



*Indonesian Center for
Environmental Law*



Training Manual for Public Bodies

On Implementing Law 14 of 2008 Regarding Openness in Public Bodies

Dessy Eko Prayitno
Margaretha Quina
Henri Subagiyo
Nisa I. Istiqomah
Toby Mendel
Michael Karanicolas

Glossary

Openness in Public Bodies	: Keterbukaan Informasi Publik
Requester of Public Information ("Requester")	: Pemohon Informasi Publik
Information and Documentation Management Officer ("PPID")	: Pejabat Pengelola Informasi dan Dokumentasi (PPID)
Superior of the PPID	: Atasan PPID
Information Commission	: Komisi Informasi
Central Information Commission ("KIP")	: Komisi Informasi Pusat (KIP)
Provincial Information Commission	: Komisi Informasi Provinsi
Information Commission of Regency/City	: Komisi Informasi Kabupaten/Kota
Freedom of Information	: Hak atas Informasi
Preliminary Examination Assembly	: Majelis Pemeriksaan Pendahuluan
Preliminary Examination	: Pemeriksaan Pendahuluan
Internal Appeal	: Keberatan Internal
Verdict of Information Commission	: Putusan Komisi Informasi
Suit	: Gugatan
State Agencies	: Lembaga Negara
Public Bodies	: Badan Publik
Law 14 of 2008 regarding Openness in public bodies ("Law 14/2008")	: Undang-undang No. 14 Tahun 2008 tentang Keterbukaan Informasi Publik
Regulation of Information Commission No. 1 of 2010 ("CIC Reg. 1/2010")	: Peraturan Komisi Informasi No. 1 Tahun 2010 Tentang Standar Layanan Informasi Publik

Introduction

In May 2008, the Government of Indonesia adopted Law 14 of 2008 Regarding Openness in Public Bodies. Indonesia thus joined the many countries around the world to have right to information or freedom of information laws, laws which give individuals a right to access information held by public bodies. These laws place obligations on public bodies to be open, both by publishing information on a proactive basis and by responding to requests for information. This training manual is specifically designed to assist officials working for local public bodies in Indonesia to meet their obligations under Law 14 of 2008, although it could also be used by other officials.

This training is based on a model which encourages participation and enthusiasm among participants. We aim to create an atmosphere where participants will actively engage, identifying problems that are relevant to their working environment and helping to generate solutions to these problems cooperatively.

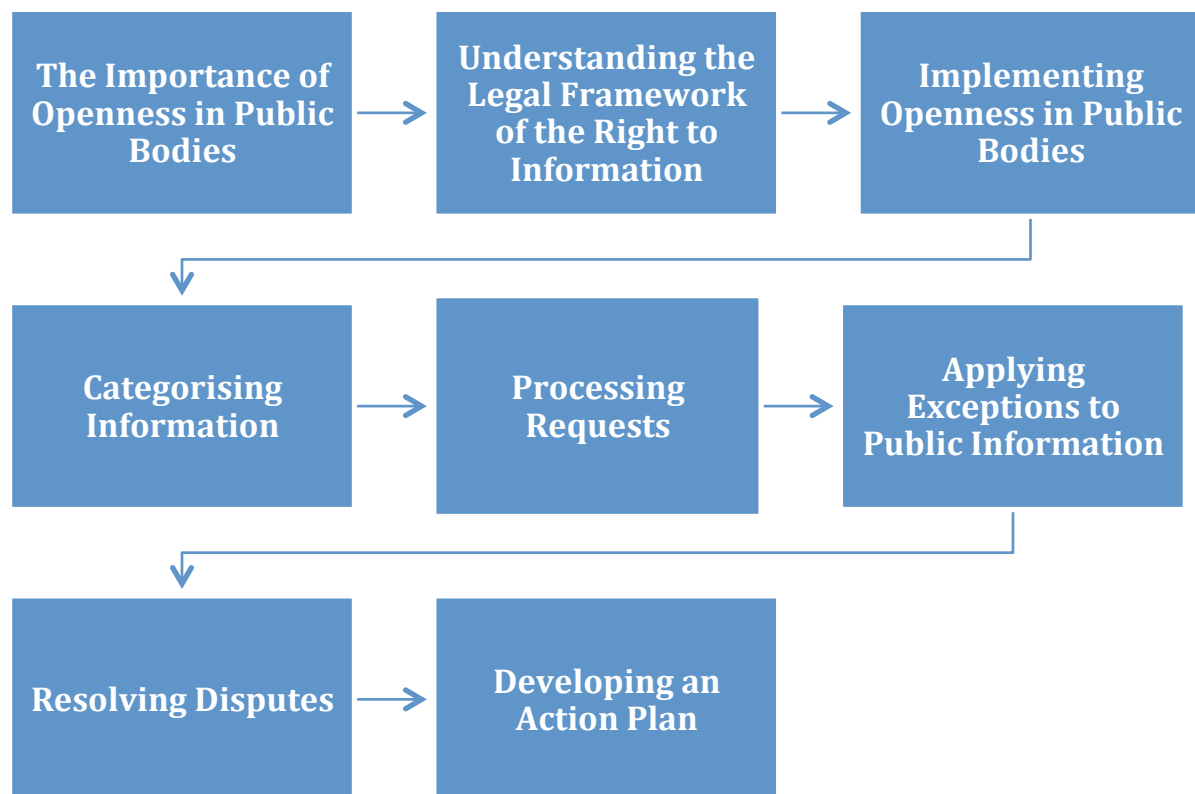
Some important principles that underlie this training are:

- a) Equality between all participants, facilitators, and speakers.
- b) Participants, facilitators and speakers each have a specific role to play, and share responsibility for the success of the training.
- c) Active participation is important to the training's success.
- d) The training should proceed in a relaxed atmosphere, while maintaining mutual respect.
- e) The ultimate aim of the training is to build the knowledge, awareness and skill of the participants.

Overview of Manual

This Manual consists of eight integrated chapters, each of which contains important and challenging material. It is designed to build capacity among participants, to enable them to understand their duties and to equip them with the skills required to protect and promote openness in public bodies.

The Manual follows the following format:



Pre- and Post-test

Participants' level of understanding will be discussed at the beginning and end of this training programme, in order to tailor the training to the specific needs of the group and ensure a challenging, productive and effective use of time and resources.

We welcome all of our participants, and are happy to see such a robust interest in protecting and promoting the right to information among officials at Indonesia's public authorities.

Session 1 – The Importance of Openness in Public Bodies

In a democratic State, power ultimately rests with the people, to whom the government remains accountable. This is true for the three main branches of government (legislative, executive and the judiciary) as well as for other public authorities, which should act in accordance with their popular mandate.

At the heart of the right to information is the idea that the information held by public bodies is not owned by them, but is held on behalf of the people, and that the people should have access to this information, subject only to limited exceptions to protect overriding interests. Furthermore, in order to effectively govern in line with the public will, it is necessary for the people to be properly informed of the function, role and operations of these public authorities. This principle underlies the core of the right to information as it fundamentally underpins democracy, in order to equip the people with the tools to engage in the process of governance.

Key Benefits of Openness in Public Bodies

From a practical point of view, every public authority must by necessity foster some level of dialogue with the public. The right to information is an essential tool for managing this relationship. Its effective implementation offers several practical benefits for public bodies and to the nation as a whole:

1. *Informing public opinion through accurate information.*

Information is an essential ingredient in the decision-making process, and is vital to shaping public opinion. The absence of accurate information can lead to wrong or misguided opinions being formed, or decision-making based on misguided assumptions or biases. A system that provides the public with accurate information therefore improves the quality of the public discourse, allowing for public opinion to be shaped by an accurate contextual understanding.

2. *Accurate public information can prevent negative and false rumours from spreading.*

A clear and accurate system for distributing information can also save public bodies from the burden of responding to negative and false rumours, allowing them to work more effectively and efficiently. Rumours flourish in a climate of secrecy, and openness is the easiest way to prevent the spread of false ideas.

3. *Minimising corruption and the abuse of insider information.*

The right to information is a key tool in combating corruption and wrongdoing in government. As U.S. Supreme Court Justice Louis Brandeis famously noted: “A little sunlight is the best disinfectant.” Cases of abuse of office often originate in access to insider information. This in turn is rooted in

secrecy, since the inability of outsiders to obtain access to this information is what gives it its illicit value. In addition to reducing the overall level of corruption within public bodies, open access to information allows everyone an equal chance to benefit from public information, relieving public bodies of the burden of having to police against these potential abuses.

4. *Improve the performance of public bodies.*

Minimising corruption and fraud allows public bodies to allocate their resources more effectively and efficiently, improving overall performance. In addition, a free and open flow of information allows the public to contribute constructively on how management can be improved and problems can be solved, ensuring that the public body prioritises issues of primary importance to society.

5. *Building relationships and increasing people's trust in the public body.*

Positive experiences with openness and accessing information will lead to better public relations and increased trust. Conversely, secrecy leads to a climate of mistrust and suspicion. An open exchange of information is key to building and establishing a positive relationship with the community.

6. *Democratic accountability.*

Proper accountability is the cornerstone of a democratic system of government. Democratic societies have a wide range of participatory mechanisms, ranging from regular elections to citizen oversight bodies, for example of the public educational and/or health services, to mechanisms for commenting on draft policies or laws. Effective participation at all of these levels depends, in fairly obvious ways, on information. Voting is not simply a mechanical act. For elections to fulfil their proper function – described under international law as ensuring that “[t]he will of the people shall be the basis of the authority of government” – the electorate must have access to information. The same is true of participation at all levels. It is not possible, for example, to provide useful input to a policy process without access to the policy itself, as well as the reasons it is being proposed.

Global Perspectives on the Right to Information

The right to information has been recognised around the world as a human right. Article 19 of the Universal Declaration of Human Rights states:

“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.”

This Declaration is broadly accepted to constitute customary international law, meaning that it is binding on all States. The right to information is also protected under Article 19 of the International Covenant on Civil and Political Rights, which has been ratified by 167 States (including Indonesia).

In 1999, the three special mechanisms on freedom of expression at the UN, OAS and OSCE stated:

“Implicit in freedom of expression is the public’s right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people’s participation in government would remain fragmented.”

The right to information has also been recognised by the Inter-American Court of Human Rights, the European Court of Human Rights and the UN Human Rights Committee.

As of September 2012, 93 countries around the world have enacted right to information laws, which generally includes a right of access and a procedural framework for implementation. It is important to note that an effective right to information law must include a practical formula for access in addition to its recognition of the right.

There are also numerous global initiatives for promoting the right to information, most significantly the Open Government Partnership (OGP), which was launched in September 2011. OGP is a multilateral initiative where member States pledge to take concrete steps to promote transparency, increase civil participation, eradicate corruption and utilise modern technology to encourage openness, effective government and accountability. As of December 2012, 58 countries (including Indonesia) have signed on to the OGP, committing to Action Plans designed to achieve the OGP’s objectives. The OGP, and other similar initiatives, reflect global consensus that the right to information is a fundamental human right which States have an obligation to promote and protect.

Session 2 – Understanding the Legal Framework of the Right to Information

1. Objective of the Law

The objectives of Law 14/2008 are set out in Article 3 as being to:

- a. guarantee citizens right to know about public policy making plans, public policy programmes, public decision making process, and the grounds of a public decision making;
- b. encourage public participation in public policy making process;
- c. to increase active public involvement in the public policy making and good public body governance;
- d. constitute good governance which is transparent, effective, efficient and accountable;
- e. publicise the grounds of public policies that have eminent effects on people's lives;
- f. develop science and to advance the intellectual life of the people; and
- g. improve management and service of information in public bodies in order to constitute excellent information service.

It is important to note that many of these goals are highly interrelated and also closely reflect the benefits of the right to information as noted above. Beginning with reforms to the current system of information management within public bodies, the law anticipates broad benefits accruing to society, including expanding access to public bodies' decision-making process and enabling more robust public participation and accountability. The law is intended to promote effective and responsible government, leading to greater prosperity and enhancing the public discourse.

2. General Principles of Openness in Public Bodies

Under international law, there are a number of core principles which flow from the right to information and which therefore govern openness in public bodies. The key principles are as follows:

1. The right to information establishes a presumption in favour of access to information held by public bodies, in most cases reversing the previous presumption against such access.
2. The right to information applies broadly to everyone, to all information, regardless of the form in which it is held, and to all bodies which form part of the State, or which are acting on behalf of the State.
3. Public bodies should publish key categories of information on a proactive basis, online but also in a way that ensures that those most affected by the information can access it in practice.
4. Public bodies should put in place clear procedures for making and processing requests for information, including by appointing special information officials for this purpose.
5. The law should set out clear exceptions to the right of access, which should be based on a harm test (so that it is only where disclosure of the information would harm a listed interest that disclosure might be refused) and a public interest override (so that information should always be disclosed where this is in the overall public interest, even if this might cause harm to a protected interest).

6. Requesters should have a right to appeal refusals to provide access to an independent administrative oversight body (information commission), which shall process appeals rapidly and at little cost to the requester.

Article 2 of Law 14/2008 contains general principles which are meant to guide its interpretation and implementation:

1. Public Information shall be in nature open and accessible to Public Information User;
2. Exempted Public Information shall be strict and limited;
3. Public Information shall be obtained by Public Information Requester in a quick and timely, inexpensive, and uncomplicated manner;
4. Exempted Public Information shall be in nature confidential pursuant to legislations, appropriateness, and public interest based on the test of consequences that will emerge if an information is disclosed to public and after meticulously measured that confining the Public information may protect a greater interest compared to disclosing it, or vice versa. [official translation]

With these principles, and the practical mechanisms that it establishes, Law 14/2008 largely meets the international standards noted above.

These criteria are consistent with the generally accepted principles of open governance:

- a. Right to request and access information;
- b. Right to know;
- c. Right to attend public meetings;
- d. Right to participate in the public policy-making;
- e. Whistleblower protection;
- f. Right to appeal to an independent authority in the event of the violation of these rights;
- g. Freedom of expression.

It is important for Public Bodies to keep these principles in mind when implementing the right to information. The main principle is that all public information should be open and accessible by default. On the other hand, any legal restrictions or exceptions to access should be interpreted as narrowly as possible, based on a legitimate threat to one of the public interests listed in the law, which overrides the benefits of disclosure.

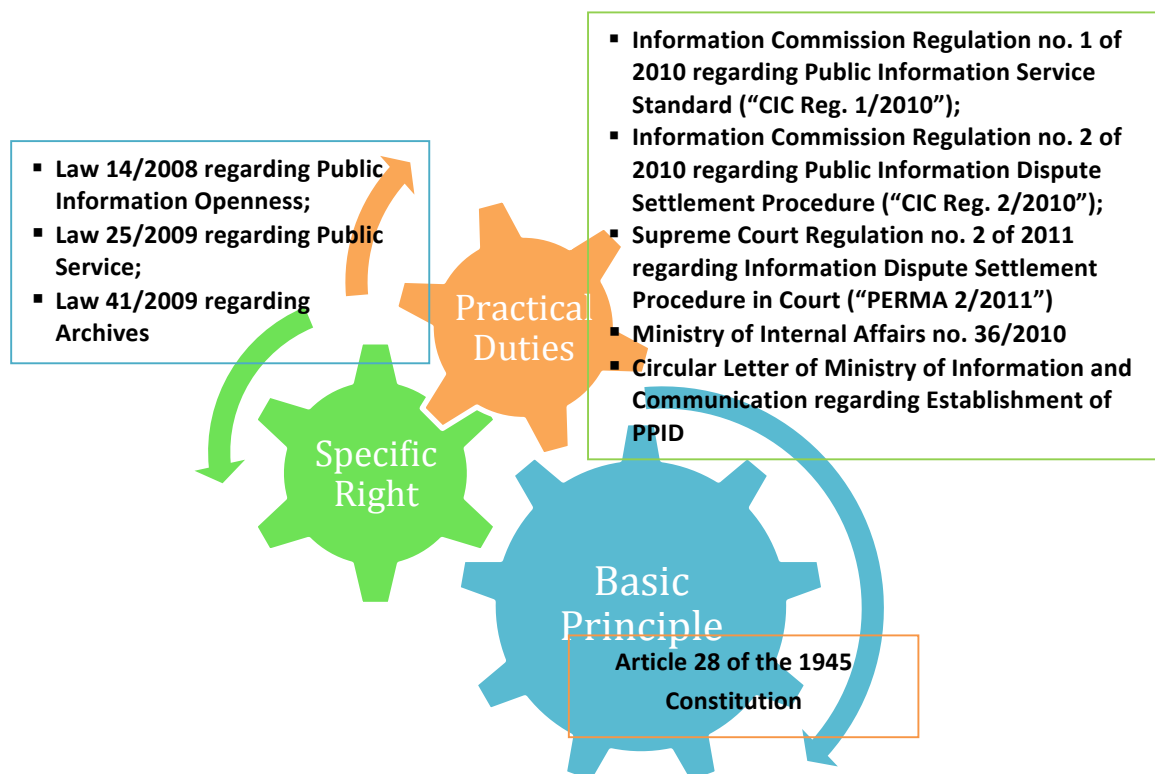
3. Constitutional Framework

The right to information is protected by Article 28F of the fourth amendment of the Constitution of the Republic of Indonesia 1945:

“Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by employing all available types of channels.”

However, the specific mechanism for actualising this right is not mentioned in that provision. Rather, these practical details for how the right is to be substantiated and protected are spelled out in detail in other laws.

Consequently, although the legal framework for openness in public bodies is rooted in the 1945 Constitution of the Republic of Indonesia, its implementation is governed by other legislation, particularly Law 14/2008. The following diagram spells out how these various instruments together shape the right to information in Indonesia. Article 28 F of the Constitution establishes the right to information as a basic principle, as embodied in the rules spelled out in Law 14/2008. These rules are reinforced by the principles of Law 25/2009 regarding Public Service and Law 41/2009 regarding Archives, both of which affirm the principle of open government and promote effective management of public information.



To further understand the proper interpretation of the legal framework for openness in public bodies based on Law 14/2008, it is important to understand the fundamental concepts that underlie the concept of openness in public bodies:

Public Information

Article 1(1) of Law 14/2008 defines Information as:

"Information means any description, statement, idea and signs contains value, meaning and message, either as data, fact or their elucidation that may be seen, heard and read which is presented in various packages and formats inline with information and communication technology development, electronically or non-electronically." [official translation]

Article 1(2) of the Law 14/2008 defines Public Information as:

“Public Information means any information produced, stored, managed, sent and/or received by a Public Body in relation with governments and governance of the state and/or operators and governance of other public bodies pursuant to this Act, and other information concerning public interest.” [official translation]

From these definitions, it can be noted that:

- a. Public Information to be provided to the people includes all information created or held by public bodies related to public administration and governance. This includes technical information about the Public Bodies themselves, such as their structure, objective and mission, as well as information about their ongoing performance and function, such as project reports, policy statements and financial statements. It also includes information provided by individuals and private bodies to public bodies, subject to the regime of exceptions (which protects privacy, among other things).
- b. Public Information to be provided to the people includes information that predates the passage of Law 14/2008. This flows logically from the phrase *“produced, stored, managed, sent and/or received”*.
- c. Drafts which are still being developed are also included within the definition of public information.
- d. Public information also includes any other information related to the public interest. Therefore, as long as a public interest in the information can be demonstrated, it should be subject to the law.

Public Bodies

Article 1(3) of Law 14/2008 says:

“Public body means executive, legislative, judicial and other institution which functions and main duties are related to state governance, which all or part of its funding originated from State Revenue and Expenditure Budget and/or the Local Revenue and Expenditure Budget, or non governmental organizations provided that all or part of its funding originated from State Revenue and Expenditure Budget and/or the Local Revenue and Expenditure Budget, public donation and/or foreign origin” [official translation]

According to this definition a public body is defined based on its source of funding, and whether it comes from the State or local budget (APBN, APBD), public donations or foreign donations. Consequently, in addition to government agencies, political parties, civil society organisations and non-governmental organisations, State-owned enterprises and local government enterprises are all classed as public bodies.

In addition, CIC Reg. 1/2010 in its annex provides an inclusive list of entities that are considered public bodies.

Public Information Requesters

Article 1(12) of the Law 14/2008 says:

“Public Information Requester means an Indonesian citizen or Indonesian legal entity filing a public information request as stipulated in this Act” [official translation]

This definition shows that only Indonesian citizens or organisations can file information requests. However, it should be noted that the right to information is a human right, which in principle applies to everyone. Public bodies should consider fulfilling access requests from foreign citizens or organisations as well.

Rights and Obligations of the Public Body and the Requester

Article 6 of Law 14/2008 allows public bodies to withhold exempted information as defined in the law.

Article 7 lists the following obligations for public bodies:

- a. Disclose public information under its authority in response to requests for public information.
- b. Provide information which is accurate, valid and not misleading.
- c. Introduce an effective system for managing public information, for example through operational standards or a public information service and an Information Management and Documentation Officer.
- d. Develop a written record of policy decisions taken to fulfil the public right to information.

The rights of requesters are regulated under Article 4 of Law 14/2008, including the right to:

- a. Access and understand public information;
- b. Attend open meetings of public bodies;
- c. Obtain copies of public information by filing requests;
- d. Use and disseminate public information, within the bounds of the law;
- e. Appeal or complain to the Information Commission and/or to court if these rights are being obstructed.

Article 5 of Law 14/2008 obligates requesters to:

- a. Utilise public information within the bounds of the law;
- b. Acknowledge the source of public information when it is being used.

Information and Documentation Management Officer (PPID)

The law also calls on public bodies to appoint PPIDs, which will be discussed in Chapter 3.

Information Commission

Law 14/2008 mandates the creation of Information Commissions. According to Article 1(4):

“Information Commission means an independent institution which functions are to implement this Act and its implementing rules, establish technical guidance on public information service standard and carry out public information dispute settlement through mediation and/or non-litigation adjudication.” [official translation]

In the implementation of Law 14/2008, Information Commissions are established at three levels: the Central Information Commission (CIC), Provincial Information Commissions and Regency/City Information Commissions. The Central Information Commission is located in Jakarta, provincial level commissions in the provincial capitals, and the regency/city level commissions in the capital of the regency or city. The CIC is composed of seven members, while the provincial and regency/city level commissions have five members each.

The main duties of the information commissions are to:

- a. Settle disputes and appeals regarding access to public information through mediation and/or non-litigation adjudication.
- b. Establish general guidelines for public information service.
- c. Provide guidance on the implementation of Law 14/2008 and technical guidance for establishing mechanisms for the provision, disclosure, and publication of public information.

In settling disputes over public information, the information commissions have the power to:

- a. Summon and/or bring together the disputing parties.
- b. Demand evidence from a public body.
- c. Compel the appearance of officials of a public body or related parties as witnesses.
- d. Require witnesses to testify under oath in the case of non-litigation adjudication.
- e. Establish and publish a code of conduct for information commissions to measure their performance.

Articles 26(2) and (3) of Law 14/2008 divide these responsibilities between the different levels of information commissions. The CIC is tasked with:

- a. Establishing procedures for settling disputes over public information;
- b. Settling disputes over public information at the local or provincial level in jurisdictions where the Provincial Information Commission or Regency/City Information Commission has not been established;
- c. Settling disputes over public information at the national level;
- d. Publish reports on its performance and the overall implementation of Law 14/2008.

The Provincial and Regency/City level information commissions are tasked with settling disputes over public information within their jurisdiction.

The information commissions also have a responsibility to educate the public about their role, since they are often incorrectly viewed as a bank or processing body for public information, rather than a facilitator of the right to information more generally.

The Dynamics of Openness in Public Bodies after the Enactment of Law 14/2008

Before the enactment of Law 14/2008, openness and disclosure was governed by a patchwork of different laws and regulations. These laws provided an uneven degree of openness, without properly regulating procedures for access, sanctions for non-compliance or standards for information management.

There are many examples which illustrate the difficulty of accessing information held by public bodies under the previous framework. From minor difficulties, such as obtaining information about basic procedural matters (birth certificates, identity cards or driver's licenses), to limitations on access to court records, public policy documents and partially-classified information. The major problems with the previous system can be summarised as:

- a. The lack of a proper guarantee for the right to information or any appeals mechanism for when requests are refused. Consequently, if a request for information was refused, there was no legal recourse for the requester.
- b. The provision of the Penal Code regulating State secrets and Law 7/1971 regarding State Archives defined classified information and State secrets extremely broadly, without clear limitations.
- c. The lack of any legal sanctions for public officials who intentionally obstructed access to public information. Consequently, it became a common administrative practice to refuse access.
- d. There was no clear mechanism or procedure for accessing information, or any timeframe for publication or for responding to request.
- e. The lack of clear guidelines for openness meant that public bodies were naturally hesitant to disclose anything.
- f. Popular perceptions of public bodies were that they were inclined towards secrecy, which discouraged the filing of requests.

Law 14/2008 is meant to solve these problems by:

- a. Establishing a unified standard for the right to information across all public bodies. For example, CIC Regulation 1/2010 provides clear guidelines on mechanisms for accessing information, while CIC Regulation 2/2010 clarifies how disputes regarding public information should be resolved.
- b. Establishing the legal principle of maximum access, limited exceptions (MALE), with clear criteria for how information can be withheld, including a consequential harm test and a public interest test.
- c. Imposing legal sanctions (including fines and imprisonment, as well as administrative sanctions) for anyone who intentionally violates the right to information by obstructing access, including public officials and public bodies.
- d. Establishing an oversight body for receiving and processing appeals against refusals to provide access and other failures to apply the law.

Sanctions for Breach of the Right to Information

One final important change brought about by Law 14/2008 is the introduction of sanctions for violations of the right to information. These are a vital means of compliance, and they include the following provisions:

- Any public authority deliberately refusing to disclose information that should be made available on a periodic basis, at all times and/or upon request and, as a result, causing damage to other parties faces a maximum of 1 (one) year imprisonment and/or a maximum fine of Rp 5.000.000,00 (five million rupiah).
- Anyone deliberately and unlawfully damaging State protected information and/or information relating to the public interest faces a maximum of 2 (two) years imprisonment and/or a maximum fine of Rp 10.000.000,00 (ten million rupiah).
- Anyone deliberately altering information so that it is misleading and damaging to other parties faces a maximum of 1 (one) year imprisonment and/or a maximum fine of Rp 5.000.000,00 (five million rupiah).

The following chart sums up the changes that came as a result of Law 14/2008:

	Before Law 14/2008	After Law 14/2008
General approach to disclosure:	Determine if there is information which can be disclosed. Information is secret by default.	Determine if there is information which should be withheld. Information is open by default, with limited exceptions.
Procedure for access:	No standard procedure or time limit.	Requesting procedures and timelines are standardised.
Responsibility for providing access:	Varies depending on the public body. No guarantee of any official responsible for providing access.	Every public body must have a PPID, who is responsible for overseeing the provision of information.
Sanctions:	No sanctions for violating the right to information.	Significant sanctions for violating the right to information.
Accountability:	No procedure for filing complaints or appeals.	Violations of the right to information can be appealed to the information commissions or to court.

Session 3: Overview of Implementation Needs for RTI

Effective and efficient implementation of openness in public bodies requires the following ingredients:

1. Information and Documentation Management Officer (PPID)

Duties, Responsibilities and Authority

Article 13(1) of Law 14/2008 states: *“In order to constitute a quick, accurate and uncomplicated service, Public body shall: a) appoint Information and Documentation Management Officer”* [official translation]. According to Article 21 of Government Regulation 61/2010 regarding Implementation of Law 14/2008 (GR 61/2010), a PPID must be appointed in all Public Bodies within one year of the regulation’s passage.

Article 1(9) of Law 14/2008 states that *“Information and Documentation Management Officer means an officer responsible for storage, documentation, provision and/or service of information in public body”* [official translation]. CIC Reg. 1/2010 further elaborates the duties and responsibilities of PPIDs:

- a. Responsibilities relating to information management:
 1. To coordinate the storage and documentation of all public information under the public body’s authority.
 2. To coordinate the collection of all public information, in its physical form, from the working units of the public body.
 3. To coordinate the inventory of public information possessed by each unit in the public body in order to make and update the list of public information at least once a month.
- b. Responsibilities related to the provision and publication of information, and responding to public requests:
 1. Organise all information under the authority of the public body in a manner that facilitates public access.
 2. Coordinate the provision of public information by publishing and responding to access requests.

Regarding the publication of public information, the PPID shall:

 - a) Coordinate the publication of public information through appropriate media to effectively reach the public at every level.
 - b) Deliver information in readable and easy-to-understand Indonesian, as well as other local languages where appropriate.

Regarding responses to requests for information, the PPID shall:

 - a) Coordinate the release of public information in response to requests.
 - b) Conduct a consequential harm test as spelled out in Article 17 of Law 14/2008, as well as a public interest test, before deciding that information is classified.

- c) Providing written reasons for any refusals, including the exact exception that applies to the material.
 - d) Black out or obscure information that falls within the scope of an exception.
 - e) Improve the quality of service by developing the capacity of support staff, including archivists, computer administrators and information officers.
- c. Responsibilities in responding to appeals: the PPID shall process appeals according to the internal dispute settlement procedure for public bodies.

In performing these duties and responsibilities, the PPID has the following powers:

- a. To coordinate each unit/working unit in the public body with regard to their management and delivery of public information.
- b. To conduct a consequential harm test as provided by Article 17 of Law 14/2008 in order to determine whether information should be withheld.
- c. To refuse requests for public information where the information at issue falls within the scope of an exception.
- d. To manage the PPID supporting staff (archivists, computer administrators, information officers, etc.).

Appointment and Accountability

The head of the public body appoints the PPID and their support staff. The head of the public body also determines the superior to whom the PPID reports.

Organisation of the PPID

Neither Law 14/2008 nor CIC Reg. 1/2010 specifically regulates the organisation or structure of PPIDs. Law 14/2008 mandates that a PPID must be appointed, with an eye to serving the public right to information. As a result, public bodies have considerable leeway to build and develop the PPID's structure according to their specific resources and budget. There are two main options:

- a. Create the PPID as an entirely new administrative unit.
- b. Attach the PPID function to an existing administrative unit which is familiar with the functions of managing and delivering information.

However, in appointing a PPID, the head of a public body should consider following matters:

- a. The appointment and designation of the PPID should be based on an understanding of the duties, responsibilities and authorities of the PPID within the organisation, as well as the structure of the organisation itself.
- b. The appointment and designation of the PPID should be based on an understanding of the management and services that the PPID will need to provide within the organisation.
- c. The officer that is appointed or designated as the PPID should have an understanding of archives and information management and documentation, as well as competence in the specific field in which the public body operates, in order to apply the consequential harm test effectively.

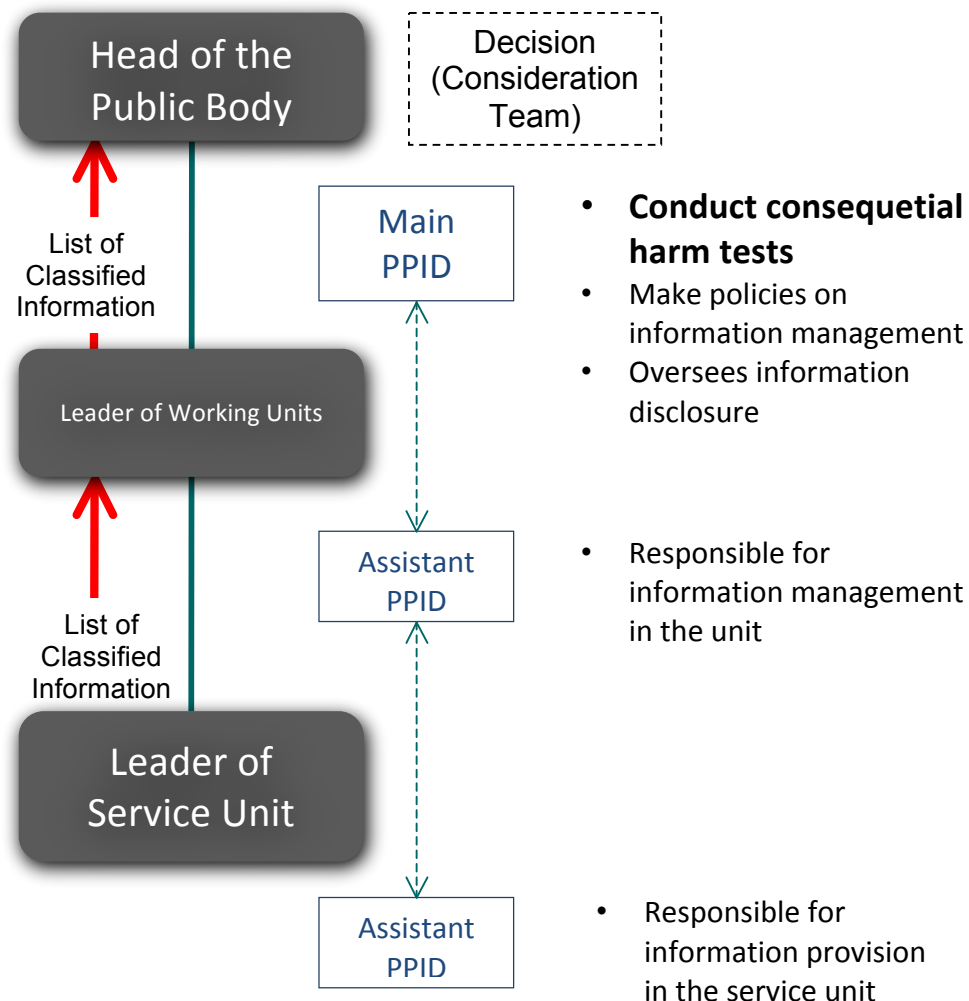
Public bodies can appoint or designate more than one PPID, with the following conditions:

- a. There must be a single Chief PPID designated, with any others acting as Assistant PPIDs.
- b. There must be a clear division of duties, responsibilities, and authorities between the Chief PPID and Assistant PPIDs.
- c. Coordinating mechanisms must be established between the Chief PPID and the Assistant PPIDs.

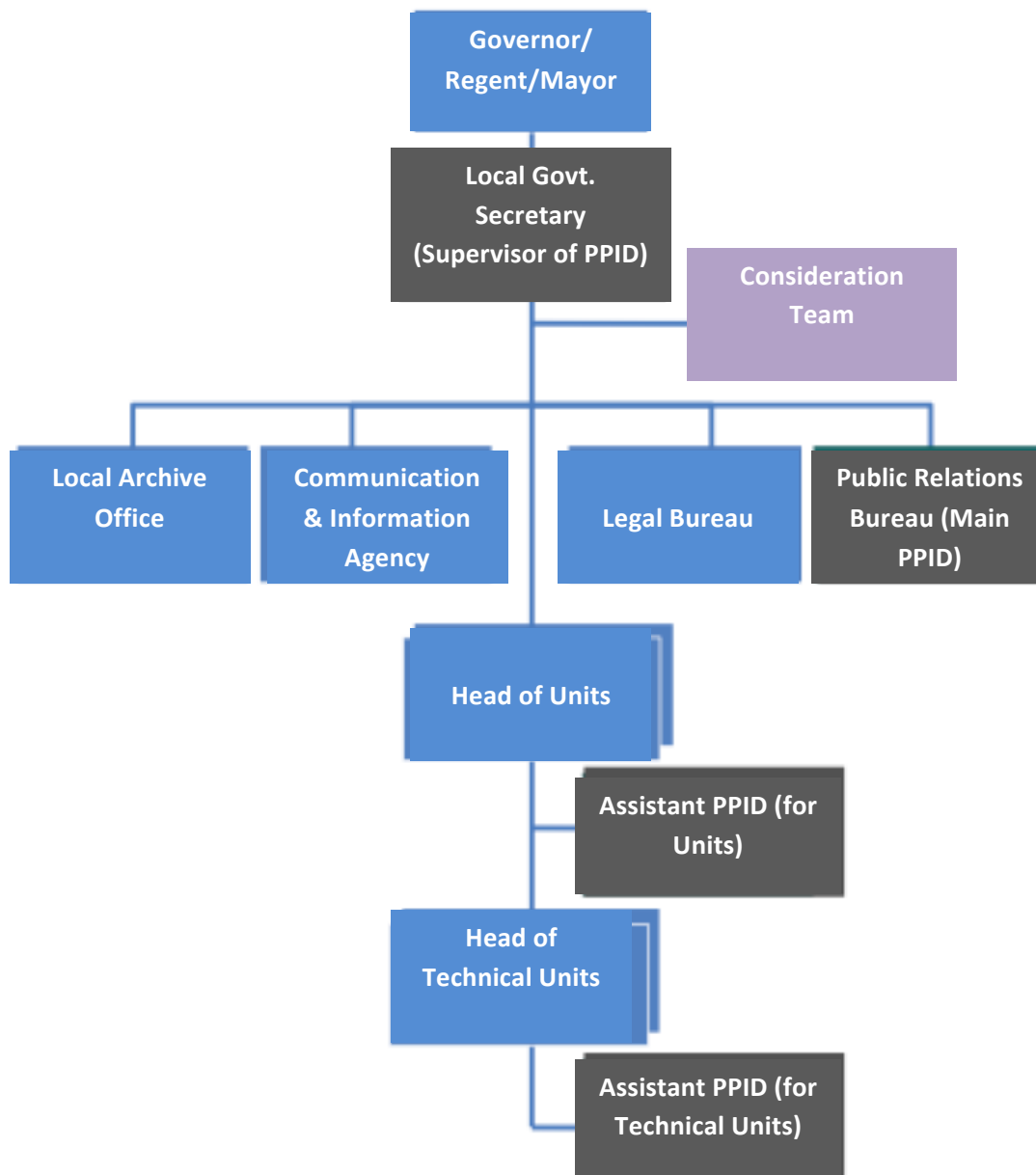
Strategies for Establishing an Effective PPID

- a. Involve all units within the public body in designing the PPID and elaborating the Standard Operating Procedure (SOP) for public information.
- b. Consider the main duties and functions of the PPID within the context of the main duties and functions of public body as a whole.
- c. Analyse whether information management functions should be centralised (concentrated in the hands of a single unit) or decentralised (divided among the different units).
- d. It is important to choose the right official to be the PPID, and to select appropriate support staff, in consideration of their duties, responsibilities and authority.
- e. Create an effective mechanism for coordination between the PPID and their support structure.
- f. Ensure that the PPID is properly established through a Letter of Decree from the head of the public body.
- g. Create proper procedures for the PPID and its support structure, namely through drafting an SOP for responding to public information requests (see Section 2).
- h. Create an effective mechanism for coordination between the PPIDs and the rest of the staff of the public body.
- i. Build the capacity of the PPID and its support structure to strengthen the management and provision of public information as mandated in Law 14/2008, CIC Reg. 1/2010 and the laws regarding archives.

Sample PPID Structure for Central Government Bodies:



Sample PPID Structure for Local Government:



Sample PPID Structure for a Simple Organisation:



2. Standard Operating Procedures for the Provision of Public Information

Article 4(a) of CIC Reg. 1/2010 requires all public bodies to establish a Standard Operating Procedure (SOP) for the provision of public information. This SOP is a part of the broader information and documentation management and provision system that is meant to guide in establishing an effective system for access to information. The SOP is meant to be devised in accordance with Law 14/2008, CIC Reg. 1/2010, and other relevant laws concerning archives.

The SOP has the following main functions:

- a. To define:
 - 1) The various systems for ensuring the provision of information in accordance with the law.
 - 2) Which officials bear which responsibilities.
 - 3) Which staff members are supposed to carry out which duties.
 - 4) Proper procedures for these duties and responsibilities.
 - 5) Expected results in the fulfilment of duties around the provision of information.
 - 6) Expected timeframes for particular procedures.
- b. To create indicators for measuring performance.
- c. To establish a division of duties and responsibilities between the relevant personnel.

In relation to the PPID system, the SOP should include regulations concerning:

- a. The structure of the PPID.
- b. The structure of the PPID's support staff (archivists, computer administrators, information desk officials, etc.).
- c. The division of duties, responsibilities and authorities in the event that there is more than one PPID.
- d. The identity of the official who is the superior of the PPID, and who is responsible for responding to appeals submitted by requesters.

With respect to the management and provision of information, the SOP should at least establish procedures for:

- a. Information management and organisation (data, documents, etc.).
- b. Information management with respect to the list of public information as established by Law 14/2008.
- c. Proactive publication of information (on websites, etc.).
- d. Responding to information requests.
- e. Standards of information provision and mechanisms for managing appeals within the public body.
- f. Reporting on the provision of information services.
- g. Managing disputes and appeals.

3. Public Information List

Article 1(7) of CIC Reg. 1/2010 states: *“The Public Information List is a systematic record which describes all public information under the possession of a public body, not including classified information.”* The Public Information List should be made available at all times or provided upon request, and should be updated regularly. Besides defining the information which should be provided at any time upon request, this list is helpful because it:

- a. Facilitates the disclosure of information by acting as a guide to the information possessed by the public authority.
- b. Facilitates the requesting process by allowing people to browse what information is available and in what format.

Template for a Public Information List:

No.	Summary of the Content	Official/Unit that Holds the Information	Official who is Responsible for the Information	Origin of the Information (time and location)	Available Formats	Retention Period

4. Information Desk

Article 1(6) of CIC Reg. 1/2010 states that, *“The role of the Information Desk is to respond to public information requests and perform various other tasks aimed at facilitating access to public information.”* The Information Desk is run by the PPID. The main function of the Information Desk is to act as a service point for requesters of public information, providing a permanent contact point for the public.

The Information Desk should not be understood in terms of its physical description (a desk). Rather, it should be understood according to its function, which is to serve as a fixed point of access and service area for requesters. Establishing this desk is a key aspect of proper implementation of a public body’s openness obligations.

The Information Desk’s function can be understood in line with CIC Reg. 1/2010, which states that they are to:

- a. Provide access to the Public Information List
- b. Provide access to public information request forms.
- c. Provide access to written notification forms.
- d. Provide access to declaration of appeal forms.
- e. Provide access to the Registrar of Appeals.
- f. Provide other relevant infrastructure to support access to information.

5. Website

A public body's website is one of the most effective outlets for disseminating information, since it is available easily and for free, as well as worldwide and around the clock. Websites should be used for proactive publication of information, and should be updated as often as possible. Some public bodies allow for information requests to be filed online or via email. This is a good practice, but public bodies should supplement electronic requesting procedures with a physical access point. The same is true of proactive disclosure, which should be carried out offline in addition to being put on the website.

6. Reporting Requirements

Articles 4(h) and 36 of CIC Reg. 1/2010 require public bodies to file reports on steps taken to fulfil their disclosure obligations. These reports should be completed annually, within three months of the end of the budget year, and should be made available to anyone upon request. They should also be delivered to the Information Commission. They should include the following information:

Category of Information	Specifics
1. General description of the disclosure policy	<ul style="list-style-type: none"> Regulations, decrees and instructions of the agency's head; letters of order or circulars and policy statements related to disclosure.
2. General description of implementation progress	<ul style="list-style-type: none"> Details of infrastructure that has been set up. Officials that have been delegated responsibilities under the law, and their qualifications. Relevant budget details relating to implementation of the law.
3. Details of requests for information that have been received	<ul style="list-style-type: none"> The number of information requests received. Timelines of responses to each request. Public information disclosed, in whole or in part, in response to each request. Number of requests refused, with specific reasons why.
4. Dispute resolution	<ul style="list-style-type: none"> Number of appeals filed. Agency responses to each appeal. Number of appeals forwarded to the Information Commission. Number of judicial appeals. Court verdicts and their implementation within the agency.
5. Internal and external barriers to disclosure	<ul style="list-style-type: none"> Description of any barriers or problems faced by the agency in fulfilling their disclosure obligations.
6. Recommendation and plans for improvement	<ul style="list-style-type: none"> Any steps the public body plans to take to improve future compliance.

There is no single correct format for this report, as long as the necessary information is provided.

The functions of the report are:

- a. To inform the public about the degree of compliance within the public body.
- b. To create a level of accountability for the strengths and weaknesses of implementation within the public body.
- c. To increase public trust in the public body, and enhance perceptions of openness.
- d. To enable each public body to take stock of their own progress and problems with implementation, identifying barriers and areas in need of improvement.
- e. To facilitate effective oversight of the Information Commissions by allowing them to obtain an accurate picture of the overall state of compliance within their jurisdiction.

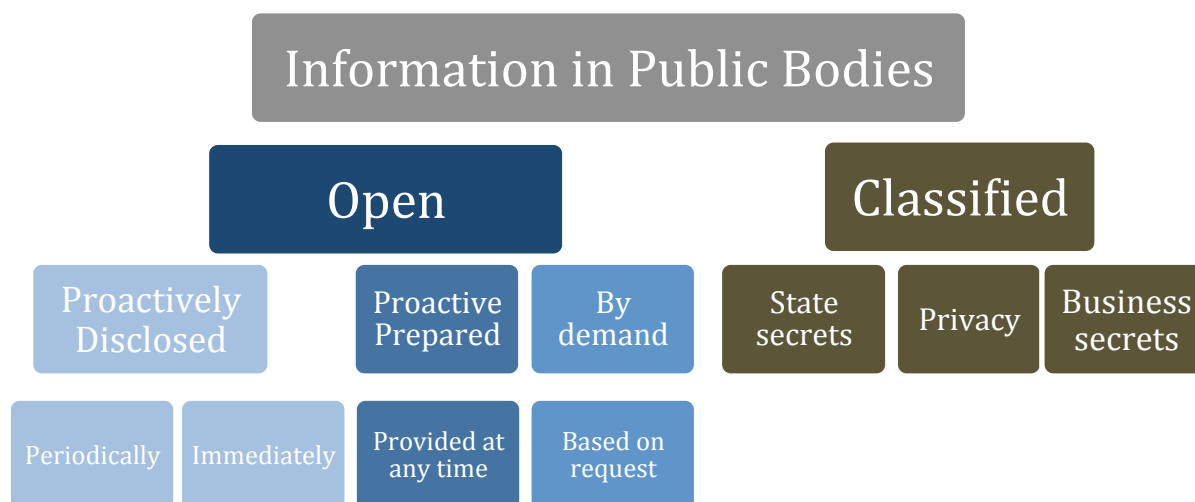
Session 4: Categorising Public Information

Considering the huge amount of information possessed by some public bodies, documentation and information management become very important matters. In providing public information services, it is important for public bodies to manage documents in a clear and consistent manner, and have clear guidelines regarding the openness of that information, as well as the means of provision and publication. The categorisation of public information is thus a critical element of transparency in public bodies.

Law 14/2008 categorises public information in the following ways:

1. Type 1: Information which shall be provided and published periodically.
2. Type 2: Public information which shall be published immediately.
3. Type 3: Public information which shall be provided at any time.
4. Type 4: Public information which is classified (under an exception).
5. Type 5: Public information to be supplied upon request pursuant to Law 14/2008. This category is not stated explicitly, but is mentioned in Article 52.

Simplifying the categories above, public information can be organised into three primary categories: information which shall be published (periodically or immediately), provided upon request and classified. The Central Information Commission provides a brief overview of public information categorisation as represented below:



- Proactively disclosed: periodically & immediately published information
- Proactively prepared: ready to be provided at any time upon request
- By demand: Based on request – information not contained within the other categories.

- Article 6 UU KIP
- Article 17 UU KIP

Source: Alamsyah Saragih, Pengecualian Informasi di Badan Publik Negara

1. Public Information which shall be provided and published periodically

Definition:

Information which shall be published proactively and updated periodically, every 6 months.

Guidelines for provision and publication:

1. The official website of the public body is a good means of distribution.
2. Publicly accessible communication boards are another good means of distribution.
3. The information should be distributed using simple language, in both Indonesian and other local dialects where appropriate, that is easy to understand.
4. The information should be distributed in ways that facilitate access by people with disabilities.

Article 9 of Law 14/2008 and CIC Reg. 1/2010 list in detail the kinds of information that fall under this category:

- a. Information regarding the profile of the public body:
 1. Information regarding the office of the public body, including its full address, the territorial scope of its activity, its aims and objectives, its duties and functions, and the offices/units under its control.
 2. Information regarding organisational structure, general descriptions of each working unit and brief profiles of each official.
 3. Reports regarding public officials' assets for those who are obliged to disclose this. The reports should have been examined, verified and sent by the Corruption Eradication Commission to the public bodies for publication.
- b. Summary of current programmes and/or activities within the scope of the public body, including:
 1. Name of the program/activity.
 2. Person in charge, program/activity implementer and a phone number and/or address to contact them.
 3. Targets and/or achievements of the program/activity.
 4. Timeline of the program/activity.
 5. Budget of the program/activity, including sources and amounts.
 6. Important agendas related to performance of the program/activity.
 7. Other specific information related directly to people's rights.
 8. Information regarding recruitment of prospective employees and/or officers.
 9. Information regarding admission of prospective students into a public agency that provides or organises educational activities for the public.
- c. Narrative summaries of the public body's performance, including activities that are currently being implemented as well as those that have already taken place, and their achievements to date.
- d. Summary of financial reports, including:

1. Plans and reports on budget realisation.
 2. Balance sheets.
 3. Reports on cash-flow and notes on financial reports prepared according to accounting standards.
 4. Lists of assets and investments.
- e. Summary of reports regarding access to public information, consisting of:
1. The number of requests for information received.
 2. Response times.
 3. Number of public information requests granted, whether wholly or in part, and the number of requests refused.
 4. Grounds for refusal.
- f. Information regarding regulations, decrees and/or policies which are binding and/or have an impact on the public and are issued by the public body:
1. List of plans for and the status of the making of regulations, decrees and/or policies which are ongoing.
 2. List of regulations, decrees and/or policies that have been passed or enacted.
- g. Information on the right to and procedures for obtaining public information, as well as procedures for internal appeals and processes for dispute settlement and related contact information.
- h. Information on the procedures for making complaints of abuse of authority or violations by officials of the public body or any other party who obtains permits or contracts of work from the public body.
- i. Information regarding announcements of goods and services procurements pursuant to relevant laws.
- j. Information on early warning and evacuation procedures in cases of emergency, in every public body office.

Examples of information published periodically on the official websites of public bodies at the local level:

Provincial Government of West Java (The best periodic information publisher: KIP 2012)	Government of Gorontalo City (One of best publishers of budget information)
<ul style="list-style-type: none"> - Profile of the province, including general profile, vision and mission, contact points, population, logo and motto, officials, art and culture, map of the province, village data, province's achievement, history of landmarks and province's management. 	<ul style="list-style-type: none"> - Profile of public body, including vision and mission, profile of officials, logo and legal products (local regulations and mayoral regulations), contact points. - General description of the city. - News related to activities of the city

<ul style="list-style-type: none"> - General description of the regencies and cities, including contact points. - Information regarding activities and performance of local government, including information on bureaucratic reform, provincial agenda, auctions, credit facilities for the poor, etc. - Overview of sectors: health, social, education, etc. - Organisation of the government: organs of provincial government, public officials, official emails of local governmental units. - Information about the budget, including summary of RKA (budget work plan), DPA (Implementation document of the budget), budget realisation, opinions regarding financial reports. - Available public services. - Statistics of the province. 	<p>government.</p> <ul style="list-style-type: none"> - Information on the budget (including RKA and DPA), monthly expenditures and utilisation of the budget.
--	---

Another important matter to be considered in the fulfilment of periodically published information is the medium of publication. The Internet is an effective medium, and is a key innovation being promoted by the Open Government Partnership. The number of Internet users has reached 24.23% of Indonesia's total population and continues to rise.

However, given that the majority of Indonesians still do not have access to the Internet, or the ability to utilise it, it is important to compliment this with a more conventional medium of publication that is within reach of everyone. This is important to meet the criteria of using a "means of publication so the information is easily accessible by the people". Some examples of media that can be utilised by government in delivering periodically published information are:

- Communication boards in the public body's office.
- Posters.
- Leaflets.
- Printed mass media.
- Radio/television.

Simplification of the technical language of certain documents is another challenge for public bodies in delivering information to the people. Documents can often be written in highly technical language, making it difficult for many people to understand. Public bodies should make efforts to overcome this problem:

- One example is to publish a "citizen's budget" alongside the original budget document. A "citizen's budget" is a summary of budget items which relate directly to the public, along with a brief narration to help laypeople understand the document more easily.
- Another area where attention is needed is in the EIA document, which contains hundreds of pages of environmental information written in technical, scientific language. Public bodies should extract the most important information contained in this document and translate it into non-technical language.

Every year, the Information Commission conducts studies on the compliance of public bodies with the requirement to periodically publish information on their official websites. The annual results are published each year on International Right to Know Day, 28 September. Some examples of public bodies which have scored well on compliance (for 2012) are:

- At the national level: the Ministry of Industry (scored 95.31)
<http://www.kemenperin.go.id>
- At the provincial level: West Java (scored 75.25)
<http://www.jabarprov.go.id>

2. Information which shall be published immediately

Definition:

Information regarding matters that could endanger public lives or public interests shall be proactively disclosed without delay, as soon as it becomes available. This means that when the public body possesses information that threatens public safety, it must be disclosed immediately to the public in order to give people warning of danger or emergencies, thereby minimising the negative consequences arising from such situations.

Guidelines for information which shall be published immediately:

1. Disclose the information to the public immediately through suitable media in language that is easy to understand.
2. Publish first to people who are potential victims or at risk.
3. Publish information regarding steps to be taken to mitigate harm, actions to be taken if specific dangers occur, procedures and points of evacuation, means of getting aid, etc.
4. Use the medium best suited to quickly reaching as many people as possible (e.g. loudspeaker, radio, television, etc.).

The information that falls under this category is regulated by Article 10 of Law 14/2008 and Article 12 of CIC Reg. 1/2010, including:

- a. Information on natural disasters, such as drought, forest fires, crop pests and diseases, epidemics, outbreaks, extraordinary dangers and space-related dangers.
- b. Information on non-natural disasters, such as industrial or technological failures, industrial hazards, nuclear explosions, environmental pollution and space-related threats.
- c. Social threats, such as social unrest, social conflict between groups or between communities, and terrorist activities.
- d. Types of potentially infectious diseases, as well as the distribution and areas known as the sources of such diseases.
- e. Information regarding poisonous contamination of food products.
- f. Information regarding the disruption of public utilities.

Because of the potential threat to public health and safety, public bodies' obligation to ensure this information reaches the impacted population is very important. The following measures will help public bodies deliver this type of information accurately and effectively:

- Develop an effective mechanism for delivering emergency information. This mechanism should be quick and easy to implement, and capable of reaching large numbers of people on short notice.
- Ensure relevant working units understand their role in this mechanism.
- Identify what impacted populations could potentially need to know about particular types of information first. For example, in the event of a tsunami alert, there would be a particularly pressing need for the information to reach low-lying or coastal areas.

Sometimes information that is not explicitly provided in Law 14/2008 or CIC Reg. 1/2010 should also be included in this category based on a logical interpretation of the listed categories, such as:

- Information concerning plans to turn off electricity in certain areas such as industrial locations, hospitals, etc. that could be vulnerable to a loss of power.
- Information about potentially major disruptions, such as a proposal to limit traffic on main streets to odd and even numbered-license plate numbers on different days.

3. Information that shall be provided at all times

Definition:

Information that shall be provided by a public body to any requester at the time of request.

Guidelines for provision:

1. This type of information shall be provided whenever there is a request for it. It is not information which must be proactively disclosed, but it is information which is approved for disclosure upon request.
2. The information that falls under this category can be accessed at any time and can be given at the time of request or within 10 days, though that timeline is extendable by a further 7 days if necessary.
3. However, it is possible for the public body to be more proactive in publishing this information on its official website or by other appropriate means, particularly if the information is frequently requested. Proactive publication will decrease the burden on public bodies in responding to separate requests.

The information that falls under this category is regulated by Article 11 of Law 14/2008 and Article 13 of CIC Reg. 1/2010, including:

- a. A list of public information that must include:
 1. The amount of information.
 2. A summary of the information.
 3. The official or unit(s) that possess the information.
 4. The official who is responsible for making/enacting the information.
 5. Time and place of origin of the information.
 6. The form in which the information is available.
 7. The retention period and archive policies.
- b. Information regarding regulations, decrees and/or policies of the public body:

1. Supporting documents such as academic drafts, studies or considerations that form the basis of the issuance of regulations, decisions or policies.
 2. Contributions from various parties regarding regulations, decisions or policies.
 3. Minutes of the process of deliberation or regulation or policy making.
 4. Drafts of regulations, decisions, or policies.
 5. Status of draft regulations, decisions or policies.
 6. Regulations, decisions or policies that have been issued.
- c. All complete information that shall be published regularly.
- d. Information regarding organisation, administration, employment and finance:
1. Guidance on organisation, administration, personnel and finance management.
 2. Complete profiles of the head and employees which consists of their names, career histories, educational backgrounds, awards and any major sanctions.
 3. Budget of public bodies, in general as well as in specific technical units, and reports on finance.
 4. Statistical data that is made and managed by the public bodies.
- e. Letters of agreement with third parties, including supporting documents.
- f. Correspondence between the head or officials of public bodies in performing their main duties and functions.
- g. Requirements for permits, issued permits or supporting documents and reports on permits given.
- h. Data on treasury or inventory.
- i. Strategic plans and work plans of the public body.
- j. Work agendas of unit chairmen.
- k. Information regarding public information services performed, infrastructure for public information services and its condition, human resources devoted to public information service and their qualifications, budget for public information service and its utilisation reports.
- l. Number, type and general descriptions of violations found in internal memos, along with reports and actions taken in response.
- m. Number, type and general descriptions of violations reported by society and the actions taken.
- n. List of results of research conducted.

- o. Other information which has been declared open to the public based on an internal appeal and/or dispute settlement mechanism, as provided for by Article 11 of Law 14/2008.
- p. Information regarding the standard for announcing information as provided for in Article 12 for public bodies that give permits and/or conduct work agreements with third parties whose activities potentially endanger public livelihood and interests.
- q. Information and policies delivered by public officials in public meetings.

Archive management is very important in this category as public bodies hold many documents, and this impacts the ability of public bodies to provide information when it is requested. Some public bodies identify information that is commonly requested by the public and upload these documents to their official website, or provide it at the information desk. This makes the information service more efficient by reducing the time required to respond to requests.

4. Classified Information

Definition:

Information that is classified by nature and cannot be accessed by the public according to Article 17 of Law 14/2008. This classified information is determined by the PPID after conducting a consequential harm test and a public interest test.

Guidelines:

1. In principle, classified information must not be accessed by the public, provided to the public or published.
2. In considering whether information is classified, the public body should conduct a consequential harm test and a public interest test to determine whether disclosure would negatively impact a protected interest, and whether that negative impact outweighs the benefits of disclosure.
3. Regardless of classification, this information must still be provided to requesters upon a decision by the Information Commission or a court.

Article 17 of Law 14/2008 states that every public body is obliged to grant a requester access to any information except:

- a. Information the disclosure of which would obstruct the law enforcement process.
- b. Information the disclosure of which would breach an intellectual property right or undermine healthy business competition.
- c. Information the disclosure of which would be hazardous to the defence and security of the State.
- d. Information the disclosure of which would reveal the natural wealth of Indonesia.
- e. Information the disclosure of which would be harmful to national economic security.
- f. Information the disclosure of which would be harmful to diplomatic relations.
- g. Information the disclosure of which would reveal the contents of an authentic personal deed or the last will or testament of an individual.

- h. Information the disclosure of which would harm personal privacy.
- i. Memorandum or letters between public bodies which, according to their nature, are confidential, except as otherwise decided by the Information Commission or a court.
- j. Information the disclosure of which is prohibited by another law.

The systems of classification are elaborated upon further in Chapter 6.

5. Public Information to be Supplied on the Basis of a Request

Definition:

This includes all information not covered by the other categories. As Article 2 of Law 14/2008 states: “public information shall in nature be open and accessible to public information users”. In other words, as long as information is not classified, it should be provided upon request.

Guidelines:

The specific guidelines for responding to information requests are spelled out in more detail in Chapter 5. It is worth noting, however, that it can be beneficial to publish information proactively in this category, particularly if it is the subject of frequent access requests. This will enhance the overall openness of the public body, and reduce the burden of responding to information requests. The law’s requirements for openness are merely a baseline, and there is never harm in surpassing them.

Session 5: Processing Requests

Governing Principle of Public Information Service

Article 2(3) of Law 14/2008 states that public information service should be fast, inexpensive and simple. Fast means that public information requests should be responded to as soon as possible, without delay and definitely within the time limit provided by law of 10 days, extendable by an additional 7 days if necessary. The principle of inexpensiveness means that the cost of requesting public information should be limited to the direct expenses actually incurred by the public body in responding to the request. The principle of simplicity means that access to information procedures should be clear and straightforward, including the language of the application, the way in which requests may be made, the location of the service point, the location of the official in charge and other procedures for service. In short, the procedural requirements of the application should not act as a barrier to obtaining information, including for requesters with special needs.

Procedure for Responding to Requests

Law 14/2008 and CIC Reg. 1/2010 establish two systems for accessing public information: proactive and reactive. Proactive procedures involve publication of information on such media as websites, communication boards, leaflets or other relevant means. Reactive procedures are carried out in response to a specific request. These procedures are governed by Article 22 of Law 14/2008 and Articles 22-28 of CIC Reg. 1/2010.

Before discussing how to respond to access requests, it is important to understand some underlying concepts:

1. Requirements of the Requester and of the Respondent

Article 1(12) of Law 14/2008 states *“Public information requester means an Indonesian citizen and/or Indonesian legal entity filing a public information request as stipulated in this Act”* [official translation]. From this definition, it is clear that the requester must be an Indonesian citizen. Proof of this status can include:

- For an individual (natural person), a copy of their identifying documents (citizenship card/driver’s license/passport).
- For a legal body, articles of association that are registered and validated by the Ministry of Law and Human Rights.

It is important to note that this requirement should not be used as an unnecessary barrier. In other words, public bodies should not require multiple forms of identification, or a specific form of identification that not all Indonesians will have, such as a passport.

The respondent can be any public body, as defined by, Article 1(3) of Law 14/2008 (see Chapter 2).

2. Cost of Access to Information Requests

As noted above, public bodies are permitted to charge for providing information. However, this is limited to costs actually incurred: photocopying or duplication expenses, delivery of documents and expenses associated with arranging for permission from third parties. The amount charged should be stipulated by a letter of decree from the head of the public body and should be registered as non-tax State revenues.

Example of a stipulation:

Letter of Decree of the Head of _____ No: _____ stipulates the cost of duplication in the amount of Rp _____/page and the cost of sending the information, in the amount of Rp _____.

Charges should be reasonable, and should roughly correspond with prices for the same or equivalent services in the private sector, such as at a photocopying shop.

3. The Forms used in Access to Information Requests

CIC Reg. 1/2010 provides for the following forms to be provided by public bodies to simplify the requesting process:

- a. *Information Request Form.* This document contains spaces for the identity of the public information requester and to describe the information requested. The PPID should assist the requester in filling out the form properly:
 - Identity of the requester, whether the requester is a citizen of Indonesia or not. The PPID can ask the information requester to demonstrate this. If the requester is an individual, it can be proven with an identity card, driver's license or passport. A legal body should provide their articles of association, and the PPID should ensure that the person making the request is authorised to act on behalf of the legal body.
 - Information requested: this should be described as clearly and comprehensively as possible. For example: if a financial report is requested, make sure to specify the year(s). Clarifying and confirming the information early on will lead to a more efficient response.
 - Means of obtaining the information: whether the requester wishes to obtain the information by seeing the original at its place of origin, or by obtaining a copy of the information. If the requester wishes to obtain a copy of the information, the PPID should notify them that the cost of duplication will be borne by the requester.
 - Means of delivery of the response: whether the requester will return in person, or requests delivery through other means (email, post, etc.). This is related to whether the information is requested in a hardcopy form or electronically.
- b. *Public Information Request Register*

This book is a systematic record of information requests, including data from the number of requests filed to the number of requests granted or refused. All requests should be registered here as soon as they are received by the public body.

c. *Written Notification Form*

This form is used to notify requesters regarding the existence of requested information, whether or not the requested information can be disclosed, the cost of providing the information and the estimated time. If the requested information includes some exempt information, this should be explained, whether it leads to a refusal or to information being blacked out. Important matters to be highlighted include:

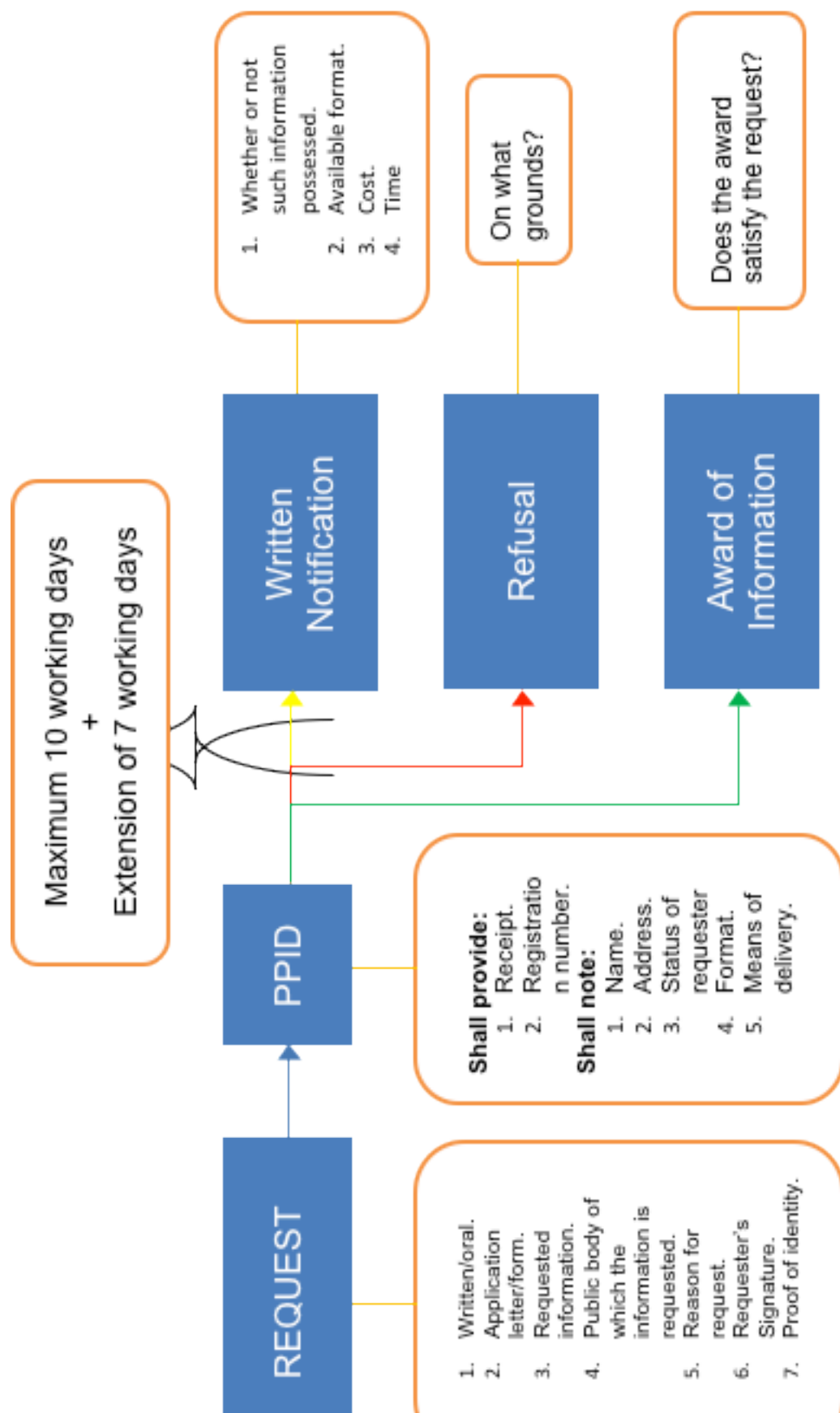
- Possession of public information: if the public body does not possess the information but another public body does, it should mention this and note the location.
- Available physical form: whether the information is available as a hardcopy and/or electronically.
- Cost: if there are costs arising from responding to the request, the public body should notify the requester of this, with a specific quantum.
- If the request cannot be fulfilled because the public body does not have the information or has not recorded the information, this should be indicated.

d. *Refusal form*

This form is used in the event that requested information is refused in accordance with Article 17 of Law 14/2008. In such instances, the public body should include a full explanation as to why the information is classified, and inform the requester of their right to lodge an appeal.

Processing Requests

The proper framework for responding to an access request can be understood as follows:



Explanation

	Phase	Details	Timeline
1.	Making an Information Request	1. Information requests can be made orally or in writing, directly or indirectly: <ul style="list-style-type: none"> - If the information request is made in-person and orally, the PPID should record the information request on an information request form and ensure the request is complete. - If the request is made in-person in writing, the PPID should ensure the request is complete. - If the request is made by telephone, the PPID shall record the request in the information request form and ensure the request is complete. - If the request is made by e-mail or mail, the PPID should ensure the request is complete and contact the requester immediately if it is not. 	The 10 day clock begins to run as soon as the request is received.
		2. According to Annex III of CIC Reg. 1/2010, in order to be complete a request should include: <ul style="list-style-type: none"> - Identity of the requester (name, address, contact info, etc.). - Details of the requested information. - Objective of the request. - Preferred format. - Means of delivering the information. 	
		3. Note the information request in the public information request register. The PPID should provide a request number in the receipt of information request according to the format of the Registrar (Annex IV of CIC Reg. 1/2010).	This should be done immediately.
		4. Provide a receipt of the request to the requester. <ul style="list-style-type: none"> - If the request is made in person, the receipt may be given over directly. - If the request is made remotely, the receipt should be sent to the requester in the same way as the request was made, insofar as this is possible. 	This should be done immediately.
2.	Processing an Information Request	1. Assess whether the public body holds information which corresponds to the request. This involves assessing what sort of information the requester is seeking and then finding out what information the	All of these steps must be completed within the 10 day period.

		public body holds that is responsive to the request.	
		<p>2. The PPID will need to consult with other relevant officials once he has decided what the request is about, to see if they hold information that is responsive to the request.</p> <ul style="list-style-type: none"> - To do this, it will be necessary to set up some sort of communication system internally to the public body which enables the PPID to pass on the request to relevant parties. 	
		<p>3. Once the information has been located, there are the further steps of deciding whether or not it is covered by the regime of exceptions (see next chapter) and of determining whether it can be provided in the form asked for by the requesters (and, if not, what form it should be given in.</p>	
3.	Responding to the information request	<p>There are the following possible responses:</p> <ol style="list-style-type: none"> 1. The public body provides the requested information. In this case, the written notification shall indicate: <ul style="list-style-type: none"> - The format of the public information. - Cost and means of payment to obtain the requested Public Information. - Time needed to provide the requested public information. 2. The public body does not hold the information. In this case, the written notification shall indicate: <ul style="list-style-type: none"> - That the public body does not hold the information. - Which public body possesses the requested information, in the event that the body know this. 3. Public body refuses to give the requested information, in whole or in part. Refusal to provide classified information shall be done in accordance with Article 17 of Law 14/2008 (see the next chapter). In this case, the written notification shall indicate: <ul style="list-style-type: none"> - The exact grounds for the refusal of the information. - An explanation of the blacking out of requested information, if any. - The right of the requester to lodge an appeal against this decision. 	Within 10 days.
4.	Time extension on information provision	A time extension may be authorised in the event that a certain public body needs additional time to respond to an information	Sent within 10 days; allows an extra 7 days.

		<p>request. A time extension is delivered through a letter of written notification within 10 days of the acceptance of the information request. Time extensions may be authorised in the following events:</p> <ul style="list-style-type: none"> - Public bodies need more time to decide whether or not the information falls under an exception, including because of the need to consult with other parties. - The information is possessed by the public body, but more time is needed to process it because of the complexity of the request. - Related public bodies partially possess the requested information. 	
--	--	---	--

Session 6: Applying Exceptions

1. Principles for Applying Exceptions

In principle, Law 14/2008 is meant to guarantee access to as much information as possible. However, this does not mean access to all information, as there remain exceptions to disclosure, where the information must be withheld to protect an overriding public interest. The general approach towards exceptions to disclosure can be summed up with five basic principles:

1. All public information is presumptively open by default and accessible to anyone (*maximum access*).
2. Exceptions to disclosure should be interpreted narrowly (*limited exceptions*).
3. Exceptions should be interpreted through a consequential harm test, which requires disclosure of the information unless this would create a tangible harm.
4. The public interest test whereby even if disclosure would cause harm to a protected interest, it should still be disclosed unless that harm outweighs the public interest in disclosure.
5. Sunshine clauses, whereby exempted information is released after a particular period, for example of twenty years.

2. The Consequential Harm Test

The consequential harm test is a requirement that any exception to disclosure must be based on a demonstrated risk of specific harm to a protected interest. This is spelled out in Article 2(4) of Law 14/2008. Law 14/2008 also contains an exclusive list of protected interests which may be protected against harm through withholding of information.

These exceptions should be interpreted purposively according to their overall intent. It may be necessary to engage expert opinion to understand fully the consequences of disclosure.

Who is Responsible for Applying the Consequential Harm Test?

Article 19 of Law 14/2008 states:

“Information and Documentation Management Officer [the PPID] in each public body shall carry out the test of consequences as referred to in Article 17, in meticulous and cautious manner prior to declaring a certain public information as exempted from being accessed by any Person.” [official translation]

Further, Article 45(1) of Law 14/2008 states that

“Public Bodies shall prove matters supporting its opinion if it declares unable to provide information due to the reasons as referred to in Article 17 and Article 35 paragraph (1) letter a)” [official translation]

These provisions indicate that the PPID is responsible for applying the consequential harm test.

Categories of Harm

Law 14/2008 contains an exclusive list of protected interest that can justify exceptions:

- a. Information that would harm the law enforcement process, namely information that would:
 1. Impede the investigation of criminal activities.
 2. Reveal the identity of an informant, witness, and/or victim of a criminal act.
 3. Reveal criminal intelligence data and plans related to the prevention and enforcement of any form of transnational crime.
 4. Endanger the life and safety of law enforcement personnel and their families.
 5. Endanger the equipment, infrastructure and facilities of law enforcement and law enforcement personnel.
- b. Harm intellectual property rights or lead to unfair competition.
- c. Endanger the security and safety of the State, namely:
 1. Information regarding strategies, intelligence, operations, tactics and techniques related to the defence and security of the State, including the planning, implementation and cancellation or evaluation of programmes dealing with domestic or foreign threats.
 2. Documents containing strategies, intelligence, operations, tactics and techniques related to the defence and security of the State, including their planning, implementation and cancellation or evaluation.
 3. The amount, composition, disposition or readiness the security forces, including deployment plans.
 4. Pictures and data depicting military bases and/or installations.
 5. Data containing an estimation of the State's military ability, limited to information that might endanger the sovereignty of the Republic of Indonesia and/or data related to military cooperation with another State that is classified by agreement with that State.
 6. Encryption systems.
 7. State intelligence systems.
- d. Reveal the natural resources of Indonesia.
- e. Information that would cause economic harm to Indonesia, namely:
 1. Initial plans to sell or purchase national or foreign currency, shares or assets.
 2. Exchange rate adjustments, interest rate adjustments or financial operational models.
 3. Adjustments of bank credit rates, government loans, tax reforms, tariffs or any other State or local revenues.
 4. Plans to buy or sell land or property.
 5. Foreign investment plans.
 6. The processes for supervising banks, insurance companies or other financial institutions.

7. Matters related to the printing of currency.
- f. Harm foreign relations, including information regarding:
 1. The position, bargaining ability and strategy of the State in relation to an international negotiation.
 2. Interstate diplomatic correspondence.
 3. Communications and coding systems that are used in connection with international relation.
 4. The protection of Indonesia's strategic infrastructure in another country.
 - g. Reveal the personal content of an authentic deed or last will and testament.
 - h. Reveal personal secrets, including:
 1. Family history and conditions.
 2. Physical and mental health and history.
 3. Financial information, including assets, income and bank accounts of a person.
 4. Evaluation results related to the capability, intellectual capacity and abilities of a person.
 5. Notes regarding a person's personality which are related to a formal or informal education unit.
 - i. Memorandum or letters within or between public bodies that are secret in nature, except in accordance with the decision of the Information Commission or a court.
 - j. Information classified by other laws.

3. Information Classified by Other Laws

The following laws contain additional classifications:

Law	Classifications
Law no. 10 of 1998 regarding Banking	Reports on the results of bank examinations. Customer lists and their account information.
Law no. 5 of 1999 regarding the Prohibition of Monopolies and Unhealthy Business Competition	The identity of anyone who reports criminal activity or violations of Law no. 5/1999.
Law no. 36 of 1999 regarding Telecommunications	Information which is sent or received by a customer of a telecommunication service through a telecommunication network and/or telecommunication service.
Law no. 30 of 2000 regarding Trade Secrets	Methods of production, methods of processing, or any other technological or business information which has economic value, is not generally known and is kept secret.
Law no. 48 of 2009 regarding the Judiciary	Information regarding judicial deliberations.
Law no. 29 of 2004 regarding Medical Practice	Medical records.

Sample procedure for determining whether information falls under an exception:

Activity		Key Components
1.	Locate the requested information.	1. Carefully examine the content of the request. 2. Identify the documents responding to the request. 3. Identify the working units that hold the information.
2.	Understand the documents containing the requested information.	4. Do the documents have any information which falls within the scope of the regime of exceptions?
3.	Study the likely consequences of disclosure.	5. Identify any specific harm that could result from the disclosure (if necessary, consult an expert). 6. Does the potential harm comport with the aim of Article 17 of Law 14/2008?
4.	Decide whether an exception should be applied, subject to the public interest override.	7. Identify the specific harm and adopt a legal position based on that harm. 8. Once this decision is reached the PPID can move on to apply the public interest test.

4. The Public Interest Test

Understand the test:

Information which has been found likely to cause a specific harm to a protected interest should still be disclosed if, according to the public interest test, this harm is outweighed by the public interest in disclosure.

Who is Responsible for Conducting the Public Interest Test?

Law 14/2008 does not assign specific responsibility for carrying out the public interest test, but it is reasonably clear from the context that it should be undertaken by the PPID. Indeed, the PPID should do this at the same time as he or she applies the consequential harm test.

Relevant Considerations

There are several major benefits to information disclosure that should be considered in applying the public interest test:

1. The impact of the disclosure on public participation in the decision-making process. Information that deals with sensitive topics can be highly illuminating. It is important to consider whether the disclosure would contribute to public discourse.
2. If the information contains details about a threat to life, health or safety, it will usually be in the public interest to disclose it.
3. If the information contains details about how the public body interacts with the public.
4. If the information illuminates corruption or abuses of power, it will usually be in the public interest to disclose it.

5. If the information illuminates human rights abuses or illegal conduct, it will usually be in the public interest to disclose it.
6. If the information will promote greater accountability of public bodies.

It is also useful to note several impacts that should not be considered “harms” in applying the public interest test:

Relevant	Irrelevant
Accountability of public bodies and their management of public resources.	The potential for embarrassment within public bodies.
The health and security of the public.	Any potential that the disclosure will generate mistrust of officials.
The overall interests of justice.	The potential for the information to mislead recipients.
Potential value of the information to an ongoing or potential legal process.	

5. Obscuring or Redacting Information

Objective:

Where the consequential harm and public interest tests lead to the conclusion that information under request should be withheld, the PPID should consider whether a document can be released in a redacted form. If it is possible to redact the sensitive information while still releasing the rest of the document, this should be done rather than refusing the request outright. This provides the dual advantages of providing the public with as much information as possible, while still protecting material classified under the law.

Information that may be Redacted:

Decisions to redact information should be taken in accordance with the consequential harm test and the public interest test. In other words, redacted information must be likely to harm a protected interest, and that harm must be greater than the public interest in disclosure.

As an example of how this could be applied, imagine a document such as a budget that contained a significant amount of harmless information but also contained personal details, such as the addresses, employee registration numbers or bank account numbers of certain public officials.

The document as a whole is public, but certain aspects of it should be excluded from disclosure.

How to Redact or Blur Information

In order to redact or blur out information in a document:

- a. The first step is to identify the specific part or parts (words, sentences or paragraphs) that contain classified information. These should be selected in line with the principle of maximum access, limited exceptions.

b. Black out these, and only these, sections:

- For a written document, this can be done with a marker.
- For electronic documents, this can be done by deleting them and replacing the test with a box indicating that information was redacted.

It is important, when redacting information, to make it clear what information has been removed and from where.

Example of Redactions:

The following is an answer sheet for public service selections. Note that the name and personal information of the candidate is blacked out, but the rest of the information remains intact:

The image displays two versions of a public service selection answer sheet. The left version shows a candidate's name and personal information redacted with black boxes. The right version shows the same form with a large black box covering the top section and a red arrow pointing to it with the text "Penghitaman dengan alasan dapat menggunakan" (Blacking out with the reason that it can be used).

SELEKSI PENERIMAAN CALON PEKAWAI NEGERI SIPIL TENAGA STRATEGIS LAINNYA

[NAMA INSTANSI]

Nama Peserta

Instansi yg dilamar

Nomor Peserta

Tgl Lahir

Kode Soal

Dasar Pendidikan untuk melai

Tanda Tangan

JAWABAN

Penghitaman dengan alasan dapat menggunakan

Session 7: Dispute Settlement

Understanding the Definition and Scope of Disputes

Article 1(5) of Law 14/2008 states, “*Public Information Dispute means a dispute between public body and public information user concerning the right to obtain and use information based on legislations.*” [official translation].

Public information disputes relating to the right to obtain public information arise from barriers to access, which may or may not involve requests. These can include:

- a. Refusals based on the application of an exception under Article 17.
- b. Failure to respond to requests.
- c. Responses that fail to satisfy requests.
- d. Partial refusals or the blacking out of information.
- e. Unreasonable charges for delivery or duplication.
- f. Delivery of public information in excess of the mandated time limit.

Disputes can also stem from the failure to fulfil proactive publication requirements, which are an ongoing responsibility for public bodies.

The law also recognises the possibility of disputes related to the use of public information, though practically speaking this is rarely an issue.

Parties to the Dispute

Article 1(6) of CIC Reg. 2/2010 states that the applicant should be an “*Indonesian natural person, group of Indonesian people, or Indonesian legal body who submits an application for public information dispute settlement to the Information Commission*”. This qualification must be combined with the definition in Article 1(5) of Law 14/2008, which means that an applicant must be:

- a. An Indonesian citizen.
- b. A requester of public information who faces an obstacle.
- c. A requester of public information, who files a public information dispute settlement application to the Information Commission.

The respondent in a public information dispute settlement, according to Article 1(7) of CIC Reg. 2/2010, is the public body itself.

The Dispute Resolution Mechanism

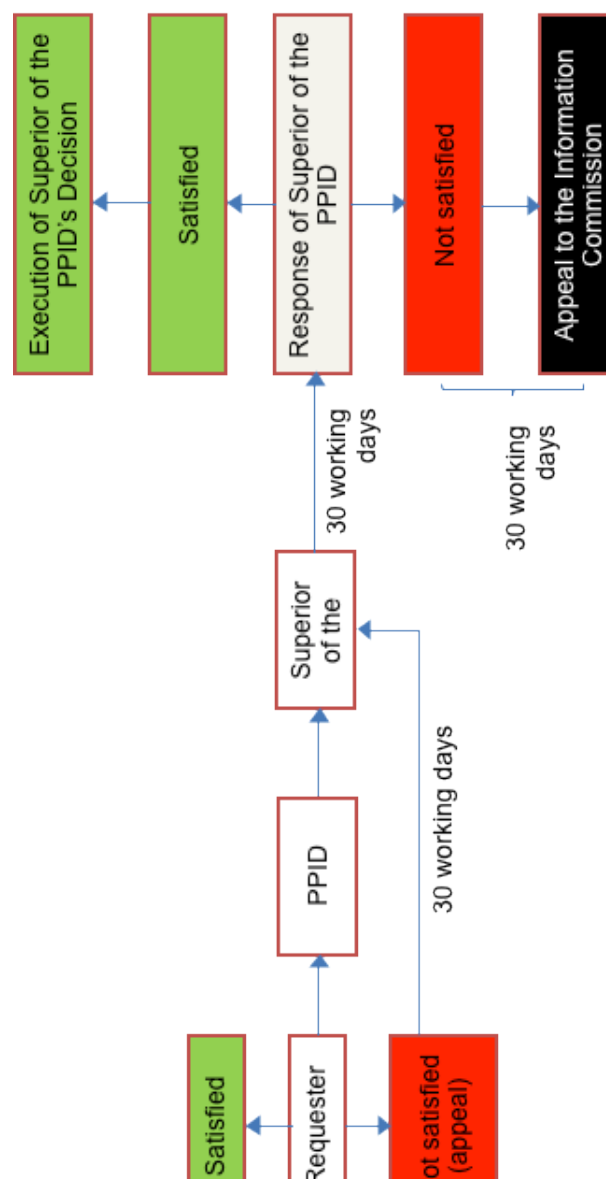
Law 14/2008 categorises the process of dispute settlement into four phases, which are:

1. Internal appeal within the public body.
2. Dispute settlement at the Information Commission.
3. Dispute settlement at the Civil Court or Administrative Court.
4. An appeal to the High Court.

Stage 1: Internal Appeal

The first stage of the settlement is an internal appeal carried out within the public body. According to CIC Reg. 1/2010, the internal appeal can be triggered by any failure of the public body to process a request in accordance with the rules, including:

- The refusal of a public information request.
- Negligence by a public body in fulfilling their proactive publication obligations.
- Failure to respond to a request.
- A response which fails to satisfy a request.
- Unreasonable charges.
- Breach of the mandated time limit.



Explanation of the Flowchart:

1. An appeal can be submitted to the superior of the PPID:

- a. Within a maximum of 30 (thirty) working days after the ground for objection is found as referred to in Article 35(1) of Law 14/2008.
- b. Verbally or in writing (by letter or standard form).

On receiving the appeal, the information official shall ensure that the application contains at minimum the following:

- a. Registration number of the appeal (supplied by the official).
- b. Registration number of the request.
- c. Nature of the request.
- d. Identity of the requester who submitted the appeal.
- e. Identity of attorney (if any) who submitted the appeal.
- f. Ground for appeal.
- g. Status of the public information request.
- h. Time of response to the appeal (by the information officer).
- i. Name and signature of the requester.
- j. Name and signature of the officer who received the application.

Together with the matters above, the officer should:

- a. Record the appeal in the Appeal Registrar as provided in Annex VIII (Format of Appeal Registrar Book) of CIC Reg. 2/2010.
- b. Provide a receipt of the submission of the appeal to the requester.

2. The superior of the PPID is to respond to the appeal within a maximum of thirty working days after the appeal has been received. In their response, the superior of the PPID may: a) grant the appeal and award the requested information or otherwise redress the problem, or b) uphold the decision of the PPID. In the event that the superior of the PPID upholds the decision of the PPID, he or she should provide reasons for their decision. The superior of the PPID should also make sure that their response contains at minimum:

- a. The date of the response.
- b. The response number.
- c. The answer to the question raised by the appeal.
- d. In the event that the appeal is granted, an order of superior to award partially or wholly the requested information or otherwise redress the problem.
- e. A time limit for executing the order.

In responding to the request, the superior of the PPID should conduct a substantive analysis of the complaint as provided by Article 3(1) of Law 14/2008. This should include:

- a. In the event of a refusal grounded in an exception the superior of the PPID should consider the exception, and whether it was appropriately applied in light of the consequential harm test and public interest test.

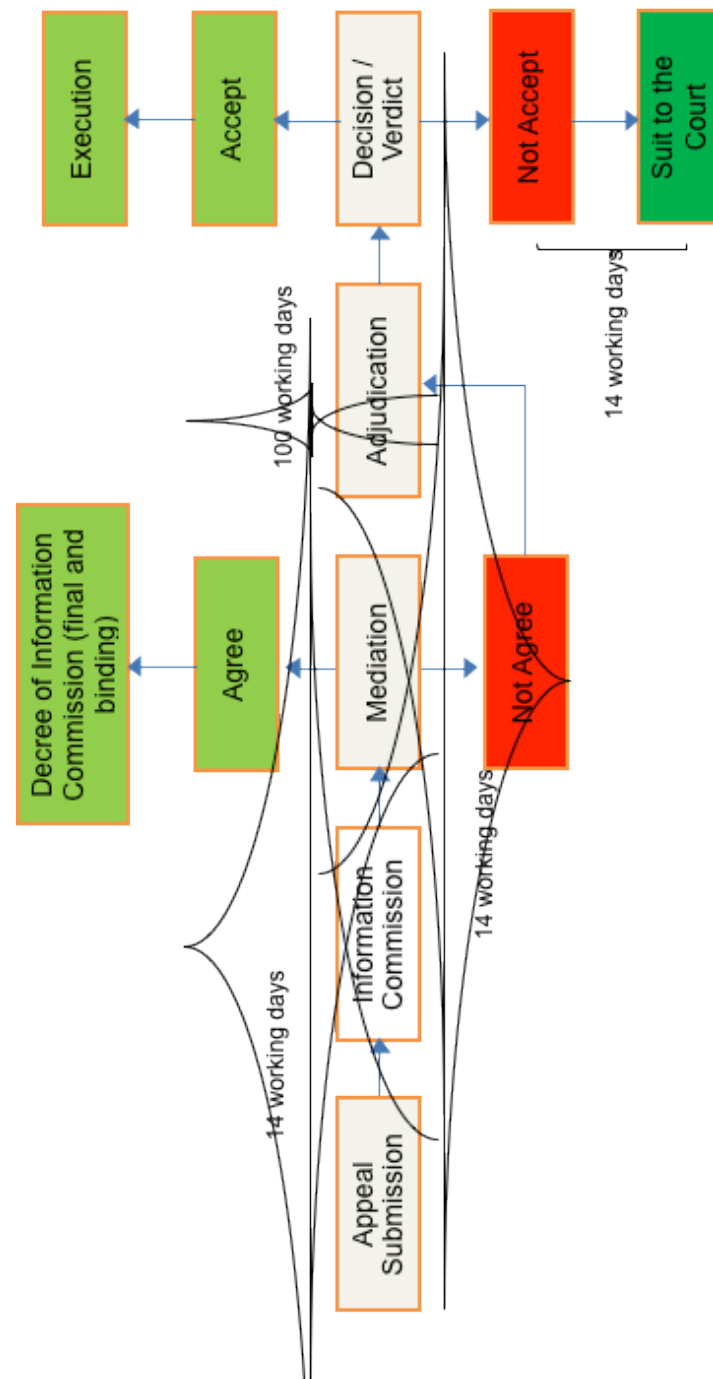
- b. In the event of a failure to periodically publish information the superior of the PPID should check whether all information that is meant to be provided and published on a periodical basis has been uploaded to the official website of the public body, communication board, or other media. If this has not been done, the superior of the PPID should publish the information through available media (i.e. official websites, communication board, leaflets, etc.) immediately.
- c. In the event that the public body has failed to respond the superior of the PPID should order the PPID to respond immediately, and should inform them of the importance of adhering to the prescribed timeline.
- d. In the event that there has been a response to the information request, but that the response did not satisfy the request there are three possibilities: the information given is unclear, the information given is not what was requested, or the information only partially responds to the request. This can happen for the following reasons:
 - A misunderstanding between the requester and the public body regarding the requested information (possibly because the request did not clearly describe the information requested). If this is the case, the public body should seek clarification, and attempt to fulfil the request on those grounds.
 - The public body does not have the requested information. This could relate to problems with archiving or information management. Therefore, the public body should check to ensure that it really does not have the requested information. In the event that the information requested is not under their possession, the superior of the PPID can answer definitively that they do not possess the information. However, in cases where the public body should have the information, it should consider whether it can obtain it and then provide it to the requester. If the information requested does not fall under their authority, the public body can direct the requester regarding which public body possesses the information.
 - The PPID did not treat the request seriously, in which case the superior should make sure the request is redone properly and inform the PPID about the importance of treating requests seriously.
- e. In the event of unreasonable charges or cost the superior of the PPID should consider whether the charges are in line with the applicable standards. They should also consider whether these standards themselves are excessive, and whether they are in line with commercial alternatives.
- f. In the event of a breach of timelines the superior of the PPID should order an immediate response to the request, and should inform the PPID of the importance of adhering to the prescribed timeline

Stage 2: Information Disputes at the Information Commission

If the response of the superior of the PPID does not satisfy the requester, the dispute can be appealed to the Information Commission. Article 3(2) of CIC Reg. 2/2010 states two grounds for dispute settlement by the Information Commission, which are:

- a. If the requester is not satisfied with the response given by the superior of the PPID.

- b. If the requester has not received any response on an appeal that has been submitted to the superior of the PPID within thirty working days of its acceptance.



Explanation of the Diagram

1. A request for dispute settlement submitted to the Information Commission should be made within 14 working days of:

- a. A written response to the appeal from the superior of the PPID received by the requester; or
 - b. The expiration of the thirty working day time limit for the written response from the superior of the PPID.
2. The request should be submitted in writing to the Information Commission, and should include:
 - a. Identity of the Requester.
 - b. Grounds for the dispute.
 - c. Petition to the Information Commission asking for resolution.
 - d. Relevant supporting documents, including:
 - Evidence of identity of the requester (identity card, articles of association, power of attorney, etc.).
 - Evidence that the requester has properly filed their information request (letter or form of information request, written receipt from the public body).
 - Evidence that the requester submitted an appeal to the superior of the PPID (letter of appeal and/or letter of response regarding the appeal from the superior of the PPID).
 - Other relevant evidence.
3. The Information Commission can carry out the dispute resolution process either through mediation or through non-litigation adjudication.

Mediation

Article 1(8) of CIC Reg. 2/2010 states, “*Mediation is a public information dispute settlement between the parties with the facilitation of a mediator from the Information Commission*”. Article 3(3) states that mediation should only be conducted on grounds provided for in Article 35(1)(b) – (g) of Law 14/2008, which are:

- Information was not published proactively.
- There was no response to the request.
- The response does not satisfy the request.
- An unreasonably high fee is charged.
- The request is not processed within the time limits.

Note that this does not include cases where requests were refused on the basis of the regime of exceptions.

Mediation is carried out according to generally accepted principles of mediation. The process should be voluntary in nature and private, unless otherwise agreed by the parties. The mediation process should be completed within a maximum of fourteen working days. There are two possible end results:

- a. The mediation is successful, resulting in an agreement between the parties that will be documented in a settlement agreement and confirmed by the Information Commission in the mediation verdict.
- b. The mediation fails, caused by: (1) either party or both parties stating in writing that the mediation process failed; (2) either party or both parties withdrawing from the

mediation; or (3) fourteen working days have passed and an agreement has not been reached.

Non-Litigation Adjudication

Article 1(9) CIC Reg. 2/2010 states, “*Adjudication is a public information dispute settlement process between the parties which is decided by the Information Commission.*” Article 3(4) states that information dispute settlement through non-litigation adjudication only can be carried out if:

- a. An information request has been refused based on an exception in Article 17 of Law 14/2008; or
- b. A mediation process has been carried out but has failed, or one or both parties have withdrawn themselves from the mediation process.

In other words, disputes about refusals based on exceptions go straight to the non-litigation adjudication procedure.

Non-litigation adjudication should be completed within a maximum of forty working days from the start, and should be conducted in accordance with the following principles:

- a. Open to the public.
- b. In the event of a document examination by the Information Commission which involves information which is claimed to be exempt in accordance with Article 17 of Law 14/2008, this examination should be carried out privately.
- c. The Information Commission will use the process to proactively seek the truth using all of the available evidence.
- d. The burden of proof is on the public body to demonstrate that they have fulfilled their openness obligations.

The main considerations to be taken into account during non-litigation adjudication are: a) arguments made by the requester or their representative; b) arguments made by the public body’s representative; c) documentary evidence relating to the requesting process; d) witness testimony – if necessary; e) expert witness testimony – if necessary; f) any other evidence related to the circumstances; and g) concluding statements from the parties – if any. Adjudication is carried out in several stages: a) preliminary examination; b) evidence; c) local authentication – if necessary; d) concluding statements from the parties; and e) decision.

Non-litigation adjudication will result in a public decision by the Information Commission. The decision will generally contain one of the following orders as provided for in Articles 46(1) and (2) of Law 14/2008:

“(1) Information Commission’s verdict concerning granting or refusal of access over all or part of requested information contains one of the following orders:

- a. *annulling the decision of Information and Documentation Management Officer’s superior and decide to grant access to all or part of the information requested by*

Public Information Requester in accordance with Information Commission's verdict.

- b. affirming the decision of Information and Documentation Management Officer's Superior to refuse access to all or part of the requested Information as referred to in Article 17.*

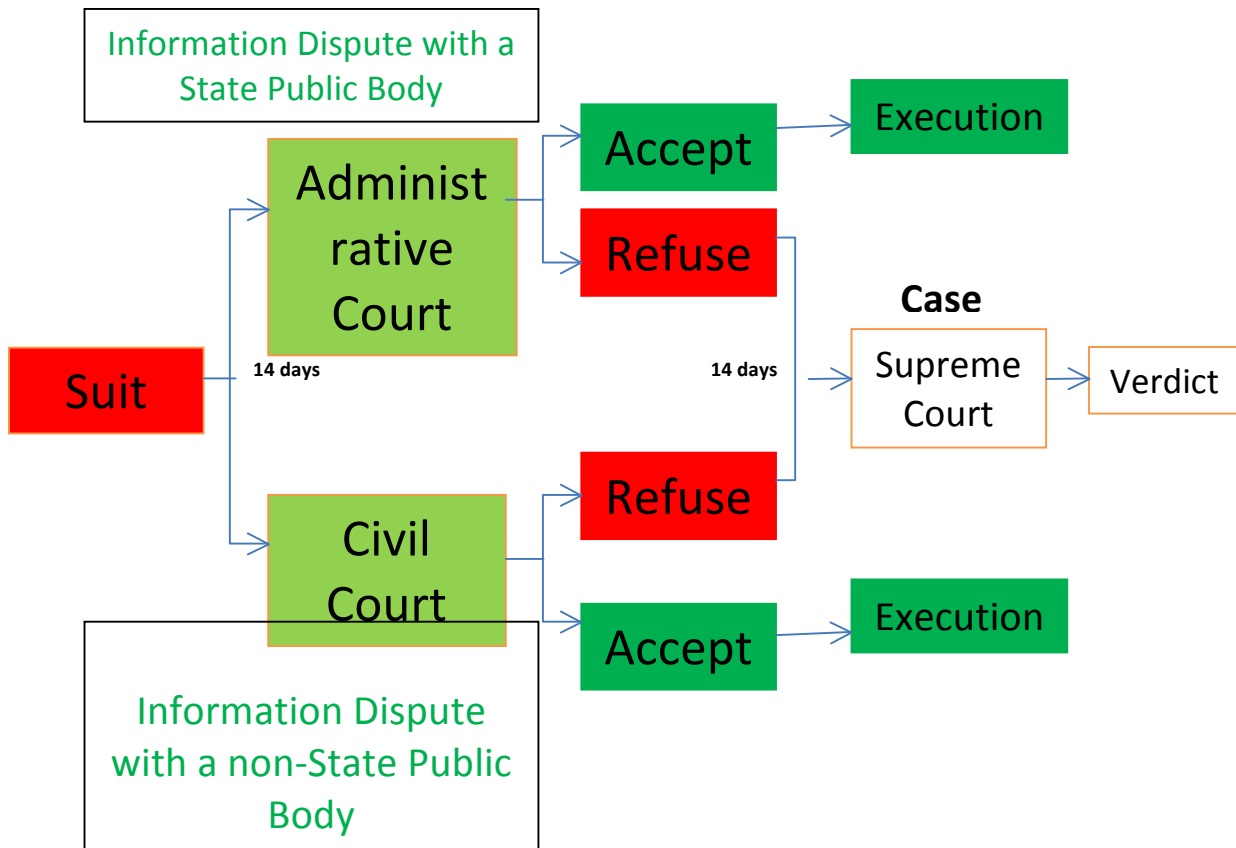
(2) Information Commission's verdict concerning reasons of objection as referred to in Article 35 paragraph (1) letter b to letter g, contains one of the following orders:

- a. ordering Information and Documentation Management Officer to perform His/Her obligations as stipulated in this Act;*
- b. ordering Public Body to fulfil its obligations within the information provision time period as stipulated in this Act; or*
- c. affirming the consideration of Information and Documentation Management Officer's Superior or decide on the cost of searching and/or copying of information."* [official translation]

Stage 3: Information Disputes taken to Court

Article 62(1) of CIC Reg. 2/2010 states that the results of non-litigation adjudication by the Information Commission can be appealed to court, as provided for by Article 47 of Law 14/2008. Moreover, Article 48(1) of Law 14/2008 sets out grounds for a suit if either party or both disputing parties state in writing that they do not accept the adjudication decision of the Information Commission. The suit must be filed within 14 (fourteen) working days from receiving the decision of the Information Commission.

Flow of Dispute Settlement in the Court



Explanation of Diagram:

1. An application for dispute settlement to the court must be made within a maximum of fourteen days after receiving the decision of the Information Commission. Article 47 of Law 14/2008 distinguishes two different jurisdictions for information disputes:
 - a. Administrative Court (PTUN), if suing a public body that is a State body/agency
 - b. Civil Court, if suing a public body that is not a State body/agency
2. Upon application, the Court examines the decision of the Information Commission, the case archives, the pleadings and any answers to written questions provided by the parties.
3. The Court is meant to provide a decision within sixty days of the start of the case, which should contain an order as provided for by Article 49 of Law 14/2008:

“(1) Verdict of state administrative court or civil court in Public Information Dispute settlement concerning granting or refusal of access over all or part of the requested information contains one of the following orders:

- a. *annulling Information Commission’s verdict and/or Ordering Public Body:*
 1. *to provide all or part of the information requested by Public Information Requester; or*
 2. *to refuse providing all or part of the information requested by Public Information Requester.*
- b. *affirming Information Commission’s verdict and/or ordering Public Body:*
 1. *to provide all or part of the information requested by Public Information Requester; or*

2. *to refuse providing all or part of the information requested by Public Information Requester.*
 - (2) *Verdict of state administrative court or civil court in Public Information Dispute settlement concerning reasons of objection as referred to in Article 35 paragraph (1) letter b to letter g, contains one of the following orders:*
 - a. *ordering Information and Documentation Management Officer to perform His/Her obligations as stipulated in this Act and/or to fulfil the time period for provision of information as stipulated in this Act;*
 - b. *reject Public Information Requester's request; or*
 - c. *decide on the cost of information copying."* [official translation]
4. In the event that one of or both parties do not accept the Court's decision, it can be further appealed to the Supreme Court of Appeal (cassation) within a maximum of fourteen days after:
 - a. The decision was declared in open trial to the public, if the parties are attending; or
 - b. The decision was delivered to the parties by the bailiff for disputes in the Civil Court, or by post for disputes in the administrative court, if the parties are not attending.

The Supreme Court of Appeal is meant to settle information dispute appeals within a maximum of thirty working days from the determination of the Assembly of Judges.

Facts of Public Information Dispute



Total Perkara
770



The Central Information Commission (CIC) data above shows that the majority of public information disputes occur over procedural issues (70%). Moreover, most requested information should properly be considered open information according to Law 14/2008 and CIC Reg. 1/2010. The best way to avoid such disputes in the future is for public bodies to improve their information management, including:

1. Attitude changes:
 - a. Understand and implement the principle of maximum access, limited exemptions (MALE).
 - b. Proactively publish commonly requested public information on websites, communication boards, leaflets, etc., in order to avoid the burden of processing repeated information requests.
 - c. Respond properly to all information requests within the legal time limit.
 - d. In responding to information requests, do not judge the requester based on their attitude, objectives, capacity or identity. Public bodies should always follow the MALE principle, apply exceptions objectively and respect everyone's right to information.
 - e. Information openness should not be confused with public relations. Public relations is concerned with maintaining the image of public bodies, whereas information openness is a social service that focuses on truth and accuracy.
 - f. Information openness should be technology neutral. The provision and publication of information should not be limited to online distribution, but should also involve other media that reaches segments of society that do not have access to the Internet or information technology.
2. Internal Management
 - a. Appoint a PPID, create an SOP for managing information and responding to access requests, make a list of public information, create a public access point for information services, etc.
 - b. Carry out training to improve the capacity of the staff of the public body to manage information and provide public information services.
 - c. Establish incentives for staff to promote good practice and disincentives to discourage bad practices in managing information and providing public information services.
3. Build communication and coordination
 - a. Internally: between working units, staff, etc.
 - b. Externally: between public bodies, with the public, etc.

Session 8 – Developing an Action Plan

1. The Importance of an Action Plan

A right to information law is ultimately only as strong as its implementation. While legislators can pass strong laws, and society can embrace the principles of openness and accountability, it is up to public bodies to put these rules into practice, and to adapt their operational models to comport with these new responsibilities. The most effective way to ensure compliance with Law 14/2008 and with the right to information as an international human right is to develop an Action Plan which codifies new policies and provides an operational guide to putting in place the systems and structures required to implement the principles of openness and transparency. In the spirit of openness, this Action Plan should be made publicly available on a proactive basis.

There are several advantages to developing and publishing a consolidated Action Plan:

- It will ensure that a unified policy and approach towards openness is adopted throughout the public body.
- It provides a roadmap for the public body to implement its obligations under the Law 14/2008, allowing for prioritisation and the setting of clear commitments and timelines.
- It provides a baseline against which progress can periodically be measured.
- It demonstrates publicly the commitment of the public body to openness, promoting dialogue with the people.
- It can promote systematic change, allowing other, less progressive public bodies to see the positive changes being made around them.
- Sharing of Action Plans lets public bodies learn from one another, allowing good practices to filter through the public sector.

2. Drafting the Action Plan

Employee Involvement:

A strong Action Plan should be developed inclusively, ensuring that all relevant stakeholders are given a chance to impact the final product. It can be productive to hold an internal meeting, soliciting feedback from interested employees at every level. In addition to providing practical guidance for implementation, an inclusive approach to policy development will give employees a sense of ownership over the process, limiting the potential for bureaucratic resistance. It is important to let everyone be heard, including as to any potential misgivings or apprehensions about increased openness. However, while employees should be encouraged to voice any concerns that they have, the meeting should be conducted in a tone that emphasises the overall benefits of openness. Negative ideas should not be allowed to dominate the discussion.

Expert Advice

It may also be useful to consult with outside experts on the right to information, who may offer critical feedback on proposals. Representatives from public bodies that are more advanced in the

implementation of their own Action Plans could also provide valuable insight into any potential pitfalls, good ideas to incorporate or advice on how a proposal could be improved, based on their experiences.

3. Design Components of a Strong Action Plan

There are universal cross-cutting components that tend to mark strong Action Plans. A strong Action Plan should be:

- Specific. The main purpose of drafting an Action Plan is to set tangible goals for openness and establish a clear path to compliance with the requirements and underlying principles of Law 14/2008. As a result, clarity is of paramount importance. The Action Plan should spell out in detail not only the goals that the public body wishes to achieve, but how exactly they intend to achieve them, delegating immediate and supervisory responsibility to specific officials or positions within the organisation. Given that the Action Plan is meant to serve as a public statement for the organisation's commitment to openness, readability is also an important quality. It should be written in clear and, as far as possible, non-technical language that any reader will be able to understand.
- Time-tested. Hand in hand with the requirement of clarity is a need to set definite timelines for each step of the implementation process. These timelines should be achievable, but should also drive the public body to keep as tight a schedule as possible. In determining a timeline for particular goals, it is worth noting that Law 14/2008 came into force in 2010. In other words, if there are any legal requirements in Law 14/2008 that have not yet been implemented in a public body, that organisation is already at least three years behind schedule as of 30 April 2013.
- Ambitious. The benefits of openness mentioned in Chapter 1, such as cleaning up mismanagement and improving relations with the public, have the potential to improve working conditions within the public body as well as providing overall operational advantages. Public bodies should therefore view the passage of Law 14/2008 as an opportunity in addition to a legal responsibility. A good Action Plan will go beyond fulfilling the minimum technical requirements of Law 14/2008 and seek to establish the public body as a leader in openness. This is particularly true with regard to proactive disclosure where, in more progressive systems, the legal requirements are viewed as merely a baseline.
- Progressive. Openness is an ideal to be pursued, rather than an endpoint to be reached. There is always room for improvement. Timelines can always be shorter, information management standards can always be improved, and there is always more information to publish proactively. As a result, a good Action Plan should allow for continuous improvement, and a set of advancing goals. The Plan should be reviewed and updated from time-to-time to ensure that it remains relevant and provides for ongoing progress towards better implementation of Law 14/2008.

- Evaluative. An effective Action Plan requires that progress should be monitored and evaluated, both according to immediate project goals as well as longer-term ideals. Consultation with the public and civil society should be part of the evaluative process, to ensure that improvements are being felt by the public and to determine the trajectory of future Action Plans.

4. Substantive Components of a Strong Action Plan

The specific content of each Action Plan will necessarily vary depending on each public body's starting point. However, regardless of the implementation progress made thus far, there are a number of key areas that the Action Plan should address:

- The Information Service Point (PPID). An essential first step to the implementation of Law 14/2008 is the establishment of an access point, in terms both of a physical space (an office or desk) and of a dedicated official(s) (PPID). This has been a legal requirement for all public bodies since April 2009. The PPID should be someone with adequate training in information management and the right to information. If the PPID is a dedicated position, the public body should ensure that it is viewed as a proper career track for advancement, in order to attract talented and ambitious applicants.
If a PPID has already been appointed, the Action Plan can set goals to improve their performance. Another area to target may be online accessibility, in improving the quality and usability of the public body's website for filing requests.
- Training. Although the PPID has primary responsibility for implementing Law 14/2008, the institutional changes mandated by this legislation impact every employee, since they require a broad attitudinal shift towards information and openness and are also required to cooperate with the PPID. As a result, the strategy for training and general education of employees is an important area for an Action Plan to address.
- Records Management. Another area for improvement is records management. An efficient system for responding to access requests requires that employees within the public body must be able to locate information quickly. This in turn requires an effective and comprehensive system of information management and registration, as mandated by Article 7(3) of Law 14/2008.
Once these systems are in place and functioning optimally, public bodies can work to expand the languages and formats in which key information is available, with a particular emphasis on digitisation in order to increase searchability, and eliminate the cost of reproduction.
- Proactive Disclosure. Law 14/2008 contains specific standards for proactive disclosure, as spelled out in Chapter 4 of this Manual. The lists of information that must be published are inclusive, rather than exclusive, and this is a good area for public bodies to expand. Proactive publication is a particularly good idea for particular types of information that are the subject of frequent requests, since this is a more efficient arrangement both for the public body and for requesters. Public bodies should be seeking to constantly increase the amount of

information available proactively, particularly online where the costs of uploading information are negligible.

Beyond expanding the total amount of information available, user-friendliness is an important area to improve. The most comprehensive database in the world is useless if it cannot be efficiently searched. This is an area where ongoing user feedback is critical.

- Processing Requests. Good systems for processing requests are a very important part of the ability of public bodies to implement their openness obligations. Action plans should describe and set clear timelines for the putting in place of these systems, and for improving and adjusting them as they are used and ways of improving them become clear. This should include the procedures by which requests are processed from the point they are received by the PPID to the point a response is provided to the requester, along with details about the role of different employees in this process.
- Public Engagement. Increasing public engagement in the business of governance is both a key objective of the right to information and a critical component to its success. As a result, an Action Plan should seek to promote open government by pushing more decision-making into the open, for example through policy townhalls and consultations, or publishing the minutes of policy sessions online.
Seminars and awareness-raising sessions on the right to information can also be useful. Public bodies will want to spread the word about their openness initiatives, since there is little point in creating a robust right to information system without taking steps to promote its use. These information sessions can be also be used to solicit feedback, contributing to an emerging dialogue that is the cornerstone of an accountable and representative government.
- Reporting Requirements. Article 12 of Law 14/2008 requires public bodies to report annually on their compliance with the law, including the number of information requests received and details about their disposition. As with all other areas, more disclosure is always better. Public bodies can work to improve the quantity of information available about their operations, particularly with regard to Law 14/2008.
- Appeals. The first step for any public body should be to ensure that it is in compliance with the requirements of Law 14/2008, as spelled out in Chapter 7 of this Manual. Once the structures for an effective appeals mechanism are in place, the system can be used as an effective gauge of implementation progress, and a way of discovering weaknesses in the system. Are certain units generating more delays or refusals than others? Are management standards different across the public body? Are there particular exceptions that employees have trouble managing and applying? All of this can prove useful in developing an Action Plan.

Working Group Exercise: Designing an Action Plan

Consider the different concepts outlined in this Chapter in the context of the specific situation at your organisation to come up with an outline for an effective Action Plan. One need not come up with all of the specifics, since this is a rough exercise, but be sure and consider how your plan addresses each of the components spelled out in this chapter.

Annex: Training Agenda
Capacity Building for Government (National and Sub-National) to Implement
Law 14 of 2008 Concerning Public Information Disclosure

Time	Event	Speaker(s)
Day Before		
09.00	Check In	
First Day		
08.00 – 08.30	Opening	1. Ministry of Internal Affairs 2. Michael Karanickolas <i>Centre for Law and Democracy</i> 3. Henri Subagiyo, S.H., M.H. <i>Executive Director, ICEL</i>
08.30 – 09.00	Training Orientation	Dessy Eko Prayitno
09.00 – 09.30	Understanding the Importance of Public Information Disclosure	Dessy Eko Prayitno
09.30 – 11.00	Understanding the Legal Framework of Law 14/2008 and the Infrastructure Needed to Implement the Law	Abdul Rahman Ma'mun <i>Head of Central Information Commission</i>
11.00 – 12.00	Public Information Disclosure: An International Perspective	Michael Karanickolas <i>Centre for Law and Democracy</i>
12.00 – 13.00	LUNCH	
13.00 – 15.00	Categorising Information and Developing a List of Public Information	Margaretha Quina
15.00 – 17.00	Understanding Public Information Disclosure Standards	Dessy Eko Prayitno Margaretha Quina Nisa I. Istiqomah
Second Day		
08.00 – 10.00	Understanding Exceptions	Michael Karanickolas <i>Centre for Law and Democracy</i>
10.00 – 10.15	<i>Coffee Break</i>	
10.15 – 11.30	Information Dispute Settlement	Dessy Eko Prayitno
11.30 – 12.00	Developing an FOI Implementation Report	Nisa I. Istiqomah
12.00 – 13.00	LUNCH	
13.00 – 14.30	Designing a PPID	Margaretha Quina
14.30 – 16.00	Designing an SOP	Henri Subagiyo

16.00 – 16.30	<i>Coffee Break</i>	
16.30 – 17.30	Developing an Action Plan	Michael Karanickolas <i>Centre for Law and Democracy</i>
17.30 – 18.00	Closing	ICEL and CLD
Day After		
09.00 – 12.00	<i>Check Out</i>	