

GOOD GOVERNANCE

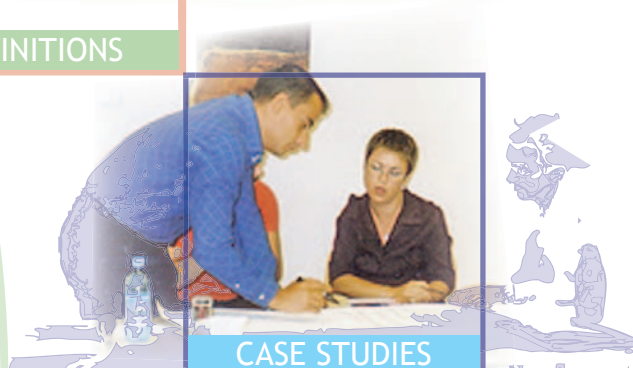


# TRANSPARENCY

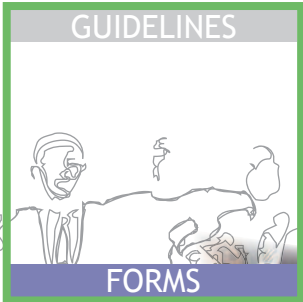
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CASE STUDIES



GUIDELINES



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PRINCIPLES



## freedom of information

### TRAINING MANUAL

FOR PUBLIC OFFICIALS



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# INTRODUCTION

## Purpose of this manual

In the past decade an unprecedented number of countries around the world have created freedom of information legislation - including Fiji, Japan, Mexico, Nigeria, South Africa, South Korea, Thailand, Trinidad and Tobago, the United Kingdom and most East and Central European countries. In doing so, they have joined the countries that enacted such laws some time ago, such as Sweden, the United States, Finland, the Netherlands, Australia, and Canada.

The law itself, however, is only the first step. Implementing the law, including the task of transforming the culture of administration into a more democratic and accountable one, poses a great challenge, especially in countries with vulnerable economies where state budgets for implementing a comprehensive programme of accompanying measures are limited.

This manual for public officials is designed as a resource for officials who want to adopt administrative practices that conform to the best standards of freedom of information. It should help them to make their work and procedures more professional, which will increase the public's trust in and appreciation of their administration.

## How to use this manual

This manual can be used in three basic ways:

- used as a teaching guide for trainers running courses for public officials responsible for handling information requests.
- used as a learning tool by such officials - in other words they can work through the manual on their own.
- used as a reference tool by officials who have already gone through a training course.

In practice, the same group of public officials may use the manual in all three ways:

- They work through the manual on their own.
- Then they attend a workshop in which the learning points in the manual are elaborated and discussed.
- They keep a copy of the manual to refer to in their future work.

This would be the ideal way of using the manual. Workshops are usually much more effective if participants have had a chance to acquire most of the basic informational content on their own, at their own speed. The workshop can then focus on:

- Issues that participants have not fully understood.
- Points of controversy or disagreement.
- Developing the skills needed to process information requests.

However, it is recognised that officials will often not have the chance to work through the manual individually before a workshop. The Notes for Trainers section offers a plan for a two-day workshop based on this manual that would be suitable for officials without advance preparation on their part.

## Objectives of the training

At the end of a two-day training workshop based on this manual, participants should have achieved a number of specific learning objectives. They should be able to:

- Explain the meaning and value of freedom of information.
- Explain the principles underlying freedom of information laws.
- Explain the process for applying exceptions to the general principle of access to information.
- Reflect on the strengths and shortcomings of freedom of information legislation in their own country.
- Identify the institutional bodies affected by the freedom of information law.
- Identify those groups commonly requesting information and any specific considerations that may be entailed in handling their requests.
- Process requests for information held by their own department.

## The content of the manual

The main part of the manual is divided into two parts.

**The first part** (Chapters 1-4) deals with the concept and basic principles underlying freedom of information. This part of the manual could equally well be used for members of the public, or for officials not directly involved in handling requests for information.

**The second part** (Chapters 5-7) is directed specifically at officials responsible for responding to requests for information. It deals with the public bodies that are obliged to provide public access to information, the requesters who are entitled to information, and the process whereby information requests are handled. In no circumstances should the second part of the manual be used without trainees having worked through the basic principles outlined in the first part.

Freedom  
of information  
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FOR PUBLIC OFFICIALS

# Chapter One

## WHAT IS FREEDOM OF INFORMATION?

### Freedom of information - why does it matter?

In 1946 the United Nations General Assembly passed one of its very earliest resolutions. It stated this:

Freedom of information is a fundamental human right and ... the touchstone of all freedoms to which the United Nations is consecrated.

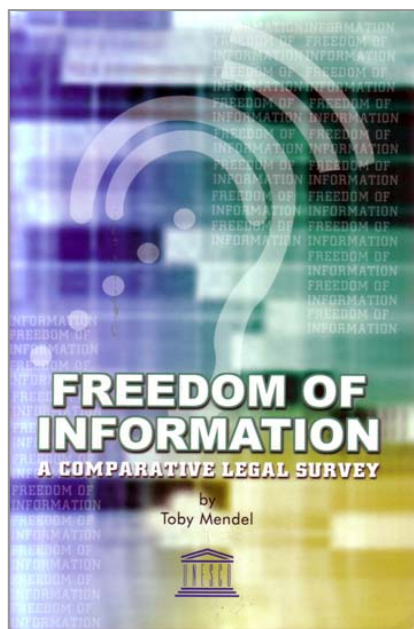
That is a very large claim. What do you think the UN meant in that resolution?

#### Brainstorm

Off the top of your head write down as many ways as you can think of that having the right to freedom of information could make your life a better one.

How about this list for a start?

- It will help you to live in a less corrupt society
- It will help you to live in a society that is free from hunger
- It will help you to live in a healthier society
- It will help you to live in a society where the environment is respected
- It will help to make sure that your fundamental human rights are respected
- It will help to make sure that your privacy is respected
- It will help to make your country more secure
- It will help to make the political system in your country more democratic
- It will help to make government more efficient
- It will lead to better decision-making
- It will help the economy to be more efficient
- It will lead to individuals receiving better treatment from institutions



Cover illustration from *A Comparative Survey on Freedom of Information*, published by UNESCO, 2003



A fairly dramatic set of claims, as we think you will agree. We shall return to this list in a moment.

But let us first take a step back and ask the question:

## What do we mean by freedom of information?

Considering that freedom of information is regarded as such an important human right, it might be a little surprising that it is not more clearly stated in the international human rights standards. The wording of Article 19 of the Universal Declaration of Human Rights is clear and unambiguous:

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 [emphasis added].

Although freedom of expression was seen as benefiting both those who “imparted information” and those who received it, the idea that citizens were entitled to have access to information held by the institutions of government was not widely held at the time. Sweden may have had a constitutional guarantee of freedom of information since 1776, but it was still in a small minority.

The American writer Walter Lippmann had stated that an elected official’s duty was to his or her office, not to the electorate: “Where mass opinion dominates government, there is a morbid derangement of the functions of power.” Likewise, the British system of parliamentary democracy was based on the assumption that it was the legislature that scrutinised government actions, not the public. In the words of Walter Bagehot, the principal theoretician of British parliamentary government, democracy could only work “if its real rulers are protected from vulgar enquiries”.

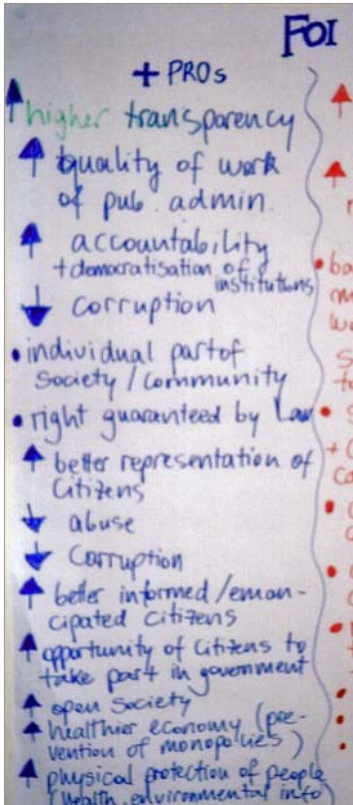
These were the views that still predominated in most government circles in the 1940s. (If we are honest, they are still widely held today.) This is why the wording of the UN General Assembly resolution was such a radical break with the past. Let us recall it again:

Freedom of information is a fundamental human right and ... the touchstone of all freedoms to which the United Nations is consecrated.

Very well, but what exactly does freedom of information consist of?

## Brainstorm

Once again, off the top of your head, write a list of everything that you can think of that could be included under the right to freedom of information.



*Results of a brainstorming exercise from a Training of Trainers Workshop*

Probably most of your answers could be found on this list:

1. The public has the right to have access to information that the government (or other powerful institutions) holds about them.
2. The public has the right to have access to information that the government (or other powerful institutions) holds that could benefit them.
3. Officials, public and private, have the right to “blow the whistle” on bad practices in powerful institutions.
4. The public has the right to see and hear what is going on in the legislature
5. The public has the right to see and hear what is going on in the courts
6. The public has the right to see and hear what is going on in other public bodies

Once again that is a big list. It would become bigger still if we were to list all the different types of information that the public might be entitled to - finance, the environment, corruption, health and medicines, defence, to name just a few.

## Access to information about individuals

This is perhaps the first thing that anyone thinks of when they hear the words “freedom of information”. Governments, as well as other powerful institutions in society such as commercial companies, hold information about everyone in the country. This information is likely to range from the most simple information - when someone was born, where they live - to much more complex information, such as medical records.

The amount and complexity of information that is held has increased with technological developments. In particular, the computerisation of the records of governments and companies makes it much easier to exchange information between different sets of records.

There is nothing sinister in itself about governments holding information. If they did not have that information, they would not be able to deliver the services that the public expect of them. Nor could they realise the rights of the people. For example, people would be fairly upset if they went to vote in the next election, only to be told that they could not because the electoral authorities had no record of them.

Similarly, someone would be very concerned if the bank had no record of their account when they next tried to draw money out of it.

So, for an institution to hold information about individuals is part of the normal way that society operates.

Yet, it is something that many people worry about. The fear is that “Big Brother” knows too much about their daily lives.

This fear is often justified. It is one practical reason why people are entitled to know what information the authorities hold about them. Another reason is that individuals should have the opportunity to know about (and correct) inaccurate information. And even if they have no practical purpose for looking at the information, they still have a basic right to know.

In international human rights treaties, as well as in most national laws, the individual has a right to privacy. Access to information is one of the ways of making sure that individual privacy is being respected.

## Access to information that could benefit individuals

Governments and other institutions hold much information that affects the well-being of the individual as a member of society, even if it does not refer to them by name.

### Brainstorm

Can you think of some of the types of information that the government holds that might be in the interest of the individual member of the public to know?

There are any number of types of information that governments hold that affect the individual. They could fall into any of the following categories (or many more):

- Politics
- Social welfare
- Health
- Education
- Environment
- Planned investment
- Security
- Justice

In all these areas the individual citizen has rights and particular things to which they are entitled. If they do not have adequate information about what the government is doing in these areas, then they will not be able to exercise those rights fully.

## Right to “blow the whistle”

The people who know best what is going on inside any large institution are the people who work there. The information that a government chooses to release to the public may not be the whole truth - it may not even be the truth at all. This is particularly the case where wrongdoing or serious mismanagement is taking place.

That is why it is important that the right to freedom of information includes the right of officials to make public information about wrongdoing in the institution that they work for.

### Brainstorm

Can you think of examples of the sort of wrongdoing in government that could be dealt with by giving whistleblowers the right to tell the truth in public?

## Right to know what goes on in the legislature

The legislature are the representatives of the public - the people they elected to make law and policy. The public has a right to know what they are doing - if for no other reason than to determine how they will cast their vote next time.

There are a variety of tasks that the legislature performs that are extremely important to know about if individual citizens are going to be well-informed. The main business of the legislature is to pass laws, of course. But it also plays an extremely important role in reviewing government policy and importance, either through debates or, very often, through specialist committees that examine policy issues in great detail.

## Right to know what goes on in the courts

There is a well-known saying that justice must not only be done, “justice must be seen to be done”. In other words, the public nature of the judicial system is a way of showing that the law is being fairly and properly enforced.

One of the main reasons that this is important, of course, is that it gives a better guarantee to someone on trial for a criminal offence that they will get a fair hearing.

But there is a broader interest for all the public in making sure that the judicial system is operating fairly.

Right to know what goes on in other public bodies

The right to a public trial is a well-established human rights principle. What is less well-established is the right of the public to know what goes on in a variety of other bodies that make constant decisions that affect the lives of everyone.

“Government” does not only refer to the head of government and the Ministers. On a day-to-day basis it means a large number of institutions - and decision-making committees within those institutions - which make decisions and take actions that implement government policy or the law. And, while there is great public interest in what goes on in the legislature or the courts, these less glamorous public institutions make extremely important decisions.

## Brainstorm

Can you think what are some of the important decision-making public bodies in your own country.

## Media access to official information

The reality is that most people do not exercise their right to freedom of information in a direct and personal way. Most people do not very often go to parliament or a court. Nor do they often try to get hold of documents or other information held by the government.

But what most members of the public do, most days, is to use the mass media - newspapers, radio, television and, increasingly, the Internet.

The public expects a variety of different things from the media. Much of the time they are looking for entertainment. But they also expect that the media will keep them informed about important things that are happening in society. If there is a law being passed or an important court case, if there is a major economic policy decision or a Minister is accused of corruption, the public expects that the media should be able to give them that information.

It is important that the media should be able to use access to information laws to inform themselves - in order to keep the public better informed.

## An example from Georgia

A Civilian Review Board was set up in Georgia to monitor the problem of human rights violations by the police.

The Board established special post boxes and hotlines for people to use to get in touch if they had a complaint about the police. The CRB regularly visits pre-trial detention facilities to see for itself what conditions are and to ensure that proper procedures are observed.

The CRB uses the Freedom of Information Act to seek access to police intelligence files. Under the law, the police can refuse to disclose the files only if “nondisclosure is essential to effective law enforcement”.

The CRB says:

Police business is generally shrouded in secrecy, which conceals outdated policies and departmental inertia, encourages cover-ups and, of course, breeds public suspicion. But we should remember: Police is an arm of government, and the government's business is our business. Police policies, procedures, memoranda, records, reports, tape recordings, etc. should not be withheld from public view unless their release would threaten ongoing investigations, endanger officers or others, or invade someone's personal privacy.

Demanding information about police practices is an important part of the struggle to establish police accountability. Indeed, a campaign focused solely on getting information from the police can serve as a vehicle for organizing a community to tackle police abuse.

## The right to truth about human rights violations

Especially in societies that are in transition from authoritarian political systems or are emerging from conflict, there may be a great public hunger for information about human rights violations that took place in the recent past. Governments may be reluctant to release such information or to investigate past human rights violations, arguing that “reconciliation” is a higher priority than justice or disclosure of information.

Yet, there is no doubt that international law gives everyone who has been the victim of a crime (even one carried out by a government) the right to justice through the legal system. Equally, the right to “seek, receive and impart information” (in the words of the Universal Declaration of Human Rights) must include the right to seek information about something as important as abuses that may have been committed against you or members of your family.

This clearly means that public officials should be held accountable for any human rights violations that they commit. But it also means that the people have a right to information about events that took place under a past government or during a conflict - however politically inconvenient that information may be.

## The benefits of freedom of information

Powerful institutions in society, when they argue in favour of withholding information from the public, usually say that this is “for our own good”. They say that if everyone knew the things that they know:

- We would not be able to understand it.
- It would cause conflict.
- It would cause insecurity.
- It would undermine the workings of government.

In reality, such arguments can usually be shown to be wrong. But they ignore an even more important question:

## Whose information is it anyway?

The idea that governments withhold information because this is for the public's benefit is part of an antiquated (and very undemocratic) view of the relationship between government and people. Remember the example of Walter Bagehot, who deplored the idea that government might be disrupted by the “vulgar inquiries” of the governed.

Yet the fundamental argument in favour of freedom of information is that the information belongs not to the government, but to the people as a whole.

To give a simple example: if I provide the government with basic information about myself, such as my name, address and date of birth, that information does not become the property of the government.

The sum total of information held by the government is only a collection of facts about the people and the country. There may be certain practical reasons why this information cannot always be available - we shall return to such situations later in the manual - but in principle the information belongs to the people not the government.

Earlier, we asked the question: how does the right to freedom of information make life better?

And we suggested the following answers:

- It will help you to live in a less corrupt society
- It will help you to live in a society that is free from hunger
- It will help you to live in a healthier society
- It will help you to live in a society where the environment is respected
- It will help to make sure that your fundamental human rights are respected
- It will help to make sure that your privacy is respected
- It will help to make your country more secure
- It will help to make the political system in your country more democratic
- It will help to make government more efficient
- It will lead to better decision-making
- It will help the economy to be more efficient
- It will lead to individuals receiving better treatment from institutions

## Brainstorm

For each of the twelve reasons on this list, try to think of one example of how freedom of information can make life better.

## Less corruption

Corruption thrives on secrecy. Individuals and institutions become corrupt when there is no public scrutiny of what they do. The more that they operate in the public gaze the less corrupt (and more efficient) they are likely to become.

## Freedom from hunger

This may seem like a strange thing to put on this list. Yet, the Nobel prize-winning economist Amartya Sen has argued that famines do not happen in countries with a free press. His argument is that famines are caused by the inaction of governments. Governments do not dare to be inactive on such an important issue when they are subject to constant media scrutiny.

## A healthier society

This may also seem a strange benefit from freedom of information. Yet, consider, for example, the greatest public health crisis of our time - the HIV-AIDS pandemic. In its early years, HIV infection was able to spread so rapidly because of the lack of publicly available information about the virus and how to avoid it. Countries that had effective public information programmes - such as Uganda, which was once the worst affected in the world - have been able to turn the tide of HIV infection.

More recently, the Chinese government's failure to be open about the gravity of the outbreak of Severe Acute Respiratory Syndrome (SARS) contributed to the spread of the condition not only within the country but in the outside world. Its belated admission of the seriousness of the SARS outbreak immediately made it easier for the public health authorities to bring it under control.

## A cleaner environment

Many of the decisions taken that cause damage to the environment are made behind closed doors. Most of these decisions could be avoided if all planning decisions had to be accompanied by an environmental impact study - which in turn should be made available to the public.

## Respect for human rights

Human rights violations, like corruption, flourish in a climate of secrecy. Some of the worst human rights violations, such as torture, are almost by definition something that takes place behind closed doors. An open government - including, for example, publication of investigations into allegations of human rights violations - is far more likely to result in respect for human rights.



## Respect for privacy

Without freedom of information there is nothing to guarantee that governments (and other powerful bodies) will not amass vast quantities of information about individuals. If the individual always has the right to see what information is held about them, their right to privacy is more likely to be respected.

In addition, people have a right to make sure that the information held about them is accurate. If this is not the case, wrong and potentially damaging decisions could be made.

## A more secure society

This is possibly the most controversial item on this list. The argument in favour of official secrecy is that this is necessary in order to safeguard "national security". Yet there is a much better argument for saying that public scrutiny of decisions related to defence and intelligence is likely to make for a more secure society. For example, many countries have a long experience of unaccountable intelligence services that direct their activities against domestic political opponents rather than genuine threats to national security. Freedom of information can help to curb such behaviour.

Secrecy can lead to corruption and inefficiency in the security services, which in turn undermines security.

## More effective democracy

Freedom of information is crucial for effective democracy. How can the electorate make an informed choice if they are denied information about what the government - their government - has been doing?

Political leaders are more likely to act in accordance with the wishes of the electorate if they know that their actions can be constantly scrutinised by the public.

## Freedom of information is about accountability

This last point about the importance of freedom of information for democracy is fundamental. Information held by the government is public information. The government is only the custodian of that information on a temporary basis.

Information about the government is essential if the public is to make informed choices - in elections, but also in many other situations where they may exercise their democratic rights as citizens.

## Freedom of information is about participation

In a democracy, important government decisions are made by elected bodies. But these bodies do not have a monopoly of the relevant expertise. If government is conducted openly - with publication of documents and the opening of meetings to the public - those with an interest in a particular issue can have a say in decision-making.

Whether it is a local planning decision or a new draft law, the best practice is for official bodies to invite the comments and participation of the public and those who have particular knowledge of the issue being decided.

The point was expressed clearly by a senior UN official, the Special Rapporteur on Freedom of Opinion and Expression, Abid Hussein:

Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked.

### Discussion Point

We have talked in the section about information held by governments "and other powerful institutions in society".

How far can the principle of freedom of information be applied to private bodies in society, such as companies, as well as to governments?

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# Chapter Two

## BASIC PRINCIPLES OF FREEDOM OF INFORMATION LAWS

In recent years many more countries have adopted freedom of information laws. In the process of doing this, some basic principles have emerged that underlie good freedom of information legislation.

The danger is that, as freedom of information becomes a fashionable phrase, governments will adopt freedom of information laws that do not actually increase public access to information. In the worst cases they may even hinder it.

Basic principles are important because they provide a measure to test whether a national law will actually increase public access to information. Of course, not all national laws will measure up to all these principles. But they provide a measure of best practice which is useful for interpreting existing laws and in campaigning for legal reform. This list comes from ARTICLE 19'S Principles on Freedom of Information Legislation.

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

In 2000, the United Nations Special Rapporteur on Freedom of Expression endorsed this same set of principles in his report to the United Nations Commission on Human Rights and in 1999, the Organisation of American States Special Rapporteur on Freedom of Expression referred to the principles in the report of the Inter-American Commission on Human Rights.

These principles also correspond closely to those adopted by the Committee of Ministers of the Council of Europe in a Recommendation on Access to Information Held by Public Authorities, as far back as 1981 and in a more recent

### A freedom of information act that made things worse

In 2002 the government of Zimbabwe gave in to years of campaigning from human rights and media groups and enacted a freedom of information law, the Access to Information and Protection of Privacy Act. Or did it?

The new Act did give the public a limited right of access to government records. But at the same time it placed a number of serious obstacles in the way of genuine freedom of information:

- All journalists and publications had to be licensed by the government.
- Most foreign correspondents would not be allowed to continue to report.
- Stringent ownership requirements limited the possibilities of private media houses attracting investment.
- New limitations on reporting of "false news" were included.



Logo of the Access to Information Programme, Bulgaria.

Recommendation on Access to Official Documents adopted in 2002. The Council of Europe plans to turn this latest Recommendation into a legally binding set of standards.

Extract from Recommendation Rec (2002) 2 of the Committee of Ministers to member states on access to official documents

### *III*

#### *General principle on access to official documents*

*"Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including national origin."*

### *IV*

#### *Possible limitations to access to official documents*

*Member states may limit the right of access to official documents. Limitations should be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of providing protection on:*

- I. national security, defence and international relations;*
- II. public safety;*
- III. prevention, investigation and prosecution of criminal activities;*
- IV. privacy and other legitimate private interests;*
- V. commercial and other economic interests, be they private or public;*
- VI. equality of parties concerning court proceedings;*
- VII. nature;*
- VIII. inspection, control and supervision by public authorities;*
- IX. economic, monetary and exchange rate policies of the state;*
- X. confidentiality of deliberations within or between public authorities for an authority's internal preparation of a matter.*

*2. Access may be refused if the disclosure of the information contained in the official document would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure.*

*3. Member states should consider setting maximum time limits beyond which the limitations mentioned in paragraph 1 no longer would apply.*

There are other important international standards on freedom of information. The Århus Convention on Access to Information, Public

Participation in Decision-Making and Access to Justice in Environmental Matters was adopted by a Ministerial conference in 1998 under the auspices of the United Nations Economic Commission for Europe. The European Commission has since adopted directives to implement the Århus Convention.

The Århus Convention contains a number of important principles:

- the right of everyone to receive environmental information that is held by public authorities (“access to environmental information”). This can include information on the state of the environment, but also on policies or measures taken, or on the state of human health and safety where this can be affected by the state of the environment. Citizens are entitled to obtain this information within one month of the request and without having to say why they require it. In addition, public authorities are obliged, under the Convention, to actively disseminate environmental information in their possession;
- the right to participate from an early stage in environmental decision-making. Arrangements are to be made by public authorities to enable citizens and environmental organisations to comment on, for example, proposals for projects affecting the environment, or plans and programmes relating to the environment, these comments to be taken into due account in decision-making, and information to be provided on the final decisions and the reasons for it (“public participation in environmental decision-making”);
- the right to challenge, in a court of law, public decisions that have been made without respecting the two aforementioned rights or environmental law in general (“access to justice”).

None of these standards is, at present, legally binding in nature, although they have strong force in interpreting freedom of information laws. The ARTICLE 19 principles, endorsed by the UN Special Rapporteur, are the most comprehensive and we shall look at each of these in turn.

Not all of these principles are necessarily contained in your own national freedom of information law. However, they provide an important guide for interpreting how an access to information law should be implemented.

# Freedom of information legislation should be guided by the principle of maximum disclosure

The principle of maximum disclosure is fundamental. What it means is that, in every case, the presumption is that a piece of information should be disclosed.

There are certain circumstances in which information might not be disclosed, but it is up to the authority that holds the information to show this.

The definition of what constitutes information should be broadly defined and the exceptions to what information should be released will be very narrow. In all instances the principle of public interest can override objections to releasing information. For an explanation of what is meant by “public interest”, see Chapter 4.

Maximum disclosure flows from the assumption that all information belongs to the people anyway. A member of the public does not have to justify their right to have access to a piece of information in each instance. That principle is understood.

This also has another very important implication: everyone has the right to make a request for information under a Freedom of Information Act. There is no need for them to explain or prove why they need that particular piece of information.

## Public bodies should be under an obligation to publish key information

A Freedom of Information Act cannot just work on the basis of requests by individual members of the public. This is an important part of public access to information but it is not the only part.

The authorities need to take active steps to disseminate certain key types of information to the public. This way, the public as a whole will be well informed without having to make requests for information.

But, in addition, members of the public who wish to request specific information cannot know with any certainty what information public bodies hold, so they do not know what to ask for. This is another reason why it is essential that all public bodies should be required to publish certain key information about what they do.

This should include:

- How does the body function - this would include its objectives, budget, audited accounts, internal structures and staff complement.

## Not a model public body...

The [United States] Central Intelligence Agency confirmed on April 7, 2003, that it is withholding in full the CIA Headquarters Handbook on the subject of release of information to the public.

In the denial letter, the CIA confirmed the existence of this manual but indicated that it was being withheld for two reasons: first, because it applies to information pertaining solely to the internal personnel rules and practices of the Agency, the b(2) exemption.

An agency employee could not specify whether the exemption cited was low b(2) or high b(2), but indicated that the Agency uses both exemptions, despite Department of Justice guidelines to the contrary.

The second reason for withholding was that the agency claims that the document describes intelligence sources and methods (the b(3) exemption).

The Agency said that no portions of the handbook were releasable, even including the cover page.

Source:

<http://www.thememoryhole.org>

- Information that has already been requested by the public (or complaints that the public may have made about how the body functions).
- Guidance on how the public can contribute to the decisions made by the public body.
- The types of information that the body holds and the form in which it is held. (This can clearly vary enormously between, say, a health authority and a police service.)
- The content and likely impact of decisions affecting the public, along with the reasons that the decision was taken.
- All announcements for public procurements and the decisions to award tenders.

## Public bodies must actively promote open government

In most countries, governments and other public bodies have worked for decades within a culture of secrecy. There are two aspects to this:

- Officials do not understand their obligations to keep the public informed.
- The public does not understand its right to information.

If the spirit of a freedom of information law is to work fully, it is important that both these problems are tackled.

This can best be done by the public bodies themselves undertaking promotional work. This will be aimed both at the public - to educate them on their information rights and to tell them how to use the Freedom of Information Act - and at officials. The latter will also need to be educated on how the freedom of information law has changed their obligations towards the public and trained on how the new information regime works.

### Discussion point

Promotional activities will vary from country to country, depending on the state of public knowledge on information rights, the depth of the official culture of secrecy and the most effective media for communicating with the public.

Taking these factors into account, how would you design a campaign to promote freedom of information in your country? What messages would you want to get across? And how would you set about it?



## Exceptions should be clearly and narrowly drawn

There are always going to be exceptions to a Freedom of Information Act - pieces of information that, for quite legitimate reasons - cannot be released to the public. But the language we use is important - these are exceptions to the general principle of maximum disclosure. As such, it will be for the body that holds the information to justify not disclosing it.

### Brainstorm

What types of information can you think of that would be a legitimate exception - in other words information that should not be disclosed under a Freedom of Information Act?

Was your list something like this?

- National security
- Law enforcement
- Personal privacy
- Commercial secrecy
- Public or individual safety
- Protecting the integrity of internal government decision-making processes
- Legally privileged information
- Public economic interests

These are all quite reasonable justifications for not disclosing information. But does this mean that, for example, **all** information related to national security should not be disclosed?

No, it simply means that if information can be shown to damage national security if it is disclosed, then it should not be.

The issue of whether a piece of information is a legitimate exception will be determined by a series of tests.

- Does this information relate to a legitimate aim (such as national security, privacy etc)?
- Would its disclosure do substantial harm to that aim?
- Would it nevertheless be in the public interest to disclose the information?

Confused?

Don't worry. We shall look at this very important issue in much greater detail in Chapter 4 of this manual.

## Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available

What is the commonest and most effective way in which authorities can deny the public access to information?

Simple. It is by making the process of obtaining information so slow, difficult, painful and expensive that most people will be deterred from exercising their rights.

This applies whether there is a Freedom of Information Act or not. So it is vital that any freedom of information law should include a straightforward and easily useable procedure for getting access to information.

A common first step is to designate an individual official (usually called something like an information officer) who is responsible for facilitating requests for information within each public body. One of the responsibilities of the information officer will be to help members of the public to frame their requests - after all, it may be difficult for them to know how to ask for information if they do not know exactly what information the public body holds.

The procedures for asking for information should take account of those groups who may have particular difficulties in making the request - for example people with disabilities, such as blindness, which would make it impossible for them to read written records.

### Discussion point

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

What happens if an individual repeatedly asks for information that this particular public body does not hold? Or makes repeated requests apparently just to be a nuisance?

The purpose of freedom of information is not to paralyse government. If requests seem to be frivolous or aimed at being a nuisance, then officials should have the authority to refuse them.

However..... this refusal, like all decisions relating to information requests, must be subject to a right of appeal.

This means that if a member of the public has a request for information turned down, then they are able to make an appeal to a higher authority within the public body itself. They should also be able to refer the case to any other existing administrative body - such as an Ombudsman or Human Rights Commission - with power to review the decisions of public bodies.

And ultimately, either the member of the public or the public body itself should be entitled to take the case to court if they are not satisfied with the decision.

## Individuals should not be deterred from making requests for information by excessive costs



*Participant at a training workshop in Moldova.*

When governments argue against the introduction of freedom of information laws, one reason commonly used is that freedom of information is expensive.

Common sense suggests that this must be true - after all, a whole new bureaucracy dealing with requests for information must be paid for somehow.

Experience from many countries shows that common sense in this instance is wrong. One of the effects of freedom of information legislation is increased efficiency by public bodies with the result that the marginal cost of freedom of information is very low - and sometimes even negative. For example, a more open information system leads to better record-keeping, which is an important function of modern government, as well as exposing corruption and mismanagement.

But the fact remains that when a member of the public applies for a piece of information there is a monetary cost. Who should pay it?

The important principle here is that the cost of requesting a piece of information should never be so high that it will deter people from making the request. Different countries have adopted different costing systems. One common one is a low flat-rate fee for all requests, so that cheaper requests are used to subsidise more expensive ones. There can be a different scale of fees for individual requesters and institutions (such as commercial companies) that seek to use public information. Requests that seek information solely for the public interest could be met free of charge.

Whatever the exact system used, it is important that no one is deterred because of the cost from obtaining information to which they are entitled.

## Meetings of public bodies should be open to the public

An important aspect of the notion of “open government” is that any public body with decision-making powers should be open to the public. This would not include internal or advisory meetings, but would include any meeting with the power to make decisions. This might include planning or zoning authorities, health authorities, industrial development agencies, educational authorities and so on.

Having a meeting in public implies that there should be advance public notice of the fact that the meeting is taking place and what business it will conduct (so that members of the public who are interested can attend).

There would, of course, be exceptions whereby meetings (or part of a meeting) would be held in private. In addition to the list of permissible exceptions we have already listed, this might include employee or personnel matters or matters involving commercial secrecy.

### Discussion point

What public bodies in your country hold decision-making meetings that are already public? And what bodies that hold their meetings in private might hold them in public under this principle?

## Laws that are inconsistent with the principle of maximum disclosure should be amended or repealed

The principle of maximum disclosure is the guiding one behind freedom of information. For that reason it should preferably be included in the national Constitution.

Whether or not this step is taken, it is clearly vital that all other laws are interpreted in a manner that is consistent with the Freedom of Information Act. In particular, it is important that there are not laws that penalise the disclosure of information that would be made public under the freedom of information law. This is a particular danger with pre-existing secrecy or national security laws. One of the effects of such a conflict between laws would be to put civil servants into an impossible position, since they will not know whether their first obligation is to release information or to keep secrets.

There should also be a general policy that officials should not be penalised in any way for disclosing official information in good faith,

even if it were to be shown that they were not required to do so under the Freedom of Information Act. It is essential that the culture of secrecy in so many countries be combated - where officials are afraid to disclose any information for fear that they will be punished.

### Discussion point

What laws exist in your country that might come into conflict with a Freedom of Information Act?

## Individuals who release information on wrongdoing - whistleblowers - must be protected

We asked you earlier to think of examples of where it would be justified for a whistleblower to reveal information to the public. Here are some of the examples that you might have chosen:

- Committing a criminal offence
- Ignoring a legal obligation
- Corruption
- Maladministration in a public body
- Risk to public health
- Threat to the environment

Legal protection for whistleblowers means that they are protected even if they have breached their legal or contractual obligations by revealing information, provided that they did so in good faith, believing that the information was true and about a serious matter of public interest, such as the examples we have given.

Here is a recent well-known example of whistleblowing by a public official.

*Katherine Gun worked as an analyst for the General Communications Headquarters (GCHQ), the British government's electronic eavesdropping organisation. In early 2003 she received a copy of an email from a US official detailing plans to eavesdrop on diplomats of member countries of the United Nations Security Council. Britain and the US were desperate to win a Security Council resolution authorising their planned invasion of Iraq.*

*Gun was appalled by what she read and gave a copy of the email to a newspaper. The resulting story was a considerable embarrassment to both governments.*

*Gun admitted that she had leaked the email and was charged with espionage. In February 2004 charges against her were dropped. Speculation was that the British government might face more embarrassment if it was obliged to produce in court the confidential legal advice that it had used to support the Iraq invasion. In any event, in a country where half the population opposed the Iraq war, it seemed unlikely that a jury would have found Gun guilty.*

Katherine Gun was not protected under English law. She lost her job and only escaped criminal conviction because the government was afraid to proceed with her prosecution.

Other countries have stronger protection for whistleblowers. South Africa provides explicit protection. So does the United States in both federal law and in many state laws. The impetus for the US Whistleblower Act came from the 1986 crash of the Challenger space shuttle. Engineers later revealed that they had pleaded with the National Aeronautics and Space Administration (NASA) not to go ahead with the launch, since they had identified the technical faults that would cause the shuttle to explode.

In 1996 the Organisation of American States adopted a convention against corruption that provided whistleblower protection. This protection is echoed in both the criminal and civil conventions against corruption adopted by the Council of Europe.

### Discussion point

We have set out nine principles that we think are fundamental to any freedom of information regime. Are there any more principles that you would add to this list?

Freedom  
of information  
**TRAINING MANUAL**  
FOR PUBLIC OFFICIALS

# Chapter Three

## LEGAL FRAMEWORK FOR FREEDOM OF INFORMATION

### Why is a legal framework necessary?

Many countries are party to international treaties that guarantee freedom of information. These include the International Covenant on Civil and Political Rights and regional treaties such as the European Convention for the Protection of Fundamental Rights and Freedoms, the African Charter on Human and Peoples' Rights and the American Convention on Human Rights.

Since these treaty obligations bind states to respect the principle of freedom of information, why is it also necessary to have a Freedom of Information Act?

There are at least two good reasons why a special freedom of information law is necessary to make sure that everyone can enjoy their right to freedom of information.

#### 1. A treaty obligation may not be directly enforceable under national law

Under many legal systems, the fact that a government has ratified an international treaty does not automatically make this part of national law. This means that although, in theory, a citizen might have the right to go to an international body to enforce their rights, they do not have the much simpler option of making sure that they can enjoy those rights under domestic administrative or legal procedures.

Making an international obligation into national law is the most effective way of making sure that rights are respected in practice.

#### 2. Establishing a freedom of information mechanism

For freedom of information to work in practice various rules and procedures have to be established. Human rights treaties lay out the general principles, but they cannot be a detailed guide to making sure that citizens enjoy the right in practice. This is the most important reason why a freedom of information law is essential.



## The Constitution - the fundamental law

Many countries that have adopted new Constitutions over the past 10 or 15 years have included the right to freedom of information.

### Discussion point

Do you think it is important that freedom of information should be a right protected in the Constitution? Why?

Is the right to freedom of information included in your country's Constitution? Does the Constitution set any limits on this right?

The importance of the Constitution is that it is the **fundamental law of the land**. Legal principles contained in the Constitution override any other law. This means that if old laws remain on the statute book that interfere with the right to freedom of information, they should be amended or repealed to bring them into line with the Constitution. Constitutional principles always come first.

What are some of the limitations on freedom of information that are sometimes contained in Constitutions?

- People are entitled to freedom of information so far as **they need it in order to exercise other rights**.
- Citizens are entitled to freedom of information **but not other people**.
- **Only journalists** enjoy the right to freedom of information.
- Freedom of information **only applies to information held by public bodies**.
- Freedom of information can be limited on grounds of **national security, public order or privacy**.

### Discussion point

What do we think about these possible limitations on freedom of information? Which of these do we think are valid?

Some points to consider:

We have seen that one of the reasons why freedom of information is so important is that it gives citizens information that allows them to exercise other rights. But if you **only** have access to information in order to exercise other rights, this means that you will have to prove that you need a piece of information every time you request it, because otherwise you would not be entitled to it. Not only would these be extremely cumbersome for those who administer the system, it would also seriously restrict the right to freedom of information itself. The idea that someone requesting a piece of



*Facilitator at the Training of Trainers Workshop in Tirana, September 2003.*

information has to prove that they have a right to it is inconsistent with the underlying principle that all information ultimately belongs to the people.

There are some rights that are limited to citizens, but very few. These are usually strictly political rights, such as the right to vote, although in many countries even that is not limited to citizens. The principle of freedom of information is that all information belongs in the public domain. What argument could there be to say that some sections of the public (those who are not citizens) do not have access to this information?

The same consideration applies when the right to freedom of information is limited to journalists. It is very shaky in principle to suggest that a right can be enjoyed by some people (by virtue of the job that they do) and not others.

Many freedom of information laws only apply to information held by public bodies. This is a normal practice and we could hardly say that this was wrong. But is there a good reason in principle why other powerful bodies in society – large private companies, for example – should not be subject to the same information laws as public bodies? When it comes to **data protection** they certainly should be – much of the information gathered about individuals is held by private companies. Data protection laws exist to protect the misuse of information held by both public and private bodies – for example in ways that may violate the privacy of the individual.

In principle it is necessary to make certain exceptions to the right of freedom of information where national security, public order and privacy are concerned. We could add a few other categories to this list, such as commercial secrecy. What is important is that these **legitimate** exceptions are not abused so as to interfere with the right to freedom of information itself.

If the right to freedom of information is guaranteed in the Constitution, why is it also necessary to have a Freedom of Information Act?

The answer here is the same as one of the answers to the question of why international treaties on their own are not enough. In order to make freedom of information work, there need to be fair and efficient procedures. Information officers will be needed to process requests for information. Some supervisory body will be needed to oversee freedom of information matters. And the exact scope of freedom of information will need to be defined with care. The exceptions to freedom of information must be defined in a clear and narrow way.

All these are matters to be dealt with in a law – not just a single clause of a Constitution.

## So what will the law contain?

### Exercise

If you were writing a Freedom of Information Act, what would you put in it?

### What information is the public entitled to?

A freedom of information law will elaborate the basic principle of freedom of information contained in the international treaties and the Constitution. It will say whether (or in what circumstances) the principle of access to information applies to private bodies, as well as public ones.

### What is information?

This may seem like an obvious question but it is not. Preferably the definition of information should encompass all recorded information, regardless of the form in which it is kept or stored. This means that the information consists of the content of a record rather than the record itself.

### Establishing a procedure

The law will need to contain a procedure by which the public can make requests for information held by public bodies (or others). This may involve creating the post of Information Officer - the person in each public body responsible for dealing with information requests and, more generally, making sure that information is freely communicated to the public.

The procedure will include issues such as **how** a member of the public makes an application and what are the obligations of the information officer. (For example, if a member of the public cannot make a written request, what other sorts of request are valid? And what should an Information Officer do to help?)

The law will also have to lay down a time limit within which the public body must respond to a request for information.

And it will set out, in principle, what fees should be paid for a request for information to be met.

All these are issues that are dealt with in much greater detail in Chapter 7 of this manual.

## Who is responsible for freedom of information?

The law will also need to set up an overall public authority - an Information Commissioner or something similar - with overall responsibility for freedom of information issues.

This will be the authority to deal with any complaints about the way in which the information system is working - including, very importantly, initial appeals against decisions to refuse information.

But there will be a further right of appeal to a court against the decision of the Information Commissioner.

## What information can still be kept secret?

The law will also have to deal with the tricky issue of when it would be right for a public body to refuse to release information. In other words, what are the exceptions to the principle of public access to information. We will look at this issue in more detail in the next chapter.

## Other aspects of openness

A freedom of information law will not only deal with public requests for information. It will also need to cover other obligations that the authorities have to make information readily available. These include:

- Regularly publishing information
- Holding public meetings
- Providing legal immunity for “whistleblowers”
- Providing legal sanction against those who wilfully obstruct access to information

## ARTICLE 19’s model Freedom of Information Law

ARTICLE 19 has produced a model Freedom of Information law. It contains all the elements that have been outlined and is based upon the principles contained in this manual. (See Appendix Two)

## Exercise

Read through the model Freedom of Information law.

What aspects of it would you change? What would you leave out? What else would you include? Why would you make these changes?

### Regulations - giving teeth to freedom of information

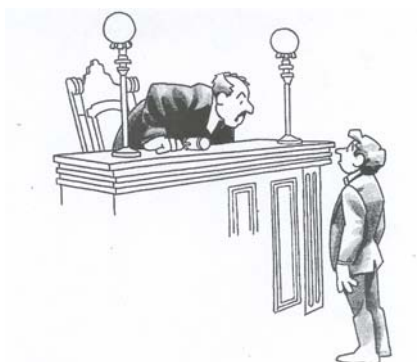
In most countries, even a constitutional provision and a law are not quite enough to turn a policy or principle into practice. Once the law is passed, various detailed procedures will need to be devised. So it is with freedom of information.

Many of the actual details of how a request for information is to be made or handled - such as what the request form should look like - will be dealt with in *subsidiary legislation*. Exact procedures vary from country to country, but usually this means that the government ministry responsible for implementing the new law is given the power to issue *regulations* that set out all these practical details.

For information officers, along with anyone else involved in the information-handling system, these regulations are the day-to-day guide to their work.

# Chapter Four

## WHAT ARE THE EXCEPTIONS TO PUBLIC ACCESS TO INFORMATION?



"The Freedom of Information Act?..Who told you about that?"

*Cartoon from the Freedom of Information Commission, Connecticut, USA.*

When we talked about the underlying principles behind freedom of information, we said that there were certain categories of information that could be made exceptions to the general rule of public access. That is, there is some information that the authorities may legitimately keep secret.

Can you remember what types of information we listed then?

- National security
- Law enforcement
- Personal privacy
- Commercial secrecy
- Public or individual safety
- Protecting the integrity of internal government decision-making processes
- Legally privileged information
- Public economic interests

Can you think of more types of information to add to this list?

### Brainstorm

Using that list of eight categories, think of an example from each category of information that should definitely not be made public in your opinion.

Here is a possible list of examples.

### National security - not letting the enemy know

If your country is in conflict with another, or just at a time of heightened tension, it would be legitimate not to reveal the position of troops.

Freedom of information should not jeopardise a genuine national security interest.

## Law enforcement - not letting the criminal know

If a crime is under investigation, it would be legitimate not to make information about the progress of the investigation public.

Freedom of information should not jeopardise a criminal investigation.

## Personal privacy

It will often be legitimate - and necessary - not to reveal the content of a personal file to another person.

Freedom of information should not override an individual's right to privacy.

## Commercial secrecy

If a company were developing a new product, it would be legitimate for details not to be made public so that they could be copied by rival companies.

Freedom of information should not interfere with legitimate commercial competition.

## Public or individual safety

It would be legitimate for the identity and whereabouts of someone in a witness protection programme to be kept secret.

Freedom of information should not put an individual's safety at risk.

## Protecting the integrity of government decision-making

It may be legitimate for a discussion paper within Cabinet, for example, to be kept secret if the positions in it were not adopted.

Governments should not be afraid to advance imaginative opinions for fear that they be made public and misinterpreted.

## Legally privileged information

In all legal systems there are some types of information, such as exchanges between lawyer and client, that are privileged - which is to say that they may not be revealed. The purpose of this is to maintain the confidentiality between lawyer and client and, more generally, the integrity of the judicial process.

## Public economic interests

There may sometimes be issues of public economic policy - such as a planned change in interest rates, for example - where revealing information might cause a damage to the overall well-being of the economy and interests of the public

These examples are all, we think, clear cut.

But does this mean that **all** information relating to national security, law enforcement and so on should be kept secret? Clearly not.

In each case where it appears that a piece of information may constitute an exception to the general rule of maximum disclosure, a **three-part test** must be applied to see whether it should indeed be treated as an exception and not disclosed.

We have already outlined the steps in this test.

**PART 1: Does this information relate to a legitimate aim specified in the freedom of information law (such as national security, privacy etc)?**

**PART 2: Would its disclosure do substantial harm to that aim?**

**PART 3: Would it nevertheless be in the public interest to disclose the information?**

Let us now look at how that would work in practice. To make it clearer we will use a hypothetical example. Let us suppose that ARTICLE 19's model Freedom of Information Act is the law in force:

*You are an information officer in the Ministry of Defence. You receive a request for information about the policy and practice of the Ministry on the procurement of boots for the army. The requester also asks about the quality of boots procured.*



## 1. Does this request relate to a legitimate aim?

The Freedom of Information Act contains a list of **legitimate aims** under which it **may** be justified to withhold information. This is important – if it does not contain such a list, then the danger is that officials can make up a list as they go along to justify withholding information.

Does this request relate to one of the aims on that list?

“Defence and security” is a legitimate grounds for an exception under this law. (“Protection of national security” or “defence of the nation” or some similar expression is certain to be on the list in any freedom of information law). This request does relate to national security.

This step might seem so obvious that it is unnecessary. But very often authorities will claim that a piece of information relates to national security – the Defence Minister’s business interests, for example – when actually they do not.

## 2. Would the disclosure of this information do substantial harm to that aim?

In this example, clearly not. The information relates to national security, but making it public would not harm defence and security. The worst would be that a potential enemy might learn that the infantry have sore feet because of the poor quality of boots they are wearing – not a “substantial” threat to national security.

But let us suppose that the request for information was not about boots but about rifles. And let us suppose that the information would reveal that a large number of the rifles used by the infantry were often defective – they overheated and jammed when fired repeatedly.

What would your answer be then?

Would you say?

- a) This information could be valuable to an enemy – it is very important that it should not be revealed, because it would harm national security; or
- b) National security would best be served by exposing the defective rifles – then there would be public pressure to replace them with ones that worked. And the publicity would help to make sure that this did not happen again in future.

The appropriate answer may depend on circumstances. For example, if the country is under immediate threat of attack (or already at war), such information might be deemed more sensitive than in a time of stable peace.

The crucial words to take into account are **substantial harm**. It is not enough to believe that revealing certain information might cause damage to national security (or one of the other legitimate aims). The government will have to demonstrate that it **will**, with a fair degree of certainty, cause that damage. And it is always the responsibility of the government to prove that there will be substantial harm, not for the person requesting the information to prove that there will not be.

### 3. Is there anyway a public interest in disclosing the information?

Suppose, for the sake of argument, that it was decided that it would do substantial harm to national security to reveal information about the malfunctioning rifles. Is that the end of the story?

No - there is still the possibility of overriding this conclusion if it would be maintained that this was still in the public interest.

In this example, it could be argued that, **even though an enemy would benefit from learning about the malfunctioning rifles** (a “substantial harm” to national security), there are various other reasons why it would be in the public interest for the information to be disclosed. These reasons could include:

- Generating public pressure to have the rifles replaced.
- Exposing weaknesses in the procurement system that led to the army buying defective weapons.
- Holding incompetent or corrupt officials to account.

There is sometimes confusion about what is meant by the “public interest”. This does **not** just mean that the public is interested in it. There is not, in this sense, a public interest in a pop star’s drug habit or a footballer’s extramarital affairs.

Public interest means that there is a **benefit** to the public in certain information being made available. It is difficult to define what that benefit might be since it will naturally vary from case to case. Lawyers generally try to avoid a hard and fast definition.

The public interest will also vary from one time to another. In the United States, the authorities decided not to release security camera video footage from inside the World Trade Center on 11 September 2001. This was because it was considered too distressing to the families of those who died. A year later, however, the footage was released because it was decided that there was an overriding public interest in knowing how people had evacuated the building. This had lessons for future design and construction of buildings.

To provide some firmer guidance, here is part of the definition drawn up by the Ethics Committee of the British National Union of Journalists (NUJ):

- a) Detecting or exposing crime or a serious misdemeanour
- b) Protecting public health or safety
- c) Preventing the public from being misled by some statement or action by an individual or organisation
- d) Exposing misuse of public funds or other forms of corruption by public bodies
- e) Revealing potential conflicts of interest by those in positions of power and influence
- f) Exposing corporate greed
- g) Exposing hypocritical behaviour by those holding high office.

Another example:

Let us look at another example, to see how this three part test works.

*The research and development division of a state-owned manufacturing company has developed a revolutionary new production technique. This technique is well in advance of anything developed by the company's international competitors. It will dramatically reduce the number of workers required.*

*A request for information about the process has been lodged by an environmental group, which is concerned about the danger of liquid waste from the new technique seeping into water courses.*

*The Freedom of Information Act makes an explicit exception of information that is a commercial secret.*

Do you release the information or not?

Let us apply the same three-part test.

1. Does this request relate to a *legitimate* aim?

Yes, clearly it does. The information requested is a commercial secret.

2. Would the disclosure of this information do substantial harm to that aim?

Remember that the crucial words are **substantial harm**. Of course, it is difficult to answer this question without knowing exactly what information would be revealed. But if this technique is so far ahead of the company's competitors, it seems as though revealing it may

sacrifice the commercial advantage. So yes, there could be substantial harm.

### 3. Is there anyway a public interest in disclosing the information?

Once again it seems that there could well be a public interest in the information, even though it would do substantial harm to a business secret.

There are two possible grounds for concluding that there is a public interest:

- The first is the reason the environmental group sought the information - the potentially harmful impact of waste disposal, which should be open to public scrutiny.
- The other reason for public interest would be the impact of the new technique on employment. It is not automatically a positive development for a state-owned company to cut jobs. This too is an issue that should be open to public scrutiny.

Let us now apply the three-part test to a real-life example.

*In Bosnia-Herzegovina, a request was made to see confidential files created by the former Communist secret police on candidates in forthcoming parliamentary elections. The director of the intelligence services referred the matter to the federal Ombudsmen for an opinion.*

#### 1. Does this request relate to a legitimate aim?

There are two possible legitimate grounds for refusing access: one would relate to national security, the other to privacy. Given that the files were created by a regime no longer in power, it seems improbable that the first would apply. However, the contents of a personal file clearly relates to the legitimate aim of preserving privacy.

#### 2. Would the disclosure of this information do substantial harm to that aim?

Arguably this information could do substantial harm to the privacy of the subjects of the files. This was the view that the Ombudsmen took:

*“The nature of confidential files, gathered in the past by police or intelligence services or eventually still gathered now, is such that, as principle, persons subject to such procedures (usually performed in illegal way) are victims of political or ideological position of those who order such gathering of information, regardless of who require it: the*

*authorities, political parties or services themselves. Publishing of such information in media for the purpose of pre-electoral campaign would make the victims to become victims for the second time."*

### 3. Is there anyway a public interest in disclosing the information?

The argument for a public interest in publishing the information would be that, as candidates, the individuals had knowingly exposed themselves to public scrutiny. There was a public interest - namely the democratic process - in knowing the content of the files.

Or was there? What do you think?

Finally, here is another case study with a slight difference: this one involves a whistleblower.

*A report appeared in the press about the transport of nuclear waste by railway. The media report said that the rail track on part of the route was in a poor state of repair - leading to the danger of an accident - and that the route also passed through part of the country where there is a strong secessionist movement that does not recognise the authority of the central government.*

*An official from the Ministry of the Environment was identified as the source of the information. He was dismissed from his job and faces criminal charges of disclosing state secrets and provoking public disorder.*

Using the three-part test, do you think that the official's whistleblowing was justified? Should he be found guilty?

## Exercise

Here are some more examples of requests for information that might - or might not - be exceptions to the general rule that officially-held information should be disclosed.

Use the ARTICLE 19 Freedom of Information Act and apply the three-part test to decide what you think would be the correct answer in each case.

*• You are an official in the Ministry of Health. Government laboratories have been carrying out research on a new and potentially deadly virus that is spreading rapidly worldwide, carried by air travellers. You have received a request for information about the progress of this research. In fact, the laboratories are close to making a breakthrough that could lead to the production of a*

vaccine. But their research has also revealed that the impact of the virus is much more serious than originally supposed.

• You are an official in the Ministry of Internal Affairs. You have received a request for information on the number and identity of wiretaps implemented by the police in the course of an operation against human trafficking.

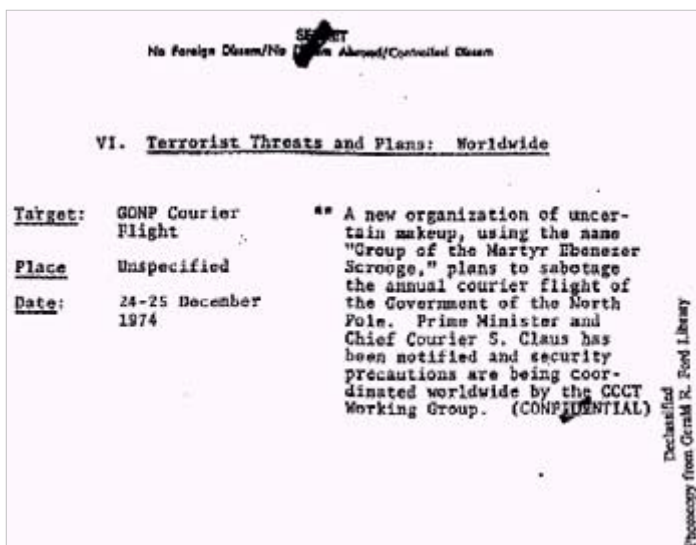
In practice the decision about whether to release information may be affected by how that information has been classified.

Classification is usually a part of secrets legislation. It assigns to each record a classification that determines who is allowed to see the record. There is usually a scale of classifications, from the most restricted ("Top Secret") to the least.

Classification may continue to persist alongside freedom of information legislation.

In Chapter 2, we noted that existing laws (such as secrets laws) should always be interpreted in a manner consistent with freedom of information. This will also apply to records that have been classified under existing laws. This may often mean that records (or rather information contained within those records) may be circulated in a broader manner than was originally envisaged when they were classified.

One of the greatest problems with classification under secrets legislation - even assuming that the classification was correct at the time - is that the status of information changes with time. Information that might have legitimately been regarded as secret 10 years ago may not be the same today. That is why it would always be preferable to apply the three-part test to a piece of information where there is some doubt, rather than simply abiding by a rubber stamp placed upon the record when it was created. However, it should be recognised that the individual official may often not have the authority or discretion to do this.



The classification process can lead to some ridiculous outcomes. This document was classified "Secret" by the US Central Intelligence Agency:

Freedom  
of information  
**TRAINING MANUAL**  
FOR PUBLIC OFFICIALS

# Chapter Five

## PUBLIC BODIES AND ACCESS TO INFORMATION



*Participants at the Training of Public Officials Workshop in Tirana, September 2003*

Public bodies in a democratic society administer the country on behalf of the public. Their power is delegated from the people. Public bodies have a democratic duty to respond to information requests because the information they hold belongs to the public.

The principle is clear - but what is a public body?

The definition of public body will vary from country to country, with different laws having somewhat different definitions.

Some international organisations, such as the Council of Europe or ARTICLE 19, have tried to define the concept of “public body”, using the best experience from different countries. As far as possible, these are the best definitions to use.

### The Council of Europe’s definition

The Council of Europe recommends a definition of public bodies that focuses on what they **do**, rather than simply what they are. For the purposes of freedom of information, it defines public bodies as:

- i. government and administration at national, regional or local level;*
- ii. natural or legal persons insofar as they perform public functions or exercise administrative authority and as provided for by national law.*

The first of these definitions is perhaps obvious, but the second is important because it means that any institution - whether publicly or privately owned - should be regarded as a public body if it exercises public functions or carries out an activity under the authority of a law.

Examples of such bodies might be transport companies, schools or private healthcare companies.

#### Exercise

Can you think of examples from your own country of private companies or other institutions that would qualify as “public bodies” under this definition?

### ARTICLE 19’s definition

ARTICLE 19 says that the definition of public bodies:



*should include all branches and levels of government including local government, elected bodies, bodies which operate under a statutory mandate, nationalized industries and public corporations, non-departmental bodies or quangos (quasi non-governmental organisations), judicial bodies, and private bodies which carry out public functions (such as maintaining roads or operating rail lines).*

At the end of Chapter 1, we asked you this question:

How far can the principle of freedom of information be applied to private bodies in society, such as companies, as well as to governments?

The definition of “public body” offered by ARTICLE 19 answers this question in part. If a private company exercises delegated public power, then it will be subject to the same access to information regime. This means that such a company would have to set up the necessary mechanisms to deal with requests for information.

The ARTICLE 19 definition of “public bodies” takes matters a step further. It includes private institutions under the access to information regime, to the extent that they hold information that may benefit society as a whole:

*Private bodies themselves should also be included if they hold information whose disclosure is likely to diminish the risk of harm to key public interests, such as the environment and health. Inter-governmental organisations should also be subject to freedom of information regimes [...].”*

At first sight this seems to be a radical extension of the scope of freedom of information. Yet it is commonly accepted that private bodies, such as companies, should be subject to stringent regulation in certain of their activities. They do not, for example, have total freedom to behave in a way that threatens the environment or public health or welfare. Extending the scope of freedom of information to cover these aspects of the behaviour of private bodies is simply asserting that these institutions have an obligation to the public in general.

## Public bodies in South Africa

In some countries this broader definition is already applied. South Africa has transformed many of its laws and institutions since the end of apartheid in 1994. It has recently developed freedom of information legislation that reflects the latest international standards.

The Promotion of Access to Information Act, adopted in 2000, states:

*“Public body” means-*

- (a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or*
- (b) any other functionary or institution when-*
  - (i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or*
  - (ii) exercising a public power or performing a public function in terms of any legislation.*

In South Africa the obligation to provide information extends even to private bodies where that information is required for the exercise or protection of other rights. Section 32 of the 1996 Constitution of South Africa provides:

*Everyone has the right of access to - ...*

*b. any information that is held by another person and is required for the exercise or protection of any rights.*

This would clearly include information held by private bodies (for example, in relation to the environment, health and so on).

## Exercise

How does your country’s freedom of information legislation define public body? Who is obliged under your law to provide information to the public?

### Experience from Ireland

The Irish Government regularly publishes on the website of the ‘Office of the Information Commissioner’ a list of bodies that have recently taken up public functions and have become liable under the Irish freedom of information act. On 1 November 2002 thirty-two new bodies were added to the list.

The list of “public bodies” in a country will not always remain the same. They change over time. New agencies will have to be added, while others may lose their public status. This is because the status of “public body” depends on the activities of an institution, not its formal title. A private company may be contracted by the governing administration to provide certain public services. From this moment on, in relation to these public services, the company should be considered a public body obliged to answer to information requests under the freedom of information law.

Some countries have a very narrow approach and include only executive government institutions in their freedom of information law. They leave out other institutions, such as the legislative and judicial branches of government and law enforcement bodies or private bodies that fulfil public functions. This approach does not correspond to best international standards. However, even if the law does not oblige officials of these institutions to provide information, it normally also does not prohibit them. Officials can still choose as public servants to provide information to the public acting according to best democratic practice.

## What steps should the public body take to promote access to information?

Passing a good freedom of information law is not the end of the process, but the beginning. Implementing the law is usually a much greater challenge than creating it. It is the government's responsibility to take steps that will make sure the law is implemented effectively.

### Brainstorm

List the steps that you think a government should take to make sure that a new freedom of information law is implemented.

### An example from Jamaica

In the middle of 2002, the Jamaican parliament passed the Access to Information Law. Within a month, the Jamaican government created an implementation unit. This unit consulted civil society in order to devise activities that would promote the new law. These included the very important process of making government and quasi-government departments aware of the requirements of the Act and the need for improved records management. The Access to Information unit circulated a template for budgetary, personnel and equipment planning to each department.

We think that there are six measures that can be identified:

- Publishing information
- Allocating responsibility to specific staff
- Training information officers and other public officials
- Setting up or improving existing information and records management systems
- Publicising the existence of the freedom of information law
- Reporting on freedom of information activities

Can you think of more?

### Measure 1: Publishing information - without it being requested

When they discuss access to information systems, most people think first about how the public can request information.

But requests are not the only part of freedom of information and, in a sense, they may not even be the most important. Freedom of information means that the whole process of government is opened up to public scrutiny. The most effective way of doing this is for public bodies, as a matter of course, to publish information of significant public interest - and to disseminate this widely.

Exactly what information each public body publishes will of course depend on what that body is and what it does, as well as the specific requirements of the national law.

### Brainstorm

Think about the institution that you work for.

What information do you think should be published so that the public have a clear picture of what it does, as well as how to find out more?

## Experience from Latvia

In Latvia, the local government, city or county councils, are required to publish annual reports. The Law on Local Governments determines the content of these reports. The annual public report must include, among other things:

- 1) the implementation of the two previous years' budgets and the accepted budget of the current year.,
- 2) the valuation of local government immovable property for the last two years,
- 3) the measures performed in the previous two year, as well as those planned for the current year in implementing the territorial development plan,
- 4) the decision of the territorial local government city or council regarding the annual economic report of the previous year,
- 5) the audit opinions of the State audit office,
- 6) the measures taken in order to promote the awareness of residents regarding the activities of the local government and the possibilities for participating in the discussion of decisions etc.

## An example from the USA

The United States Freedom of Information Act obliges public bodies to publish any information released in response to a request if it is likely that it will be the subject of other requests.

We think that, at a minimum, each public body should publish the following information. It should do this at least once a year:

- a description of its structure, functions, duties and finances;
- details of any services it provides directly to members of the public;
- any public request or complaints mechanisms, along with a summary of any requests or complaints or other direct actions by members of the public and the response of the public body;
- a simple guide containing information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a request for information;
- a description of the powers and duties of its senior officers, and the procedure it follows in making decisions;
- any regulations, policies, rules, guides or manuals;
- the content of all decisions and policies that affect the public, along with the reasons for them, any authoritative interpretations of them, and any important background material;
- any mechanisms or procedures by which members of the public may make representations or influence the way the body works.

## Exercise

Has the public body you work for published information about its activities?

In what form was this information published (booklet, web site etc)?

What was the public response?

Was this useful for your work?

For staff working in a public body the enormous advantage of publishing information regularly is that this will reduce the number of requests for information. If commonly requested information can be made readily available to the public, they will have no need to ask for it. Or, even if they do request the information, it will be a simple matter for you to respond.

The body responsible for overseeing implementation of the freedom of information law - Information Commissioner, Ombudsperson etc - should:

- publish a guide on minimum standards and best practices for public bodies publishing information;
- provide advice to public bodies on publishing information.

## Experience from Bulgaria

In Bulgaria, the Access to Public Information Act, (APIA) requires the local administration to report or publish certain information. The difference between reporting and publishing lies in the manner of public presentation: reports can be either written or oral, while publishing is always in written form. The APIA requires the administration to report information in the following circumstances: when the information can avert a threat to life, health and safety of the citizens or their property; when the information disproves inaccurate information that has already been disseminated; when the information is of public interest.

In addition, the APIA requires the heads of administrative structures to publish periodically: a description of the public body's duties and a list of the acts it has carried out; information about the organisation, functions and responsibilities of the administration; a description of the information resources used by the public body; the name, address, telephone number and working hours of the department responsible for receiving written requests for access to public information.

## An example from Mexico

In Mexico, Article 9 of the Federal Transparency and Access to Public Government Information Law requires that public bodies provide computer equipment to the public so that they can have access to official information.

In the United Kingdom, for example, the freedom of information law requires public bodies to have publication schemes that must be approved by the Information Commissioner. The latter also publishes a model publication scheme that public bodies can adopt instead.

But public bodies do not always take their responsibilities seriously...

*[South African] Human Rights Commission chairman Jody Kollapen has requested political intervention from Parliament to compel the country's 800 public bodies to fulfil their obligations in terms of the Promotion of Access to Information Act.*

*Kollapen complained yesterday, in a letter to National Assembly speaker Frene Ginwala, that in May last year, the first anniversary of the act coming into force, only 20 public bodies submitted the required reports.*

*This dwindled to only 15 reports from the 800 public bodies in May this year. Ironically, the bodies that failed to submit a report included Parliament itself.*

*Kollapen said last year the commission held briefings for public bodies in eight of the nine provinces and placed a notice on its website "in order to impress on public bodies the need to comply with this obligation".*

*He said the commission had also spent R80000 of "public funds" on advertisements reminding public bodies to submit their reports by March.*

*The act is intended to give substance to the constitutional guarantee to information of ordinary citizens. In terms of the act, all public bodies must report to the commission on the number of applications for information they received, and how these were dealt with.*

*The act also applies to private bodies, and studies by the Open Democracy Advice Centre have shown that few bodies either public or private were complying with the legislation.*

*He warned that while the act did not provide sanctions for non-compliance, it was a criminal offence in terms of the Human Rights Commission Act to frustrate the work of the commission.*

*"The commission does not readily resort to drastic measures to ensure compliance with obligations pertaining to its functions but we resort to these measures where we have to," Kollapen said.*

Source: Business Day

## Measure 2: Allocate responsibility to specific staff

The public body should designate an individual (or group of individuals) who is responsible for processing requests for

information and for ensuring that the body complies with the law in the way that it deals with requests. This official is often called an information officer.

The public body must make sure that the public has easy access to the name and contact details of the information officer.

## Brainstorm

If you are working through this manual, then perhaps you are an information officer yourself. What responsibilities do you have in your job?

### Experience from Albania

In Albania the freedom of information law was passed in 1999. So far most public bodies have not designated specific people responsible for dealing with information requests. Instead, this function is partially fulfilled by the spokespersons, who often are political appointees working for a particular political agenda. Furthermore, most of them are not familiar with the nature and requirements of the freedom of information legislation and are therefore unable to implement it.

The information officer has three basic functions:

- to promote the best practices of maintaining, archiving and disposing of records within the public body;
- to be the main point of contact between the public body and the public on all information issues - receiving requests for information, helping individuals who are trying to find information and receiving complaints about the performance of the public body in information disclosure;
- making sure that the public body complies with the law on access to information and promoting best practices of disclosing information.

It is important to understand that the role of the information officer is quite different from that of the press or public relations officer.

In some countries, the responsibility for handling information requests has been given to press officers or officials spokespersons. But this has caused problems. The role of the press officer is generally to present the institution to the public in a positive light. This is quite different from realising the public's right of access to information. Freedom of information means that it must be possible to gain access to unaltered documentation about the functions of a public body. This is not what a press officer does. The two functions should be kept completely separate.

## Measure 3: Train the information officer and other public officials (including senior ones)

Since you are reading this manual, this step - training the information officer - may already be taking place!

## An example from Mexico

The Mexican freedom of information law creates liaison sections (unidades de enlace) and information committees.

There is a liaison section within each public body. Its functions include:

- collecting and publishing information from the public body;
- receiving and processing requests for information;
- helping individuals prepare requests;
- proposing internal procedures to help deal with information requests;
- training officials in handling requests for information;
- keeping a record of requests for information.

Each public body also has an information committee. Its functions include:

- establishing procedures for handling requests for information;
- overseeing the classification of information;
- generating information to produce an annual report on its activities.

If the freedom of information law is to work properly, it requires that officials have both an understanding of the guiding principles and a knowledge of the legal technicalities.

This means that officials responsible for administering the act will need training in how to make it work. Importantly, the senior officials to whom they report should also be trained.

In countries with a tradition of institutional secrecy - which is most countries without a history of freedom of information legislation - it is necessary to consider how to transform attitudes and culture within the public administration.

## Brainstorm

What do you think we mean by “transforming attitudes and culture within the public administration”?

What steps do you think could be taken to begin to effect this transformation?

Training sometimes does not happen because the public body does not have enough financial resources to organise large training programmes. However, people and organisations from various parts of the world have developed approaches to address this problem, even where resources are limited.

### **Involvement of both government and non-governmental organisations in training and promoting institutional change**

*In South Africa, training of information officers and deputy information officers has been carried out by various organisations including the South African Human Rights Commission, the Justice College and the Open Democracy Advice Centre (ODAC). ODAC has conducted numerous training sessions for NGOs, the private sector and public institutions, which not only focus on the technical aspects of the law but also address organisational change and transformation issues related to implementation of the law.*

*In Jamaica, the Access to Information Unit, set up by the government, has planned a series of training workshops in conjunction with the Records and Archives Department (of Government) and the Management Institute for National Development focusing on record keeping and retrieval, the application of the Act and Managing Change.*

### **Creation of “openness” incentives for public officials**

*The Campaign for Freedom of Information, a non-governmental organisation in the United Kingdom created annual Freedom of Information Awards to recognise individuals and public bodies for voluntarily releasing information. Among the recipients of the awards have been:*

- *the public inquiry into Bovine Spongiform Encephalopathy (BSE) for its internet site which gave the public immediate access to all written evidence it received and put full transcripts of oral evidence on-line within two hours of a witness's appearance;*

- *Cardiff County Council for establishing a public register of councillors' and officers' conference expenses;*

- *Wandsworth Borough Council's Technical Services Department, for making details of all planning applications, including scanned images of original application forms and plans available on the internet.*

## Measure 4: Set up or improve existing information and records management systems

Besides building staff capacity through training, each public body needs to create systems to enable the public to request and receive information.

This requires two kinds of system:

- Adequate filing and information management ("record management") systems, so that requested information can be found in a timely manner.

- Open and accessible systems by which information requests can be submitted and their progress traced.

Different laws have different definitions of public information. Here are two of the definitions from international bodies:

### ARTICLE 19's definition of information

*For ARTICLE 19, information includes all records held by a public body, regardless of the form in which the information is stored (document, tape, electronic recording and so on), its source (whether it was produced by the public body or some other body) and the date of production.*



## The Council of Europe's definition of information

*The Council of Europe's recommendation applies to "official documents". These documents are defined as including "all information recorded in any form, drawn up or received and held by public authorities and linked to any public or administrative function".*

### Discussion point

What kind of information is covered by the freedom of information law in your country? What are the advantages and disadvantages of the definition that is used?

Of course, it would make life much simpler for an information officer if every person requesting information could give a precise definition of the record that they require. But of course, they cannot. A member of the public only knows what information they are looking for. They usually will not know what the public body's system for record-keeping is.

This is why it is important that they have a right to the information itself, and not just to a particular record. As we will see later, this also allows information to be more easily severable. Severability means that if there is some legitimate reason why the entire record containing the requested information may not be released, then the information within the same record that does not fall under the legitimate exception may nevertheless be released.

### Discussion point

How can records management be improved at your work place?  
What request management and tracking mechanisms is/could be employed in your public body?

With modern computer technology and especially designed software both records and requests management can be done in a highly efficient manner.

But what experiences do there exist for improving information management systems without major investments?

## Good practice from Bulgaria

*In Sliven municipality the information centre has established a separate audit trail for information requests that distinguishes clearly between on-the-spot advice and information requests that*

*cannot be satisfied immediately. The latter are recorded so that their progress can be tracked.*

## Good practice from Bosnia-Herzegovina

*Sarajevo municipality created a database of records and an internal communication system so that information officers could communicate easily with heads of department to track the progress of requests. There is a clear division between information requests and administrative requests (for example, for birth and marriage certificates). The latter are lodged with different staff in another part of the building.*

## Measure 5: Publicise the freedom of information law

There will need to be a country-wide information campaign by the Information Commissioner (or whoever is responsible for overseeing freedom of information) or by the government or parliament. The aim will be to tell the public about the freedom of information law.

But at the same time, each public body will need to inform the public about their right to information held by that body and how this right can be exercised in practice.

### Brainstorm

How would you publicise the freedom of information law for your own public body? What messages would you try to get across and what methods would you use to do this?

Perhaps the public body that you work for has already run a publicity campaign on freedom of information. If so, what lessons would you draw from it?

In countries where literacy is low and newspaper distribution limited, the broadcast media are a particularly important vehicle for public education on freedom of information. Posters and leaflets are also an efficient and cost-effective way of making the public aware of what information is available and how to obtain it.

There are great opportunities for creativity in getting your message across.

## An example from South Africa

The Promotion of Access to Information Act (PAIA) provides for the creation of “manuals” which have been described by freedom of information experts as “road maps” pointing the way to records that exist and are held by each public body. The PAIA “manual” or “road map” is a document that a person making a request for information can look at in order to identify the records they may want to request, or to learn how they are expected to make a request. The PAIA manual will contain information about the organisation, the index of records held by the public body and the process to be followed in order to make a request for information. In order for such a manual to be produced, the public body must first categorise the records in its possession. Declaring the maximum number of records as automatically open is the best approach: it limits the decision-making process - and is therefore less of a drain on resources - and is clearly better for the requester, as disclosure will be automatic.

Here are some examples from public education campaigns on freedom of information.

## Example from Jamaica

*A civil society organisation has set up a Help Point to raise awareness about the law and provide advice for those wishing to make an information request. As well as providing practical help to potential requesters in filling out applications for information, the Help Point will also track, monitor and oversee the implementation of the law on behalf of civil society. Any information obtained via the Help Point will also be used to lobby for any needed changes in the Act, once it comes up for automatic review, two years after implementation has begun.*

## Example from Bulgaria

*The Access to Information Programme (AIP), which led the campaign for the Access to Public Information Act (APIA), is a key agent in promoting the effective implementation of freedom of information. AIP has published a handbook for citizens which explains the basic concept and principles of the law and the process for making an information request. The handbook includes a template of a model information request.*

The body overseeing the implementation of the freedom of information law (e.g. the Information Commissioner) should, as soon as practicable, compile in each official language a clear and simple guide containing practical information to facilitate the effective exercise of rights under the law, and disseminate the guide widely in an accessible form. The guide should be updated on a regular basis, as necessary.

## Good practice in Bulgaria

*In the Ministry of Health, as visitors enter the building, before they reach the security guard, all information on the Access to Public Information is posted. A contact person is available for two hours a day to deal with oral information requests.*

## Measure six: Reporting on freedom of information activities

Every public body (normally the Information Officer) should annually produce a report on the activities of the public body in relation to providing public access to information. The report should include information about:

- the number of requests for information received, granted in full or in part, and refused;
- how often and which sections of the freedom of information law were relied upon to refuse, in part or in full, requests for information;
- appeals from refusals to communicate information;
- fees charged for requests for information;
- how it has published information proactively;
- how it has maintained records; and
- how it has trained officials and informed the public about their right of access to information.

**Good freedom of information laws require public bodies to produce such a report on a regular basis and at least once a year. Public bodies should be obliged to disseminate this widely.**

Freedom  
of information  
**TRAINING MANUAL**  
FOR PUBLIC OFFICIALS

# Chapter Six

## WHO ARE THE REQUESTERS?

Different countries define who has the right to information in different ways.

The **Bulgarian** Access to Public Information Act defines requesters in the following way:

- 7) Any citizen of the republic of Bulgaria is entitled to access public information...
- 8) Foreign citizens and individuals with no citizenship shall enjoy the right..
- 9) Legal entities shall enjoy the right...

The **Albanian** Freedom of Information law states that “every person - physical, juridical, native or foreigner” has the right of access to information.

The **Connecticut (US)** State Freedom of Information law defines “person” as “natural person, partnership, corporation, limited liability company, association or society.”

**Under your freedom of information law, who is entitled to request information?**

In some countries people requesting information have been treated differently depending on their profession, status or what institution they represent. However, the right to information is a democratic, human right of everybody in a given country, and should not depend on any formal requirements (for example citizenship of the country). The media should not have privileged access to information over ordinary people. All requesters should be treated equally without any discrimination based on age, gender, ethnic grounds, political or economical status or position.

### Discussion point

Do you agree with this principle? Are there any arguments in favour of differentiating between requesters.

Who might come to your public body with a request for information? Why might this information be important for them?

Anyone might be a requester of information

*A mother from Thailand:*

*A mother in Thailand objected to the selection procedures of the state-funded primary school to which her daughter applied. Each applicant was required to sit an entry examination but the test scores and ranks were never made public.*

*When her daughter's application was rejected, the mother wrote to the school asking to see her examination results. Her request was refused. She then filed a petition under the 1997 Information Act to see the results.*

*In 1998, the Official Information Commission ruled that the marks of the 120 students who had been admitted to the school should be made public and it was revealed that 38 of these students had failed the test but gained entry to the school because of payments that their parents had made.*

*The mother went on to file a request with the Council of State, a government legal advisory body with the power to issue legal rulings, arguing that the school's admission practices were discriminatory and violated the equality clauses of the new constitution. In January 2000, the council ruled in her favour and ordered the school and all other state-funded demonstration schools to abolish such practices.*

*A journalist in South Africa*

*A journalist called Lisa in South Africa was inspired to investigate the safety of meat products by casual remarks by friends and colleagues who cited their suspicions of "what goes into meat" as a reason for their vegetarianism. She did not get very far by looking at the wrappings of different meat products in supermarkets so she approached the School of Agricultural Sciences and Agribusiness at the local university. A researcher told her "off the record" of a research project where pesticides had been found in certain agricultural products in South Africa. Her source further informed Lisa that the National Department of Agriculture (NDA) regularly conducted food residue tests on products such as beef and poultry and that some of the tests had shown residue levels way above the legal and safe standards.*

*Lisa then approached the NDA and requested results of food residue tests from 1982 to 2002. However her request was refused because the NDA claimed:*

- 1) *The disclosure of the information would harm the commercial interest of exporters;*
- 2) *The disclosure would jeopardise the safety of inspectors.*

*An official at the NDA also claimed that there was no evidence that showed that residue levels had been exceeded.*

*As we write, this case is on appeal - there is still a chance that Lisa will get the information she is seeking.*

Those are two real-life examples of people requesting information held by public bodies. There are many others we can imagine:

***A women's organisation:***

*For an organisation that works to advocate the rights of women, it is important to have access to data about the situation of women in their country. This information could include how many girls have access to higher education, how many abortions are carried out per year, how many newly-born children die per year and how much women are paid on the labour market in comparison with men.*

***Minorities:***

*Roma in South-East Europe, for example, who have historically been an underprivileged group, may want to know the levels of recruitment of Roma into public service positions in comparison to other ethnic groups; what the government is doing to redress institutional discrimination against Roma; and whether public bodies have any policies at all to redress social discrimination. They may seek this information so that they can develop policy recommendations or raise public awareness of discrimination issues, in order to change the government policies or the public's attitudes toward Roma.*

***Journalists:***

*Journalists who investigate reports of maladministration or corruption in public bodies may request information such as court decisions, or reports on budget expenditure to verify whether or not officials have abused their power. It is essential that the media have access to such information in the public interest. If investigative journalism has to be based on rumours rather than verifiable facts, journalistic practice risks becoming defamatory, exacerbating social conflict, and the public is unable to judge the competence of the administration and the country's leadership.*





Cover illustration from a Guide to the Albanian Law on Access to Official Documents, published by the European Centre, 2002.

### **Ordinary citizens:**

*A person who intends to build a house in an area near a factory has a right to know what are the levels of pollution caused by the factory. A woman who is about to become a mother may wish to find out about her statutory rights to maternity leave, health insurance and vaccination regime for new born babies. Many people will want to have access to personal information held about themselves, such as medical or school records.*

### **Businesses:**

*Private companies often request commercial information from governments, especially in relation to issues such as consumer surveys. It is economically efficient to make this information available, since it prevents duplication in generating it.*

### **Political parties:**

*In countries with established democracies and freedom of information laws, political parties often use these laws to request information. They use the information in order to formulate their own policies, as well as asking questions of the government and challenging them in parliamentary debates. This is useful since, to some extent, it minimises the advantages that a ruling party enjoys and levels the playing field in elections.*

### **How should you treat requesters?**

In most cases, people are not requesting information to make your life more difficult, but because they genuinely need the information.

How should you respond to their request? Here are some basic rules and guidelines.

## **Guideline 1: Meet requesters with politeness**

The role of public officials in a democracy is to serve the public. This is why in some countries they are called public or civil *servants*. You should meet every person who requests information with this principle of serving the public in mind. You should treat all requesters as equal, and meet them with politeness.

## **Guideline 2: Advise and assist them when making their request**

You should advise and assist them in making their request, taking into consideration that the requester may not know what information exactly to look for, where to look for it, or how to file a request. Provision should be made to ensure full access to

information for certain groups, for example those who cannot read or write, those who do not speak the language of the record, or those who suffer from disabilities such as blindness. In such cases you should help the customer to put their request into writing, include your name and position in the body, and give a copy to the person who made the request.

User-friendly systems have been established in Denmark and the Netherlands where applications can be made verbally. The Belgian legislation gives requesters the right to have documents explained to them.

### **Guideline 3: Direct them to where the information can be found**

If the information requested is already publicly available, for example on an internet site, in information bulletins or in an annual report, you should indicate to the requester where he or she can find the information.

If you do not hold the information the requester is looking for, you should direct him or her to the correct person or body where the information can be found.

### **Guideline 4: Process requests rapidly and fairly**

Requests for information should be processed rapidly and fairly within the time limits prescribed by law. The reasons for any refusal of information should be given to the requester with a comprehensive written explanation.

### **Guideline 5: Inform requesters of their rights**

A good freedom of information act will foresee the possibility for an independent review of any refusals through an administrative body (for example an ombudsperson or a Parliamentary Commission). In case you decide not to disclose the requested information, you should inform the requester that he or she can appeal this decision by applying to this body.

### **Guideline 6: You may refuse vexatious requests**

Notwithstanding, it is legitimate for public bodies to refuse frivolous or vexatious requests.

## Guideline 7: Keep in touch

Keep the requester informed of the progress of their request, if the request is such that processing it will take some time. This will be the case for example when it involves a large amount of information or numerous documents.

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

- ✓ Provide the requester with a receipt documenting the request;
- ✓ Provide the requester with a reference number for the request to make it easier to trace the request later on;
- ✓ 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);
- ✓ 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.

### Discussion point

Think of examples of “difficult” requesters and discuss how the situation could be handled in a professional manner.

# Chapter Seven

## PROCESSING REQUESTS



*Small discussion group at the Training of Public Officials workshop in Tirana, September 2003.*

The principle of maximum disclosure means that all information held by public bodies is accessible to the public as a matter of principle, except in a few very limited circumstances (as outlined in Chapter 4 of this manual). Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information. The exercise of this right should not require individuals to demonstrate a specific interest in the information. In some freedom of information laws, such as the Swedish law, someone making a request for information is not even obliged to disclose their identity. Where a public authority seeks to deny access to information, it should justify the refusal at each stage of the proceedings. In other words, the public authority has the responsibility of showing, at each stage, that the information being withheld falls within the scope of the limited regime of exceptions, as set out in the law.

The flow chart below outlines the questions that should guide any official who deals with information requests. Follow the chart as you work through the steps that follow.

You can alter this chart to reflect the specific requirements of the law in your country.

### Step one: The information request

The request for information could be an oral request or a written one. Some national legislation, such as the United Kingdom Freedom of Information Act, only covers a request that is in writing. In other countries, for example in Bulgaria, a request for information can be made orally or in written form.

Information is defined in your access to information law and generally speaking is understood as recorded information. In other words the law does not oblige you to provide information that does not already exist as part of a record. According to best international practice the law should contain a broad definition of information. We have already quoted ARTICLE 19's definition: "any recorded information, regardless of its form, source date of creation or official status, whether or not it was created by the body that holds it and whether or not it is classified".

## Discussion point

Does your freedom of information law allow people to make requests orally, or must they be in writing? What are the advantages or disadvantages of each approach?

### Step two: Is the information already published?

This is the first question you should ask yourself. As we discussed earlier, your public body should publish certain routine information without needing to be asked. To make things easier for you and your colleagues, as well as for the public, a list of these already published documents should be readily available in the reception area of your building and if you have a web site should be posted on your home page. If the information is already available as a published document, give it to the requester yourself, or tell the requester where he/she can find it.

### Step three: Does the responding body hold the information requested?

Not everyone is familiar with the way that the government and public administration works. You may be asked for information that your public body does not hold. In this situation, you should either transfer the request to the public body that holds the information, or tell the person making the request which public body holds the record. (Your national law may lay down a standard process for dealing with such a situation.) It is important to remember that your body may hold many records that have originated from other parts of the public administration. For example, if you work in local government your body is likely to have many records that have been produced by central government departments.

Normally, it is irrelevant where the information originally came from. You must disclose it unless it falls within the scope of one of the exceptions. In some cases, however, the originating body may be better qualified to assess the request (for example to assess an exception or public interest override).

### Step four: Does the request contain sufficient detail to enable you provide the information?

Different national laws prescribe in varying detail what an information request should contain.



*Local facilitator at the Training of Trainers workshop in Tirana, September 2003.*

For example in the Mexican legislation, the request must contain

- Name and contact details of the person making the request (and details of the person representing them, if this is relevant);
- A clear and precise description of the documents requested;
- Any other information that may make the documents easier to locate;
- The form in which the information is required - it may be verbally, by consulting the document, or in the form of a simple copy or a certified copy.

Note that the law, as is common in all freedom of information legislation, does not require the requester to specify the exact title or reference of the document he or she is seeking. All that is required is that the description is sufficiently clear to enable the official to identify the record.

Some freedom of information laws require a request to be made in a form or a template. In any case it will be helpful for your public body to produce a form or template for requesters to fill in to provide all the necessary details, e.g. their names, a description of the information they require, a correspondence address (if only to make sure that they do not forget something). This form should be simple and straightforward and designed to facilitate the request, not to add an extra layer of bureaucracy to the procedure!

If you receive a request that does not comply with the requirements in your law, this is not a reason to reject the request. On the contrary, if possible, you should help the requester to formulate the request. (And if the requester is unable to formulate the request in writing, because of disability or illiteracy, you should write down the requester's oral request).

### Discussion point

Here is a copy of the request form for information from a public body in South Africa. (See Appendix 3).

Is this a good form?

What additional questions would you include if you were designing a form for your own public body? What questions would you leave out?

## Step five: Recording the request, issuing a receipt and explaining the procedure

If the request for information is straightforward and you know that the information is public, you should provide it immediately. The only reasons to delay providing information to a requester are:

- if the request involves a large number of documents which will take time to retrieve;
- if there is a serious question as to whether it might fall within the scope of an exception.

As we discussed earlier, some laws require each request for information to be recorded - in any case it is good practice to register every information request in either a manual or computer log and issue the requester with a receipt and a reference number. Even if the information has been provided immediately and the request requires no further action, keeping a record of each request allows the public body to monitor how many requests are received and on what subjects. It will also be needed in the event of a follow-up, such as an appeal, or a further request for the same or related information.

If the information cannot be provided immediately, recording the request and issuing a reference number allows the progress of the request to be tracked within the public body. On acceptance of the request it is important that you explain to the requester what will happen next. You should explain (in accordance with the provisions in your national law):

- the maximum time limit within which your public body must respond to the request;
- the different options for providing access to the information (viewed in person, sent a copy, computer disk etc);
- when it is necessary to pay a fee and what the fee structure is;
- if the information request is refused, that a written explanation will be provided.

## Steps six and seven: Is there a ground to deny access to the information requested? Does the restriction refer to the whole document?

Remember! Information can only be restricted on grounds specified in law. It is not your job to protect another official or minister from embarrassment by withholding information which should be made public. We discussed earlier the exceptions to the right of access to information that will be specified in your freedom of information law.

## Refresh your memory!

What exceptions to the right of access to information exist in the law in your country?

What is the “three-part test” for deciding whether a piece of information can be an exception under a freedom of information law?

Turn back to Chapter 4 and remind yourself of the way that potential exceptions under a freedom of information law should be decided.

Your next steps will be determined by which of the exceptions forms the grounds for restricting access to the information being requested.

For example, your law may require reference to a third party if the information requested was provided to the public body by a third party. In this case, you may need to refer to the third party to allow them the opportunity to argue that the information requested falls within the scope of an exception.

### *Case for discussion*

Here is a real life request for information from the Netherlands. The request was initially refused. Read the details of the request and the reasons for refusing it. Do you agree with the arguments put forward for refusing?

*When I started as a civil servant, one of the first requests for information I had to deal with was an application from a journalist who wanted to look at the declarations of expenses submitted by the Minister of the Interior, and the actual restaurant and other bills they were based on. The minister refused to make these documents public on the basis of three arguments:*

- *Expense declarations and restaurant bills are not official documents and therefore do not fall under the scope of the Government Information (Public Access) Act.*
- *Even if they were to be considered to be official documents, access would still have to be denied because making them public would infringe the privacy of the minister. Citizens do not need to know details of what expenses the minister declares (the minister was, however, prepared to reveal the total amount declared).*



- *It would hamper the work of the minister if it were known which restaurants and hotels he visited and whom he spoke to.*

Do not look at the outcome below until you have decided what your decision would be!

Here is what happened when the case went to appeal:

*After an administrative appeal and proceedings before a court of first instance, the case was brought before the Council of State, the highest administrative court in the Netherlands*

*The Council of State ruled as follows on the above arguments:*

- *Declaration forms and restaurant bills are official documents, as they are related to the work of the minister as a public official.*
- *To some extent the information can be refused on grounds of privacy. This is true, for example, of the meals mentioned on the restaurant bill and the bank account number on the declaration of expenses.*
- *It also acknowledged that, in principle, the documents might contain information which, if made public, would hamper the work of the minister. But looking at the documents in question, the Council of State concluded that this was not the case.*
- *The result of this judgement was that the Minister of the Interior made all the expense declarations and restaurant bills public on the Ministry's Internet site. The parts of the documents that contained private information were blanked out.*

Another possible consideration is whether the information requested relates to another individual whose privacy may be violated if it were released. Privacy may, of course, be a legitimate exception to granting access to information. In that case, it may be necessary to seek the consent of the third party referred to in the record.

Or it may be necessary to release only that part of the record that does not refer to the third party.

## Step eight: Making a decision

### Releasing the information

This is what will happen most of the time. You release the information to the requester in the form that they asked for.

It will also be worth considering whether this is a piece of information that may be the subject of more requests. If so, your department should look into ways of publishing the information to save both requesters and yourself having to go through the request process again.

### **Granting partial access to a document**

If there are grounds for restricting access to the information requested, but these only apply to part of the document, you should grant partial access. This is the severability that we referred to earlier. It is important that only information that genuinely falls under one of the exceptions is withheld - and not the entire record that contains the information. Note how, in the example from the Netherlands that was just quoted, private information was blanked out when the record was released.

Practically speaking there are different ways of doing this. You should indicate to the requester which parts of the document have been withheld, for example by listing the missing page numbers, or by simply blanking out the necessary sentences or paragraphs (so that they can see how much has been removed).

### **What happens when you deny access to the information?**

In this case, the public body must provide a written explanation as to why access has been denied. This justification should be accompanied by an explanation of how the requester can appeal against the decision. This will depend on the terms of your national legislation. Some laws include a right of administrative appeal followed by an appeal to an oversight body such as an information commissioner or an ombudsman. Others provide for an appeal to the courts.

## **Exercise**

Here are some more information requests to consider. This time, use your own national law (not the ARTICLE 19 model law). Use the flow chart to guide yourself through the process of deciding whether you should:

Release the information;

Partially release the information; or

Withhold the information.

- *You are an official in the Ministry of Justice. You have received a request for information about the shareholdings of a judge currently presiding over an important commercial law case.*
- *You are an official with the tax authorities. You have received a request for information contained in archived tax files relating to a current government Minister.*
- *You are a local government official. You have received a request for information contained in planning guidelines circulated by the national Ministry of the Environment.*

## Step nine: Going to appeal

Your responsibility as a public official does not entirely end with the decision to release information or to refuse the request.

If your decision is to withhold the information, the requester may exercise a right of appeal, so you will have to justify your decision.

Exactly how the appeal system works is something that will be set out in the national freedom of information law. It is likely that it will have two - or even three - levels to it.

First, any person whose request is refused should be able to appeal to a more senior level within the public body that holds the information.

Second, if that appeal fails, they may be able to take the matter to another administrative supervisory body such as an Ombudsperson or human rights commission. These bodies do not have the same powers of enforcement as a court, but the important thing is that they are entirely independent of the body that holds the information. Under some access to information laws they have powers to supervise the way that the law works.

Finally, if all else fails, an unsuccessful requester should always be able to take the matter to a court of law. This court should then be able to make a final decision on the issue, which will be binding on both the requester and the public body.

The importance of this appeal procedure is that it is a guarantee that the law is being applied in a manner that is consistent and not arbitrary. Individual officials should not feel threatened by an appeals system. In a sense, it helps them to do their job properly by ensuring that decisions on information requests are made in strict conformity to the law.

**What is the appeal system for unsuccessful information requests in your country?**

You should know the answer to this, because every time you refuse a request (not too often we hope!) you will have to explain to the requester what is the appeal process.

## Sample role-play

### Description of situation

A citizen comes to a public body and asks for copies of all the decisions about the building of gas pipeline. He mentions that the population has already paid more than was needed for the construction because some of the money allocated by government for the pipeline was used by local administration for the maintenance of hospital.

The official replies that such documents are not given to everyone, and the requester may go and complain about it anywhere.

The citizen goes to the Head of institution who explains the situation, but still refuses the request.

The citizen makes a request addressed to a panel of independent judges. The judges listen to both sides and decide upon the issue, giving reasons for their decision.

## Role-play: Character 1

You have the role of requester of information.

At all stages you appear naïve and ill-informed. In reality you are an undercover journalist testing the attitude of the public institution. Insist on receiving the information you have requested

You will not say who you are even in front of the judges. Be noisy and insistent.

## Sample role-play: Character 2

You have the role of information officer.

The requested information cannot be disclosed, because some decisions in this case were adopted arbitrarily, without approval through the proper channels.

Find any reasons to divert the requester from the theme: it was written in the newspaper, it was said on TV, meetings were organised, the local people have been consulted, why does he need the documents - the important thing is to have gas.

When you are invited to the Head - look as if butter would not melt in your mouth. When you come before the judges recognise your mistake: "I didn't know", "I didn't want to lose my job", "the law in any case is not respected" etc.

## Sample role-play: Character 3

You have the role of head of the institution.

Listen to the requester. Tell lies: we don't have money, we have a lot of problems.

Make a show of upbraiding the subordinate official.

When the requester says that he will appeal to the court, express your sympathy - he will have a long journey.

At the appeal, claim that you know nothing about case. You are seeing the requester for the first time.



## Sample role-play: Character 4

You have the role of one of the independent judges.

You must make a decision on whether the information should be released. Analyse the case according to the facts, as well as deciding whether the correct procedures were followed. Give detailed reasons for your decision.

## CLOSING SESSION OF THE WORKSHOP: SUMMARY AND EVALUATION

### IMPORTANT

The workshop should end with a summary of the learning points and an evaluation.

The evaluation can be done in two ways.

First, return to the written notes of expectations that the participants produced in the introductory session. Review these and see if the expectations have been met.

Second, ask participants to complete an evaluation form (anonymously). This may elicit more honest responses from those who may be critical of the process, as well as more detail than an oral evaluation. An example of an evaluation form will be found on the next page.

In addition, it would be very useful to approach trainees in their work places six months to a year after training to find out how effective it has been in practice.

## Example of evaluation form for participants at the Training of Trainers Workshop to be completed at the workshop

### Information about you:

1. How much did you know about FOI before the training?

Hardly anything                  Some knowledge                  A lot of knowledge

2. How much experience as a trainer did you have before the training?

Hardly any                          Some                          A lot

### Content:

3. How well was the subject of FOI (concept, principles and procedure) conveyed?

Very poorly      Poorly      Adequately      Well      Very well

Why?

4. Was there too much/too little on international standards?

Too little                  Good balance                  Too much

5. Was there too much/too little on the national FOI framework?

Too little                  Good balance                  Too much

6. Was there any aspect of the topic missing, and if so, what?

### Methodology:

7. Please comment on the workshop agenda (the sequence of sessions, duration of sessions, number of sessions, duration of the workshop...).

8. How useful do you find the flow chart to understand the process of handling information requests?

Not useful                  Fairly useful                  Adequate                  Useful                  Very useful

Why?

Do you think you will use it when giving training yourself?

Yes / No

9. How useful were the different activities (warm-up exercises, brainstorming, small group work, plenary discussions, role play)?

Not useful                  Fairly useful                  Adequate                  Useful                  Very useful

Would you change the combination of activities? More or less of which activity? Why?

**The Manual:**

10. Have you read the manual before the training?

Yes / No

11. How well does it convey the subject of FOI (concept, principles, procedure)?

Very poorly      Poorly    Adequately      Well      Very well

Why?

12. How well is the information presented?

Very poorly      Poorly    Adequately      Well      Very well

Why?

13. Do you have any suggestions for improving the manual?

14. Will you use the manual for preparing training yourself?

Yes / No

**Facilitators:**

15. How would you assess their contribution?

Very poor      Poor      Adequate      Good      Very good

**Follow-up:**

16. After this workshop, do you feel confident enough to hold a training session on FOI?

Yes / No

What kind of support would you like to get for it?

17. Would you find it useful to form a network of FOI trainers in your country?

Yes/ No

18. Any other comments

## Example of evaluation form for participants at the Public Officials Training Workshop - to be completed at the workshop

### Information about you:

1. How much did you know about FOI before the training?

Hardly anything    Some knowledge    A lot of knowledge

### Content:

2. How well was the subject of FOI (concept, principles and procedure) conveyed?

Very poorly    Poorly    Adequately    Well    Very well

Why?

3. Was there too much/too little on international standards?

Too little    Good balance    Too much

4. Was there too much/too little on the national FOI framework?

Too little    Good balance    Too much

5. Was there any aspect of the topic missing?

### Methodology:

6. Please comment on the workshop agenda (the sequence of sessions, duration of sessions, number of sessions, duration of the workshop...).

7. How useful do you find the flow chart to understand the process of handling information requests?

Not useful    Fairly useful    Adequate    Useful    Very useful

Why?

8. How useful were the different activities (warm-up exercises, brainstorming, small group work, plenary discussions, role play)?

Not useful    Fairly useful    Adequate    Useful    Very useful

Would you change the combination of activities? More or less of which activity? Why?

**The Manual:**

9. Have you read the manual before the training?

Yes / No

10. How well does it convey the subject of FOI (concept, principles, procedure)?

Very poorly      Poorly    Adequately      Well      Very well

Why?

11. How well is the information presented?

Very poorly      Poorly    Adequately      Well      Very well

Why?

12. Do you have any suggestions for improving the manual?

13. Will you use the manual in your daily work?

Yes / No

**Facilitators:**

14. How would you assess their contribution?

Very poor      Poor      Adequate      Good      Very good

**Comments:**

**Follow-up:**

15. After this workshop, do you feel confident to handle information requests?

Yes / No

What kind of further support would you like to get?

## Example of follow-up evaluation form for participants of the Training of Trainers Workshop - to be completed 6 months later

The aim of this follow-up evaluation is to assess how you have been able to use the skills and knowledge you gained in the training and what we can do to further improve our training programme and to support your initiatives as FOI trainers.

Information about you:

1. How much did you know about FOI before the training workshop in [insert month of training]?

Hardly anything    Some knowledge    A lot of knowledge

2. How much experience as a trainer did you have before the training?

Hardly any        Some    A lot

Immediate follow-up

3. Have you kept in touch with the other participants from the TOT and/or with the local organisers of the workshop?

YES/NO

4. Have you had the opportunity to meet with each other/ exchange information and experience/ initiate joint activities?

YES/NO

IF YES, what activities?

5. Have any of the public officials whom you trained in the workshop after the TOT, been in touch with you since to ask for advice or request further training for themselves or their colleagues? Do you know if the public officials have your contact details?

YES/NO

Using the skills and knowledge you learnt

6. Have you had the opportunity to conduct your own training workshop on freedom of information for public officials or for any other target group (such as NGOs) since the Training of Trainers workshop?

YES/NO

IF NO, why not?

IF YES, please briefly describe the training by answering the following questions:

i.        Who and how many people participated? (if you trained public officials, please explain exactly who they were - central or local government officials and their position).

ii.       Did you organize the training on your own or with other trainers who took part in the TOT?

- iii. Where did the training take place?
- iv. Did you follow a similar agenda to the one we used in the TOT and did you use the manual?
- v. If you made modifications to the agenda or used different training materials, please describe.
- vi. Did the participants ask any questions which you felt unable to answer satisfactorily?
- vii. What obstacles or difficulties, if any, did you encounter in organising the training, or in conducting the training?

Please add any further comments you wish about your experience of carrying out a training workshop.

7. Have you used the skills and the knowledge you acquired in the TOT in any other way? (e.g. provided advice to colleagues, public officials or NGOs on freedom of information, incorporated freedom of information into other seminars/training workshops in which you have been involved, submitted information requests to public bodies, promoted awareness of the FOIA?) And if you are a public official yourself, have you initiated any of the practical measures suggested in the training workshop in your own institutions, or discussed them with colleagues?

Please describe in which way you have used your new skills.

8. Having had time to reflect on the TOT and the training manual, do you have any further suggestions for improving the training content and methodology or the manual?

9. What additional support would you like from the local partner organisation, or from ARTICLE 19, to be better able to conduct your own training sessions on FOI?

10. Please add any further comments.



## Example of a follow-up evaluation form for participants of the Public Officials Training Workshop to be completed 6 months later

The aim of this follow-up evaluation is to assess the longer term impact of the training and identify future activities and support which we could offer to you and your colleagues in the implementation of the freedom of information law.

### Information about you:

1. How much did you know about FOI before the training workshop in [insert month of training]?

Hardly anything   Some knowledge   A lot of knowledge

2. Before the training workshop, had you received any previous training on FOI, and if so, was it delivered by someone in your administration or by an external organisation, such as an NGO?

3. Please describe your responsibilities in relation to the Freedom of Information Law, in your job?

### Evaluation of the training you received and how you have applied lessons learned

4. Do you feel more confident in handling information requests as a result of the training you received?

5. Has your institution received any information requests since you participated in the training workshop and if so, have you been involved in handling these requests?

6. In what ways have you been able to use the knowledge you learned in the training, in your daily work?

7. Have you kept the FOI manual you received at the training and how has it been useful to you since?

8. Having had time to reflect on the training you received, do you have any suggestions for improving the training methodology and content or the manual?

9. Have you been in contact with any of the trainers or organisers since the workshop to ask for further information or advice on a specific information request you have received?

### Future needs

10. Would you like further training on freedom of information and if so, is there a specific topic you would like to learn more about? (e.g. freedom of information and classified documents, freedom of information and data protection, records management etc.)

11. Is your institution planning any training for you or your colleagues on freedom of information?

12. What additional support/ information/materials would you like to receive from the local partner organisation [insert name] or from ARTICLE 19 to help you in implementing the freedom of information law?

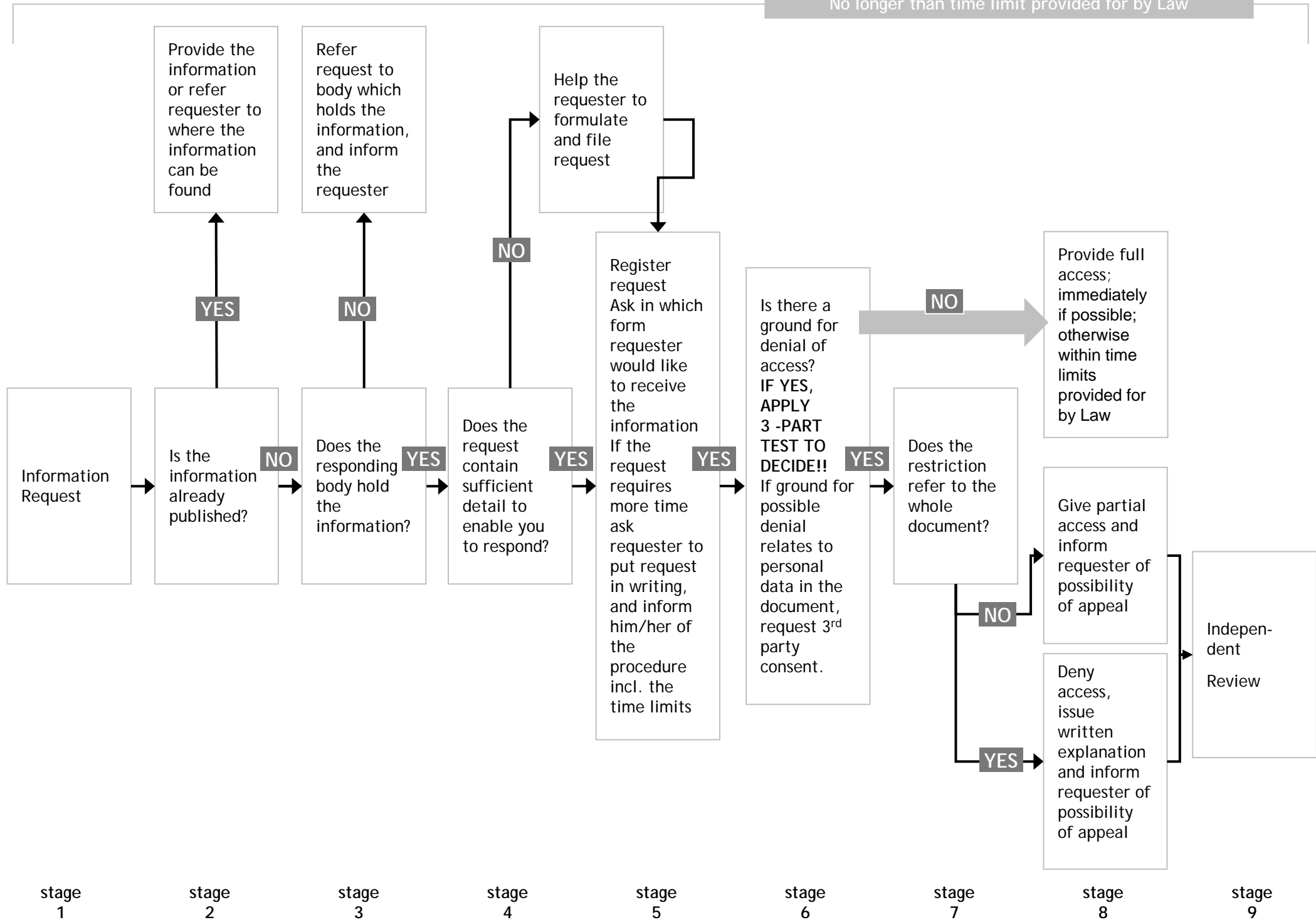
13. We intend to distribute the final version of the FOI manual to as many public officials as possible. Please could you suggest the best way to do this in relation to the institution in which you work and please provide the name and contact details of key officials who should receive the FOI manual.

14. Please add any other comments.

Freedom  
of information  
**TRAINING MANUAL**  
FOR PUBLIC OFFICIALS

**APPENDICES**

No longer than time limit provided for by Law



## Access to Information Laws Around the World



\*Not all national laws have been implemented or are effective. See [freedominfo.org/survey.htm](http://freedominfo.org/survey.htm) for an analysis of the laws and practices

## APPENDIX 2

# A MODEL FREEDOM OF INFORMATION LAW

ARTICLE 19

CENTRE FOR POLICY ALTERNATIVES

COMMONWEALTH HUMAN RIGHTS INITIATIVE

HUMAN RIGHTS COMMISSION OF PAKISTAN

July 2001

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## INTRODUCTION

The right to information is guaranteed in international law, including as part of the guarantee of freedom of expression in Article 19 of the International Covenant on Civil and Political Rights. Many countries around the world are now giving legal effect to the right, both by enshrining access to information in their constitutions and by adopting laws which give practical effect to the right, providing concrete processes for its exercise.

*A Model Freedom of Information Law* is based on best international practice, as reflected in the ARTICLE 19 publication, *The Public's Right to Know: Principles on Freedom of Information Legislation*, as well as a number of freedom of information laws from around the world. It is intended to respond particularly to the freedom of information needs of the countries of South Asia, and as such reflects a common law drafting style. At the same time, it represents global standards in this area and, therefore, is also relevant to civil law countries.

In this context, the term 'model' is not used to suggest that all countries should take this as a fixed template for their own legislation. Every country has different informational needs and different structures, and laws must be adapted accordingly. Rather, the term 'model' is used to signify that it is through a law incorporating the types of provisions set out here that maximum effect is given to practical disclosure of information, in accordance with the best standards on the right to know.

*A Model Freedom of Information Law* (the Law) provides for an enforceable legal right to access information held by public bodies upon submission of a request. Everyone may claim this right, and both information and public bodies are defined broadly. The Law also provides for a more limited right to access information held by private bodies, where this is necessary for the exercise or protection of any right. In this respect, it follows the South African legislation in recognising that much important information is held by private bodies, and that to exclude them from the ambit of the law would significantly undermine the right to information.

In terms of process, the Law sets out a requirement for public bodies to appoint special information officers who have a duty to promote the objectives of the law. However, a request may be made to any officer of the relevant body. Requests must be responded to within 20 days, extendable to 40 days for large requests where compliance within the original time limit is not possible. Where information is required to safeguard life or liberty, it must be

provided within 48 hours. An individual making a request may specify the form in which s/he would like the information to be provided. Fees may not exceed the actual cost of providing the information and may not be charged for personal or public interest requests.

Crucially, the Law provides for the appointment of an independent Information Commissioner with the power to review any refusal to disclose and with a general mandate to promote the goals of the law. The Commissioner may both receive complaints and undertake his or her own monitoring. He or she may also require bodies to disclose information and even impose fines for wilful failures to comply with the law.

The Law recognises a number of exceptions, in accordance with international practice, including for personal information, commercial and confidential information, health and safety, law enforcement, defence and policy formulation. However, these are subject to a strict public interest override and, for some, overall time limits.

Part III of the Law places a number of positive obligations on public bodies, including a requirement to publish certain types of information and to maintain their records in good order, in accordance with a Code of Practice to be published by the Commissioner.

Part VI of the Law provides protection to whistleblowers – individuals who release information on wrongdoing – as long as they acted in good faith, in the reasonable belief that the information was substantially true and that it disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.

Finally, *A Model Freedom of Information Law* provides protection to those who disclose information in good faith pursuant to a request and, at the same time, imposes criminal liability on those who wilfully obstruct access to information or who destroy records.

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## A MODEL FREEDOM OF INFORMATION LAW

### ARRANGEMENT OF SECTIONS

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Section:

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2. [Purpose](#)

#### PART II: THE RIGHT TO ACCESS INFORMATION HELD BY PUBLIC BODIES

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5. [Legislation Prohibiting or Restricting Disclosure](#)

6. [Public and Private Bodies](#)

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# **A Model Freedom of Information Law**

An Act to promote maximum disclosure of information in the public interest, to guarantee the right of everyone to access information, and to provide for effective mechanisms to secure that right.

Be it enacted by [insert relevant body, such as the Parliament] as follows:

## **PART I: DEFINITIONS AND PURPOSE**

### **Definitions**

1. In this Act, unless the context otherwise requires: –

- a. "commissioner" is the office of the Information Commissioner, established by Part V, or the holder of that office, as the context may require;
- b. "information officer" is an individual with specific responsibilities under this Act, required to be appointed by every public body pursuant to section 16(1);
- c. "official" means any person employed by the relevant body, whether permanently or temporarily and whether part-time or full-time;
- d. "minister" means the Cabinet minister responsible for the administration of justice;
- e. "private body" has the meaning given by sub-section 6(3);
- f. "public body" has the meaning given by sub-section 6(1) and (2);
- g. "publish" means make available in a form generally accessible to members of the public and includes print, broadcast and electronic forms of dissemination;
- h. "personal information" means information which relates to a living individual who can be identified from that information; and
- i. "record" has the meaning given by section 7.

### **Purpose**

2. The purposes of this Act are: –

- a. to provide a right of access to information held by public bodies in accordance with the principles that such information should be available to the public, that necessary exceptions to the right of access should be limited and specific, and that decisions on the disclosure of such information should be reviewed independently of government; and
- b. to provide a right of access to information held by private bodies where this is necessary for the exercise or protection of any right, subject only to limited and specific exceptions.

## **PART II: THE RIGHT TO ACCESS INFORMATION HELD BY PUBLIC AND PRIVATE BODIES**

### **Freedom of Information**

3. Everyone shall have the right to freedom of information, including the right to access information held by public bodies, subject only to the provisions of this Act.

### **General Right of Access**

4. (1) Any person making a request for information to a public body shall be entitled, subject only to the provisions of Parts II and IV of this Act: –

- a. to be informed whether or not the public body holds a record containing that information or from which that information may be derived; and
- b. if the public body does hold such a record, to have that information communicated to him or her.

(2) Any person making a request for information to a private body which holds information necessary for the exercise or protection of any right shall, subject only to the relevant provisions of Parts II and IV of this Act, be entitled to have that information communicated to him or her.

## **Legislation Prohibiting or Restricting Disclosure**

5. (1) This Act applies to the exclusion of any provision of other legislation that prohibits or restricts the disclosure of a record by a public or private body.

(2) Nothing in this Act limits or otherwise restricts the disclosure of information pursuant to any other legislation, policy or practice.

## **Public and Private Bodies**

6. (1) For purposes of this Act, a public body includes any body: –

- a. established by or under the Constitution;
- b. established by statute;
- c. which forms part of any level or branch of Government;
- d. owned, controlled or substantially financed by funds provided by Government or the State; or
- e. carrying out a statutory or public function,

provided that the bodies indicated in sub-section (1)(e) are public bodies only to the extent of their statutory or public functions.

(2) The Minister may by order designate as a public body any body that carries out a public function.

(3) For purposes of this Act, a private body includes any body, excluding a public body, that: –

- a. carries on any trade, business or profession, but only in that capacity; or
- b. has legal personality.

## **Records**

7. (1) For purposes of this Act, a record includes any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the body that holds it and whether or not it is classified.

(2) For purposes of this Act, a public or private body holds a record if: –

- a. the public or private body holds the record, other than on behalf of another person; or
- b. another person holds the record, on behalf of the public or private body.

## **Request for Information**

8. (1) For purposes of section 4, a request for information is a request in writing to any official of a public or private body that is in sufficient detail to enable an experienced official to identify, with reasonable effort, whether or not the body holds a record with that information.

(2) Where a request for information pursuant to section 4(1) does not comply with the provisions of sub-section (1), the official who receives the request shall, subject to sub-section (5), render such reasonable assistance, free of charge, as may be necessary to enable the request to comply with sub-section (1).

(3) An individual who is unable, because of illiteracy or disability, to make a written request for information pursuant to section 4(1) may make an oral request, and the official who receives an oral request shall, subject to sub-section (5), reduce it to writing, including their name and position within the body, and give a copy thereof to the person who made the request.

(4) A request for information under section 4(2) must identify the right the person making the request is seeking to exercise or protect and the reasons why the information is required to exercise or protect that right.

(5) An official who receives a request for information may transfer that request to the Information Officer for purposes of complying with sub-sections (2) and/or (3).

(6) A public or private body may prescribe a form for requests for information, provided that such forms do not unreasonably delay requests or place an undue burden upon those making requests.

(7) A public or private body which receives a request for information shall provide the requester with a receipt documenting the request.

## **Time Limits for Responding to Requests**

9. (1) Subject to sub-section (3), a public or private body must respond to a request for information pursuant to section 4 as soon as is reasonably possible and in any event within twenty working days of receipt of the request.

(2) Where a request for information relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, a response must be provided within 48 hours.

(3) A public or private body may, by notice in writing within the initial twenty day period, extend the period in sub-section (1) to the extent strictly necessary, and in any case to not more than forty working days, where the request is for a large number of records or requires a search through a large number of records, and where compliance within twenty working days would unreasonably interfere with the activities of the body.

(4) Failure to comply with sub-section (1) is deemed to be a refusal of the request.

## **Notice of Response**

10. (1) The response under section 9 to a request for information pursuant to section 4(1) must be by notice in writing and state: –

- a. the applicable fee, if any, pursuant to section 11, in relation to any part of the request which is granted, and the form in which the information will be communicated;
- b. adequate reasons for the refusal in relation to any part of the request which is not granted, subject only to Part IV of this Act;
- c. in relation to any refusal to indicate whether or not the public body holds a record containing the relevant information, the fact of such refusal and adequate reasons for it; and
- d. any right of appeal the person who made the request may have.

(2) The response under section 9 to a request for information pursuant to section 4(2) must be by notice in writing and state: –

- a. in relation to any part of the request which is granted, the applicable fee, if any, pursuant to section 11, and the form in which the information will be communicated; and
- b. in relation to any part of the request which is not granted, adequate reasons for the refusal.

(3) In relation to any part of a request that is granted, communication of the information must take place forthwith, subject only to Section 11.

## **Fees**

11. (1) The communication of information pursuant to a request under section 4 by a public or private body may, subject to subsections (2) and (3), be made conditional upon payment by the person making the request of a reasonable fee, which shall not exceed the actual cost of searching for, preparing and communicating the information.

(2) Payment of a fee shall not be required for requests for personal information, and requests in the public interest.

(3) The Minister may, after consultation with the Commissioner, make regulations providing: –

- a. for the manner in which fees are to be calculated;
- b. that no fee is to be charged in prescribed cases; and
- c. that any fee cannot exceed a certain maximum.

(4) A public body shall not require payment of a fee under sub-section (1) where the cost of collecting that fee would exceed the amount of the fee.

## **Means of Communicating Information**

12. (1) Where a request indicates a preference as to the form of communication of information contained in sub-section (2), a public or private body communicating information pursuant to a request for information under section 4 shall, subject to sub-section (3), do so in accordance with that preference.

(2) A request may indicate the following preferences as to the form of communication of information: –

- a. a true copy of the record in permanent or other form;
- b. an opportunity to inspect the record, where necessary using equipment normally available to the body;
- c. an opportunity to copy the record, using his or her own equipment;
- d. a written transcript of the words contained in a sound or visual form;
- e. a transcript of the content of a record, in print, sound or visual form, where such transcript is capable of being produced using equipment normally available to the body; or
- f. a transcript of the record from shorthand or other codified form.

(3) A public or private body shall not be required to communicate information in the form indicated by the person making the request where to do so would: –

- a. unreasonably interfere with the effective operation of the body; or
- b. be detrimental to the preservation of the record.

(4) Where a record exists in more than one language, communication of the record shall, from among those languages, be given in accordance with the language preference of the person making the request.

## **If a Record is Not Held**

13. (1) Where an official who receives a request pursuant to section 4(1) believes that that request relates to information that is not contained in any record held by the public body, the official may transfer the request to the Information Officer for purposes of compliance with this section.

(2) Where an Information Officer receives a request pursuant to sub-section (1), he or she shall confirm whether or not the public body does hold a record containing the information and, if it does not, shall, if he or she knows of another public body which does hold the relevant record, as soon as practicable, either: –

- a. transfer the request to that public body and inform the person making the request of such transfer; or

b. indicate to the person making the request which public body holds the relevant record,

whichever would be likely to ensure more rapid access to the information.

(3) Where a request is transferred pursuant to sub-section (2)(a), the time limit for responding to requests under section 9 shall begin to run from the date of transfer.

(4) A private body which receives a request pursuant to section 4(2) relating to information that is not contained in any record held by the private body shall notify the requester that it does not hold the information.

## **Vexatious, Repetitive or Unreasonable Requests**

14. (1) A public or private body is not required to comply with a request for information which is vexatious or where it has recently complied with a substantially similar request from the same person.

(2) A public or private body is not required to comply with a request for information where to do so would unreasonably divert its resources.

# **PART III: MEASURES TO PROMOTE OPENNESS**

## **Guide to Using the Act**

15. (1) The Commissioner shall, as soon as practicable, compile in each official language a clear and simple guide containing practical information to facilitate the effective exercise of rights under this Act, and shall disseminate the guide widely in an accessible form.

(2) The guide in sub-section (1) shall be updated on a regular basis, as necessary.

## **Information Officer**

16. (1) Every public body shall appoint an Information Officer and ensure that members of the public have easy access to relevant information concerning the Information Officer, including his or her name, function and contact details.

(2) The Information Officer shall, in addition to any obligations specifically provided for in other sections of this Act, have the following responsibilities: –

- a. to promote within the public body the best possible practices in relation to record maintenance, archiving and disposal; and
- b. to serve as a central contact within the public body for receiving requests for information, for assisting individuals seeking to obtain information and for receiving individual complaints regarding the performance of the public body relating to information disclosure.

## **Duty to Publish**

17. Every public body shall, in the public interest, publish and disseminate in an accessible form, at least annually, key information including but not limited to: –

- a. a description of its structure, functions, duties and finances;
- b. relevant details concerning any services it provides directly to members of the public;

- c. any direct request or complaints mechanisms available to members of the public regarding acts or a failure to act by that body, along with a summary of any requests, complaints or other direct actions by members of the public and that body's response;
- d. a simple guide containing adequate information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a request for information;
- e. a description of the powers and duties of its senior officers, and the procedure it follows in making decisions;
- f. any regulations, policies, rules, guides or manuals regarding the discharge by that body of its functions;
- g. the content of all decisions and/or policies it has adopted which affect the public, along with the reasons for them, any authoritative interpretations of them, and any important background material; and
- h. any mechanisms or procedures by which members of the public may make representations or otherwise influence the formulation of policy or the exercise of powers by that body.

## **Guidance on Duty to Publish**

18. The Commissioner shall: –

- a. publish a guide on minimum standards and best practices regarding the duty of public bodies to publish pursuant to section 17; and
- b. upon request, provide advice to a public body regarding the duty to publish.

## **Maintenance of Records**

19. (1) Every public body is under an obligation to maintain its records in a manner which facilitates the right to information, as provided for in this Act, and in accordance with the Code of Practice stipulated in sub-section (3).

(2) Every public body shall ensure that adequate procedures are in place for the correction of personal information.

(3) The Commissioner shall, after appropriate consultation with interested parties, issue and from time to time update a Code of Practice relating to the keeping, management and disposal of records, as well as the transfer of records to the [insert relevant archiving body, such as the Public Archives].

## **Training of Officials**

20. Every public body shall ensure the provision of appropriate training for its officials on the right to information and the effective implementation of this Act.

## **Reports to the Information Commissioner**

21. The Information Officer of every public body shall annually submit to the Commissioner a report on the activities of the public body pursuant to, or to promote compliance with, this Act, which shall include information about: –

- a. the number of requests for information received, granted in full or in part, and refused;
- b. how often and which sections of the Act were relied upon to refuse, in part or in full, requests for information;
- c. appeals from refusals to communicate information;
- d. fees charged for requests for information;

- e. its activities pursuant to section 17 (duty to publish);
- f. its activities pursuant to section 19 (maintenance of records); and
- g. its activities pursuant to section 20 (training of officials).

## **PART IV: EXCEPTIONS**

### **Public Interest Override**

22. Notwithstanding any provision in this Part, a body may not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless the harm to the protected interest outweighs the public interest in disclosure.

### **Information Already Publicly Available**

23. Notwithstanding any provision in this Part, a body may not refuse to communicate information where the information is already publicly available.

### **Severability**

24. If a request for information relates to a record containing information which, subject to this Part, falls within the scope of an exception, any information in the record which is not subject to an exception shall, to the extent it may reasonably be severed from the rest of the information, be communicated to the requester.

### **Personal Information**

25. (1) A body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would involve the unreasonable disclosure of personal information about a natural third party.

(2) Sub-section (1) does not apply if: –

- a. the third party has effectively consented to the disclosure of the information;
- b. the person making the request is the guardian of the third party, or the next of kin or the executor of the will of a deceased third party;
- c. the third party has been deceased for more than 20 years; or
- d. the individual is or was an official of a public body and the information relates to his or her function as a public official.

### **Legal Privilege**

26. A body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where the information is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it.

### **Commercial and Confidential Information**

27. A body may refuse to communicate information if: –

- a. the information was obtained from a third party and to communicate it would constitute an actionable breach of confidence;
- b. the information was obtained in confidence from a third party and: –
  - i. it contains a trade secret; or



- ii. to communicate it would, or would be likely to, seriously prejudice the commercial or financial interests of that third party; or
- c. the information was obtained in confidence from another State or international organisation, and to communicate it would, or would be likely to, seriously prejudice relations with that State or international organisation.

## **Health and Safety**

28. A body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, endanger the life, health or safety of any individual.

## **Law Enforcement**

29. A body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to: –

- a. the prevention or detection of crime;
- b. the apprehension or prosecution of offenders;
- c. the administration of justice;
- d. the assessment or collection of any tax or duty;
- e. the operation of immigration controls; or
- f. the assessment by a public body of whether civil or criminal proceedings, or regulatory action pursuant to any enactment, would be justified.

## **Defence and Security**

30. A body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the defence or national security of [insert name of State].

## **Public Economic Interests**

31. (1) A body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the ability of the government to manage the economy of [insert name of State].

(2) A body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the legitimate commercial or financial interests of a public body.

(3) Sub-sections (1) or (2) do not apply insofar as the request relates to the results of any product or environmental testing, and the information concerned reveals a serious public safety or environmental risk.

## **Policy Making and Operations of Public Bodies**

32. (1) A body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to: –

- a. cause serious prejudice to the effective formulation or development of government policy;
- b. seriously frustrate the success of a policy, by premature disclosure of that policy;
- c. significantly undermine the deliberative process in a public body by inhibiting the free and frank provision of advice or exchange of views; or

- d. significantly undermine the effectiveness of a testing or auditing procedure used by a public body.

(2) Sub-section (1) does not apply to facts, analyses of facts, technical data or statistical information.

## **Time Limits**

33. (1) The provisions of sections 26–31 apply only inasmuch as the harm they envisage would, or would be likely to, occur at or after the time at which the request is considered.

(2) Sections 27(c), 29, 30 and 31 do not apply to a record which is more than 30 years old.

# **PART V: THE INFORMATION COMMISSIONER**

## **Appointment of the Information Commissioner**

34. (1) The Commissioner shall be appointed by the [insert head of State] after nomination by a two-thirds majority vote of [insert name of legislative body or bodies], and after a process in accordance with the following principles:

–

- a. participation by the public in the nomination process;
- b. transparency and openness; and
- c. the publication of a shortlist of candidates.

(2) No-one may be appointed Commissioner if he or she: –

- a. holds an official office in, or is an employee of a political party, or holds an elected or appointed position in central or local government; or
- b. has been convicted, after due process in accordance with internationally accepted legal principles, of a violent crime and/or a crime of dishonesty or theft, for which he or she has not been pardoned.

(3) The Commissioner shall hold office for a term of seven years, and may be re-appointed to serve a maximum of two terms, but may be removed by the [insert head of State] upon a recommendation passed by a two-thirds majority vote of [insert name of legislative body or bodies].

## **Independence and Powers**

35. (1) The Commissioner shall enjoy operational and administrative autonomy from any other person or entity, including the government and any of its agencies, except as specifically provided for by law.

(2) The Commissioner shall have all powers, direct or incidental, as are necessary to undertake his or her functions as provided for in this Act, including full legal personality, and the power to acquire, hold and dispose of property.

## **Salary and Expenses**

36. The Commissioner shall be paid a salary equal to the salary of a judge of the Supreme Court [or insert name of appropriate court] and is entitled to be paid reasonable travel and living expenses incurred in the performance of his or her duties.

## **Staff**

37. The Commissioner may appoint such officers and employees as are necessary to enable him or her to perform his or her duties and functions.

## **General Activities**

38. In addition to any other powers and responsibilities provided for in this Act, the Commissioner may: –

- a. monitor and report on the compliance by public bodies with their obligations under this Act;
- b. make recommendations for reform both of a general nature and directed at specific public bodies;
- c. co-operate with or undertake training activities for public officials on the right to information and the effective implementation of this Act;
- d. refer to the appropriate authorities cases which reasonably disclose evidence of criminal offences under this Act; and
- e. publicise the requirements of this Act and the rights of individuals under it.

## **Reports**

39. (1) The Commissioner shall, within three months after the termination of each financial year, lay before [insert name of legislative body or bodies] an annual report on compliance by public bodies with this Act, the activities of his or her office and audited accounts of the office during that financial year.

(2) The Commissioner may from time to time lay before [insert name of legislative body or bodies] such other reports as he or she deems appropriate.

## **Protection of the Commissioner**

40. (1) No criminal or civil proceedings lie against the Commissioner, or against any person acting on behalf of or under the direction of the Commissioner, for anything done, reported or said in good faith in the course of the exercise of any power or duty under this Act.

(2) For the purposes of the law of libel or slander, anything said or any information supplied pursuant to an investigation under this Act is privileged, unless that information is shown to have been said or supplied with malice.

# **PART VI: ENFORCEMENT BY THE COMMISSIONER**

## **Complaint to the Commissioner**

41. A person who has made a request for information may apply to the Commissioner for a decision that a public or private body has failed to comply with an obligation under Part II, including by: –

- a. refusing to indicate whether or not it holds a record, or to communicate information, contrary to section 4;
- b. failing to respond to a request for information within the time limits established in section 9;
- c. failing to provide a notice in writing of its response to a request for information, in accordance with section 10;
- d. failing to communicate information forthwith, contrary to section 10(3);
- e. charging an excessive fee, contrary to section 11; or
- f. failing to communicate information in the form requested, contrary to section 12.

## Complaint Decision

42. (1) The Commissioner shall, subject to sub-section (2), decide an application under section 41 as soon as is reasonably possible, and in any case within 30 days, after giving both the complainant and the relevant public or private body an opportunity to provide their views in writing.

(2) The Commissioner may summarily reject applications: –

- a. which are frivolous, vexatious or clearly unwarranted; or
- b. where the applicant has failed to use any effective and timely internal appeals mechanisms provided by the relevant public or private body.

(3) In any application under section 41, the burden of proof shall be on the public or private body to show that it acted in accordance with its obligations under Part II.

(4) In his or her decision pursuant to sub-section (1), the Commissioner may: –

- a. reject the application;
- b. require the public or private body to take such steps as may be necessary to bring it into compliance with its obligations under Part II;
- c. require the public body to compensate the complainant for any loss or other detriment suffered; and/or
- d. in cases of egregious or wilful failures to comply with an obligation under Part II, impose a fine on the public body.

(5) The Commissioner shall serve notice of his or her decision, including any rights of appeal, on both the complainant and the public or private body.

## Direct Implementation of Decision

43. (1) The Commissioner may, after giving a public body an opportunity to provide their views in writing, decide that a public body has failed to comply with an obligation under Part III.

(2) In his or her decision pursuant to sub-section (1), the Commissioner may require the public body to take such steps as may be necessary to bring it into compliance with its obligations under Part III, including by: –

- a. appointing an information officer;
- b. publishing certain information and/or categories of information;
- c. making certain changes to its practices in relation to the keeping, management and destruction of records, and/or the transfer of records to the [insert relevant archiving body, such as the Public Archives];
- d. enhancing the provision of training on the right to information for its officials;
- e. providing him or her with an annual report, in compliance with section 21; and/or
- f. in cases of egregious or wilful failures to comply with an obligation under Part III, paying a fine.

(3) The Commissioner shall serve notice of his or her decision, including any rights of appeal, on the public body.

## Commissioner's Powers to Investigate

44. (1) In coming to a decision pursuant to section 42 or 43, the Commissioner shall have the power to conduct a full investigation, including by issuing orders requiring the production of evidence and compelling witnesses to testify.

(2) The Commissioner may, during an investigation pursuant to sub-section (1), examine any record to which this Act applies, and no such record may be withheld from the Commissioner on any grounds.

## **Appeal from Commissioner's Decisions and Orders**

45. (1) The complainant, or the relevant public or private body, may, within 45 days, appeal to the court for a full review of a decision of the Commissioner pursuant to section 42 or 43, or an order pursuant to section 44(1).

(2) In any appeal from a decision pursuant to section 42, the burden of proof shall be on the public or private body to show that it acted in accordance with its obligations under Part II.

## **Binding Nature of Commissioner's Decisions and Orders**

46. Upon expiry of the 45-day period for appeals pursuant to section 45, the Commissioner may certify in writing to the court any failure to comply with a decision pursuant to section 42 or 43, or an order pursuant to section 44(1), and the court shall consider such failure under the rules relating to contempt of court.

# **PART VII: WHISTLEBLOWERS**

## **Whistleblowers**

47. (1) No one may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.

(2) For purposes of sub-section (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body.

# **PART VIII: CRIMINAL AND CIVIL RESPONSIBILITY**

## **Good Faith Disclosures**

48. No one shall be subjected to civil or criminal action, or any employment detriment, for anything done in good faith in the exercise, performance or purported performance of any power or duty in terms of this Act, as long as they acted reasonably and in good faith.

## **Criminal Offences**

49. (1) It is a criminal offence to wilfully: –

- a. obstruct access to any record contrary to Part II of this Act;
- b. obstruct the performance by a public body of a duty under Part III of this Act;
- c. interfere with the work of the Commissioner; or
- d. destroy records without lawful authority.

(2) Anyone who commits an offence under sub-section (1) shall be liable on summary conviction to a fine not exceeding [insert appropriate amount] and/or to imprisonment for a period not exceeding two years.

## **PART IX: MISCELLANEOUS PROVISIONS**

### **Regulations**

50. (1) The Minister may, by notice in the *Gazette* [or insert name of appropriate publication] and after consultation with the Commissioner make regulations regarding: –

- a. additional forms of communication of information under section 12(2);
- b. training of officials under section 20;
- c. reports to the Commissioner under section 21;
- d. any notice required by this Act; or
- e. any administrative or procedural matter necessary to give effect to this Act.

(2) Any regulation under sub-section (1) must, before publication in the *Gazette*, be laid before [insert name of legislative body or bodies].

### **Interpretation**

51. When interpreting a provision of this Act, every court must adopt any reasonable interpretation of the provision that best gives effect to the right to information.

### **Short Title and Commencement**

52. (1) This Act may be cited as the Right to Information Act [insert relevant year].

(2) This Act shall come into effect on a date proclaimed by [insert relevant individual, such as president, prime minister or minister] provided that it shall automatically come into effect six months after its passage into law if no proclamation is forthcoming.

## APPENDIX THREE – EXAMPLE OF A REQUEST FORM, SOUTH AFRICA

### FORM A

#### REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

(Section 18(1) of the Promotion of Access to Information Act, 2000

(Act No. 2 of 2000))

#### [Regulation 6]

#### FOR DEPARTMENTAL USE

Request received by \_\_\_\_\_ (state rank, name and surname of information officer/deputy information officer) on (date) at \_\_\_\_\_ (place). Reference number: \_\_\_\_\_

Request fee (if any): R .....

Deposit (if any): R .....

Access fee: R .....

\_\_\_\_\_  
INFORMATION OFFICER

\_\_\_\_\_  
SIGNATURE OF INFORMATION OFFICER/DEPUTY

#### A. Particulars of public body

The Information Officer/Deputy Information Officer:

#### B. Particulars of person requesting access to the record

- (a) *The particulars of the person who requests access to the record must be given below.*
- (b) *The address and/or fax number in the Republic to which the information is to be sent, must be given.*
- (c) *Proof of the capacity in which the request is made, if applicable, must be attached.*

Full names and surname:

Identity number:

Postal address:

Fax number:

Telephone number: \_\_\_\_\_ E-mail address:

Capacity in which request is made, when made on behalf of another person:

#### C. Particulars of person on whose behalf request is made

*This section must be completed ONLY if a request for information is made on behalf of another person.*

Full names and surname:

Identity number:

**D. Particulars of record**

- (a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.
- (b) If the provided space is inadequate, please continue on a separate folio and attach it to this form. **The requester must sign all the additional folios.**

1. Description of record or relevant part of the record:

2. Reference number, if available:

3. Any further particulars of record:

**E. Fees**

- (a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a **request fee** has been paid.
- (b) You will be notified of the amount required to be paid as the request fee.
- (c) The **fee payable for access** to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.
- (d) If you qualify for exemption of the payment of any fee, please state the reason for exemption.

Reason for exemption from payment of fees:

**F. Form of access to record**

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 below, state your disability and indicate in which form the record is required.

Disability:	Form in which record is required:
-------------	-----------------------------------

- Mark the appropriate box with an **X**.
- NOTES:
- (a) Compliance with your request for access in the specified form may depend on the form in which the record is available.
- (b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.
- (c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

1. If the record is in written or printed form:

<input type="checkbox"/>	copy of record*	<input type="checkbox"/>	inspection of record
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2. If record consists of visual images -  
(this includes photographs, slides, video recordings, computer-generated images, sketches, etc.):



	view the images		copy of the images*		transcription of the images*	
<b>3. If record consists of recorded words or information which can be reproduced in sound:</b>						
	listen to the soundtrack (audio cassette)		transcription of soundtrack* (written or printed document)			
<b>4. If record is held on computer or in an electronic or machine-readable form:</b>						
	printed copy of record*		printed copy of information derived from the record*		copy in computer readable form* (stiffy or compact disc)	
*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? <b>Postage is payable.</b>					YES	NO
<i>Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.</i>						
In which language would you prefer the record?						

**G. Notice of decision regarding request for access**

<i>You will be notified in writing whether your request has been approved/denied. If you wish to be informed in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.</i>
---

How would you prefer to be informed of the decision regarding your request for access to the record?

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20

SIGNATURE OF REQUESTER / PERSON  
ON WHOSE BEHALF REQUEST IS MADE

## APPENDIX 4

### FURTHER READING AND RESOURCES

The most useful resources on freedom of information are generally those to be found on the World Wide Web. The following is a list of some of the most relevant WEB SITES.

ARTICLE 19, the Global Campaign for Free Expression, has a number of publications on freedom of information on its website: <http://www.article19.org>. Hard copies of publications are also available directly from: [info@article19.org](mailto:info@article19.org)

ARTICLE 19 resources include standard setting publications (Principles) and thematic surveys. The Principles have been translated into many languages including Russian, French, Arabic and Spanish.

*The Johannesburg Principles: National Security, Freedom of Expression and Access to Information*, 1996.

*The Public's Right to Know: Principles on freedom of information legislation*, 1999.

*Global Trends on the Right to Information: A Survey of South Asia*, 2001.

*Promoting Practical Access to Democracy: A Survey of Freedom of Information in Central and Eastern Europe*, 2002.

*Freedom of Information: A Comparative Legal Survey* (published by UNESCO), 2003. This publication includes a CD ROM documentary film - *Accounts and Accountability* - about the right to information movement in Rajasthan, India and can be downloaded from: <http://www.article19.org/docimages/1707.pdf>

Council of Europe Recommendation (2002) 2 on Access to Official Documents can be found at the following link:  
[http://www.coe.int/t/e/human\\_rights/media/5\\_Documentary\\_Resources/1\\_Basic\\_Texts/2\\_Committee\\_of\\_Ministers'\\_texts/PDF\\_Rec\(2002\)002\\_E.pdf](http://www.coe.int/t/e/human_rights/media/5_Documentary_Resources/1_Basic_Texts/2_Committee_of_Ministers'_texts/PDF_Rec(2002)002_E.pdf)

Council of Europe Civil Law Convention on Corruption can be found at the following link: <http://conventions.coe.int/treaty/EN/WhatYouWant.asp?NT=174&CM=8&DF=>

Council of Europe Criminal Law Convention on Corruption can be found at the following link:  
<http://conventions.coe.int/treaty/EN/WhatYouWant.asp?NT=173&CM=8&DF=>

The Open Society Justice Initiative Freedom of Information Program aims to promote the adoption and implementation of laws to enable exercise of the right to government-held information, as well as to information of public interest held by private bodies: <http://www.justiceinitiative.org/activities/foifoe/foi>

The FOI Advocates Network was formed to meet the need to exchange information between NGOs working actively in the freedom of information area and to facilitate the development of common projects. The FOIA Network aims to help NGOs with

campaigning, advocacy, and fundraising, through exchange of information, ideas, strategies and by providing a forum for collaboration: <http://www.foiadvocates.net>

Privacy International: <http://www.privacyinternational.org>. David Banisar of Privacy International has written a comprehensive survey of access to information laws, which is available here: [http://www.freedominfo.org/survey/global\\_survey2004.pdf](http://www.freedominfo.org/survey/global_survey2004.pdf)

<http://www.freedominfo.org/index.htm> has regular news and updates on freedom of information issues.

The Commonwealth Human Rights Initiative campaigns for the right to information in the Commonwealth countries, primarily in Asia and Africa. Up-to-date information can be found here: <http://www.humanrightsinitiative.org/programs/ai/rti/rti.htm>. CHRI's 2003 survey of the right to information in the Commonwealth is available here: [http://www.humanrightsinitiative.org/publications/chogm/chogm\\_2003/default.htm](http://www.humanrightsinitiative.org/publications/chogm/chogm_2003/default.htm).

The Access to Information Programme promotes freedom of information in Bulgaria: <http://www.aip-bg.org>.

The American Civil Liberties Union provides an online guide to using the US Freedom of Information Act: <http://www.aclu.org/library/foia.html>.

The Campaign for Freedom of Information has resources on freedom of information in the United Kingdom and elsewhere: <http://www.cfoi.org.uk>.

The Open Democracy Advice Centre is a non-governmental organisation providing advice to the public on freedom of information in South Africa: <http://www.opendemocracy.org.za>

Freedom of information laws: <http://home.online.no/~wkeim/foil.htm>.

Freedom of information in Asia: <http://foi-asia.org>.

Resources on freedom information law: <http://www.foi.net>.

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