CENTRE FOR LAW AND DEMOCRACY

Yemen

Comments on the Law on the Right of Access to Information

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Introduction

Corruption and a lack of government accountability were central among the factors that drove protesters onto the streets during the Arab Spring, forcing several heads of State, including Yemen's President Ali Abdullah Saleh, from power. It is not surprising that transitional governments in the Arab world have tended to prioritise the drafting of right to information legislation, which is essential to citizen oversight of government.

Yemen's Law on the Right of Access to Information (the Law),[1] passed on 24 April 2012, is the third such law in the Arab world (following Jordan (2007) and Tunisia (2011)), although it awaits Presidential signature to come into force. It is a relatively strong and well-written document. If properly implemented and utilised, the Law has the potential to have a transformative effect on the way Yemenis interact with their government.

However, adoption by the legislature does not mark the end of the Law's development. According to Article 66, Yemen's President and Commissioner-General for Information (the Commissioner) are tasked with enacting executive regulations within six months of the issuance of the Law, which will guide how it is interpreted and applied, and could serve to fill gaps in the legislative framework. The Centre for Law and Democracy has prepared these Comments, which highlight the strengths and weaknesses of the Law as it now stands, with an eye to this process, and in order to assist in understanding how best to advance the right to information in Yemen.

These Comments are based on international standards regarding the right to information, as reflected in the *RTI Legislation Rating Methodology*, prepared by CLD and Access Info Europe (CLD/AIE RTI Rating).[2] They also reflect better legislative practice from democracies around the world.[3] We have prepared an assessment of the Law based on the RTI Rating and the relevant sections of this assessment are pasted into the text of these Comments at the appropriate places.

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[1] These Comments are based on an unofficial translation of the Law.

[2] This document, published in September 2010, reflects a comprehensive analysis of international standards adopted both by global human rights mechanisms, such as the UN Human Rights Committee and Special Rapporteur on Freedom of Opinion and Expression, and by regional courts and other mechanisms in Europe, Africa and Latin America. It is available at: http://www.RTI-rating.org.

[3] See, for example, Toby Mendel, Freedom of Information: A Comparative Legal Survey, 2nd Edition (2008, Paris, UNESCO), available in English and several other languages at: http://portal.unesco.org/ci/en/ev.php-URL_ID=26159&URL_DO=DO_TOPIC&URL_SECTION=201.html.

The overall score of the Law, based on the RTI Rating, is as follows:

Section	Max Points	Score
1. Right of Access	6	2
2. Scope	30	29
3. Requesting Procedures	30	17
4. Exceptions and Refusals	30	20
5. Appeals	30	18
6. Sanctions and Protections	8	2
7. Promotional Measures	16	14
Total Score	**150**	**102**

This score puts Yemen in twenty-first place globally among all national right to information laws adopted by countries around the world, behind Kyrgyzstan and Indonesia and just ahead of Bulgaria.

1. Right of Access

The right of access is the category where the Law was weakest. Given the lack of accountability that characterised the government under Mr. Saleh from 1990 to 2012, it is not surprising that Yemen's constitution, which was ratified in 1991, fails to protect the right to information. However, Yemen's successor government is expected to initiate the drafting of a new constitution. This should protect the right to information as a human right.

The Law does contain a statement of principles, under Article 3, which includes a strong statement that the Law's objective is to promote transparency and expand popular participation, as well as to expand public rights and freedoms, notably by securing the right to information. However, the Law fails to create a specific presumption in favour of the openness of all information held by public authorities, subject only to the regime of exceptions in the law.

Recommendations:

- Yemen's new constitution should protect the right to information as a human right.
- The Law should establish a specific presumption that all information held by public authorities is accessible to the public.

Right of Access

Indicator		Max	Points	Article
1	The legal framework (including jurisprudence) recognises a fundamental right of access to information.	2	0	
2	The legal framework creates a specific presumption in favour of access to all information held by public authorities, subject only to limited exceptions.	2	0	
3	The legal framework contains a specific statement of principles calling for a broad interpretation of the RTI law.	1	1	3
	The legal framework emphasises the benefits of the right to information?	1	1	3
	TOTAL	**6**	**2**	

2. Scope

The Law's scope is extremely broad, which is one of its strongest features. According to the definition of "concerned party" in Article 2, requests can be made to any agency of the executive, legislative or judicial branch, as well attached ministries, agencies, institutions or local units. The Law also covers any agency which receives money from the general budget of the State. This type of broad catch-all clause is in line with international standards, and it is a positive feature since it removes ambiguity regarding the Law's applicability, as well as removing the need to continually update the Law as new ministries or agencies are created. In addition, the idea that the right to information applies to any agency which receives public money is in line with a core principle of the right to information, whereby the public has a right to know where and how public resources are expended. In applying the right to information to private organisations, it is acceptable to limit access requests to the receipt, management and expenditure of the portion of their income which comes from the public purse. However the Law appears to apply a right of access more broadly than that, extending to all information in the hands of any "concerned party". In terms of coverage of public authorities, the Law's only shortcoming is that it does not apply to private organisations that perform a public function.

There is some confusion as to whether the Law extends a right of access to foreigners. A recent story in the *Yemen Times* quotes a representative of the State-run National Information Center as saying that the Law precludes foreign nationals or organisations from making access requests.[4] However, it seems clear from Articles 4 and 17 that the right of access is extended to foreigners, which is in line with international standards.

[4] Muaad Al-Maqtari, "Parliament Approves Access to Information Law", *Yemen Times*, 26 April 2012. Available at: http://www.yementimes.com/en/1567/news/759/Parliament-approves-access-to-information-law.htm.

Article 2 of the Law defines "information" and "information system" extremely broadly, to include "all means known now or invented later in the future" for storing data.

Recommendations:

- The Law should be extended to apply to private organisations that perform a public function.

Scope

Indicator		Max	Points	Article
4	Everyone (including non-citizens and legal entities) has the right to file requests for information.	2	2	4, 17
5	The right of access applies to all material held by or on behalf of public authorities which is recorded in any format, regardless of who produced it.	4	4	2
6	Requesters have a right to access both information and records/documents (i.e. a right both to ask for information and to apply for specific documents).	2	2	2
7	The right of access applies to the executive branch with no bodies or classes of information excluded. This includes executive (cabinet) and administration including all ministries, departments, local government, public schools, public health care bodies, the police, the armed forces, security services, and bodies owned or controlled by the above.	8	8	2
8	The right of access applies to the legislature, including both administrative and other information, with no bodies excluded.	4	4	2
9	The right of access applies to the judicial branch, including both administrative and other information, with no bodies excluded.	4	4	2
10	The right of access applies to State-owned enterprises (commercial entities that are owned or controlled by the State).	2	2	2
11	The right of access applies to other public authorities, including constitutional, statutory and oversight bodies (such as an election commission or information commission/er).	2	2	2
12	The right of access applies to a) private bodies that perform a public function and b) private bodies that receive significant public funding.	2	1	1
	TOTAL	**30**	**29**	

3. Duty to Publish

The Law's proactive publication requirements are contained in Article 11, which requires all public authorities to publish information annually on mechanisms in

place to achieve institutional objectives and performance results, on information requests received and actions taken in response to them and on the types of information held by the public authority.

This list, as it currently stands, is a somewhat minimalist approach to proactive disclosure. However, Article 11(f) allows the Commissioner to add categories of information to the list. This is a power the Commissioner should begin to exercise promptly. The Commissioner should aim for a publication regime which is continually expanding, creating a system of progressive responsibility, whereby the scope of proactive disclosure is increased over time. In other words, as public authorities become accustomed to their obligations under the law and develop greater information management and dissemination capacity, it is appropriate to increase their proactive publication responsibilities in order to push government to be more open and accountable.

A good place to start is to mandate the release of financial information, a useful tool for rooting out corruption and ensuring proper management of public resources. The Commissioner should consider adding requirements for financial disclosure, including budgets, remuneration schedules, and specific information about any subsidies, grants or concessions, including the identities of the recipients and the mechanisms by which they were awarded.

Other areas where publication requirements can be particularly helpful in advancing government accountability include information about procedures that underlie decision-making processes, procedures for public consultation or petitions, internal rules and regulations, and the minutes of any open meetings.

Article 12 states that public authorities should provide the prescribed information to the National Information Center, and both the public authority and the National Information Center are then tasked with publishing the information either electronically or in paper form, either free or for a fee not exceeding the actual costs incurred in "obtaining" the information. These standards are not in line with better practice, which holds that information which is proactively published should be disseminated free of charge, and as widely as possible. The language of Article 12 is particularly problematic since public authorities can often incur significant costs associated with internal accounting and information gathering and management ("obtaining" the information to be disclosed). However, this should be seen as part of their core responsibility, and the proactive publication regime should not be seen as a mechanism to recoup these costs. There should instead be a requirement to distribute the information free of charge both in print form and online.

Recommendations:

- The Commissioner should expand the proactive publication requirements over time, beginning with financial information and then moving on to information about decision-making processes, procedures for public consultation, internal rules and regulations, and open meetings.
- Proactively published information should be disseminated as broadly as possible, both online and in paper form, and free of charge.

Note: The RTI Rating did not assess the duty to publish and so no excerpt from it is provided here.

4. Requesting Procedures

The Law spells out fairly clear procedures for making access requests, while indicating that several aspects of this process will be determined by subsequent regulation. Of particular importance will be the content of the official form which, according to Article 29(h), is to be developed by the Commissioner. According to Article 15, all requests must be made using this form. While it is good practice to provide standard forms to assist requesters frame their requests, the use of these forms should not be required. Rather, the current rules in Article 15, whereby requesters are able to lodge requests by any means they choose, including electronically, by mail and in person, should be maintained.

The official form, when drafted, should only require a description of the information and contact address for delivery of the information. The official forms should not require requesters to state their reasons for wanting to access the information. The Law is not currently clear on this, and it would be helpful if the regulations stated that requesters may not be required to provide reasons for their requests.

Article 15 also requires applicants to list their workplace in their requests. Given Yemen's autocratic history, this requirement is troubling. During the Arab Spring, it was widely reported that participants in the protests who worked at companies that were controlled by or did extensive business with the government faced employment-related sanctions, including termination. The fear of such repercussions, even if not realised, can have a powerful chilling effect on the making of requests. Despite Article 7, which states that individuals may not be subjected to negative consequences for exercising their rights under the Law, in a country with high unemployment it should be expected that any requirement to include one's workplace as part of a requesting will act as a significant psychological barrier.

Although the Law requires public officials to provide reasonable assistance to requesters that are illiterate or have special needs, it creates no general duty to assist requesters. This should be addressed in the regulations, through placing an

obligation on officials to assist requesters in filing requests and to contact requesters for clarification where requests are unclear.

In line with international standards, Article 18 requires that requesters be provided with a receipt, including the date, immediately upon filing a request. This should be helpful in enforcing the clear rules on timelines contained within the Law. Article 19 requires public authorities to respond to requests within 15 days, though it is not clear whether this means working days or calendar days. Better practice is to require a response to requests within two weeks. Article 19 permits public authorities to extend the timeline, once, by an additional 15 days if the request is for a large amount of information or if it requires consultation with a third party, with a requirement that the requester be notified of the extension. Article 19 also requires public authorities to prioritise requests made by journalists working on a deadline or which relate to matters of public interest or public affairs. One weakness of the Law in terms of timelines is that it does not explicitly require public authorities to respond to requests as soon as possible, though the relatively tight timeframe mitigates this deficiency.

Article 22 of the Law contains procedures for a public authority to transfer requests to another public authority. Although this protocol is useful, the Law currently allows public authorities to make a transfer if the other authority has a greater connection with requested information. Better practice is for transfers to be limited to situations where the public authority does not possess or have access to the information.

According to international standards, it should be free to file requests and the only charges levied should be those directly incurred by the public authority in copying and delivering the information. The Law does not explicitly state that it is free to file requests, but this is implied by Article 20, which states that fees should be collected only "where appropriate", and Article 2, which defines the cost of access as the actual cost incurred excluding staff time. This should be clarified in the regulations, which should also set standard rates for common expenses like photocopying and provide for a set number of pages, say twenty, to be provided for free. The regulations should also provide fee waivers for requesters that cannot afford to pay.

One problem with the Law is that Article 20(c) allows authorities to provide information in whatever form or language they wish. Better practice is to require public authorities to respect requesters' preferences regarding the form of access, unless this would unreasonably interfere with the office's operation or damage the record.

Recommendations:

- Requesters should be allowed to file requests by any means they choose, with use of the official form being recommended rather than mandatory.
- Requesters should not have to indicate their workplace or state their reasons when filing requests for information. The official form should only require that users describe the information and provide an address for delivery.
- Officials should be required to provide reasonable assistance to requesters in filing requests, and to contact requesters for clarification if their requests are unclear or otherwise deficient.
- Public authorities should be required to respond to requests as soon as possible.
- The transfer mechanism in Article 22 should be limited to situations where the public authority does not have the information.
- It should be clarified that it is free to file requests. The regulations should set central rates for reproduction and delivery expenses and provide for the provision of a certain number of pages of information for free.
- There should be fee waivers for impecunious requesters.
- Public authorities should be required to respect requesters' preferences regarding form of access to the information.

Indicator		Max	Points	Article
13	Requesters are not required to provide reasons for their requests.	2	0	
14	Requesters are only required to provide the details necessary for identifying and delivering the information (i.e. some form of address for delivery).	2	1	15
15	There are clear and relatively simple procedures for making requests. Requests may be submitted by any means of communication, with no requirement to use official forms or to state that the information is being requested under the access to information law.	2	1	15, 29(h)
16	Public officials are required provide assistance to help requesters formulate their requests, or to contact and assist requesters where requests that have been made are vague, unduly broad or otherwise need clarification.	2	0	
17	Public officials are required to provide assistance to requesters who require it because of special needs, for example because they are illiterate or disabled.	2	2	16
18	Requesters are provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed 5 working days	2	2	18
19	Clear and appropriate procedures are in place for situations where the authority to which a request is directed does not have the requested information. This includes an obligation to inform the requester that the information is not held and to refer the requester to another institution or to transfer the request where the public authority knows where the information is held.	2	1	22

20	Public authorities are required to comply with requesters' preferences regarding how they access information, subject only to clear and limited overrides (e.g. to protect a record).	2	0	20(c)
21	Public authorities are required to respond to requests as soon as possible.	2	0	
22	There are clear and reasonable maximum timelines (20 working days or less) for responding to requests, regardless of the manner of satisfying the request (including through publication).	2	2	19
23	There are clear limits on timeline extensions (20 working days or less), including a requirement that requesters be notified and provided with the reasons for the extension.	2	2	19
24	It is free to file requests.	2	2	20, 2
25	There are clear rules relating to access fees, which are set centrally, rather than being determined by individual public authorities. These include a requirement that fees be limited to the cost of reproducing and sending the information (so that inspection of documents and electronic copies are free) and a certain initial number of pages (at least 20) are provided for free.	2	2	2
26	There are fee waivers for impecunious requesters	2	0	0
27	There are no limitations on or charges for reuse of information received from public bodies, except where a third party (which is not a public authority) holds a legally protected copyright over the information.	2	2	
	TOTAL	**30**	**17**	

5. Exceptions and Refusals

The Law's list of exceptions largely conforms to international standards, protecting legitimate interests such as national defence and law enforcement. The only exception which is overly broad is Article 25(g), which allows refusals based on copyright protection but fails to distinguish between privately held copyright and publicly held copyright. Since the exception is aimed at protecting commercial interests, it should be rephrased to cover only information the disclosure of which would harm the legitimate commercial interests of a public authority or third party. Most of the exceptions are explicitly harm-tested, except for military information, described in Articles 25(a) and (b). Article 25(c), which excludes information supplied by a foreign government and which the government of Yemen has promised to keep secret, is not directly harm-tested. The regulations should clarify that only information harmful to Yemen's foreign relations may be withheld under this provision.

However, a major weakness of the Law is that the public interest override only applies to the Article 26(b) exception for personal information. It is a bedrock principle that information should only be withheld if the likely harm to a protected

interest outweighs the public interest in disclosure. All exceptions should be approached from that perspective. The fact that the exceptions in Articles 25 and 26 state that the officer "shall reject" the request rather than that the officer "may reject" the request compounds this problem by removing any discretionary power to consider the public interest. This is probably the Law's biggest weakness.

Another weakness is that the Law lacks any mechanism for consulting with third parties regarding the disclosure of their personal or commercial information. When an exception relating to privacy or third-party commercial interests is being considered, the public authority should consult with the concerned third party to inquire as to whether they have any objection to the disclosure since, if they consent, there will be no need to apply the exception.

If a request contains information that falls within the scope of an exception, Article 20(b) requires the public authority to excise the confidential information if possible, providing the rest of the document to the requester, rather than rejecting the request outright. Article 20(b) also requires the public authority to notify the requester of the specific legal reason for any redaction. Article 23 requires a similar explanation if the request is refused outright. However, in addition to the specific legal reasons, in both instances requesters should be notified of their right to appeal.

A positive aspect of the Law is that Article 65 contains a strong override clause, where by the standards in the Law trump other legal provisions in the case of any conflict. Article 27, which states that information cannot be refused if it is more than thirty years old, is useful, although better practice is to provide for a shorter time frame, say of twenty years. The Law should also mandate that all information which is subject to an exception should be disclosed once the exception ceases to apply.

Recommendations:

- The a public interest override should apply to all exceptions, rather than just to the exception for personal information.
- Article 25(a) and (b) should be harm tested, so that information can only be excluded if its disclosure would harm national defence, not merely because it relates to defence.
- Article 25(g) should distinguish between privately held and publicly held copyright, and should only allow refusals if the information would harm the legitimate commercial interests of a public authority or third party.
- Information should be withheld under Article 25(c) only if its disclosure would harm Yemen's international relations.
- A system should be put in place to consult with third parties if information relating to their privacy or commercial interests is requested.
- Requesters whose requests are refused, in whole or in part, should be notified of their right to appeal.

- All information should be disclosed as soon as an exception ceases to apply.
- The sunset clause in Article 27 should be shortened from thirty years to twenty years.

Indicator		Max	Points	Article
28	The standards in the RTI Law trump restrictions on information disclosure (secrecy provisions) in other legislation to the extent of any conflict.	4	4	65
29	The exceptions to the right of access are consistent with international standards. Permissible exceptions are: national security; international relations; public health and safety; the prevention, investigation and prosecution of legal wrongs; privacy; legitimate commercial and other economic interests; management of the economy; fair administration of justice and legal advice privilege; conservation of the environment; and legitimate policy making and other operations of public authorities. It is also permissible to refer requesters to information which is already publicly available, for example online or in published form.	10	9	25, 26
30	A harm test applies to all exceptions, so that it is only where disclosure poses a risk of actual harm to a protected interest that it may be refused.	4	2	25, 26
31	There is a mandatory public interest override so that information must be disclosed where this is in the overall public interest, even if this may harm a protected interest. There are 'hard' overrides (which apply absolutely), for example for information about human rights, corruption or crimes against humanity.	4	1	25, 26
32	Information must be released as soon as an exception ceases to apply (for example, for after a contract tender process decision has been taken). The law contains a clause stating that exceptions to protect public interests do not apply to information which is over 20 years old.	2	1	27
33	Clear and appropriate procedures are in place for consulting with third parties who provided information which is the subject of a request on a confidential basis. Public authorities shall take into account any objections by third parties when considering requests for information, but third parties do not have veto power over the release of information.	2	0	
34	There is a severability clause so that where only part of a record is covered by an exception the remainder must be disclosed.	2	2	20(b)
35	When refusing to provide access to information, public authorities must a) state the exact legal grounds and reason(s) for the refusal and b) inform the applicant of the relevant appeals procedures.	2	1	20(b), 23
	TOTAL	**30**	**20**	

6. Appeals

A strong appeals and oversight system is an essential ingredient in a strong right to information system. At the core of this lies an independent and specialised oversight body. In Yemen's case, the Commissioner is given this role. There are strengths and weaknesses regarding how the Commissioner's office is constituted. The Law grants the Commissioner relatively broad powers, including the right to inspect government premises. It does not appear, from the language of Article 42, that the Commissioner has the power to order the production of classified information and, if possible, this should be clarified in the regulation. The Commissioner also has the power to order disclosure of information pursuant to Article 32, while Article 42(f) grants him or her the power to make other decisions and recommendations regarding the application of the Law. It is not entirely clear whether this grants the Commissioner the power to impose binding structural solutions on agencies that are the subject of appeals, but the Law explicitly states under Article 41 that recommendations and decisions of the Commissioner are legally binding.

According to international standards, the independence of the oversight body should be adequately protected. The Law is problematic in this regard since the Commissioner is directly appointed by the President. The Law also lacks any prohibition on individuals with strong political connections from being appointed to the position. However, Article 35(c) contains professional requirements, including a university degree in information systems, good character including a clean judicial record regarding cases involving morality and loyalty and at least five years of administrative experience. The latter is problematical inasmuch as it might suggest that only ex-officials may be appointed as Commissioners.

Article 39 seems to provide some security of tenure by stating that the Commissioner will only be relieved of duty if he or she passes away, is convicted of a crime involving moral turpitude, or is transferred to another position. This last clause, however, is problematical since it suggests that the President may transfer Commissioners to other positions, for example the latter are too effective. This should be clarified to state that the Commissioner cannot be transferred without their consent. The degree of budgetary independence of the Commissioner is also unclear, since Article 28 states only that the Commissioner's budget will be allocated from the general budget of the State. This should be clarified to ensure that the Commissioner's office has financial independence.

According the Article 30, the Commissioner has the power to review not only refusals to disclose information, but also the charging of excessive fees, breach of timelines, the forwarding of requests from one agency to another multiple times, or any other matter, at the Commissioner's discretion. This list is sufficiently broad. Particularly positive is the inclusion of multiple forwarding of requests, since a common complaint of requesters in some countries is that they are repeatedly

shuffled between public authorities, each claiming that another is better equipped to deal with a particular request.

The Law does not specify whether appeals are free of charge and can be filed without a lawyer, both of which are important features of an accessible appeals process. This should be clarified in the regulations. The regulations should also place a clear burden on the public authority to demonstrate that they are operating in compliance with the Law in any appeals process, something which is absent from the law. Article 32 states that the Commissioner must respond to all complaints within 30 days, and defines the procedures for processing complaints. These are relatively straightforward, and Article 36 states that they will be further clarified by regulation.

According to Article 24, if requesters are not satisfied with the Commissioner's decision they can lodge a judicial appeal.

Recommendations:

- It should be clarified that the Commissioner has the power to review any information.
- The Commissioner should have the power to impose binding structural solutions on public authorities which breach the Law.
- The appointment process for the Commissioner should be strengthened with a view to ensuring that it is non-partisan, for example by involving different stakeholders or, at the very least, different political parties (for example thorugh the involvement of parliament).
- There should a prohibition on individuals with strong political connections being appointed to the position of Commissioner.
- The Commissioner should be protected from being transferred to another position, at least without their consent.
- The Law should protect the Commissioner's financial independence.
- The regulations should state that appeals to the Commissioner are free of charge and do not require a lawyer.
- In the event of an appeal, there should be an evidential burden on the public authority to demonstrate that it acted in accordance with its legal obligations.

Indicator		Max	Points	Article
36	The law offers an internal appeal which is simple, free of charge and completed within clear timelines (20 working days or less).	2	0	
37	Requesters have the right to lodge an (external) appeal with an independent administrative oversight body (e.g. an information commission or ombudsman).	2	2	24

38	The member(s) of the oversight body are appointed in a manner that is protected against political interference and have security of tenure so they are protected against arbitrary dismissal (procedurally/substantively) once appointed.	2	1	34, 39
39	The oversight body reports to and has its budget approved by the parliament, or other effective mechanisms are in place to protect its financial independence.	2	1	28
40	There are prohibitions on individuals with strong political connections from being appointed to this body and requirements of professional expertise.	2	1	35(c)
41	The independent oversight body has the necessary mandate and power to perform its functions, including to review classified documents and inspect the premises of public bodies.	2	1	42
42	The decisions of the independent oversight body are binding.	2	2	41
43	In deciding an appeal, the independent oversight body has the power to order appropriate remedies for the requester, including the declassification of information.	2	2	32
44	Requesters have a right to lodge a judicial appeal in addition to an appeal to an (independent) oversight body.	2	2	24
45	Appeals (both internal and external) are free of charge and do not require legal assistance.	2	0	
46	The grounds for the external appeal are broad (including not only refusals to provide information but also refusals to provide information in the form requested, administrative silence and other breach of timelines, charging excessive fees, etc.).	4	4	30
47	Clear procedures, including timelines, are in place for dealing with external appeals.	2	2	32, 36
48	In the appeal process, the government bears the burden of demonstrating that it did not operate in breach of the rules.	2	0	
49	The external appellate body has the power to impose appropriate structural measures on the public authority (e.g. to conduct more training or to engage in better record management)	2	0	42(f)
	TOTAL	**30**	**18**	

7. Sanctions and Protections

The Law provides for significant sanctions for various breaches of the right to information. Article 59 provides for a penalty of up to one year imprisonment or a fine of at least one hundred and fifty thousand riyals (approximately USD700) for concealing information that is the subject of a request. Article 60 provides for a prison term of between three months and one year or a fine of not less than one hundred and fifty thousand riyals for misleading a requester. These penalties are reasonable, although they could be wider and cover such issues as destroying information or obstructing the work of the Commissioner.

Article 61 provides for a penalty of at least three months in prison or a fine of not less than one hundred and fifty thousand riyals for violating Articles 18-23, 25-27, 51-55 or 58 of the Law. As a result, violations of basic administrative procedures regarding the processing of requests, such as the need to issue a receipt and to adhere to the enumerated timeframe, are penalised. However, this provision also applies to the regime of exceptions, meaning that it could be used against employees who wrongly disclose information that is subject to an exception. This is problematic, since attaching stiff sanctions to improper disclosure could chill the willingness of public employees to fulfil their disclosure obligations, or cause them to err on the side of non-disclosure in borderline cases.

This is exacerbated by the failure of the law to provide protection to officials who disclose information in good faith, another important tool to change the culture of secrecy within government and to give officials the confidence they need to disclose information pursuant to the right to information law. Article 13 of the Law provides protection for employees who disclose information about wrongdoing associated with the application of the Law, but it does not provide for wider protection for whistleblowers, for example for exposing corruption or breaches of other laws

Article 62 provides for a penalty of imprisonment of at least two years or a fine of at least five hundred thousand riyals (approximately USD2,300) for any person who deliberately fails to fulfil the proactive disclosure requirements of Article 11.

Unfortunately, while the Law contains appropriate sanctions against individuals for breaches of the right to information, there is no mechanism for imposing sanctions on or requiring remedial measures of public authorities that regularly fail to meet their obligations under the Law.

Recommendations:

- Articles 59 and 60 should apply broadly to all forms of wilful obstruction of the right to information.
- The Law should include protection for officials who disclose information pursuant to the Law in good faith.
- Article 61 should be extended to provide protection for all forms of whistleblowing.
- The Law should provide for a system to sanction or impose remedial obligations on public authorities which systematically fail to meet their obligations under the Law.

Indicator	Max	Points	Article

50	Sanctions may be imposed on those who wilfully act to undermine the right to information, including through the unauthorised destruction of information.	2	1	59-62
51	There is a system for redressing the problem of public authorities which systematically fail to disclose information or underperform (either through imposing sanctions on them or requiring remedial actions of them).	2	0	
52	The independent oversight body and its staff are granted legal immunity for acts undertaken in good faith in the exercise or performance of any power, duty or function under the RTI Law. Others are granted similar immunity for the good faith release of information pursuant to the RTI Law.	2	0	
53	There are legal protections against imposing sanctions on those who, in good faith, release information which discloses wrongdoing (i.e. whistleblowers).	2	1	13
	TOTAL	**8**	**2**	

8. Promotional Measures

The promotional regime is one of the stronger aspects of this Law. In order to improve accessibility, all public authorities are required to designate an "information specialist" pursuant to Article 8, whose responsibilities include responding to information requests and managing information. Article 10 requires public authorities to train their employees on the right to information. Articles 45, 48, 49 and 50 also deal with safeguarding and preserving information, including requirements to use modern indexing, archiving and data protection mechanisms. Although the extent to which these standards will be implemented remains to be seen, their vision is broadly in line with international standards.

Within the promotional regime, a central role is given to the Commissioner, whose office is tasked with overseeing and contributing to the training of staff and officials in public authorities on their obligations under the Law and educating the public about their right of access (Article 29). The Law is vague regarding the scope and nature of this promotional work, but it should include creating a guide for the public about their new rights under the Law and, in particular, education programs for the young about the right to information and its importance. In addition, these promotional and educational roles should extend beyond the Commissioner's office and should be carried out by all public authorities.

The Commissioner is also tasked with preparing a quarterly report to be submitted to the President, the House of Representatives and the Council of Ministers including information about any cases where a request was unjustly refused, operational problems the Commissioner is facing, and the work and activities of the Commissioner's office.

All public authorities are required, as part of their publication duties under Article 11, to create an index of all types of information under their control. It is not clear, however, that such lists will be made public.

Recommendations:

- The Commissioner's promotional duties should include producing a guide for the public about the right to information and educational programs directed at the young.
- Consideration should be given to placing a general obligation on all public authorities to conduct public outreach work.
- Public authorities should be required to publish the lists of information under their control.

Indicator		Max	Points	Article
54	Public authorities are required to appoint dedicated officials (information officers) or units with a responsibility for ensuring that they comply with their information disclosure obligations.	2	2	8, 47
55	A central body, such as an information commission(er) or government department, is given overall responsibility for promoting the right to information.	2	2	29(b)
56	Public awareness-raising efforts (e.g. producing a guide for the public or introducing RTI awareness into schools) are required to be undertaken by law.	2	1	29(b)
57	A system is in place whereby minimum standards regarding the management of records are set and applied.	2	2	9, 45, 48-50
58	Public authorities are required to create and update lists or registers of the documents in their possession, and to make these public.	2	1	11(c)
59	Training programmes for officials are required to be put in place.	2	2	10, 29(c)
60	Public authorities are required to report annually on the actions they have taken to implement their disclosure obligations. This includes statistics on requests received and how they were dealt with.	2	2	11
61	A central body, such as an information commission(er) or government department, has an obligation to present a consolidated report to the legislature on implementation of the law.	2	2	11, 12, 43
	TOTAL	**16**	**14**	