



OPEN
GOVERNMENT
GUIDE

Right to Information

Customised Report

www.opengovguide.com




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Introduction

At the heart of open government are the ideas of transparency, participation and accountability. As a working definition;

- **Transparency** means the public understands the workings of their government
- **Participation** means public can influence the workings of government by engaging with public policy processes and public service providers
- **Accountability** means the public can hold the government to account for its policy and service delivery performance

 More about definitions can be found at www.opengovguide.com/glossary





The Guide has been developed by the Transparency and Accountability Initiative (T/AI). It aims to support governments and civil society organisations to advance transparency, accountability and participation particularly as part of the Open Government Partnership. It highlights practical, measurable, specific and actionable steps that governments can, and are taking to advance open government.

The full guide covers a broad range of topics, and more are being developed.




Cross cutting topics	Focused topics
Assets disclosure and conflicts of interest	Aid
Budgets	Construction
Citizen engagement	Elections
Open government data	Environment
Public contracting	Extractive industry
Public services	Fisheries
Records management	Land
Right to information	Parliaments
Whistleblower protection	Police and public security
	Tax and Illicit flows

 A full index can be found at www.opengovguide.com/topics

Each Topic has been developed by an expert organisation and offers a flexible menu of 'illustrative commitments' which governments could adopt.

-  **Initial steps** – actions that a country can take starting from a relatively low baseline
-  **Intermediate steps** – actions that countries can take once they have already made moderate progress
-  **Advanced steps** – established best practice demonstrated by the most advance performers
-  **Innovative steps** – new approaches which countries are trying out

For each step the Guide lists.

-  **Recommendations** – detailed guidance from expert networks
-  **Standards and guidance** – key principles, guidance, reports, rankings and tools
-  **Country examples** – examples in practice from around the world

The levels of ambition do not imply that countries must work through the steps one by one, or that the country examples given in relation to a particular action implies an overall rating of national progress. Rather, it seeks to offer a flexible framework to support national dialogues about reforms in support of progress towards greater openness.

This document is a customised extract from the full online guide, which is a work in progress. Opengovguide.com is not just a static website. We hope that it will continue to grow with new case examples, resources and ideas. Contact info@opengovguide.com with comments and suggestions.

About T/AI


T/AI is a donor collaborative that aims to seize momentum and expand the impact breadth and coordination of funding and activity in the transparency and accountability field as well as to explore applications of this work in new areas. The collaborative includes the Ford Foundation, Hivos, the International Budget Partnership, the Omidyar Network, the Open Society Foundations (OSF), the Revenue Watch Institute, the UK Department for International Development and the William and Flora Hewlett Foundation

The contents of The Guide are attributable to the contributors for each Topic. The Transparency and Accountability Initiative members do not necessarily endorse the recommendations mentioned in the publication and website.

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Right to information

 **Lead author:** [Access Info](#) and [Centre for Law and Democracy](#)

Introduction

Right to information legislation (RTI), also referred to as freedom of information or access to information laws, establishes a general presumption that all information held by government should be accessible and set out the mechanisms by which it can be accessed.

The case for ensuring access to information is that it supports good governance, effective and efficient public administration, compliance with laws and regulations, efforts to combat corruption and better investment climates. There is emerging evidence to support this, however there remains a lack of systematic assessments of RTI policies and whether and how they are translating into greater government transparency and participation in decision-making (Calland, 2010).

Open, participatory and accountable government is contingent on members of the public having access to information held by public bodies. The right to information is protected through the guarantees of freedom of expression found in the main international human rights treaties. This has been recognised by international human rights tribunals (Inter-American Court of Human Rights and the European Court of Human Rights) and leading international authorities (including all four special mandates on freedom of expression at the UN, OAS, OSCE and African Commission on Human and People's Rights, and the Inter-American Juridical Committee) as well as the UN Human Rights Committee (Mendel, 2008).

A key principle of Right to Information is that of 'maximum disclosure'. Information should only be withheld from the public where absolutely necessary to prevent harm to a legitimate interest and where there is no overriding public interest in knowing the information.

As of June 2013, 95 countries have adopted RTI laws, a massive increase from the 13 countries which had these laws in 1990. However, experience has shown that while the passage of the law is often a high-profile effort by its political champions, the key challenge is to maintain the political momentum needed for effective implementation (Dokenia, 2013).

References

Calland, R., (2010) Review of Impact and Effectiveness of Transparency and Accountability Initiatives: Freedom of Information, Institute of Development Studies, Brighton. <http://www.ids.ac.uk/files/dmfile/IETAAnnex3FreedomofInfoCallandFinal28Oct2010.pdf>

Mendel, T. (2008), Freedom of Information: A Comparative Legal Survey, 2nd Ed., UNESCO, Paris. http://portal.unesco.org/ci/en/ev.php-URL_ID=26159&URL_DO=DO_TOPIC&URL_SECTION=201.html

Dokenia, A. (2013) Right to Information; Lessons from experience, World Bank, Washington D.C. http://www.right2info.org/resources/publications/publications/wb_implementing-rti_lessons-from-experience_2013

Expert Organisations

Access Info <http://www.access-info.org/>

Article 19 <http://www.article19.org/>

The Freedom of Information Advocates Network <http://www.foiadvocates.net>

Right2INFO.org <http://right2info.org/>

freedominfo.org <http://www.freedominfo.org/>

Centre for Law and Democracy <http://www.law-democracy.org/live/>

Alianza Regional por la Libre Expresión e Información, (Alianza Regional) <http://www.alianzaregional.net/>

Africa Freedom of Information Centre <http://www.africafoicentre.org>

Summary of illustrative commitments

Initial

- Adopt a law which recognises the right to information, in line with international standards
- Establish institutional structures for implementing RTI
- Provide training to officials on record management and RTI implementation
- Publish core information about government on a proactive basis

Intermediate

- Ensure that each public authority puts in place core implementation systems on RTI
- Expand the scope of proactive publication
- Promote public awareness of the right to information

Advanced

- Align RTI law and practice with highest international standards on RTI
- Establish best practice monitoring and evaluation systems on RTI
- Review and amend secrecy laws

Innovative

- Use IT to enhance access to information

Detailed Recommendations

Initial Step: Adopt a law which recognises the right to information, in line with international standards

Justification

The basic building block for ensuring the right to information is the adoption of a law, which recognises the right to information as a fundamental right. The special international mandates for freedom of expression at the UN, OSCE, OAS and African Commission on Human and Peoples' Rights, among others, have called on States to adopt such laws. If neither the Constitution, jurisprudence nor the statutory law recognise a fundamental right, efforts should be made to do so: the strongest foundation for a RTI law is where right to information is recognised as a fundamental right in the Constitution.

For a law to be effective it must provide a robust framework that ensures that persons can access the information held by public bodies, which includes all branches of the State (executive, legislative and judicial) and other public or governmental authorities, at whatever level – national, regional or local, as well as all bodies exercising public power, performing public functions or operating primarily with public funds. International standards provide key minimum benchmarks for such laws.

Recommendations

Where no right to information law is in place, one which conforms to international standards should be adopted. Where a law is already in place, it should be reviewed and amended, as necessary, to bring it into line with international standards. The key criteria are that the law should establish:


1. Recognition of a human right to information, along with a broad presumption in favour of openness which applies to everyone, including non-citizens, and to all information, regardless of format, held by all public bodies, including State-owned enterprises and bodies, and private bodies undertaking public functions or operating with public funding;
2. An obligation to publish a wide range of information on a proactive basis;
3. Robust procedures for making and processing requests which are simple, free (to make requests and limited, centrally set fees for reproduction of information) and quick (maximum 20 day response time), and which involve the provision of assistance to requesters as needed (including in formats accessible to people with disabilities);
4. A limited regime of exceptions based on preventing harm to protected interests, a public interest override and severability where part of a record is exempt;
5. The principle that the right to information law prevails over other laws which place limits on the right, such as secrecy laws, in case of conflict;
6. A broad right of appeal for all failures to implement the law, including proactive publication failures, to an independent oversight body and the courts;
7. Protection for good faith disclosures and sanctions for wilful obstruction of access; and
8. A package of promotional measures, including obligations on all public bodies to report on requests received and how they were processed, backed up by sanctions for refusal to disclose information without reasonable cause.

Standards & Guidance

- ARTICLE 19 Principles <http://www.article19.org/data/files/pdfs/standards/righttoknow.pdf>
- OGP Eligibility Criteria: Access to Information <http://www.opengovpartnership.org/how-it-works/how-join/eligibility-criteria>

- RTI Rating <http://www.rti-rating.org/>
- Special Mandates 2004 Declaration <http://www.osce.org/fom/38632>
- Tshwane Principles on National Security and the Right to Information <http://www.right2info.org/exceptions-to-access/national-security>

Country Examples

 23 countries have recently adopted RTI laws which reflect the progress made in international standard setting

23 countries obtained scores of 100 points or more out of a possible 150 points on the RTI Rating. The average age of the laws in the top 20 countries is just 5 years. Features of the stronger laws include that they establish clear procedures for requesters and have strong oversight bodies.

- http://rti-rating.org/country_data.php

Initial Step: Establish institutional structures for implementing RTI

Justification

For an RTI law to be effective it needs to be supported by active implementation measures and supported by an institutional framework to undertake this task.

There are three key institutional mechanisms for implementing RTI laws. First, each public authority needs to appoint a dedicated official to receive and process requests. Often this official is also responsible for leading on the putting in place other systems as required by the law. Second, it is very useful to establish a focal point in the government to provide guidance and to monitor implementation. Finally, the law should provide for the establishment of an independent oversight body, such as an information commission or commissioner, which has the power to review complaints relating to requests and often also has a role in promoting awareness of the right (Neuman, 2011).

Recommendations

1. Each public authority which falls within the ambit of the RTI law should nominate one or more officials as information officer(s) to receive and process requests for information and to lead the authority in implementing the law.
2. The executive should designate a central focal point (a high-level unit or committee) with responsibility for supporting and monitoring implementation across the public body.
3. An independent oversight body, or information commission, should be established; it should have a dual function covering complaints and promotional measures, along with the necessary mandate, resources and powers to carry out its functions effectively, including to review documents, inspect premises, to make binding orders for the release of information and to impose structural measure on public bodies as necessary to ensure compliance with RTI rules.

Standards & Guidance

- Carter Center: The Access to Information legislation Implementation Assessment Tool

http://www.cartercenter.org/peace/americas/access_to_information/IAT/index.html

- World Bank's Public Accountability Mechanisms website
<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/0,,contentMDK:23352107~pagePK:148956~piPK:216618~theSitePK:286305,00.html>

Country Examples

 In Canada rules on the right to information are overseen by the Department of Justice

This function for managing right to information, in Canada, served by the [Department of Justice](#)

 India has central and state level information commissions

India has a system of a central and state-level [information commissions](#), and the [Department of Personnel and Training](#) (DoPT) serves as the central focal point for right to information.

 Mexico has set up a federal institute for access to information (IFAI)

The institution supporting right to information legislation is, in the case of Mexico, the [Instituto Federal de Acceso a la Información y Protección de Datos](#) (Federal Institute for Access to Information and Data Protection or IFAI).

Initial Step: Provide training to officials on record management and RTI implementation

Justification

For officials to implement RTI laws properly, they must be aware of their responsibilities under the law.

It is important for public officials to have training in how to ensure that records are captured and held in reliable record-keeping systems, that they are properly controlled and scheduled for retention and disposition. It is also important to make sure that officials are trained on how to meet their obligations under an RTI law. This requires not only training in legal and technical dimensions, but often a process of culture change, to shift from a defensive, 'secrecy' mindset to one in which officials accept that public scrutiny of their actions is the norm.

For practical reasons, it may make sense to focus initial training activities on information officers and other key personnel. Over time, however, it is important to provide training to all officials. This is important to ensure that they understand their obligations under the law, and also to promote better cooperation with and support to information officers.

Over time, all officials should receive at least some training on RTI. This can be provided in different ways, depending on the

way the civil service is run in the country, including through incorporating modules on RTI in ongoing training courses provided to officials, by having information officers provide training to other staff at the public authority and through incorporating RTI training into entry level courses for officials.


Recommendations

1. Identify the training and guidance needed to enable public servants to assess records, datasets and other information assets for disclosure and to undertake their obligations under the RTI law.
2. Review any existing records management and RTI training and identify components that need to be updated.
3. Establish an adequate budget allocation to enable training to be undertaken.
4. Provide basic but specialised training to all information officers, members of the central focal point and staff at the independent oversight body. Over time, expand this so that some training on RTI is provided to all officials (i.e. staff of public bodies).
5. Provide specialised training for judges, and ensure that the right of access to information is included in curriculum for future judges.
6. Training should draw on civil society inputs which provide a view from the perspective of information seekers.
7. Conduct reviews of the training and guidance to ensure their continued relevance and effectiveness.

Standards & Guidance

- ARTICLE 19 Training course for public officials http://https://www.ip-rs.si/fileadmin/user_upload/Pdf/Publikacije_ostalih_pooblascencev/Article_19_foitainersmanual.pdf

Country Examples

 The UK Information Commissioner's Office has developed a set of training materials for use in the public sector

The website of the UK Information Commissioner's Office includes a wide set of training materials, including short films on how to manage personal information, and how to comply with the UK Data Protection Act, Freedom of Information Act, and the Environmental Information Regulations.

- http://ico.org.uk/for_organisations/training

Initial Step: Publish core information about government on a proactive basis

Justification

For most people, the most important practical means of accessing information held by public bodies, government, and by organisations acting on behalf of government, is through accessing information which is made available on a proactive basis, rather than through making requests for information (Darbishire, 2011). Many of the other sections of this guide address the proactive publication of information relating to different sectors, such as the [budget](#), [aid](#), [extractive industries](#) and [assets of public officials](#). In addition to these sectoral commitments, it is very important for all public bodies to make available a minimum platform of information about what they do, how they function, how they spend public funds, and the

service and benefits they provide.

Every effort should be made to ensure that this proactively disclosed information is presented in a way which makes it easy to find and readily comprehensible to the average person.

Recommendations

Public bodies should publish on a proactive basis the following core categories of information:

- **Institutional:** Core legal documents, internal regulations, functions and powers.
- **Organisational:** Information on personnel, names and contacts of public officials.
- **Operational:** Strategy and plans, policies, activities, procedures, reports, and evaluations and reports from supervisory mechanisms and oversight bodies.
- **Decisions and Formal Acts:** Including the background documents.
- **Public Services:** Descriptions of services offered, guidance, booklets and leaflets, forms, information on fees and deadlines.
- **Budget:** Projected budget, actual income and expenditure, audit reports.
- **Open Meetings:** Including about which meetings are open and how to attend them.
- **Decision-making and Participation:** Decision-making procedures, and mechanisms for consultations and public participation in decision-making.
- **Subsidies:** Beneficiaries of subsidies, the objectives, amounts, and implementation.
- **Public Procurement:** Detailed information on public procurement processes, criteria, outcomes of tenders; copies of contracts, and reports on completion of contracts.
- **Lists, Registers, Databases:** Lists, registers and databases held and whether these are available online and/or for on-site access.
- **Publications:** Publications, including whether they are free of charge or the price.
- **Dispute Resolution:** Mechanisms available to the public for raising concerns, complaints and making appeals regarding the decisions or actions of the institution.
- **Information about RTI:** How to make requests, complaints and appeals, contact information for information officer.

In addition, the legislative branch should ensure that all records of parliamentary proceedings are published proactively and the courts should make decisions from courts of all levels available proactively.

Regular consultations should be held with members of the public about the information which they find to be most useful and how to ensure that this is published proactively as a priority. Information which is requested frequently should be made public proactively.

Country Examples

Georgia issued a decree requiring proactive publication of government information

Civil society organisations in Georgia have long been concerned that the country's Freedom of Information act was not strongly implemented. Information requests had to be mailed in, and sometimes were ignored or responded to with incomplete information.

However, on 1 September, 2013, the government issued a decree on Electronic Request and Proactive Publication of

Public Information. This Decree, which is based on the recommendations from a group of civil society organizations obliges all agencies under the supervision of the Executive to release information on their activities electronically, free of charge and in easy-to-use, open format. The decree sets out seven categories of information for proactive disclosure:

- General information on the public agency – its structure, functions, founding documents, annual reports, strategies, action plans, as well as biographies and contact details of the leadership and the staff;
- Names and contact details of FOI officers, relevant regulations, procedures and forms of appeal, FOI reports and statistics;
- Employment vacancy announcements, rules of competition, results of the competition and procedures for appealing these results, number and categories of the employed staff
- Procurement plans and tenders
- Budgets and details of staff remuneration, expenditures, grants and public assets
- Laws and official documents pertaining to the activities of the public agency
- Information on the services, taxes, fees and other revenues of the public agency

The list of information requirements was developed as a result of a series of consultations between civil society organizations and the government. An electronic request system is being developed for additional information.

The decree only applies to central government and its agencies. Parliament, the judiciary, elected local bodies – and the independent regulators do not have to comply but can choose to do so voluntarily.

- <http://blog.opengovpartnership.org/2013/09/proactive-publication-of-information-as-a-common-standard-in-georgia/>

Mexico's access to information law provides for proactive disclosure of information


Mexico's [Federal Law on Transparency and Access to Public Information](#) (2002) establishes that frequent requests should result in proactive disclosure of information. It requires public bodies to publish "relevant and useful information," and specifies that one way to determine this category is that it "corresponds to the most frequent questions made by the public." The sophisticated electronic request-tracking system developed in Mexico helps to capture data on frequent requests.

- http://freedominfo.org/documents/mexico_ley.pdf

The Indian Right to Information Act lists the types of information that must be published on a proactive basis

Section 4 of the Indian Right to Information Act from 2005 provides a long list of types of information that must be published on a proactive basis, as well as mechanisms to ensure that this is accessible to those who need to access it.

- <http://www.rti-rating.org/pdf/India.pdf>

 The Peruvian Law of Transparency and Access to Public Information contains extensive proactive publication obligations

Title IV of the Peruvian Law of Transparency and Access to Public Information contains extremely detailed and extensive proactive publication obligations, particularly in the area of public finances, upon which it focuses.

- <http://www.ccrinepal.org/files/documents/legislations/11.pdf>

Intermediate Step: Ensure that each public authority puts in place core implementation systems on RTI

Justification

For public bodies to be able to meet their various obligations under the RTI law consistently over time, systems need to be put in place. Such systems should ensure that requests can consistently be processed within the time limit set out in the law, and should make clear what role officials other than specifically nominated information officers play in this process (including that they must cooperate with the information officer). Where the law provides for an internal appeal, a system for managing this also needs to be put in place; the same holds for appeals before the oversight body.

Many countries that have enacted ambitious right to information laws have put in place annual reporting processes to track their progress and report back to parliament and to the public. For these to function effectively, systems need to be put in place for collecting and collating information about implementation.

Recommendations

1. Develop guidelines or model policies for public bodies to assist them to establish formal policies or systems for meeting their obligations under the RTI Law, including in relation to:
 - Ensuring requests for information are received and processed in accordance with the rules, including the timelines for responding to requests.
 - Ensuring that internal appeals are processed in accordance with the rules.
2. Establish a system collect and collate information to produce an annual report on implementation.
3. Use the annual report process to improve both implementation and to feed into law reform to bring the law more closely into line with international standards.
4. Incorporate provisions on compliance with the provisions of an RTI law as part of the general performance management systems for public sector organisations and managers.

Standards & Guidance

- Carter Center: The Access to Information legislation Implementation Assessment Tool
http://www.cartercenter.org/peace/americas/access_to_information/IAT/index.html

- World Bank's Public Accountability Mechanisms website
<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/0,,contentMDK:23352107~pagePK:148956~piPK:216618~theSitePK:286305,00.html>

Intermediate Step: Expand the scope of proactive publication

Justification

Proactive publication of information is an effective RTI system from the perspective of both users and officials, since it is far more efficient for both parties than the piecemeal release of information pursuant to requests (while recognising that these will always be important to supplement proactive publication systems) (Darbishire, 2011).

Over time, as much information as possible should be made available proactively, as this both facilitates access for the public and reduces the cost of providing access for officials. Proactive publication is closely related to the '[Open Government Data](#)' approach in which governments make datasets available in machine readable and reusable formats to allow users and intermediaries analyse, visualise and use it in new ways.

Releasing new records and datasets proactively requires quality control, to ensure a high degree of quality and integrity and that information is kept up-to-date. Effort also needs to be put into ensuring that information is available in an accessible form to those who are likely to be interested in it. Paper based records may need to be digitised, and converted into machine-readable formats, and information covered by exceptions may need to be redacted.

Engaging the public actively in determining priorities for proactive publication can both help to prioritise the timetable for publication, and ensure that the information is made available in a form that is useful, which may also include making use of non-digital means of publishing and disseminating information.

Recommendations


1. Require government organisations to develop, produce, and disseminate indexes of the information they hold, and its accessibility, and provide guidelines to assist go in providing user-friendly descriptions of records and datasets using a common format.
2. Hold consultations with public interest groups, representative organisations and the general public to enable them to recommend which categories and datasets should be priorities for release and to test and refine the relevance and format of proactively published information.
3. Publish all information released pursuant to RTI requests in a searchable database.
4. In addition to the initial set of information released, further categories include national companies' registers, laws, and documents on the full cycle of [public contracts](#), and comprehensive and searchable records of parliamentary proceedings and court jurisprudence.
5. Make data available in open, machine-readable formats ensuring that it is openly licenced and free of any restrictions on reuse, present it clearly in the major languages of user communities and ensure that it is regularly updated.
6. For countries where internet penetration is still low, this more substantial step should include making more extensive use of alternative means of proactive publication and ensuring that it reaches larger sectors of the public.

Country Examples


 A Canadian government website provides the public with information about the government's access to information and privacy programmes

In Canada, the Info Source website provides the public with information about the government's access to information and privacy programmes. The primary purpose of Info Source is to assist individuals exercise their rights under the Access to Information Act and the Privacy Act. Info Source also supports the federal government's commitment to facilitating access to information regarding its activities.

- <http://www.infosource.gc.ca/index-eng.asp>

 In Bulgaria all units of the Ministry of Interior must publish data on FOI requests

Under a special bylaw of the Minister of the Interior in implementation of the Freedom of Information Act, all units of the Ministry of Interior were obliged in March 21,2011 to publish annually aggregate numbers about the requests they receive under the FOI act and to how many of them they actually grant information. (Art.46 of Internal Rules and Procedures for the Activity of the Ministry of the Interior in Implementation of the FOI Act, Adopted with an Order of the Minister of the Interior No I-z-771 of March 21,2011.

 The US Federal Register website provides information on citizen rights and obligations and actions of federal agencies, and provides a forum for public participation in the democratic process

The website is administered jointly by the Office of the Federal Register of the National Archives and Records Administration and the U.S. Government Printing Office.

- <https://www.federalregister.gov>

Intermediate Step: Promote public awareness of the right to information

Justification

If citizens, civil society organisations, journalists and others are not aware of the RTI Law, their rights under it or how to use it, demand for information through the Law will be poor and the openness objectives it seeks to promote will be undermined. There is no standard approach towards promoting public awareness of RTI and in most countries this involves a range of different actors, including senior politicians, public bodies, the oversight body, civil society, the media and the education authorities. To ensure a locus of responsibility for these efforts, it is useful to allocate overall responsibility for publicity to a central body.

Public educational efforts are critical to ensure that all citizens are aware of this right. This should include incorporation of RTI as a subject in school curriculums (for example on civic education or citizenship), as well as in various university courses and programmes (for example in human rights courses, and journalism and law programmes), as well as particular efforts to reach disadvantaged segments of the population.

This effort should also include assessments of the effectiveness and appropriateness of public information systems, such as surveys on awareness of RTI and on the utility of the information which is disclosed publicly.

Recommendations

1. Give overall responsibility for training and promotion to a central body – such as the central focal point or the oversight body.
2. A range of official actors should be involved in promoting public awareness, including senior politicians and officials, public bodies, the oversight body and educational authorities; as well as regional and local bodies particularly in larger, federal and more decentralised countries.
3. Over time, public outreach efforts should be substantially enhanced and RTI should be incorporated into school curriculums and relevant university courses and programmes, as well as programmes aimed at CSOs, and public education campaigns to build people's skills to seek and use information under the RTI law.
4. Develop promotion strategy. Depending on the needs of the country, include high level events and statements by leading individuals, prominent highlighting of RTI, along with guidance materials, on public bodies' websites and in public spaces such as receptions, notice boards, waiting rooms, meeting rooms. Also include active outreach by public bodies through their regular communication with the public as well as through public service announcement and news stories disseminated via the media, including through media which reach large sectors of the population such as television and community radios.
5. RTI should be incorporated into educational programmes, such as a session on this in a civil education or citizenship course for schoolchildren, and inclusion in university courses on human rights issues, law and journalism.
6. RTI should be incorporated as a theme in professional training for officials, both at entry level and through ongoing professional development.

Country Examples

 In Nicaragua right to information is incorporated into school curricula by law

The Nicaraguan RTI law – Law of Access to Public Information from 2007 – provides for the incorporation of the right to information into school curricula at all levels and for the establishment of a national centre for research and teaching on the right to information.

- http://www.rti-rating.org/pdf/Nicaragua_Engl.pdf

Advanced Step: Align RTI law and practice with highest international standards on RTI

Justification

Stronger RTI laws can help promote greater access to information in many ways, such as by expanding the scope of the law, by reducing the scope of exceptions, by streamlining procedures for processing requests and/or by increasing the strength of promotional measures. Countries adopting an RTI Law for the first time are encouraged to build in these features right from the outset, and many of the strongest RTI laws are indeed recent ones. Countries which already have laws should assess and amend them to bring them into line with best international practice.

Recommendations

Governments should review the RTI Law and propose amendments to it with a view to bringing it into line with highest international standards.

Key Criteria

The highest international standards are evolving as better practices constantly emerge. Some key criteria are:

1. Proactive publication obligations include commitments to publish all information which may be of interest to the public, including information released in response to a request;
2. Extensive assistance is available; public bodies are required to undertake electronic redesign of information to provide it in requested formats;
3. Information that was traditionally sold, such as geo-spatial maps, meteorological data and company registers, is provided for free without limitations on or charges for reuse of information;
4. Most information is provided immediately or very rapidly and maximum timelines are reduced (for example to ten days);
5. Exceptions are progressively reduced in scope and applied rigorously and in a limited fashion;
6. In addition to the general public interest override, there is an explicit override for information relating to violations of human rights, crimes against humanity, corruption or abuse of power, or threats to public health or the natural environment;
7. The burden of proof rests on a public authority seeking to deny access to information; timelines for processing appeals are reduced, ideally to 30 days or less;
8. Protection for disclosing wrongdoing (whistleblowers);
9. The right is extended to cover private bodies when the information requested is necessary for the protection of a fundamental right; and
10. Promotional measures include strong training requirements, public awareness raising obligations, record management systems and reporting rules.

Standards & Guidance

- African Commission on Human and Peoples' Rights: The Model Law on Access to Information for Africa http://www.achpr.org/files/news/2013/04/d84/model_law.pdf
- ARTICLE 19 Principles <http://www.article19.org/data/files/pdfs/standards/righttoknow.pdf>
- RTI Rating <http://www.rti-rating.org/>
- Special Mandates 2004 Declaration <http://www.osce.org/fom/38632>
- Tshwane Principles on National Security and the Right to Information <http://www.right2info.org/exceptions-to-access/national-security>

Country Examples

Serbia, India and Slovenia tops the RTI Rating

The top three scoring countries on the RTI Rating were Serbia (135 out of a possible total of 150 points), India and Slovenia (both with 130 points).

- http://rti-rating.org/country_data.php

South Africa's right to information law covers both public and private bodies

The South African right to information law, the [Promotion of Access to Information Act](#) from 2000, applies to both information held by public bodies and information held by private bodies in so far as the information is necessary for the exercise or protection of other rights.

- http://www.dfa.gov.za/department/accessinfo_act.pdf

Advanced Step: Establish best practice monitoring and evaluation systems on RTI

Justification


RTI systems, like all systems, may fail to deliver their intended benefits if they are not subject to robust monitoring and evaluation systems, leading to adjustments in either the law or the practice to address problems. This should include the regular and systematic collection, by all public bodies, of data on the number of requests, rates of response, exceptions relied upon and classes of information published proactively, as well as the central collation of this information. There should be a feedback loop, so that systems are in place for ensuring that remedial measures are taken to address problems. Civil society should be encouraged to input into how to improve implementation, and the government should consider setting up consultation processes with civil society and members of the public.

It is not possible to design an RTI system that is responsive to people's needs and interests without consulting them on the design and implementation of that system. Issues which are particularly sensitive to public input are what sorts of information are important to people (and which should then be disclosed proactively and, where necessary, presented in more easily understandable formats), when search functions are not use-friendly (i.e. when people cannot find the information they are seeking even though it is available online) and problem areas and issues in the requesting process. To address this, mechanisms need to be put in place to foster public feedback and also participation in design of RTI systems.

Recommendations

1. Robust monitoring and evaluation systems should be put in place, which include extensive information collection components and mechanisms for ensuring that remedial measures are taken to address problems.
2. The promotion of public feedback and participation should be fostered through regular public awareness surveys and public consultations/focus groups to permit the public to participate directly in debates about how to improve government openness.
3. Civil society should be encouraged to play a major role in providing this feedback not only to governments but also to Information Commissions/Commissioners. This can be done by setting up civil society advisory committees.

Country Examples

 Mexico has a system to systematically track statistics on requests and responsiveness from federal agencies

In Mexico, the [Federal Institute for Access to Information and Data Protection \(IFAI\)](#) has set up a system to systematically track statistics on requests and responsiveness from federal agencies.

Federal agencies have incentives to comply with access to information legislation because their response to information requests is permanently monitored by the IFAI. Also, heads of agencies have an incentive to be well evaluated as the IFAI's evaluations are public. No agency wants to be listed as a poor performer.

The IFAI has developed monitoring indicators to access the extent to which federal agencies fulfil the procedures established in the [transparency law](#) and provide responses to information requests. Different methodologies – quantitative, qualitative and the 'mystery shopper' methodology – are used to assess compliance and analyse the state of access to information in Mexico. Official figures on the extent to which public agencies provide information in response to individuals' requests show an overall positive response rate.

- <http://go.worldbank.org/FWFM9U5M90>

 The UK publishes quarterly and annual reports on the number of FOI requests, response and appeals

The UK government publishes quarterly and annual statistics covering approximately 40 departments of state and other monitored bodies with significant policy-making, regulatory or information-handling functions. Recent data suggest that between three-quarters and nine-tenths of all requests receive a response within the required time frame and that performance has improved in recent years.

- <http://go.worldbank.org/NBINTFKT90>

Advanced Step: Review and amend secrecy laws

Justification

In many countries, there are numerous secrecy provisions in different pieces of legislation, and sometimes even dedicated secrecy laws. In most cases, these laws were adopted prior to the RTI law, and their secrecy requirements do not conform to the standards of the RTI law. As an initial step, the RTI law should prevail over secrecy laws in case of conflict. However, this will not fully resolve the potential for conflict of laws situations, and civil servants faced with apparently conflicting rules cannot be expected to navigate complex legal issues. It is important to create a fully consistent and coherent legal framework for exceptions to give officials clear guidance as to their duties, to prevent legal uncertainty from being used to keep information secret and to reduce the number of administrative and legal appeals.

Recommendations

Governments should review secrecy provisions in other laws and propose amendments to them with a view to creating a coherent and consistent regime of exceptions based on the three-part test under international law, namely that exceptions should: only protect recognised interests; be based on harm; and be subject to a public interest override.

Standards & Guidance

- African Commission on Human and Peoples' Rights: Declaration of Principles on Freedom of Expression in Africa

<http://www1.umn.edu/humanrts/achpr/expressionfreedomdec.html>

- Special Mandates 2004 Declaration <http://www.osce.org/fom/38632>
- Tshwane Principles on National Security and the Right to Information <http://www.right2info.org/exceptions-to-access/national-security>

Country Examples

 In Slovenia, all secrecy provisions are laid out in the Classified Information Act

The [Slovenian Classified Information Act](#) from 2006 covers all secrecy provisions in Slovenia. The Information Commissioner of Slovenia has also provided [extensive interpretation](#) of the exemption on 'secret information', namely that it can only be information that complies with the definition and standards in the secrecy law.

- <https://www.ip-rs.si/index.php?id=505>

 In Sweden, all secrecy provisions are concentrated in one law: the Secrecy Act

In Sweden, the updated Public Access to Information and Secrecy Act from 2009 replaced the old access to information act from 1980. All secrecy provisions are stated in this Act.

- <http://www.government.se/sb/d/11929/a/131397>

Innovative Step: Use IT to enhance access to information

Justification

IT can be used to enable both proactive and reactive disclosure of information, reducing burdens on public bodies and significantly enhancing access to information by individuals and others.

Recommendations

The scope of action here will continue to evolve with new technologies. Some key areas of potential include:

Substantive improvements to information accessibility:

- Enabling real time updates of documents and data, including financial data.
- Requiring government agencies to keep a register of metadata, including about requests and how they are being processed, and to publish it daily to the online access portal.
- Improving the granularity of data.
- Tagging to enable relevant searches.
- Customised and powerful search facilities.

- Adopting interoperable formats and systems for government websites and information.

Procedural improvements to information accessibility:

- Developing a citizen access portal to provide a central access point for government information that enables users to search for information across all public bodies, to make requests for information easily and rapidly, with processes for routing requests to the agency that holds the information and handling appeals.
- Ensuring that information is published in a format that is accessible for users with disabilities.
- Making information and datasets produced, collected or owned by public bodies available for free in accordance with open licences (thereby ensuring elimination of all fees and copyright/reuse restrictions).
- Requiring RTI to be designed into IT systems and the production of records, for example by building in systems for the segregation of exempt information (for example, private data).
- Fully enabling the electronic processing of appeals.

Country Examples

Mexico has put in place electronic systems to facilitate RTI

Mexico has put in place three key electronic systems to facilitate RTI:

- Infomex: an electronic platform for making information requests and submitting complaints and appeals. When requests are presented in writing and in person, they are transferred into the e-platform by a staff member so that they can be registered by the system. According to IFAI, 97 percent of all requests were received electronically.
- ZOOM: a tool for searching the database of requests that have been made and answers provided. Each government agency is required to set a link to the ZOOM on their websites.
- POT: a standardised system for accessing the information which is published proactively by public bodies. Users can search through this data by keyword or by type of transparency obligation, thereby providing easy comparison of the data across different public bodies.
- <https://www.infomex.org.mx/gobiernofederal/home.action>; <http://buscador.ifai.org.mx/buscador/bienvenido.do>
- <http://portaltransparencia.gob.mx/buscador/search/search.do?method=begin>

Norway has developed an electronic public records tool, which is used by central government agencies to publicise their public records online, and which is open for everyone to use

Norway's Electronic Public Records (Offentlig Elektronisk Postjournal or OEP) was developed in the late 1990s by the agency that later evolved into the Agency for Public Management and eGovernment. Originally a password-protected database, the OEP was developed to enable journalists to access public information. Its creation was made possible by the launch of the Noark 3 standard in 1994, which established a standard method of generating and uploading metadata through Electronic Document and Records Management Systems (EDRMS).

The OEP was updated in May 2010 as part of the Norwegian government's commitment to transparency and democracy under the Freedom of Information Act. While the previous OEP enabled public information to be sought by journalists and scientists, the new OEP can be used by any person with internet access.

The OEP is a collaborative tool which central government agencies, approximately 100 of them, use to publicise their

public records online. Public records data is stored in a searchable database from which the public can locate case documents and send requests to the agency responsible for that particular case. The agencies themselves then process the requests sent to them via OEP, and reply to users directly.

The OEP only contains documents from the period after May 2010 and the old, password protected, version is still running parallel to the new OEP. By the end of 2012, the new OEP contained over five million registry entries published by 105 government agencies, processing about 20,000 information requests a month. The greatest number of requests comes from journalists (50%). Citizens and businesses make 22% of requests, public employees 21% and researchers 3%.

- <http://www.oep.no/nettsted/fad/OM-OEP.html>
- http://www.conferpapers.co.nz/wcioi_papers/Arne_Flifet_Paper.pdf

Annex: Standards and Guidance

Right to information

 African Commission on Human and Peoples' Rights: Declaration of Principles on Freedom of Expression in Africa

INTER-GOVERNMENT PRINCIPLES

The Declaration of Principles on Freedom of Expression in Africa was signed in Banjul, the Gambia, in October 2002. The Declaration states that freedom of expression and information is a fundamental and inalienable human right. With regard to secrecy laws, it further states that secrecy laws shall be amended as necessary to comply with freedom of information principles.

<http://www1.umn.edu/humanrts/achpr/expressionfreedomdec.html>

 African Commission on Human and Peoples' Rights: The Model Law on Access to Information for Africa

INTER-GOVERNMENT PRINCIPLES DETAILED GUIDANCE

This Model Law on access to information for Africa from 2012 is a non-binding document crafted specifically as a tool to guide law makers in African countries in translating obligations found in international treaties into detailed national legislation.

The Model Law aims to guide the development of new access to information legislation and the review of existing legislation. Its purpose is also to be an advocacy tool to encourage the adoption of access to information laws, to provide a compilation of best practices, and to help reinforce a common approach and harmonisation of access to information laws.

http://www.achpr.org/files/news/2013/04/d84/model_law.pdf

 ARTICLE 19 Principles

MULTI-STAKEHOLDER PRINCIPLES

ARTICLE 19 has published a set of international principles on freedom of information legislation: 'The Public's Right to Know - Principles on Freedom of Information Legislation'. These principles set out ways in which governments can achieve maximum openness, in line with the best international standards and practice. They are designed primarily for national legislation on freedom of information or access to official information but are equally applicable to information held by inter-governmental bodies such as the United Nations and the European Union.

<http://www.article19.org/data/files/pdfs/standards/righttoknow.pdf>

 ARTICLE 19 Training course for public officials

MULTI-STAKEHOLDER DETAILED GUIDANCE

ARTICLE 19 has published a Training Manual for Public Officials. The Manual is designed as a resource for officials who want to adopt administrative practices that conform to the best standards of freedom of information.

https://www.ip-rs.si/fileadmin/user_upload/Pdf/Publikacije_ostalih_pooblascencev/Article_19_foitainersmanual.pdf

Carter Center: The Access to Information legislation Implementation Assessment Tool

EXPERT / OTHER DETAILED GUIDANCE

The access to information legislation Implementation Assessment Tool, developed by the Carter Center, serves the dual purpose of diagnosing the extent to which the public administration has the capacity to respond to requests and to provide information, as well as providing an implementation roadmap for the government. The Assessment Tool is constructed to serve as an input for each public agency in which it is applied, and not as a comparative index across countries. The objectives of the Assessment Tool are to:

- Establish a comprehensive set of access to information implementation benchmarks;
- Identify the extent to which a ministry/agency has implemented its law;
- Provide a roadmap for improvements; and
- Contribute to scholarship on implementation and to the understanding of implementation successes and challenges.

http://www.cartercenter.org/peace/americas/access_to_information/IAT/index.html

OGP Eligibility Criteria: Access to Information

OGPELIGIBILITY CRITERIA RATING

In order to participate in OGP, governments must exhibit a demonstrated commitment to open government in four key areas, as measured by objective indicators and validated by independent experts. Any government that achieves a score of at least 75% of the total possible points available to them can join OGP at any time once they have demonstrated that they meet these minimum criteria.

Having an access to information law is one of the four eligibility criteria. This is assessed based on information taken from an ongoing survey by Right2Info.org that covers 197 countries. Four points are awarded to countries with access to information laws in place, three points if a country has a constitutional provision guaranteeing access to information, and one point if a country has a draft access to information law under consideration. Countries with both a constitutional provision and a draft law under consideration will only be awarded the 3 points for the constitutional provision.

<http://www.opengovpartnership.org/how-it-works/how-join/eligibility-criteria>

RTI Rating

CIVIL SOCIETY RATING

The RTI Rating, published by Access Info and the Centre for Law and Democracy, analyses the quality of the world's right to information laws. It covers 89 countries with RTI laws. The RTI Rating assesses the overall strength of countries' legal framework concerning RTI, and indicates the strengths and weaknesses of the legal framework in seven different categories, namely: Right of Access, Scope, Requesting Procedures, Exceptions and Refusals, Appeals, Sanctions and

Protections, and Promotional Measures.

<http://www.rti-rating.org/>

Special Mandates 2004 Declaration

INTER-GOVERNMENT PRINCIPLES

A joint declaration concerning access to information and secrecy legislation was adopted in 2004 by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression.

<http://www.osce.org/fom/38632>

Tshwane Principles on National Security and the Right to Information

CIVIL SOCIETY PRINCIPLES

The Tshwane Principles on National Security and the Right to Information were issued in June 2013 by 22 organisations and academic centres from around the world. The Principles were developed in order to provide guidance to those engaged in drafting, revising or implementing laws or provisions relating to the state's authority to withhold information on national security grounds or to punish the disclosure of such information. They are based on international and regional law and standards, evolving state practice, the general principles of law recognized by the community of nations, and the writings of experts.

<http://www.right2info.org/exceptions-to-access/national-security>

World Bank's Public Accountability Mechanisms website

INTER-GOVERNMENT GENERAL REFERENCE

The World Bank's Public Accountability Mechanisms website provides extensive information about various aspects of the right to information, including implementation measures.

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/0,,contentMDK:23352107~pagePK:148956~piPK:216618~theSitePK:286305,00.html>

Annex: Acknowledgements

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Right to information

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