

Right to Access Information

Training Manual



Open Democracy Advice Centre (ODAC), 2011

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This manual is a continuation and an update of the work that ODAC has over the years been engaged with in promoting capacity building on access to information issues in South Africa and the African continent as whole. As such this manual draws a lot from ODAC's own training manual on South Africa's Promotion of Access to Information Act, the DIHR's "Access to Information" handbook mentioned above, and the South African Human Rights Commission's "Promotion of Access to Information Act Resource Manual" that was compiled by ODAC and the Research Unit for Law and Administration (RULA) in 2001.

LEARNING OBJECTIVES

The objectives of this training session are to:

- increase participants' knowledge of freedom of information
- encourage understanding of the “right to know” as a leverage right
- develop participants' capacity to advocate for their right to know
- reflect on freedom of information in participants' own country
- identify key players in freedom of information, including institutions
- understand the procedures of requesting and providing information



RECOMMENDED FORMATS FOR TRAINING PROGRAMME

This programme can be truncated depending on the purpose of the training intervention. The two-day programme is suitable for indepth training of civil society groups that have not had prior exposure to freedom of information (FOI) issues (all sections marked “A”). The programme can also be shortened into a day-long programme directed at government implementors of an FOI and civil society actors that have had prior exposure to FOI issues (all sections marked “B” except when training civil society groups).

A four-hour programme will be more suitable community outreach activities where the trainer seeks to raise awareness about FOI (all sections marked “C” below). A shorter two-hour information session will be more suitable for engagements with senior government officials such as heads of department, ministers and parliamentarians (all sections marked “D” below).

RTI TRAINING PROGRAMME

Day 1:

- 9:00 – 9:15 Introductions and Expectations^{A,B,C,D}
- 9:15 – 9:30 Overview of the Training Session^{A,B,C,D}
- 9:30 – 10:30 What is Freedom of Information?^{A,B,C,D}
- 10:30 – 10:45 Tea
- 10:45 – 12:30 Key Concepts and Principles of FOI^{A,B,C}
- 12:30 – 13:00 FOI and Human Rights^{A,B,C}
- 13:00 – 14:00 Lunch
- 14:00 – 14:30 International Trends^{A,B,D}
- 14:30 – 16:30 What is the legal framework for FOI?^{A,B,D}
- 16:30 – 17:00 Recap of the day and close^{A,B,C,D}

Day 2:

- 9:00 – 9:30 Introductions and Recap of day 1^A
- 9:30 – 11:00 Freedom of Information in Africa^A
- 11:00 – 11:30 Tea
- 11:30 – 13:00 Public Administration Bodies and FOI^B
- 13:00 – 14:00 Lunch
- 14:00 – 14:30 How to Provide Information^B
- 14:30 – 16:30 How to Request Information^{A,C}
- 16:30 – 17:00 Overview of training and Close^A

WHAT IS FREEDOM OF INFORMATION (FOI)? AND THE RIGHT TO INFORMATION (RTI)?

Learning objectives

- Enhance knowledge of freedom of information and the role it plays in your life
- Increase understanding of your right to information.

Exercises

- How do you think freedom of information impacts on your life?
- Can you think of problems you have faced because you lack access to information?

Being able to access important information is an essential part of good corporate and state governance. Weak companies and bad governments rely on secrecy in order to hide their inefficiency, wastefulness and corruption. Information allows people to scrutinise the actions of their government and is the basis for informed debate. For the private sector, access to good information is vital for tendering, for open competition and for an efficient market place of ideas and products.

Right to Information (RTI) laws and policies encourage government to adopt a “right-to-know” approach, in the interests of both the holder of the information and the citizen, where as much information as possible is automatically published. This is cheaper for private bodies and avoids the need to administer individual requests.

There are certain limitations, where a request for information may be refused, where there is a legal requirement for secrecy, or public safety or environmental risk is involved. The decision to refuse access to a record can be challenged in the courts by the requester.

Ideally, freedom of information includes the right to receive information held by public structures, also called the right to know, as well as the obligation of such structures to make information accessible.

Securing the right to water in rural South Africa

The villagers in Emkhandlwini in rural KwaZulu-Natal noticed that their neighbours in nearby villages were receiving water from municipal tankers from Ntambanana Municipality, but they were not. Their source of water was a dirty stream that they shared with their livestock. Luckily some members of the community were aware of their rights but did not know how to seek solutions to the water issue without relying on an unresponsive local government political representative. With the assistance of the Open Democracy Advice Centre, the villagers used South Africa's Promotion of Access to Information Act to ask for the minutes of the council meetings where the municipality had decided on their programmes for the provision of water. They also asked for the municipality's Integrated Development Plan (IDP) and its budget.

It took a frustrating six months before the information was released to the requestors but finally, it showed that there were plans to provide water. With these plans the village women started asking difficult questions of the authorities regarding the delivery of water. The villagers' usage of the FOI law and their struggle for water were also covered in the media, which may have created sufficient pressure to prompt the municipality to do something about the issue. Almost a year after the initial FOI request was sent to the municipality, fixed water tanks were installed in the village and mobile water tankers delivered water to the community.

When the water supply by mobile tankers became erratic because drivers started skipping areas, the villagers made another request for information for a service-level agreement about water delivery. The villagers were shocked to discover that there was no service level agreement - a legal requirement in South Africa - and therefore the water delivery company could not be held accountable for non-delivery of services. This breach of the country's public finance legislation was duly reported to the Auditor General for investigation and corrective action.

KEY CONCEPTS AND PRINCIPLES OF FREEDOM OF INFORMATION

Learning objectives

→ Increase participants' understanding of the basic concepts and principles of freedom of information

Exercises

→ Considering the most effective media for reaching a wide audience, what campaign would work to promote freedom of information in your country?

→ What types of information can you think of that should not be disclosed under a Freedom of Information Act?

→ Can you think of a potential situation where a whistleblower would be justified in revealing otherwise secret information?

The concepts and principles underlying freedom of information provide a benchmark for laws and policies that guide a country's freedom of expression framework. The concept of openness in governance means that a government takes steps to make their affairs transparent to the surrounding community, and to strengthen the general trust in public institutions. Such measures include:

- providing access to information that they hold, at their own initiative, and
- upon request; and
- involvement of the public in policy formulation and implementation through hearings, open meetings, campaigns, and participation in relevant committees, boards etc.

The way an institution interacts with the public is crucial because openness is a mechanism which allows for good and accountable government of public affairs, and is a necessity for a dynamic and democratic society. Sometimes it's argued that openness demands a tricky balancing act between serving the public interest and loyalty towards a public employer. It is a dilemma which all public employers and employees encounter in their professional lives.

To protect other fundamental interests, be it privacy of an individual or the protection of national security, it is widely understood that openness in terms of freedom of information cannot be unlimited. A fair balance must be made between the right to information and these other interests. To find that balance requires a specific assessment in every case. International standards can assist authorities in making such assessments.

Below is a list from ARTICLE 19's⁴ Principles on Freedom of Information Legislation outlining what is necessary for a credible right to information legal framework.

1. Freedom of information legislation should be guided by the principle of maximum disclosure
2. Public bodies should be under an obligation to publish key information
3. Public bodies must actively promote open government
4. Exceptions should be clearly and narrowly drawn
5. Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available
6. Individuals should not be deterred from making requests for information by excessive costs
7. Meetings of public bodies should be open to the public
8. Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed
9. Individuals who release information on wrongdoing – whistleblowers – must be protected

⁴ Article 19 is a UK-based non-profit organisation that campaigns and lobbies on freedom of expression. They also develop standards to advance media freedom and campaign for the free flow of information.

Let's explore these a little further.

1. FREEDOM OF INFORMATION LEGISLATION SHOULD BE GUIDED BY THE PRINCIPLE OF MAXIMUM DISCLOSURE

The principle puts an obligation on public authorities to disclose all information held by them unless it is subject to a clear and limited set of exception grounds. In Denmark this is also called the principle of 'more openness' which implies that the administration is free to provide more information than the bare minimum they are obliged to disclose according to the law.

"Information is the oxygen of democracy. If people do not know what is happening in their society, if the actions of those who rule them are hidden, then they cannot take a meaningful part in the affairs of that society"

(The Public's Right to Know: Principles on Freedom of Information Legislation. Article 19: International Centre Against Censorship)

As a minimum all government and administration bodies at national, regional and local levels should be covered by the obligation to disclose information. Individuals performing public functions or exercising administrative authority should also be guided by the principle of maximum disclosure. And finally, public authorities which are part of the legislative and the judiciary could also be guided this way.

Anybody should be entitled to seek publicly held information – it should not be a privilege of a particular group of society (such as the media). In countries which currently have Information Acts, citizens generally have the right to access information held by the state authorities without having to prove a specific legal interest. In Japan and South Africa, non-citizens also enjoy this right.

Guidelines or manuals may be produced advising the general public on their right of access to information and how to exercise it (this is legally required of South African public institutions in the Promotion of Access to Information Act).

Individuals have a right to know what information public authorities record about them. This includes public employees in all cases where their employers hold information about them. There should be easy access to personal information gathered by public and private bodies in registers and databases, so that individuals can get access to their records (such as health records at hospitals). Specific regulation is needed to protect personal privacy, with regards to personal information.

The following elements are fundamental for providing information of high quality:

- To make key information available,
- Only to make correct and precise information available,
- To make information available in an intelligible language,
- To make information available in a format accessible to vulnerable groups.

Information kept by public institutions must be recorded and stored systematically and properly. Piles of paper that sit in an office corner are kept out of institutional memory. Information must also be presented in a clear and well-structured manner enabling access for all, including disabled

groups. South Africa made “plain legal language” summaries available during reform of legislation after apartheid. The UK makes “easy-reader” texts available on their website and experience shows that these texts are more frequently read than the originals. Switzerland has adopted a set of 5 criteria which must apply to presentation of online government information: information must be reliable, useful, complete, objective and easily accessible.

The right of access to information should apply to all information recorded and linked to public or administrative function, and can include written information, as well as information stored in films, photographs, maps, microchips etc. Information received orally presents a different kind of challenge. Denmark recognises this and requires public officials to record factual information received orally when it may be of importance to decisions of administrative cases.

2. PUBLIC BODIES SHOULD BE UNDER AN OBLIGATION TO PUBLISH KEY INFORMATION

Public bodies should provide relevant information to the public about their own activities and information of public interest within their fields. So, what is considered “information that is relevant to the public?”

The Global Account Report has developed good accountability practices, including for the provision of online information. They suggest a specific set of questions to assess the level of information disclosure:

- Is a description of the objectives, targets and activities available?
- Are evaluations of main activities available?
- Can the public identify all key members of the organization?
- Is there a public record of the number of votes each member holds?
- Is a meaningful description of key decision-making bodies available to the public?
- Are individuals on the executive body publicly identified?
- Are the agendas, draft papers and minutes of both governing and executive body’s meetings available to the public?
- Is there an information disclosure policy available which clearly states the types of documents the organization does and does not disclose, stating the reasons for non-disclosure?
- Are annual reports publicly available and do they contain externally audited financial information?
- Is the above information available in the languages of those with a stake in the organisations?

Too much information may have the same effect as no information at all, since an overflow of information risks blurring the essential message.

3. PUBLIC BODIES MUST ACTIVELY PROMOTE OPEN GOVERNMENT

Public bodies should actively promote a culture of openness within its own ranks as well as externally. Such promotion measures, which require strong and dedicated leadership, include:
raising awareness of the duty to provide information

Meaningful participation in democratic processes requires informed participants. Secrecy reduces the information available to the citizenry, hobbling their ability to participate meaningfully... We often speak of government being accountable to the people. But if effective democratic oversight is to be achieved then the voters have to be informed...

(Joseph Stiglitz, Former Senior Vice-President and Chief Economist of the World Bank⁴)

⁴ Joseph Stiglitz, 'On Liberty, the Right to Know, and Public Discourse: The Role of Transparency in Public Life', Oxford Amnesty Lecture, Oxford University, United Kingdom, January 27, 1999.

establishing principles of accountability
establishing systems to handle and store records in a systematic manner for easy retrieval

4. EXCEPTIONS SHOULD BE CLEARLY AND NARROWLY DRAWN

To allow for openness to thrive in practice, the grounds for exception to disclose information should be clearly and narrowly defined. Otherwise it is too easy to broaden exceptions and withhold important information. The presumption is always in favour of disclosure, unless the information meets a so-called three-part test, deduced from international law:

- the information relates to legitimate interests protected by the law, and
- disclosure of the information threatens to cause substantial harm to that interest, and
- the harm to the interest is greater than the public interest in receiving the information.

Information laws must specify which interests are legitimate to protect through exemption, and may include privacy of individuals, health and safety, law enforcement, commercial and other confidential information, the safeguard of policy making and operation of public bodies and national security.

The fact that the information falls within the list of legitimate exception grounds is not sufficient to exempt it from disclosure. The disclosure must harm the specific interest substantially and this harm must be greater than the public interest in receiving the information.

5. REQUESTS FOR INFORMATION SHOULD BE PROCESSED RAPIDLY AND FAIRLY AND AN INDEPENDENT REVIEW OF ANY REFUSALS SHOULD BE AVAILABLE

There must be clear procedures for decision making about information requests. Public bodies should:

- Provide assistance to the requester, including if he or she has difficulties filing a request
- Provide a timely answer within strictly defined time limits
- Provide an answer in at least the same form as the request was received
- Provide an answer in the same language as the request was received in multi-lingual societies if the requested information exists in this language
- Provide the actual access to information, e.g. by means of copies or making documents available to the applicant
- Explain the decision if the applicant is refused access to the requested information
- Refusals to disclose specific information should be accompanied by information on review bodies to address for possible appeal of the decision.

The way of providing access to information varies, but should include some or all of the following measures:

- Inspection of records in the place where they are kept, in a manner that enables the requester to view and read them, including making necessary equipment available for the purpose

- Transcript of file
- Paper or electronic copy of document
- Another copy of information carrier, e.g. tape or CD
- Verbal explanation
- Special forms of access for persons with disabilities

Review bodies must be established and have a review procedure in order to facilitate access to information and to enable review of the decisions made by public bodies. Such bodies include Courts, information commissions and ombudsman institutions.

6. INDIVIDUALS SHOULD NOT BE DETERRED FROM MAKING REQUESTS FOR INFORMATION BY EXCESSIVE COSTS

In principle, information should be made available at no cost. Access to information should not be hindered by costs related to copies of records and time spent by the public body to meet a request. Should the information required involve making copies of several hundred pages, e.g. for scientific research, the actual cost for the copies (and no more) may be charged. However, such cost must not be prohibitive or discriminatory.

As access to information is a right, any cost involved in authorities fulfilling this right must be considered part of ordinary public service already paid by citizens via taxes.

7. MEETINGS OF PUBLIC BODIES SHOULD BE OPEN TO THE PUBLIC

Freedom of information includes the public's right to know what the Government is doing on its behalf and to participate in decision-making processes, therefore meetings of government bodies should be open to the public.

There is a growing tendency to include public participation in the openness principles, for both policy formulation as well as decision-making. Plans about the use of a specific area or expropriation of private property for a public purpose are good examples of subjects which have a direct bearing on the public and where public involvement enhances transparency of the decision-making process and gives the public a voice. Opening up decision-making procedures to the public provides a forceful tool for making well-reasoned and viable solutions to specific challenges in cases where the decisions directly influence the public itself. In Denmark for instance, a certain number of parents must be members of all primary level school boards.

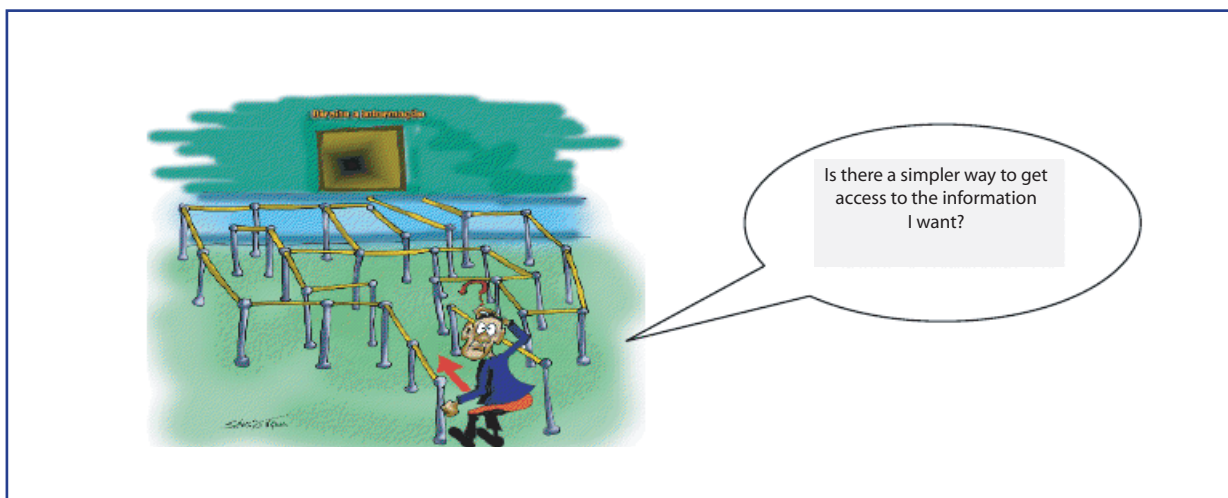
8. LAWS WHICH ARE INCONSISTENT WITH THE PRINCIPLE OF MAXIMUM DISCLOSURE SHOULD BE AMENDED OR REPEALED

Disclosure takes precedence over secrecy, and to give effect to the principle of maximum disclosure, any legislation or provision contradicting this principle should be amended or repealed. In cases of conflict, information acts should overrule.

9. INDIVIDUALS WHO RELEASE INFORMATION ON WRONGDOING - WHISTLEBLOWERS - MUST BE PROTECTED

One way of exposing corruption is by protecting so-called whistle blowers - public officials who release confidential information on wrongdoing of public bodies. In order to ensure that such internal scrutiny takes place, whistle blowers should be protected from criminal and disciplinary liability when they act in good faith to serve the public interest. The limits for whistle blowing are decided by the judiciary in court cases.

In recognition of the importance of promoting accountability of public institutions some countries, including South Africa, Ghana and the United Kingdom, have introduced laws protecting whistle blowers.



INFORMATION AND HUMAN RIGHTS

Learning objectives

→ To understand the right to information as a basic human right, and a leverage to other rights.

Exercises

→ Make a list of the ways in which freedom of information makes a difference in your life.

→ How do you think access to information impacts on your knowledge about issues such as education, health, water, pollution?

→ What groups in your country would have difficulty gaining access to official information? What practical steps could be taken to help them?

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

(Article 19 of the Universal Declaration of Human Rights.)

The right to information forms part of human rights and freedoms, and it is essential to be able to access information from public authorities in order to exercise individual human rights and freedoms. This is particularly true for disadvantaged groups, and especially in countries where information does not ordinarily flow freely.

Why is access to information so important for human rights? Right to Information laws and policies create mechanisms whereby an individual can access information that may have an impact on them, in order to meaningfully exercise other rights in the Bill of Rights. In unequal societies, it is also important for the right to equality. Experience in other parts of the world has shown that in equality cases, it is very difficult to prove discrimination because of lack of evidence. Access to information facilitates such claims by allowing an open assessment of all the facts surrounding the alleged discrimination. Equally importantly, it may also serve as a deterrent to the continued violation of rights if such activity is open to scrutiny.

A person may wish to find out whether a particular school or college is admitting only children from a particular race group or area, and thus breaching their children’s right to equality of opportunity and also their right to adequate education.

Protecting a child’s right to education in Thailand

In Thailand children’s rights to education and fair and equal treatment was challenged when a child was refused entry at one of the country’s best public schools. In asking about the results of enrolment tests for children, the case exposed all manner of corruption and discrimination that had been part of the selection process, favouring children from rich and prominent families. That action prompted a country wide overhaul of the system of selection and enrolments in public schools.

The Thai public school case shows how FOI was used to protect and promote both civil rights (fair and equal treatment and prevention of unfair discrimination) and socio-economic rights (the right to education).

RTI AND SOCIO-ECONOMIC RIGHTS⁴

The first Right to Information legislation in the world was passed in 1766 when Sweden passed her Freedom of the Press Act. This action would only be followed by the United States of America almost two hundred years later with the passing of the Right to Information Act.

During that era when only Sweden and the USA had FOI legislation, these laws created an understanding of freedom of information as merely a part of the right of freedom of expression which in and of itself had come to be perceived as a right that only affects journalists and political activists. However, there has been a major paradigmatic shift in the past decade. Right to Information or the Right to Know, properly implemented, is now regarded as a multi-dimensional human right that can make a huge difference to both people and their governments, backed by international legal instruments. RTI is now regarded as critical to realization of the group of rights in the constitution known as socio-economic rights, such as the rights to adequate health care, education and clean environment. Or a person could want to find out what information there is about pollution in a particular area, because of an unusual number of illnesses in the locality. Without the right to access information, it may be difficult to get this knowledge.

Over the past decades, the number of domestic acts obliging public authorities to give the public access to its records has increased from a dozen to more than 50 at the global level. More countries are working on adopting similar acts. All continents have witnessed the adoption of at least a couple of such acts and initiatives. This development has been triggered by different factors. In some countries it has e.g. coincided with adoption of new constitutions and political transition towards democracy whilst in other countries legislation has grown out of a public demand for transparency in the wake of corruption scandals.

The third wave⁵ of democratization in the developing world has created opportunities for development and reconstruction of many nations. This has affected not only on infrastructure and economies, but democratic imperatives have also demanded a rethink of the relationship between those in power and those who voted for them. Alexander Hamilton said:

“If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place, oblige it to control itself. A dependence on the people is no doubt the primary control on government; but experience has taught mankind the necessity of auxiliary precautions.”⁶

These “auxiliary precautions” referred to by Hamilton included courts and organs of state, as well as a constitutional legal framework established to support these relationships. Alas, we are not angels and we therefore need these “auxiliary precautions” in order to protect the democratic order. National

⁴ This part is an extract from Dimba, M. (2008) Access to Information and promotion of socio-economic justice. (An unpublished paper given on the occasion of the Carter Centre's International Conference on the Right to Public Information, February 2008, Atlanta, USA)

⁵ According to Jones and Stokke (2005) the “third wave refers to a series of democratic transitions in Southern Europe in the 1970s, in Latin America in the 1980s, in Eastern and Central Europe and former Soviet Union from the late 1980s, and in parts of Africa in the 1990s”

⁶ Hamilton, A. quoted in President Thabo Mbeki's Address to a Judicial Symposium held in Johannesburg, South Africa, 2003

constitutions need to protect civil and political rights and promote realization of social and economic rights.

By social and economic rights, we refer to what Professor Kader Asmal⁷ of South Africa once called “the red and green rights”, namely, the rights to housing, health care, food, social security, social services, education, human dignity in conditions of detention, healthy environment, land and security of tenure.

The third wave of democracy has not necessarily brought about social and economic development of communities previously disadvantaged by oppressive, discriminatory and undemocratic systems of government. This is largely because the focus has been largely on full constitutional protection of civil and political rights as the cornerstone of the democratic order, and only partially entrenching social and economic rights.

Some argue “that democracy will remain a formality unless it also includes substantive social and economic equality” (Jones and Stokke, 2005). Amartya Sen’s argument is that “democratic institutions are guarantors for public deliberation and effective responses to poverty and deprivation” (Jones and Stoke, 2005). Sen (2000) goes on to argue that:

“freedoms are not only the primary ends of development, they are also among its primary means. Political freedoms (in the form of free speech and elections) help to promote economic security. Social opportunities (in the form of education and health facilities) facilitate economic participation. Economic facilities (in the form opportunities for participation in trade and production) can help generate personal abundance as well as public resources for social facilities. Freedoms of different kinds can strengthen one another.”

Paul Graham of Idasa agrees with Sen when he argues that “democracy unleashes the freedoms and establishes rights which are necessary for socio-economic development and growth.”

The issue of civil and political rights being in constant interplay with socio-economic rights is expounded on by Mumtaz Soysal, who in his 1977 Nobel Lecture argued that there is no conflict between civil and political rights on one hand and social and economic rights on the other hand.

“When those deprived of their socio-economic rights cannot make their voices heard, they are even less likely to have their needs met. If a person is deprived of one right, his chance of securing the other rights is usually endangered. The right to education and the right to freedom of information and open debate on official policies are necessary to secure full public participation in the process of social and economic development. The freedom of the human mind and welfare of the human being are inextricably linked.”

⁷ The late Professor Kader Asmal was a former Human Rights Law Professor at Trinity College (Ireland) and South Africa’s former Minister of Education and former Minister of Water Affairs.

South Africa presents a good example of a constitution - as an “auxiliary precaution” - that establishes a very progressive approach through the inclusion of socio-economic rights alongside civil and political rights. In a country where citizens were unjustly denied access to certain services and resources because of their race, the constitution’s protection of socio-economic rights is most vital to the process of redress, reconstruction and redistribution.

The protection of socio-economic rights by any country’s constitution and making their progressive realization partially justiciable by the courts is quite a departure from the norm, where focus has tended to be on protection of political and civil rights. Traditionally Freedom of Information has found its place among the body of these political and civil rights.

INTERNATIONAL TRENDS⁵

Learning objectives

→ Understand the global context of legal and cultural openness and freedom of information.

Exercises

→ What system of law operates in your country, and how open do you think it is?

→ Do you think there is freedom of information in your country? Why/why not?

The development of openness of governmental affairs in Sweden since the 18th century has been one of the greatest sources of inspiration for spreading the principle of openness worldwide. Following the Second World War many countries started adopting legislation governing access to information held by governments. Since the fall of the Berlin Wall this process spread to most Central and Eastern European countries during their transition to democracies. It also spread to countries in transition to democracy in all other continents. Currently, a considerable number of countries in Asia, Africa and the Americas have adopted or are considering adopting such legislation.

A growing number of countries have established the legal right of citizens and others to demand information from public bodies (legal systems differ from country to country). In civil law countries, legislation is the primary source of law in contrast to common law countries, where case-law is the main legal basis. In other countries, there is co-existence of civil or common law with so-called customary law, which is oral law based on tradition. Naturally, the legal tradition will influence the value of the legal instruments used to regulate openness and access to information. However, in relation to access to information, it should be mentioned that even in some common law countries such as the UK, South Africa, Nigeria, Ghana, Kenya, Sierra Leone, etc, legislation plays an important role in establishing the right of access to information.

The principle of openness and the right of access to information are enshrined in the general hierarchy of norms, which is roughly illustrated in the example below. Very often the low-ranking norms are more specific than the Constitution or legislation and therefore more frequently used by the public authorities. However, all the described norms are binding for public authorities. Therefore, citizens can use them to claim their rights.

<u>Civil law countries</u>	<u>Common law countries</u>
International law	International law
Constitution	Constitution if any
Legislation such as <ul style="list-style-type: none"> • Freedom of Information Act. • Special legislation affecting access to information, including access to environmental and consumer information, legislation protecting personal data • Sunshine laws on openness of meetings and public participation. 	Case-law, including codification of law, including Freedom of Information Acts
Subordinate legislation, such as <ul style="list-style-type: none"> • Regulations • Consolidation acts • Statutory orders • Government circulars • Instructions 	Regulations, including <ul style="list-style-type: none"> • Government codes of practice and standards • Court instructions

⁵ This manual draws on and updates "An Introduction to Openness and Access to Information" by the Danish Institute for Human Rights published in 2005. It can be accessed from <http://www.humanrights.dk/files/pdf/Publikationer/An%20Introduction%20to%20Openness%20and%20Access%20to%20Information.pdf>

In addition to the formal hierarchy, public institutions often adopt their own policies and guidelines on openness. Such instruments generally promote a culture of openness and good governance. These declarations of intent are not legally binding though, and therefore the public can seldom invoke them to claim specific rights. To ensure that the principles are applied in practice, it is important that the legislation be as simple as possible.

Example of simple legislation	Example of complicated legislation
<p>Sweden</p> <p>Legislative basis Freedom of the Press Act Special act.</p> <p>Exemptions Primarily gathered in one act, The Secrecy Act. If regulated by other acts, the Secrecy Act must contain a reference to it.</p>	<p>Denmark</p> <p>Legislative basis General act: the Access to Public Administration Files Act and the Public Administration Act. Special act, regulations, instructions and internal guidelines.</p> <p>Exemptions Contained in several acts, including the general acts establishing the openness principle.</p>

In Sweden, the general principle of openness is stated in an access to information act and a couple of special acts. All exemption grounds are contained in a secrecy act. This makes it fairly easy to decide whether information should be disclosed or not. In contrast, neighbouring Denmark has several acts, regulations, instructions and other legal instruments to regulate the same area. This provides a confusing pattern of legal instruments with reference-making and exemptions from one to another. The coexistence of more legal instruments makes the legal framework more complicated and obscure to the administration as well as to the citizen.

In federal systems, federal legislation is often supplemented with state legislation in areas where the states alone have the jurisdiction.

In some countries the point of departure for the public's right of access to information is – or has been – legislation on the protection of classified information or state secret acts in opposition to a regular openness approach. Such legislation creates a culture of secrecy and closes public institutions rather than opening them up to the public.

WHAT IS THE LEGAL FRAMEWORK FOR FOI?

Learning objectives

→ Understand the legal requirements for freedom of information.

Exercises

→ How could civil society encourage stronger support for a legal framework for freedom of information in your country?

Key international instruments used in Freedom of Information policy and law are discussed below.

THE UNITED NATIONS

In 1946 the United Nations General Assembly adopted Resolution 59(1), which stated that:

“Right to Information is a fundamental human right and is the touchstone of all the freedoms to which the UN is consecrated.”

Other international human rights instruments enveloped the right of access to information within the broader and fundamental right of freedom of expression.

These include:

The UN General Assembly’s Resolution 217 A (III) on the 1948 Universal Declaration of Human Rights which states that:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

The UN General Assembly’s Resolution 2200 A (XXI) on the 1966 International Covenant on Civil and Political Rights states that:

“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 COMMONWEALTH PRINCIPLES

The issue of access to information was first given expression within the Commonwealth in 1980 when the council of Law Ministers issued a statement recognizing the fact that:

“public participation in the democratic and government process was at its most significant when citizens had adequate access to information”.

However this was given more detail in 1999 when the Commonwealth convened an Expert Group on Right to Information which confirmed that:

“Right to Information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the executive, the legislative and the judicial arms of the state, as well as any government owned corporation and any other body carrying out public functions.”

This principle was adopted by the council of Law Ministers who went on to formulate further principles which started that:

- Member countries should be encouraged to regard Right to Information as a legal and enforceable right.
- There should be a presumption in favour of disclosure and Governments should promote a culture of openness.
- The right of access to information may be subject to limited exemptions but these should be narrowly drawn.
- Governments should maintain and preserve records.
- In principle, decisions to refuse access to records and information should be subject to independent review.

The Ministers also called on the Commonwealth to promote these principles among its member states.

THE AFRICAN CHARTER & THE DECLARATION ON PRINCIPLES OF FREEDOM OF EXPRESSION

The Organisation of African Unity's (predecessor to the African Union) African Charter on Human and People's Rights, adopted in 1981 and came into force in 1986⁶, also upheld the right of access to information wherein Article 9 of the Charter states that:

- “1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.”

At the 32nd Ordinary Session of the African Commission on Human and Peoples' Rights (Banjul, The Gambia, 2002) African countries adopted a Declaration of Principles on Freedom of Expression in Africa⁷ which states that:

Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law. The right to information shall be guaranteed by law in accordance with the following principles:

- everyone has the right to access information held by public bodies;
- everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
- any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
- public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
- no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
- secrecy laws shall be amended as necessary to comply with Right to Information principles.
- Everyone has the right to access and update or otherwise correct their

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African Charter on Human and Peoples' Rights, available at http://www.achpr.org/english/_info/charter_en.html

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African Commission on Human and Peoples' Rights, Declaration of Principles on Freedom of Expression in Africa, 2002, <http://www.achpr.org/instruments/achpr/>

personal information, whether it is held by public or by private bodies.

THE AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE

One of the stated objectives of the recent adopted AU African Charter on Democracy, Elections and Governance adopted at the AU Assembly of the AU on 30 January 2007 is to:

“Promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs”

The Charter states that member states shall implement the charter in accordance with, among others, the principle of “transparency and fairness in the management of public affairs”. In Article 12 it also calls on member states to: “Promote good governance by ensuring transparent and accountable administration”.

Article 19 of the Charter calls on each member state to “guarantee conditions of security, free access to information, non-interference, freedom of movement and full cooperation with the electoral observer mission.”

AFRICAN UNION CONVENTION ON PREVENTING AND COMBATING CORRUPTION

This convention was adopted in 2003, but still awaits further ratification before entering into force. The Convention applies both to the public and the private sectors. One of the objectives was to ‘establish the necessary conditions to foster transparency and accountability in the management of public affairs’ (Article 2, 5). The Convention obliges African states to respect the rule of law and good governance (Article 3, 3).

Article 9 of the requires State Parties to adopt legislative and other means to ‘give effect to the right of access to any information that is required to assist in the fight against corruption’. According to the Convention, civil society and the media should be enabled to participate in the monitoring process of public bodies (Article 12, 3). Furthermore, they should be given ‘access to information in cases of corruption and related offences on condition that the dissemination of such information does not adversely affect the investigation process and the right to a fair trial’ (Article 12, 4).

AFRICAN CHARTER ON VALUES AND PRINCIPLES OF PUBLIC SERVICE AND ADMINISTRATION

Article 6 (Access to Information) of the African Charter on Values and Principles of Public Service and Administration provides that:

1. Public Service and Administration shall make available to users information on procedures and formalities pertaining to public service delivery.

2. Public Service and Administration shall inform users of all decisions made concerning them, the reasons behind those decisions, as well as the mechanisms available for appeal.
3. Public Service and Administration shall establish effective communication systems and processes to inform the public about service delivery, to enhance access to information by users, as well as to receive their feedback and inputs.
4. Public Service and Administration shall ensure that administrative procedures and documents are presented in a user-friendly and simplified manner.



Have you heard? The newspaper says that the government passed a law that guarantees us all the right to get any information that is held by the government!

FREEDOM OF INFORMATION IN AFRICA

Learning objectives

→ Understand freedom of information in the African context.

Exercises

→ Has your country adopted or ratified any global, or African, freedom of information laws.

If not, why do you think this is so?

Despite what has been called an “explosion” in the passage of freedom of information laws the world over, with more than seventy of the countries passing the laws in the last decade being developing countries, very little of this activity has happened on the African continent.

Following the international standards discussed earlier, various countries have attempted codify these access to information rights either in statutes or in constitutions. A country’s constitution should always be the supreme law of the land and its highest standard on matters of law and rights.

There is a vast new body of experience on how to implement freedom of information in the context of challenging institutional, resource and other socio-economic constraints, but in the African context this experience is limited only to South Africa, Nigeria, Liberia and Uganda to some extent. Ethiopia and Angola have also passed freedom of information legislation but these laws have not been made fully operational yet. The Zimbabwean Access to Information and Protection of Privacy Act is a classic example of what freedom of information law should not be.

In southern Africa five (5) SADC countries have expressly guaranteed the right to information within their constitutional framework, namely; South Africa, Malawi, Mozambique, the DRC and Madagascar. Eight other SADC countries have only protected this right within the context of the broader right of freedom of expression which normally includes the right to “seek, receive and impart information”. These countries are Botswana, Lesotho, Angola, Zambia, Mauritius, Zimbabwe, Namibia and Swaziland. Of these countries, only Angola and Zimbabwe have adopted some form of codification of the right of access to information by statute. Zambia has a bill at advanced stages. The Zambian bill – a product of a healthy and successful partnership between the government and civil society - was tabled before parliament in 2002. However the bill was soon and unceremoniously withdrawn by the government during its second reading. Six years later, in early 2008 the late Zambian President, Levy Mwanawasa reintroduced the bill in parliament during the official opening of the assembly. The bill languished in an open ended process of “consultations” by government until the Rupia Banda administration fell in 2011 and replaced by a more sympathetic Michael Sata administration.

Though Zimbabwe has passed a law called the Access to Information and Protection of Personal Privacy Act (AIPPA), it is difficult to consider this legislation as a proper Right to Information Law because of the numerous and very broad exemptions on the exercise of the right to information and its draconian provisions aimed at controlling the exercise of journalism in the country.

On the eastern part of Africa only Uganda, Rwanda and Kenya have the right of access to information specifically guaranteed in the constitution but Uganda remains the only country in the region that has passed legislation that gives effect to the right of access to information. In Tanzania the right

to information is only established in the constitution as part of the right to freedom of expression. There is no expressly stated right to information or right to seek and receive in the constitution of Burundi, except through inference and interpretation of what constitutes the right to freedom of expression that is provided for. The draft bills on Freedom of Information law are at advanced stages in Tanzania, Kenya and Rwanda. In 2007 a Kenyan government delegation undertook a study tour to South Africa to learn from the experiences there on drafting and implementing a Freedom of Information in the context of a developing African country.

Article 29 of the Ethiopian constitution expressly establishes the right to information but also within the broader freedom of the press, mass media and artistic creativity. This Ethiopian Mass Media and Freedom of Information Act was passed by parliament in 2008 and will come into force in late 2010.

On the western part of the continent, Gambia does not have constitutional protection either of the right of access to information specifically or the right to freedom of expression generally. Gambia is infamous for being one of the most dangerous places for the practice of journalism on the continent. On a more positive note, the constitutions of Ghana, Cameroon and Senegal expressly guarantee the right to information while in Nigeria and Sierra Leone the right is constitutionally established as part of the freedom of expression. The Nigerian draft bill was passed by both houses of Parliament in 2007 but the former President, Olusegun Obasanjo, refused to sign it into law, which was quite a set back for the campaign for Freedom of Information law in Africa. It was only four years later during Obasanjo's second predecessor's administration – Dr. Goodluck Jonathan – that the Nigerian FOI law was adopted and signed into law. However Nigeria was piped to the post by Liberia which, in 2010, became the first West African country to adopt an FOI law. Similar developments occurred in Guinea and Niger. There are currently draft laws in Ghana, Sierra Leone and Senegal. However there are currently no FOI draft bills in Benin, Burkina Faso, Cameroon, Cape Verde and Mali.

However in both Mali and Senegal there currently exists in the statute public administration laws that allow for access to administrative documents.

In North Africa, only Tunisia has an access to information legislation, while the Moroccan constitution establishes the right to “freedom of opinion and freedom of expression in all its forms”. Morocco and Egypt are the only North African countries that have draft legislation on Freedom of Information.

PUBLIC ADMINISTRATION BODIES AND FOI

Learning objectives

→ Understand the role that public administration plays in freedom of information.

Exercise

→ Write down some guidelines for how you think an information officer should respond when approached with a request for information.

Public administration should be open about its financial management and the services it provides to the citizens, fostering transparency and accountability. It should also be open about how policies and procedures regulate the development of these activities. As a minimum this obligation should apply to the following areas:

- Development and realization of policies, strategies, initiatives and physical planning,
- Financial decisions, including budgets and accounts,
- Decisions in administrative cases,
- Evaluation of sector performance,
- Information about services,
- Meetings of the administration.

When regulated at the national level, public administration should be governed by a general legal framework on openness and access to information (Freedom of Information Act) and in most cases also by special acts requiring openness in relation to specific areas (e.g. Anti-Corruption Act, Data Protection Act, Access to Environmental Information Act, Public Archives Act).

Local governments typically work and operate differently from state institutions. Therefore, specific local government acts and sector laws apply to local governments in many countries. Such legislation may put forward a number of additional or more specific demands to openness.

It is important to clarify the intention of the legislation and how to use it in practice, and in concrete terms to assist those administering the legislation. A useful way of doing this is through guidelines or manuals. Front line staff that talk directly to citizens should have guidelines on how to handle requests for information. These tools should be made public.

The legal framework should enable citizens to participate in meetings and be actively involved in the administration of public affairs. The more these practices become institutionalized, the more they create channels for dialogue between public officials and citizens. In this way, public officials can gain valuable information about citizens' preferences that enable the public administration to make sound decisions, which are as widely accepted as possible.

Bodies typically covered by the notion 'public administration' in Information Acts include:

State administration	Local administration
<ul style="list-style-type: none"> • Ministries • Boards • Agencies • Police • Military • Hospitals 	<ul style="list-style-type: none"> • Municipalities • Boards • Institutions providing specific services at municipal level, including • Municipal police • primary and secondary education, • water supply, • waste management, • public utilities • hospitals
Private bodies undertaking public duties, such as: <ul style="list-style-type: none"> • telecommunication, • airports and other infrastructure, • bodies administering grants from public budgets 	

Public administration is not itself responsible for adopting legislation on openness, but it is responsible for bringing law into practice. Public administration officials will also influence perceptions about performance throughout the entire public sector, through its approach and mechanisms to guarantee openness. This is especially important in countries having long-standing secrecy attitudes and practices.

In any society, openness only comes about through dedicated leadership, systematic training, promotion and implementation of openness legislation and principles. Sanctions should be imposed on public officials who seek to obstruct openness legislation in practice.

For all branches of public administration, openness means willingness to communicate the information they hold to the outside world – both information about successes and information about failures. The way that the different branches of the administration can open up towards citizens naturally depends on the type of work they undertake. Willingness often develops through outside pressure, for instance from NGOs, unions and the political opposition.

Even if there is access to information, there is no guarantee that citizens will take action; the public may be unaware of their rights or may fear repercussions. Public officials must play an active role in empowering citizens to participate in public affairs.

In many ways it is an advantage for public officials to be pro-active about their transparency – even beyond what is prescribed in the legislation.

That way, citizens get a better understanding of the motives underlying activities, plans and decisions and the active involvement of citizens is a way to:

- Increase commitment and co-ownership
- Diminish the “us-them” thinking
- Tap available resources in civil society
- Turn negative feelings (protests) into positive energies (engagement). The enthusiasm and involvement of some citizens in particular cases (like child care, roads, schools etc.) can in a positive dialogue be used to discuss broader local government development issues
- Give the administration an opportunity to make better decisions and solutions to problems
- Create a balance between different special interest groups thus increasing local democracy
- Reconcile people’s reality on the ground with what is claimed on paper through public service reports on progress of government in delivering services

In addition to the legal framework, procedural and organisational mechanisms can also promote openness⁸ and avoid excessive bureaucratic obstacles. This helps to encourage staff to regard openness as a positive value. Leadership must be dedicated to setting a clear agenda and to promote concrete openness initiatives within the organization.

Important processes where open and responsible administration should occur, include:

- Internal information procedures about every-day matters, as well as background information of the staff such as staff handbooks containing relevant legislation, guidelines and information on procedures and processes
- Procedures on about budgets and annual accounts
- Procedures for registering and storing information
- Procedures to accommodate enquiries from the general public, including how to assist the public requesting access to information
- Procedures for publication and release of information, including type of media and how to make information intelligible, accessible and useful
- Procedures for openness of meetings and possible direct involvement of the public
- Communication policy
- Procedures for public consultation.

Transparency Checklist - best practices in municipalities in Bulgaria

The Foundation for Local Government Reform (FLGR) is a resource centre in Bulgaria which specialises in providing assistance to local government on ways to improve democratic and transparent government. As one example, FLGR has drawn up a ‘Transparency Checklist’ of best practices in use in municipalities in Bulgaria. Upon request of FLGR, municipalities themselves contributed to the elaboration of the checklist by providing examples of best practices used in their daily work. Examples include procedures of the municipal council, the way decisions are executed and communicated, openness of financial management, openness in relation to service delivery, openness in relation to public procurement procedures and decisions and issues relating to management and disposal of municipal property. Copies of the list have been forwarded to all municipalities in order to help them assess the transparency of their daily management as well as areas where they can make progress.

Seeking education budgets in rural Tanzania

In Bigwa, a rural settlement in Tanzania just 15 minutes away from central Morogoro, there are a group of women that rely on subsistence farming and handicrafts to keep their families going. Local schools were built with donor support, under the condition that the donor agency and government would put in funding for every Tanzanian shilling paid by local parents towards the running of the schools. These funds would then be controlled by local authorities and the school principals.

Inefficiency and some reported cases of corruption have left some schools in disrepair, with no accountability of how funds are spent. The women in the village are fearful to openly ask for this information. "Asking such questions may be seen as betrayal and can lead to one being branded a trouble-maker". is how one of them has put it.

With regard to electronic government (e-government), technological development provides new avenues for processing information and handling electronic records, as well as making them available to the public. Depending on the development of the IT system of public administration, as well as internet (or mobile) penetration in the general public, it may be relevant to adopt procedures for e-government. In Denmark the experience gained from a major project on 'e-government' throughout public administration will be used by a Commission on Access to Information tasked with drafting a proposal for a new act on access to information that takes into account technological progress in the Danish public administration.

Organisational structure can also impact on the flow of information. If an institution is well managed with a clear internal distribution of tasks, it will typically be in a better position to provide good, open administration.

Key activities of any public administration which should be scrutinised include establishment and maintenance of archives and registers, information offices, access to information services and digital services.

Public administration institutions need a well-functioning archive to store data in a systematic manner. According to need and size, archives may be organized centrally or in a decentralized manner within every single branch of the administration.

In many countries, public relations officers or information desks (or so-called one-stop shops) are given the task of assisting citizens who want to access service information. They are most widely used in local governments which are charged with many service tasks. In societies with a high degree of digitalization, websites of public administration tend to become the new service counters or at least a supplement to the one-stop shops.

In one-stop shops, citizens should be able to submit their proposals and complaints, make appointments with the officials, receive information upon request and get acquainted with the work and decisions of the institution. A one-stop-shop itself symbolizes openness and that citizens are welcome.

Information offices that are responsible for general communication and information activities should identify topics of public interest to include in an active communication strategy. This could include analysis of public opinion, examination of requests from the general public, public hearings and polls. They may also produce information to serve a specific audience such as national and foreign journalists.

Skills that are important for information officers include communication skills, service skills, organization skills and language skills, especially in countries with more than one official language. Information officers must be service-minded, unbiased and able to communicate difficult information in an easily accessible language.

Online Delivery of Municipal Service in Vijaywada, India

The Vijaywada Online Information Centre (VOICE) delivers municipal services such as building approvals and birth and death certificates. It also handles the collection of property, water and sewerage taxes. The VOICE system uses five kiosks located close to the citizens. The application has reduced corruption, made access to services more convenient, and has improved the finances of the municipal government.

Staff need to know relevant procedures, including when expert staff should be consulted. In digitalized societies such procedures should be accessible to staff via the internet. It is also important that a sufficient number of officials are appointed to undertake these services.

Staff numbers and information accessibility interrelated in South African law

In the chapter on designation of information officers of the South African Promotion of Access to Information Act this concern is formulated as follows: 'For the purpose of this Act, each body must,, designate such number of persons as deputy information officers as are necessary to render the public body as accessible as reasonably possible for requesters of its records'.

There is a risk of overlap in the distribution and exercise of the tasks performed by those providing access to information in one-stop shops or via websites and specialists working with specific subject areas. Important synergies between these structures should be identified, adopting a clear distribution of tasks as well as a plan for sharing information. Co-ordination is especially important when the two types of services are not physically or geographically close to each other. Without appropriate co-ordination, citizens can become confused about who to address to get information.

Where the resources are available, digitizing the administration leads to easier and faster sharing of information and can allow the general public to access information services directly via the internet.

Ration dealing in India

The Indian government runs a massive food subsidy scheme as a social security measure aimed at promoting the people's right to food. These food rations are mostly distributed through shopkeepers in the private sector, called ration-dealers. Ordinarily a member of the public would take their ration card to the local ration-dealer to collect some food parcels. The dealer would then claim payment from the government for the food distributed to the local community in terms of the food subsidy scheme. However some ration dealers were reported to be manipulating the process by telling people that they'd run out of "food subsidy stock" and offering to sell them "ordinary trading stock" instead. However in the records of the ration-dealer, such transaction is recorded as a distribution in terms of the food subsidy scheme and money is claimed from government as well. Therefore the ration-dealers get paid twice, both by the customer and by the government.

This practice was exposed in a number of villages in the state of Rajasthan when the communities used freedom of information law to access the ration-dealers' claim documents sent to the government. Massive discrepancies were discovered between what the ration-dealer's were claiming from government and what they actually distributed by the communities as captured in individual ration cards of community members.

FOI can be used as tool for accountability, for protection of socio-economic rights, for fighting corruption and for improving government efficiency.

HOW TO PROVIDE INFORMATION⁹

Learning objectives

→ Understand best practice about providing information to requesters.

Administrations do not become open and transparent out of the blue. It takes time to sow the seed of openness and make it grow into a culture of openness within the institutions. Old habits need to change, perceptions of the administration's role must change and citizens must be invited to participate in and influence the conduct of public affairs. A set of core conditions must also be fulfilled in order for public administrations to open up and be able to provide access to information. This applies to the external as well as internal levels.

Exercise

→ List the best way/s to reach the most number of people in your country, to provide them with access to information that would be useful to them.

Externally, it takes a huge institutional landscape to promote the development of an open public administration. Such a landscape comprises the separation of powers, respect for the rule of law and protection of fundamental rights and freedoms. It moreover requires the existence of free and active media and NGOs as well as active citizens wishing to be informed about matters of public interest. External controllers such as state auditors and ombudsmen taking action if public affairs are not properly conducted are also required. And finally it takes legislation and principles on freedom of information to create a truly open public administration.

Internally, an open administration demands a preset system of values, policies governing the way interests are articulated, resources managed and the power exercised. Thus, public administrations need a number of procedures to support the information flow and to make information accessible internally as well as externally. It is important to support policy and procedures by organization, e.g. by the establishment of well-functioning archive systems and information offices to provide storing and handling of general information.

Both employers and employees need knowledge about how to make the correct decisions when approached with requests for information. It is also important for the cooperation of different institutions that information flows freely between them.

Public institutions administer public tasks and funds for the benefit of the common good. So ideally, the public should be properly informed and consulted about matters of public interest (including budgetary issues) to enable them to take active part in public affairs, make informed decisions, and hold public institutions accountable for good or bad administration, or corruption with regard to tax payers' money. Knowing about administrators themselves is also important – their salaries, or personal economic interests which may impact on their professional decisions. It's also important to understand procedures about recruitment, tendering, outsourcing, to avoid arbitrary and corrupt behaviour. Sometimes citizens are unaware of their right to know, as well as what is important to know.

In-service training is important to educate public officials about the standards and practices for adopting clear policies, legislation, guidelines, administrative procedures regulating why and how public institutions should conduct public affairs in an open and transparent manner.

Protecting a child's right to education in Thailand

In Thailand children's rights to education and fair and equal treatment was challenged when a child was refused entry at one of the country's best public schools. In asking about the results of enrolment tests for children, the case exposed all manner of corruption and discrimination that had been part of the selection process, favouring children from rich and prominent families. That action prompted a country wide overhaul of the system of selection and enrolments in public schools.

The Thai public school case shows how FOI was used to protect and promote both civil rights (fair and equal treatment and prevention of unfair discrimination) and socio-economic rights (the right to education).

When freedom of information is a new concept in a society, it takes time to bring practice in line with the law. To societies unused to such a culture of openness, this implementation may come as a challenge - for the public administration as well as for the public. The administration must learn to become a service body and the general public must learn how to make use of the right of access information. For both sides this demands an increase in the level of awareness of rights and obligations.

Information and communication technologies are effective tools to increase accessibility and availability of information and communication held by public institutions. The internet allows information to be retrieved much faster than when using paper based systems.

Technology itself does not create openness, but can establish the preconditions for improving the level of openness. Technology does come with a challenge, however, particularly with regard to storing personal data in a secure manner, that doesn't allow for misuse. Technology can also alienate those who do not have access to the internet, although the increasing penetration of mobile phones makes reaching into rural areas far more viable than in the past.

Trust is an important part of open societies. The potential drawback of openness is abuse of the system in a way that is illegal and restricts the right to information. Corruption and terrorism are two of the most forceful threats. Openness and the right to information can also be threatened by lack of awareness of the right, low education levels hindering understanding of the right, and restrictions on free media.

What should be made public?

As described in the openness principle 'Obligation to publish' earlier, basic information includes information on the function, organization, accounts, procedures and standards of the public authority as well as major decisions affecting society. Freedom of Information Acts in some countries, such as the United Kingdom and the United States, prescribe that basic information should be provided to the public. In other countries, such as Denmark, the public administration is not bound by general law to provide such proactive information disclosure on its own initiative. Whatever the law prescribes, it is good practice that information is made available in a generally accessible form. This includes print, broadcast and electronic forms of dissemination.

How to make information public?

Very few acts prescribe how information should be made public, leaving each administration to make its own judgment. Before deciding on dissemination strategies, levels of literacy and reach of technology must be assessed to ensure that as many people as possible are able to access the information. This is of particular concern when dealing with high numbers of people living in rural areas.

Here is a list of examples:

- brochures/pamphlets
- booklets
- print newsletters
- reports
- posters (in market places, at post offices, libraries, other government buildings)
- contributions to debates in print and online media
- websites and online newsletters
- radio (adverts, soapies, plays)
- mobile phone platforms
- theatre

[Annual report of Nigerian Attorney-General accounts for requests for information](#)

All Nigerian Ministries and public bodies to whom the FOI law applies are obliged to inform the Attorney General about inter alia, the number of requests for information received and processed, and the type of individuals or bodies who have presented the requests. Based on these reports, the Attorney General provides statistics on information requests in its annual reports. The reports are publicly available.

The African Commission on Human Rights stresses in its Declaration of Principles on Freedom of Expression in Africa that broadcast media are particularly appropriate media to use in Africa where oral traditions lend themselves particularly well to such ways of providing information. Broadcast media have the advantage of reaching a wide audience due to the comparatively low cost of receiving transmissions and the media's ability to overcome barriers of illiteracy as well as geographical distances.

Information and communication technologies provide opportunities to provide information easily - books, reports, policies, guidelines, accounts, relevant public application forms etc. as well as to provide on-line self-service. This can empower citizens and help the workload for the administration. It is also easier to process large amounts of information (text, pictures, sound, film) quickly and systematically using the internet. Importantly, technology also makes it possible to make information accessible to disabled groups, such as automatic reading of electronic text.

[Transparency Portal in Kenya](#)

In 2011 the government of Kenya launched the Kenya Open Data portal. This transparency portal "makes public government data accessible to the people of Kenya" It holds publicly accessible information on national census data, government expenditure at national and county level, parliamentary proceedings and public service locations. People can also find information about health facilities, school examination results, etc.

Danish Key Figures Database on Local Government

In Denmark the central government hosts a Local Government (LG) Key Figures Database. The Ministry of the Interior and Health publishes a large number of "key figures" per local government on an annual basis - both in paper reports and in an electronic database. An electronic link to the database is available from the Ministry's website. The main challenge of such information gathering is to ensure that the information is comparable and therefore that reporting is done along the same guidelines. The areas covered include general data such as:

- population, living conditions and employment
- income and expenditures
- services
- child care and social care in general
- education and culture
- costs and benefits

The key figures gathered give the public and especially the press an opportunity to compare key figures of different local governments. However, in order to single out best practices and why specific local governments perform better than others it is necessary to analyze the policies and administrative practises behind these key figures.

The system has proven to be quite an effective method to increase local governments' awareness of their efficiency. Furthermore, the key figure databases have given local governments an incentive to apply national accounting standards, in order to ensure that their financial dispositions are correctly reported to the public.

Right-to-Know Network provides access to official US databases

The Right-to-Know Network provides free access to numerous official databases and resources on the environment in the USA. The Network was established in order to empower citizen involvement in community and government decision-making. With the information available on the Right-to-Know Network it is possible to identify specific factories and their environmental effects; find permits issued under environmental statutes; and identify civil cases filed.

Government-sensitization in Niger, West Africa

In Niger ministers and high ranking officials travel around the country to sensitize and gather comments from administrative, traditional, religious and civil society leaders. This method was used to inform and involve citizens in the national strategy for conflict prevention in 2003, prior to the conclusion of a final document. In the fight against HIV/AIDS and treatment of diseases in Niger the same types of teams try to locate other campaigning places such as major market places or traditional gatherings such as the nomads 'Salt Party' in September.

[British government homepage on freedom of information](#)

An extensive campaign was conducted by the British government prior to the Freedom of Information Act on 1 January 2005. The campaign includes a section on the right of freedom of information designed to service the public. This gives an introduction to human rights, to the new British legislation and how to use it as well as other relevant legislation and where to address requests for access. See the site at <https://www.gov.uk/make-a-freedom-of-information-request/the-freedom-of-information-act>.

The public should have wide access to information of general interest. Information should only be withheld from public disclosure if this is strictly necessary to protect another right or interest, such as law enforcement, the operation of public bodies or national security.

[General access to communist secret police files in the Czech Republic to redress past wrongs](#)

In 2002 the Czech Senate approved an act which extended the right of access to previously classified communist secret police files. Czech citizens have been able to access their own files since 1996, but not the files of other people. The new legislation excludes only files of foreign nationals and those containing information that could endanger national security or the lives of other people from access. The act established a new Institute for the Documentation of the Totalitarian Regime to oversee access to the files and ensure the transparency of the process.

Information which the authorities hold about individuals should not be disclosed to the general public unless the person has consented, or there are important considerations of public interest to justify departure from the general rule of confidentiality. This could for instance be to protect vulnerable members of society or to ensure good and open administration.

[Access to information about public administration staff](#)

The African Union's Draft Model Law on Access to Information provides that information that "relates to the position or functions of an individual who is or was an official of the information holder or any other public body or relevant private body" cannot be withheld in terms of the exception of personal information regarding third parties.

In the South African law information that may not or cannot be withheld includes: confirmation that the individual is or was an official of that institution or company, their title, work address, work phone number, the job classification, salary scale, remuneration and responsibilities of the position held or services performed by the individual; and the name of the individual on a record prepared by the individual in the course of employment.

Individuals should generally be entitled to access the information the public authorities hold about them. Only in extreme situations where it

is strictly necessary to protect other vital public or private interests, such as the protection of health and safety, should this right be limited. Not many countries have directly regulated the protection of privacy regarding personal data. International standards provide a framework for protection of the individual against misuse of data held about them. According to these standards, transfer of personal data between authorities should be regulated by national law and should always serve a legitimate aim. The administration should generally request the consent of the person(s) concerned. Only when competing private or public interests exceed the interest in protecting personal privacy, should exceptions to this procedure be allowed. As a matter of principle, the citizens should be informed about procedures and practices about such information transfer. They should also be informed of their right of access to, and correction of, the files held about them.

Public administration should guide the citizen in requesting information. To do so, many institutions have chosen to publish “request forms” detailing how the public should make correct information requests. This can save time for officials. Clear directions save the authorities from spending unnecessary time corresponding with each individual person making a request for information.

When access is requested to a document or other information where only part of it can be disclosed such partial access should be ensured.

Methods to promote dialogue between citizens and the administration include:

- Systematic collection of citizens’ comments to draft policies and decisions: Surveys, questionnaires and interviews can be used to clarify preferences within specific user groups, or from a representative sample of citizens. Referenda can be held when issues are particularly important.
- Evaluating and monitoring performance:
Surveys
‘report cards’ or ‘scorecards’ on the administration’s performance (results must be made available to the public)
- Consultative mechanisms to give inputs to policy development:
Regular official consultation hours for media and interested public on general matters
Public hearings (including a selected panel of citizens or the general population) to allow for questions and testimonies
Group meetings with local community (e.g. to make a participatory planning and budgeting session)
Discussion forums for existing and potential stakeholders
Development seminars to establish a common vision for the community’s future
IT dialogue forums or internet conferences
Incentive mechanisms (rather than penal actions) rewarding them for good information practices

Incentive mechanisms for providing information to the population - investment funding in Uganda

Since 1999, Uganda has implemented a national Local Government Development Programme that provides capital grants for infrastructure development to local authorities.

In order to gain access to the capital grants, the local authorities have to fulfil some minimum requirements that are agreed between the Ministry for Local Government and the Uganda Local Government Association.

One of nine performance indicators is: communication and accountability performance, where local authorities have to demonstrate how they make information easily available to the population (for instance by way of posting of plans, approved projects, members of project management committees etc. on public notice boards) and have to submit the final annual accounts to the Auditor General and make them available together with quarterly accountability statements.

Another performance indicator is: procurement capacity and performance, that measures local authorities' adherence to good procurement practises, including publication of lists of pre-qualified companies.

Special review teams cover all local authorities annually and deliver a Performance Measurement Report evaluating the fulfilment of the criteria and general performance by each local authority. Depending on the outcome of the performance measurement, local authorities can be granted up to +20% in annual allocations, while a negative assessment may lead to a decrease of 20%. If a number of minimum criteria are not fulfilled, a local authority may lose all access to capital grants for a year!! The outcome of the annual assessments create great public interest and poorly performing local authorities certainly will have to answer to the local and national press, which provides a good basis for the local population to gain more access to information with a view to ensuring better adherence to the performance criteria next year.

Public officials require training to fully participation in an open culture of information sharing. It is particularly important to train officials who will work directly with providing access to information to citizens, as well as their superiors. In some countries specific academies (sometimes in partnership with civil society organisations) have been established for in-service training of some or all branches of the administration.

Networking is also useful for strengthening the capacity of public administration. Participation in regular meetings with equals from other parts of the administration facilitates discussion of successes and dilemmas in a non-threatening manner.

Tracking constituency development funds in Kenya

In Kenya the citizens have complained about the mismanagement of constituency development funds (CDF) which are funds controlled by members of parliament aimed at fighting poverty at regional levels. CDFs are also used to run educational and bursary schemes and they constitute about 7.5% of the government's revenue. However in Kenya the CDFs have come to be popularly called "corruption devolvement funds".

Kenyans have very little recourse to ensure that they receive the services to which they are entitled.

Kenya doesn't have an FOI law.

National Information Officers Forum in South Africa

The National Information Officers' (NIOF) Forum and the Provincial Deputy Information Forums (PIOFs) in South Africa were established in South Africa through a joint project of the South African Human Rights Commission and the Open Democracy Advice Centre in 2006. The NIOF is an annual meeting of all government official tasked with implementing South Africa's Promotion of Access to Information Act (PAIA). They meet every year on the International Right To Know Day (28 September) to share their experiences, achievements, challenges and innovative work that they do as information officers.

Since its inception, the NIOF has become a critical mechanism for benchmarking, highlighting and replicating best practice on implementation of PAIA.

There must be complaint and appeal mechanisms must be in place, for when requests for information do not flow smoothly. The following basic appeal mechanisms should be guaranteed:

- Administrative complaints system
- Review by an independent body
- Control by the judiciary
- Review by an independent auditing system

A number of institutions contribute to ensuring that public administration is kept accountable. Among these are the media, NGOs and the general public who all have an interest in promoting open and transparent administration.

In most countries, legal openness instruments provide for appeal of refusals or complaints about time delays in providing information. These internal reviews are subject to independent and judiciary control, if the citizen is not content with the revised decision. Internal review is typically made by a superior official. If the body issuing the original decision is part of another institution, it may also be decided by law that this superior institution treats complaints. Some institutions have established internal ombudsman systems responsible for receiving complaints at the same time as advising the institution on good administration practice.

Public administrations may resort to disciplinary sanctions, such as demotion, transfer to other position or dismissal, in cases where public officials are guilty of administrative wrongdoing or deliberate obstruction of good information practices or of human rights abuses. However, when public officials are asked to make the delicate balancing of opposing interests prior to a decision of whether or not to disclose information, there must be a certain margin for mistakes made in good faith. Otherwise anxiety and fear of sanctions may lead officials to make wrongful decisions and ultimately create an indirect culture of secrecy.

The administrative complaints system should include independent bodies, such as ombudsman institutions, information commissioners and data protection agencies. Such bodies are established to act as watchdogs of how public officials conduct public affairs. It is an advantage to the complainant

that such review bodies are able to make binding decisions which can be enforced by the judiciary if need be. However, most ombudsmen only have the authority to issue non-binding declarations and therefore the authority of the ombudsperson is decisive for whether or not the declaration is respected and implemented in practice.

Time frames for appeal should make it possible for a complainant to make use of an independent body.

Bulgaria - timeframe for appeal makes independent review illusory

Legislation does not always make it possible to submit the case to an independent body before initiating court proceedings. This is e.g. the case in Bulgaria where the time limit of 14 days for appeal of an administrative decision does not allow both a hearing of the future Ombudsman and making an appeal with a relevant court.

The Liberian Information Commissioner's Office
In Liberia oversight for implementation and compliance with the FOI Act is the responsibility of the Information Commissioner.

The Information Commissioner was appointed in May 2012 and has this power to:

Appeal to the judiciary is the ultimate weapon of a citizen against public administration which is unwilling to disclose information, and this measure is directly guaranteed in most Freedom of Information Acts. However, even judicial decisions have drawbacks in cases where they refer the subject matter back to renewed decision-making in an uncooperative branch of the administration, which more or less repeats the original decision.

It is not only public administrations which stand trial in cases regarding disclosure of information. In specific cases public employees may be charged with criminal offences and stand trial in court. This is typically the case when employees leak confidential information of public administration, either for personal gain or in order to put wrongdoing of the latter on the public agenda to hold them accountable for their actions (so-called whistle-blowing). As indicated in the openness principle 'protection of whistle blowers' in chapter 2, whistle blowers should be protected from criminal liability when they act in good faith to serve the public interest.

National State Auditor offices are specialised control mechanisms empowered to hold public authorities accountable for their financial administration. Most countries have such an institution, although they have different mandates and a differing degree of independence. Wherever State Auditors only supervise the state administration, there should be parallel regional and municipal audit and control systems. Such systems are generally supervised by the Ministry of Interior.

So, what do you need to do when you receive a request? Here is a checklist:

- a. Provide the requester with a receipt documenting the request;
- b. Provide the requester with a reference number for the request to make

it easier to trace the request later on;

- c. Explain the procedure of how the request will be handled (for this purpose, the public body could have a leaflet explaining the standard procedure for handling information requests);
- d. Keep the person informed of the progress of their request, especially if it involves a large amount of information which will take time to find.

Learning objectives

→ Understand procedures underlying requests for information.

Exercise

→ Think of issues such as electricity, water, housing, pollution, social grants, development projects, local business areas. Governments and businesses have information that could be useful to us. Think of things that matter in your community. What would you like more information about and who has it?

General Guidelines¹⁰:

- Be polite
- Advise and assist them when making their request
- Direct them to where the information can be found
- Process requests rapidly and fairly
- Inform requesters of their rights
- You may refuse vexatious requests
- Keep in touch

The Liberian Information Commissioner's Office

In Liberia oversight for implementation and compliance with the FOI Act is the responsibility of the Information Commissioner.

The Information Commissioner was appointed in May 2012 and has this power to:

- receive, hear and decide all complaints as well as mediate disputes arising from the FOI Act.
- review information held by public bodies and covered private entities, procedures for the internal reviews and the fees charged by public bodies and entities for reproduction of requested information.
- issue orders and other recommendations to any or all of such public bodies and relevant private entities relative to implementation and compliance with the Act.
- investigate, monitor, and promote compliance with the Act,
- order any public body or private body concerned to release requested information should it find that the information or record is not one that is exempted by Act.
- train and build the capacity of personnel of public bodies and private entities concerned to ensure (1) proper interpretation and application of this Act and (2) that the handling of information requests is consistent across all government bodies.
- consult with and provide support to Information Officers and other relevant officials of public bodies and private entities covered under the Act.
- develop access guidelines and procedures.
- To develop public awareness strategies and information dissemination campaigns to educate the public about their rights under the Act, and promoting necessary compliance with the Act.

HOW TO REQUEST INFORMATION

In many countries legal instruments are automatically published in print or electronically and thus made widely accessible. Individuals or professionals wishing to access them should look to:

Legal instrument	Information source
Legislative history of the instruments, incl. Bills, Explanatory notes Records on discussions in Parliament	<ul style="list-style-type: none"> • Parliament • NGOs participating in law drafting and/or monitoring the field
Final legal instruments and possible comments published by Parliament or government in print, or electronically	<ul style="list-style-type: none"> • Internal staff handbooks • Ministry responsible • Ombudsman • Information Commissioner
Guidelines explaining contents of legislation targeting public authorities and/or the general public, published in print or electronically by the ministry responsible	<ul style="list-style-type: none"> • NGOs monitoring the field • Academic works and interpretations. • Internal staff handbooks • Ministry responsible • Ombudsman • Information Commissioner • NGOs monitoring the field • Academic works and interpretations.

Amartya Sen, the Nobel Prize-winning economist, observed that there has never been a substantial famine in a country with a democratic form of government and a relatively free press. Inequality of access to information, he has argued, is a form of poverty. Without knowledge, you cannot act.

Under an RTI law/policy there should be a system in place to allow you to get hold of this information. All you need to do is ask for it – you have the right to access it. In most cases, you will need to fill in a simple form, but as the holders of the information are required to help you fill in the form, you should not worry about that aspect of it.

So, what must I do to use a right to information law to access information? First of all, you must try and work out where the information is. Sometimes this will be simple – it may be you want to access a record held by your doctor or your bank – other times, it may be more difficult and you may need to make some initial inquiries. If you think that the information is held by a public body (in other words, the government), then you could begin by looking in the telephone book to find out the contact details of the information officer.

What is an Information Officer? Each part of government should have a very senior person as its information officer. The information officer is responsible

for ensuring that people are given access to information held by the state. You can either phone or write or e-mail the information officer to ask if they have the information you are looking for.

In addition, public bodies must produce a “road map” (referred to as the “manual” or “publication scheme”) setting out the categories of records that they hold. This is to help you work out what they have and whether it is what you want or need.

Once you have established where the information is held, or where you think it probably is held, then simply ask for it. When asking a public body for the information, all you need to do is say who you are and where you are, and also clearly state the information you want. You do not need to say why you want the information.

The holder of the information is entitled to ask you to fill in a form setting out these details. They are not allowed to reject your request simply because the form is not filled in properly; they must help you to fill out the form correctly. If you are clear about who you are, the information you want, and in the case of private information, why you want it, the holder of the information may well give you the information anyway. You have to say if you want to just come and look at the record. If you are illiterate or have a disability that prevents you from completing a form, then there is no need to do so, you are allowed to make the request orally, though you will need to explain that you can not fill in a form.

If the record is not a document, but for example a video, then you can ask to see the video or get a copy if the holder of the information has access to copying facilities. When a record is on a computer, then you can ask for the records to be printed or you can ask for a copy of the record in a way that you can put it on another computer and read it. If you ask for access in a particular way, then you should get access in that way unless that would interfere unreasonably with the running of the body holding the information or damage the record or infringe a copyright.

If you are making the request on behalf of someone else, then you have to submit proof of the capacity in which you are making the request, to the “reasonable satisfaction” of the information officer. In the case of a public record this should not really be of great importance, because the right to access applies equally to everyone. In the case of a private record, however, because of the need to show that the information is required for the protection or exercise of any right, this is a more important procedural requirement and private bodies are likely to be more careful about giving the information to people on behalf of others.

The holder of the information is entitled to ask you for a fee. In fact, there may be as much as three parts to the fee:

- a request fee
- an access fee, which may have two components: a fee for searching for a record (in the case of a record that requires such a search) and a fee for the cost of reproducing the record (photocopying etc)
- a reproduction fee – if you want a copy rather than just inspecting (there are different amounts, depending on the nature of the record).



The public sector is required to make as many records as possible automatically available. If the information is already available, you will not need to make a request, you pay just one fee for reproduction of the record if you want a copy (unless it is made available for free).

What about language – can I see the record in my preferred language? In the case of a public record, you should be entitled to ask for the record in a preferred language and, if the record exists in that language, be given access in that language. If it only exists in another language, then you will only be given access in that language. There is no such requirement in the case of private records, but there is no harm in asking.

What if I have asked the wrong person? In the case of a public record, the holder of the information must transfer the request to the correct department or government body. They have fourteen days to tell you this, and to either help you make a new request to the right body or transfer your request. A private body may simply reject your request on the grounds that they do not hold the record.

Once you have made the request, the holder of the information has a limited period of time in which to make a decision about your request. This period can range from 7 to 30 days. The holder of the information may extend the period in some limited circumstances, such as when the request is for a large number of records. If the information officer fails to meet these times limits, then they are deemed to have refused the request.

Can my request be refused otherwise? Yes, if the record does not exist (it cannot be destroyed once you have requested it and to do so would be a criminal offence); or, it cannot be found. In both cases the holder of the information must swear an affidavit to this effect. Your request can also be refused if it falls within one of the exemptions permitted by the RTI law or policy.

Is that the end of the road? No, not at all. You have the right to an internal appeal, in the case of a public record, and an external appeal in the case of a private record or where the internal appeal is refused.

Internal Appeals: You may have set number of days to lodge an internal appeal, which must set out the reason for the appeal. A fee is payable. You cannot go straight to Court or other administrative tribunal – only go to court/tribunal after you have exhausted your right to an internal appeal. You also have the right to an internal appeal when the information officer of the public body decides to extend the period of time to deal with the request. Also, you can appeal in the case where the record is not given in the form that you asked for.

External Appeals: must be made to the High Court or Magistrates Court or an Information Commissioner or administrative tribunal.

ASSESSMENT EXERCISE

The twenty most frequently asked questions about RTI Laws/Policies

(These questions can be used to establish a pre-workshop baseline measure on the participant's understanding of key concepts regarding RTI laws and policies. The questions can also be used to assess the participants' mastery of the key concepts on RTI following the presentation on content by the trainer. Thirdly, the questions can be used by the trainer to facilitate discussion among participants, either in plenary or in small working groups or commissions.)

1. Why is openness important in the conduct of public affairs?
2. How does the right to information (RTI) promote openness in society?
3. List the nine Article 19 principles of RTI legislation.
4. To which institutions or bodies would an RTI law or policy ordinarily apply? Are there any exceptions to this? What are these exceptions, if there are any?
5. Generally, what are the four main things that an institutions to whom the law applies do implement the law?
6. Who can make a request for information? Describe how various countries/jurisdictions address this issue.
7. Some countries allow a requestor to request information held by private institutions such as companies, in those instances what conditions must be met in order to make the request for information? (Think of provisions in the African Union's draft model law on access to information, the RTI law in Antigua & Barbuda and the South African RTI law)
8. Who decides on a request for information?
9. What is the role of the (deputy) information officer or (deputy) public information officer?
10. What kind of information can a requestor ask for?
11. Describe the nature of recourse that a requestor may have if s/he has been denied information.

CASE STUDY

Openness is a friend, not a foe

By Richard Calland
(March 1, 2002)

Ila Hildert's office is on the seventh floor of a simple but elegant Swedish government building, Rosenbad, that looks out over one of the many stretches of water that bisect Stockholm, the "Venice of the North".

Hildert works for Prime Minister Goran Persson and is responsible for the administration of the system of public access to his documents. So the fact that bright light streams into her office is entirely apt: "Sunlight," goes the cliché, "is the best form of disinfectant".

I tell Hildert that I have come to inspect the prime minister's correspondence. "Of course, would you like to see today's correspondence first," she replies. No, I would like to see correspondence with Nelson Mandela and Thabo Mbeki. She types and out comes two lists. One, for Mandela, shows 27 items of correspondence from 1992 until now. From Mbeki, there are just two items, which turn out to be short notes of congratulation from Mbeki in relation to the Swedish presidency of the European Union during the first half of last year.

I ask to see the actual documents of two on the Mandela list. One, from 1998, has as its title "EU-South Africa trade negotiations". I imagine a request for support from Mandela against the stubbornness of the French and Portuguese. "Oh dear, I am so sorry," Hildert says, "this correspondence has been marked 'secret.'" She asks me whether I would like to take the matter up for review.

One of the many qualities of the Swedish system of openness is that although there are exemptions to public access, such as international relations, they can be reviewed again and again. This is entirely sensible: what may be secret one year may no longer require protection a year later. In Britain and elsewhere you have to wait at least 30 years before what by then may be entirely innocuous documents are made public.

I ask: What will the review involve? Hildert informs me that she will speak that afternoon with the prime minister's special adviser to see if he will permit access on the basis of changed circumstances. If not, the Cabinet will need to review the matter and, she says, they will only be meeting next week and would I mind waiting that long?

A number of things go through my mind. Am I dreaming? Can it really all be so civilised? And, in contradistinction, I imagine walking into, say, 10 Downing Street and asking to see Mr Blair's correspondence ... Well, I say to Hildert, I really don't want to intrude upon the Swedish Cabinet's time, but if they have nothing better to do ... well, why not?

The other correspondence had no such exemption and I made copies of it. It is rather interesting. On September 8 2000 Mandela wrote to the Swedish

prime minister asking for support for the Nelson Mandela Foundation's work on HIV/Aids. Mandela writes: "It is estimated that the position is so serious that approximately 10 teachers die of Aids every month, and that one student dies in one university every week." And: "In a neighbouring country three Cabinet members have died from this pandemic." He then informs Persson that the response from the United States has been "excellent"; the Melinda and Bill Gates Foundation donated \$10-million, and \$7,5-million came from Gates' partner, Craig McCaw; in addition, president Bill Clinton contributed \$5-million. These are substantial sums of money, which makes the big point about the sort of transparency that is apparently ingrained within the Swedish bureaucracy: it promotes genuine accountability. People can ask questions about the facts revealed by such public documents; with knowledge they can act; and so the wheel of accountability turns.

This is part of a global trend. In Rajasthan in India, for example, a new state access to information law is being used by community organisations to expose corruption and ensure that people get the houses and hospitals promised to and budgeted for them. In a remarkable video, *The Right to Information — the Right to Live*, one organisation shows how it assembled a village of people and then amused and appalled them by reading from a document obtained under the new law recording the building of a canal to bring clean water to the village. Of course, unscrupulous middle-men had siphoned off the funds and the canal was a fiction. One man had, according to the record, been paid for two weeks' work and the hire of his plough. "Impossible," he says, "I was away in Delhi that month."

The Swedes have had their freedom of information law for 250 years — which raises the question, what was or was not happening in Swedish society to prompt the passing of the first such law about 200 years before any other nation? The short answer is that it was busy sorting out a social consensus and a system of government that has provided stability and quality of public service ever since. Openness is easier when there is political and social stability because it is probably easier for the government to have confidence in itself and in its people. The Social Democrats have ruled for 61 of the past 72 years and look likely to extend this after the general election later this year.

South Africa has its own openness law, the Promotion of Access to Information Act 2000, which has been in force for about a year. Already it is becoming clear that the South African bureaucracy lacks the confidence to see that openness is a friend and not a foe. This is a question of mentality as much as system. And on this, it has a lot it could learn from Sweden.

I have subsequently been notified by Hildert that the secrecy protection has been removed after my request for a review and that a copy of the correspondence is in the post.

(Richard Calland has been in Stockholm as a member of a three-person delegation to study Sweden's system of governmental openness, as a part of a project grant from the Swedish International Development Agency to the Open Democracy Advice Centre

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