Vietnam

Analysis of the Draft Law on Access to Information

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Centre for Law and Democracy
info@law-democracy.org
+1 902 431-3688
www.law-democracy.org

Introduction

Since the early 1990s, there has been dramatic global growth in the recognition and protection of the right to information (RTI). Well over 100 countries now have national laws recognising individuals' right to access information held by public authorities, up from 14 at the end of 1990. Furthermore, RTI has been clearly recognised as a human right under international law, including through decisions of the Inter-American Court of Human Rights[1] and the European Court of Human Rights,[2] as well as in the UN Human Rights Committee's 2011 General Comment on Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR),[3] which was ratified by Vietnam in 1982.

The number of RTI laws among countries in Southeast Asia remains somewhat limited – with only Indonesia and Thailand having adopted them so far – but a number of other countries – including Cambodia, Myanmar, the Philippines and Vietnam – are moving forward on this issue.

In Vietnam, discussions about a draft right to information law have been taking place, on and off, since at least 2009, but the government has now developed and published a draft Law on Access to Information (draft Law), which is expected to be adopted by the National Assembly in 2016.

This Analysis of the draft Law[4] is based on international standards regarding the right to information, as reflected in the *RTI Legislation Rating Methodology*, prepared by the Centre for Law and Democracy (CLD) and Access Info Europe (RTI Rating). The RTI Rating, first published in September 2010, is based on a comprehensive analysis of international standards adopted both by global human rights mechanisms, such as the UN Human Rights Committee and Special Rapporteur on Freedom of Opinion and Expression, and by regional courts and other regional mechanisms. It involves 61 indicators spread over 7 main categories which reflect all of the positive attributes that a strong RTI law should have.

The Rating has received widespread global recognition and is relied upon by a range of actors – including such inter-governmental bodies as UNESCO and the World Bank – to assess the strength of RTI laws. The Rating is continuously updated and now covers 102 national laws from around the world.[5]

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[1] *Claude Reyes and Others v. Chile,* 19 September 2006, Series C, No. 151.
[2] *Társaság A Szabadságjogokért v. Hungary*, 14 April 2009, Application no. 37374/05.
[3] General Comment No. 34, 12 September 2011, CCPR/C/GC/34, para. 18.
[4] The Analysis is based on an unofficial translation of the August 2015 version of the draft Law, prepared by Towards Transparency.
[5] Information about the RTI Rating as well as the assessments of the 102 national laws is available at: http://www.RTI-Rating.org.

A quick assessment of the draft Law based on the RTI Rating has been prepared and should be read in conjunction with this Analysis (the relevant sections of the RTI Rating assessment are pasted into the text of this Analysis at the appropriate places). The overall score of the Law, based on the RTI Rating, is 59 out of a possible 150 points, broken down as follows:

Section	Max Points	Score
1. Right of Access	6	2
2. Scope	30	16
3. Requesting Procedures	30	12
4. Exceptions and Refusals	30	10
5. Appeals	30	8
6. Sanctions and Protections	8	2
7. Promotional Measures	16	9
Total score	**150**	**59**

This score places the draft Law in 93rd position globally, in the bottom ten percent of the 102 countries which have been rated. This reflects the weak performance of the law on most of the RTI Rating categories, on only two of which it earns a score of 50 per cent or higher and on several of which it earns only one-third or less of the points.

The RTI Rating only measures the quality of the legal framework and much can be done at the implementation stage to address legal weaknesses. However, in our experience, certain minimum standards need to be met for a law to be effective, and the draft Law is simply too weak to provide a viable basis for a robust system of access to information.

1. Right of Access and Scope

The right to information is protected in Article 25 of the 2013 Constitution of the Socialist Republic of Vietnam which provides, among other things, that citizens shall enjoy the right "to access to information", the practice of which shall "be provided by the law." It is not clear whether this refers directly to the right to access information held by public authorities or some wider notion of access to information. In any case, allowing such a right to be regulated by law largely negates the value of the constitutional guarantee, since the latter fails to place any conditions on how such a law might regulate the right. In contrast, under international law, restrictions on the

right to information are considered to be legitimate only if they are necessary to protect one of a limited list of public and private interests.

Various articles in the draft Law refer to the right of citizens to access information, including Articles 1(1), 2(1) and 4(1). None, however, make it clear that this creates a specific presumption in favour of access to all information held by public authorities, subject only to a limited regime of exceptions. Furthermore, several provisions in the law, detailed below, appear to limit the scope of the right.

The draft Law does not follow better practice by setting out – either in its main provisions or in a preamble – the benefits associated with the right to information. This is important, among other things, to provide a positive basis for interpretation of the law.

It is clear from several provisions in the draft Law, including 2(1) which contains the most direct statement of the right of access, that it only applies to citizens, although Article 29 does give foreigners who are resident in Vietnam the right to access information which is directly related to their rights and obligations. It is also unclear whether legal entities have a right to make requests for information. Better practice is to extend the right to anyone, including legal entities, regardless of nationality or residence. This is sometimes challenged on the basis that it might undermine the country's security or place a burden on public authorities but such arguments simply do not hold water. Information which is sensitive on national security grounds should not be given to citizens or foreigners alike, while experience in countries that allow anyone to make a request demonstrates that the volume of such requests is low and does not place a burden on public authorities.

According to Article 3, "information" means information "created and owned" by public authorities during the performance of their functions. According to Article 7, this can be extended to information "held" by public authorities where access is "deemed necessary for community interests and health". Pursuant to Article 30, the new law will apply only to information created after it comes into force. Article 16 also refers to the scope of information that may be the subject of a request, although the precise implications of this article are unclear. Article 16(1) appears to be broad in scope, but Articles 16(2) and (3) suggest a much narrowly scope, referring to information relating to various activities of citizens which is not subject to proactive publication and internal information but only where this is needed to protect the legitimate "rights and interests" of the requester.

Taken together, these provisions substantially limit the scope of information covered by the draft Law. Better practice is to cover all information that is held by a public authority, regardless of who produced it, when it was produced or whether it is subject to proactive publication or is considered to be internal information. This is

appropriate given that the exceptions will protect all legitimate secrecy interests (including those of third parties who provide information to public authorities). It is also useful for an RTI law to state explicitly that one may lodge requests for either information or documents. In the former case, it might be necessary to compile the information from various documents.

Article 6 of the draft Law appears to contain a broad definition of public authorities, although the precise scope of this depends on how some of the terms used – such as "government agencies" and "hierarchical agencies" – are understood. Article 6 makes it clear that both legislative and judicial bodies are covered. It is not, however, clear whether State-owned enterprises are included (they do not appear to be) or whether bodies which do not fall under the purview of a ministry are covered (assuming such bodies exist in Vietnam). Finally, the law does not appear to cover private bodies that perform public functions or that receive significant public funding.

Recommendations:

- In due course, Article 25 of the Constitution should be amended to make it clear that it covers the right to access information held by public authorities and to place clear limits on the power of laws to restrict this right.
- The law should create a specific legal presumption in favour of access to all information held by public authorities, subject only to a narrowly defined set of exceptions.
- Consideration should be given to referring to the wider benefits of the right to information in the law and then requiring its provisions to be interpreted so as best to give effect to those benefits.
- Everyone, including legal entities and foreigners, should have the right to make requests for information.
- Information should be defined to include any material which is held by a public authority, regardless of who produced it or when it was produced.
- The law should make it clear that requesters have a right to access both information and documents.
- The definition of a public authority should be clarified to make it clear that it covers all public authorities, including the police, military, intelligence actors and State-owned enterprises, as well as private bodies which undertake public functions or receive significant public funding.

Right of Access

Indicator	Max	Points	Article

1	The legal framework (including jurisprudence) recognises a fundamental right of access to information.	2	1	Const. Art. 25
2	The legal framework creates a specific presumption in favour of access to all information held by public authorities, subject only to limited exceptions.	2	1	1(1), 2(1), 4(1)
3	The legal framework contains a specific statement of principles calling for a broad interpretation of the RTI law. The legal framework emphasises the benefits of the right to information.	2	0	
	TOTAL	**6**	**2**	

Scope

Indicator		Max	Points	Article
4	Everyone (including non-citizens and legal entities) has the right to file requests for information.	2	0	1(1), 2(1), 5(1), 29
5	The right of access applies to all material held by or on behalf of public authorities which is recorded in any format, regardless of who produced it.	4	1	2, 3, 6, 7, 16, 30
6	Requesters have a right to access both information and records/documents (i.e. a right both to ask for information and to apply for specific documents).	2	0	
7	The right of access applies to the executive branch with no bodies or classes of information excluded. This includes executive (cabinet) and administration including all ministries, departments, local government, public schools, public health care bodies, the police, the armed forces, security services, and bodies owned or controlled by the above.	8	6	1(2)(c), 6
8	The right of access applies to the legislature, including both administrative and other information, with no bodies excluded.	4	4	6
9	The right of access applies to the judicial branch, including both administrative and other information, with no bodies excluded.	4	4	6(e)
10	The right of access applies to State-owned enterprises (commercial entities that are owned or controlled by the State).	2	0	
11	The right of access applies to other public authorities, including constitutional, statutory and oversight bodies (such as an election commission or information commission/er).	2	1	6
12	The right of access applies to a) private bodies that perform a public function and b) private bodies that receive significant public funding.	2	0	
	TOTAL	**30**	**16**	

2. Duty to Publish

The proactive publication provisions are found in Articles 10-15 of the draft Law. The categories of information that must be published, apart from information required to be published by other laws, are mainly found in Articles 10(1)(b), and 12(1)(b) and (d). Ultimately, these obligations are quite limited in scope and rather general in nature, especially compared to better practice laws in other countries. They mostly focus on structural organisational information and a general category of "necessary information for the community interests and health", and do not include, for example, financial information about public authorities, information on how to participate in the activities of public authorities and about their decision-making processes, information about contracts and the purchase of goods and services by public authorities, and information about the recipients of public benefits.

The draft Law does, however, include some progressive rules on how information is to be disseminated, with Article 11 detailing obligations to try to reach those with disabilities and other hard to reach communities, and Article 13 referring to certain obligations of the mass media in this regard.

Recommendation:

- Consideration should be given to expanding substantially the minimum requirements in terms of what information is subject to proactive publication.

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

3. Requesting Procedures

An important international principle is that requesters should not have to provide reasons for their requests. Section 17(2)(d) states that reasons should be provided, but it also refers to Article 16(3), so that it is not clear whether reasons always need to be given or only when Article 16(3) is engaged (which is when information is needed to protect the legitimate rights and interests of requesters). Subject to the concerns raised above about Article 16(3), it is legitimate to ask for reasons in the context of a particular access provision which hinges on those reasons.

Article 17(2)(a) requires requesters to provide their names and addresses and an identification (or passport) number on their request. Better practice is simply to require them to provide a description of the information sought, along with an address for delivery of the information. This is perhaps linked to the limitation of the right to citizens, since this (otherwise unnecessary) requirement would require the provision of formal identification.

The provision of assistance to requesters can be vital to their ability to make requests and it can also facilitate the smooth processing of requests. Article 4(5) requires the government to "create favourable conditions" for certain groups – such as persons with disabilities or those living in remote areas – to exercise their right to information. This is useful, but it does not appear to place a direct obligation on public authorities to assist requesters falling into these categories. Article 17(3) provides that public authorities are responsible for "guiding" requesters where additional information is needed relating to a request. Once again, this does not quite seem to meet the standard of a specific obligation to provide assistance to requesters who need it to formulate their requests. A requirement for officials to provide assistance to help requesters formulate their requests, or to contact and assist requesters whose requests are vague, unduly broad or otherwise need clarification, should be set out directly in the law.

The draft Law does not place an obligation on public authorities to provide receipts acknowledging requests. These can be important, for example as evidence that a request was lodged on a particular day.

Pursuant to Article 17(3), where the public authority to which a request is directed does not have the information sought but knows of another authority which does, it must inform the requester about that other authority. Better practice in such cases is for the original authority to transfer the request directly to the agency which holds the information.

The main provision on form of access is Article 18, which refers to a number of possible forms of access and indicates that public authorities "are responsible for providing information within the scope and methods requested", depending on the nature of the information. This is useful, but it is not clear that it constitutes an obligation to comply with requesters' preferences regarding how they wish to access information, as long as this is technically feasible and would not impose an undue burden on the public authority.

The draft Law has reasonably good provisions in terms of time limits, with Article 19(3) requiring requests to be responded to within 12 days (it is not clear if these are working or calendar days), which may be extended to 15 days for more complex requests. The draft Law does not, however, require public authorities to respond to

requests as soon as possible, which can be important to avoid situations where authorities wait until the end of the time limit to respond, even where the information is readily accessible. Better practice is also to require public authorities to inform requesters where extensions beyond the original time limit are required, although given that is only an additional three days it may not be that important.

Article 22 makes it clear that fees may only be charged for the costs of printing and sending information to requesters. This is positive but it would be useful to provide for a central schedule of fees even for these items, so as to avoid a patchwork of fees across different public authorities. It is also useful to make it clear that no charge may be levied simply for filing a request. Finally, better practice is to provide for fee waivers for poorer requesters.

Article 1(2)(b) refers to intellectual property rights owned by the State, while Article 5(2)(b) prohibits the use of information for purposes other than those which have been "given", presumably through the requesting process. There is a very strong trend, known as open data, towards making information available free of State intellectual property restrictions, so that individuals may use it as they please. This has led to the creation of massive reuse activities in many countries, often very much in the public interest, with individuals making creative use of information, in particular in data formats, to develop tools and applications for use by others.

Recommendations:

- Public authorities should not be allowed to ask requesters for their reasons for seeking information, perhaps outside of certain limited circumstances where the reasons are relevant to assessing whether or not the information should be provided in the first place.
- Requesters should only be required to provide a description of the information and an address for delivery of that information when making a request.
- The rules should be clarified to make it clear that public authorities have an obligation to provide assistance to help requesters where they need assistance either to formulate their requests or to make a written request in the first place.
- Public authorities should be required to provide a receipt to requesters.
- Where a public authority does not hold requested information, it should be required to transfer the request to another authority which does hold the information, if it is aware of such a body, and to inform the requester about the transfer.
- The law should make it clear that public authorities are required to comply with requesters preferences in terms of form of access, unless this would be unduly

burdensome or pose a risk of harm to the preservation of a record.

- The law should clarify whether the time limits are working or calendar days, and should require public authorities to respond to requests as soon as possible, with the time limits simply being maximums.
- Consideration should be given to providing for a central schedule of fees, to making it clear that it is free to lodge requests and to putting in place a system of fee waivers for poorer requesters.
- Instead of prohibiting breach of State intellectual property rights and limiting what requesters may do with information, the law should provide for free utilisation of information so as to stimulate creative uses of it for the benefit of the public.

Indicator		Max	Points	Article
13	Requesters are not required to provide reasons for their requests.	2	1	5(2)(b), 17(2)(d)
14	Requesters are only required to provide the details necessary for identifying and delivering the information (i.e. some form of address for delivery).	2	0	17(2)
15	There are clear and relatively simple procedures for making requests. Requests may be submitted by any means of communication, with no requirement to use official forms or to state that the information is being requested under the access to information law.	2	2	17(1)
16	Public officials are required provide assistance to help requesters formulate their requests, or to contact and assist requesters where requests that have been made are vague, unduly broad or otherwise need clarification.	2	1	17(3)
17	Public officials are required to provide assistance to requesters who require it because of special needs, for example because they are illiterate or disabled.	2	1	4(5)
18	Requesters are provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed 5 working days	2	0	
19	Clear and appropriate procedures are in place for situations where the authority to which a request is directed does not have the requested information. This includes an obligation to inform the requester that the information is not held and to refer the requester to another institution or to transfer the request where the public authority knows where the information is held.	2	1	17(3)
20	Public authorities are required to comply with requesters' preferences regarding how they access information, subject only to clear and limited overrides (e.g. to protect a record).	2	1	3(2), 17(2)(c), 18, 23(1)(d)
21	Public authorities are required to respond to requests as soon as possible.	2	0	
22	There are clear and reasonable maximum timelines (20 working days or less) for responding to requests, regardless of the manner	2	2	4(2), 5(1)(a),

	of satisfying the request (including through publication).			19(3)(a)
23	There are clear limits on timeline extensions (20 working days or less), including a requirement that requesters be notified and provided with the reasons for the extension.	2	1	19(3)(b)
24	It is free to file requests.	2	1	
25	There are clear rules relating to access fees, which are set centrally, rather than being determined by individual public authorities. These include a requirement that fees be limited to the cost of reproducing and sending the information (so that inspection of documents and electronic copies are free) and a certain initial number of pages (at least 20) are provided for free.	2	1	22
26	There are fee waivers for impecunious requesters	2	0	
27	There are no limitations on or charges for reuse of information received from public bodies, except where a third party (which is not a public authority) holds a legally protected copyright over the information.	2	0	1(2)(b), 5(2)(b)
	TOTAL	**30**	**12**	

4. Exceptions and Refusals

One of the areas where the draft Law does least well on the RTI Rating, scoring just 10 points out of a possible 30 or 33 percent, is in terms of the regime of exceptions. There are a number of related problems here. First, the draft Law preserves secrecy rules in other laws (see Articles 1(2) and 4(3)), rather than overriding them. The problem with preserving exceptions or secrecy provisions in other laws is that these are often numerous, including provisions in sometimes quite old laws, and were normally not drafted with openness in mind. As a result, they often fail to conform to the spirit of the right to information law and they may seriously undermine it by establishing broad and often very discretionary secrecy rules.

Better practice in this area is for the right to information law to override other laws, but only to the extent of any conflict. Thus, if the right to information law recognises privacy as a legitimate ground to refuse access, there is no problem with another law elaborating on the scope of privacy. But other laws should not, for example, establish grounds for secrecy which are not recognised in the right to information law.

Another problem with the regime of exceptions in the draft Law is that is it not very clear and scientific in nature, with provisions containing secrecy rules or references spread around the draft rather than being collected in one place. Thus, there are secrecy references in Articles 1(2), 4(3) and (4), 8 and 20. In many cases, these

references are overlapping or potentially overlapping. Thus, Article 1(2) refers to State secrets, Article 4(3) refers to national defence and security, and Article 20 again refers to national defence and security and also State secrets. Given that the terms used in these different provisions appears to be different, they might be interpreted and used differently, even though they cover the same concepts, which is inherently problematical.

Overall, the draft Law refers to a number of grounds for secrecy which are either unduly vague or which are not recognised as legitimate grounds for restricting access to information under international law. These include: state secrets, which is undefined (Articles 1(2)(a) and 20(1)(a)); social order and ethics (Article 4(3)); interests of the nation, people and State, and the rights and obligations of agencies (Article 4(4)); using information against Vietnam, undermining national solidarity, inciting violence, conducting propaganda for war or sowing hatred or religious division (Article 8(2)); infringing the dignity of others (Article 8(3)); and State security and the rights and interests of third parties (Article 20(1)(a)). There appears to be some confusion, at least in relation to some of these exceptions, between the idea of restrictions on freedom of expression – which, for example, are legitimate to prevent incitement to crime and hatred – and restrictions on access to information held by public authorities – which should simply not be capable ot inciting others to hatred.

By and large, the exceptions in the draft Law are harm-tested, in the sense that they apply only where disclosure of the information would cause harm to the protected interest. However, a few, such as those found in Article 1(2) and some of those in Article 20(1), lack proper harm tests.

Among the most important features of a strong exceptions framework is a public interest override, whereby information must be released even if this may cause harm to a protected interest if the overall public interest in disclosure outweighs that harm. There is no public interest override in the draft Law. Other features found in better practice laws which are missing from the draft Law include:

- Presumptive overall time limits – for example of 20 years – on the duration of exceptions, based on the idea that the sensitivity of information declines over time.
- Procedures for consulting with third parties in relation to information provided by them, with a view to obtaining either their consent to the release of the information or their objections to its release.

Article 20(2) requires public authorities to give requesters written notice of any refusals to provide access. This is useful but it could be improved by requiring the notice to specify the precise legal provision relied upon to refuse access (i.e. so the requester understands what is sensitive about the information) and to include

information about the right of the requester to lodge a complaint or appeal against the refusal decision.

Recommendations:

- The right to information law should override other laws in case of conflict.
- The provisions on exceptions should be brought together and rationalised, so that any repetitive references are removed and so that these provisions represent a tight, coherent system of exceptions.
- The specific exceptions in the draft Law should be reviewed and amended so that they conform to international standards in terms of the types of interests that are protected and that there is a uniform requirement of a risk of harm before an exception may be applied.
- The law should incorporate a public interest override, presumptive overall time limits for exceptions and rules on consulting with third parties in relation to information provided by them.
- When informing requesters that their request has been denied, public authorities should be required to provide information about the specific grounds for the refusal and about the requester's right to lodge an appeal or complaint against the decision.

Indicator		Max	Points	Article
28	The standards in the RTI Law trump restrictions on information disclosure (secrecy provisions) in other legislation to the extent of any conflict.	4	0	1(2), 4(3), 30(2)
29	The exceptions to the right of access are consistent with international standards. Permissible exceptions are: national security; international relations; public health and safety; the prevention, investigation and prosecution of legal wrongs; privacy; legitimate commercial and other economic interests; management of the economy; fair administration of justice and legal advice privilege; conservation of the environment; and legitimate policy making and other operations of public authorities. It is also permissible to refer requesters to information which is already publicly available, for example online or in published form.	10	4	1(2), 4, 8, 20
30	A harm test applies to all exceptions, so that it is only where disclosure poses a risk of actual harm to a protected interest that it may be refused.	4	3	4, 8, 20
31	There is a mandatory public interest override so that information must be disclosed where this is in the overall public interest, even if this may harm a protected interest. There are 'hard' overrides (which apply absolutely), for example for information about human rights, corruption or crimes against humanity.	4	0	

32	Information must be released as soon as an exception ceases to apply (for example, for after a contract tender process decision has been taken). The law contains a clause stating that exceptions to protect public interests do not apply to information which is over 20 years old.	2	0	
33	Clear and appropriate procedures are in place for consulting with third parties who provided information which is the subject of a request on a confidential basis. Public authorities shall take into account any objections by third parties when considering requests for information, but third parties do not have veto power over the release of information.	2	0	
34	There is a severability clause so that where only part of a record is covered by an exception the remainder must be disclosed.	2	2	21
35	When refusing to provide access to information, public authorities must a) state the exact legal grounds and reason(s) for the refusal and b) inform the applicant of the relevant appeals procedures.	2	1	20(2)
	TOTAL	**30**	**10**	

5. Appeals

The draft Law does even less well in this category of the RTI Rating than exceptions, mostly because it fails to establish an independent administrative body for appeals, such as an information commission. Experience in other countries demonstrates that having such a body is essential to the successful implementation of the right to information. In addition to providing an accessible, independent review of decisions to refuse access (i.e. an independent interpretation of the exceptions) such a body can play a number of important promotional roles, including serving as a centre of expertise and knowledge on this issue for the whole public sector and raising awareness about this right among the general public.

When establishing such a body, some key considerations in terms of its effectiveness are:

- Making sure it is independent of the government, the decisions of which it is supposed to review, including through the way members are appointed, protection of the tenure of members, prohibitions on those with strong political connections being appointed, and insulating the budget allocation process from potential political interference.
- Ensuring that the body has the necessary powers to investigate complaints, including by reviewing information and by compelling public authorities to provide it with information and to testify before it.
- Having the power to make binding decisions that ensure that the requester's right to information is respected, including for public authorities to disclose information.

- Having the power to impose appropriate structural remedies on public authorities which are systematically failing to respect the right to information, such as to appoint an information officer, to train their staff or to manage their records better.

In addition, the rules relating to appeals need to be clear, including as to procedures and time limits, that appeals are free and that the government bears the burden of proof on appeal (which is appropriate given that the government is in a much better position to establish its case, given that the requester will not have seen the information under consideration). The draft Law does not do any of these things, although Article 27(2) does provide for broad grounds for appeals.

It is also useful to have two other levels of appeals. The first is an internal appeal to a higher decision-making authority within the same public authority or within government. This is not provided for in the draft Law. The second is a judicial appeal to the courts, which is provided for in Article 5(1)(b) of the draft Law.

Recommendations:

- The law should establish an independent, administrative oversight body to deal with appeals and also to undertake other (promotional) functions, in line with the standards outlined above.
- The law should set out clear procedures and time limits governing appeals and provide that appeals are free and that the government bears the burden of proving that it acted in accordance with the law on appeal.
- The law should also provide for an internal appeal.

Indicator		Max	Points	Article
36	The law offers an internal appeal which is simple, free of charge and completed within clear timelines (20 working days or less).	2	0	
37	Requesters have the right to lodge an (external) appeal with an independent administrative oversight body (e.g. an information commission or ombudsman).	2	1	27(3)
38	The member(s) of the oversight body are appointed in a manner that is protected against political interference and have security of tenure so they are protected against arbitrary dismissal (procedurally/substantively) once appointed.	2	0	
39	The oversight body reports to and has its budget approved by the parliament, or other effective mechanisms are in place to protect its financial independence.	2	0	
40	There are prohibitions on individuals with strong political connections from being appointed to this body and requirements of professional expertise.	2	0	

41	The independent oversight body has the necessary mandate and power to perform its functions, including to review classified documents and inspect the premises of public bodies.	2	0	
42	The decisions of the independent oversight body are binding.	2	0	
43	In deciding an appeal, the independent oversight body has the power to order appropriate remedies for the requester, including the declassification of information.	2	0	
44	Requesters have a right to lodge a judicial appeal in addition to an appeal to an (independent) oversight body.	2	2	5(1)(b)
45	Appeals (both internal and external) are free of charge and do not require legal assistance.	2	1	
46	The grounds for the external appeal are broad (including not only refusals to provide information but also refusals to provide information in the form requested, administrative silence and other breach of timelines, charging excessive fees, etc.).	4	4	27(2)
47	Clear procedures, including timelines, are in place for dealing with external appeals.	2	0	
48	In the appeal process, the government bears the burden of demonstrating that it did not operate in breach of the rules.	2	0	
49	The external appellate body has the power to impose appropriate structural measures on the public authority (e.g. to conduct more training or to engage in better record management)	2	0	
	TOTAL	**30**	**8**	

6. Sanctions and Protections

When establishing a new RTI system, it is important to include an appropriate system of sanctions, to promote respect for the new law. Article 8 sets out various forms of prohibited behaviour, including providing incorrect or insufficient information, destroying or falsifying information, or otherwise obstructing requesters (see also Article 23(3)). Pursuant to Article 23(2), heads of public authorities are responsible for dealing with such violations in a timely manner, while Article 28 provides that those who obstruct access shall be disciplined or subjected to penal sanctions, depending on the extent of the violation.

These are generally strong provisions on sanctions. Consideration should be given, however, to the idea of establishing a more independent system for applying disciplinary sanctions. Often, public authorities are reluctant to disclose information and so there may not be sufficient incentives for the heads of these bodies to discipline individuals who obstruct access. Indeed, senior officials often given mixed messages in this area to information officers, on the one hand telling them formally

to comply with the law but, on the other, giving them informal messages that it is okay to be secretive.

Consideration should also be given to providing for specific penal rules relating to information in the body of the right to information law. Otherwise, any penal measures will be dependent on rules in other laws, which may not be properly tailored to an information context.

One concern with the rules on sanctions is that Article 8, in addition to sanctioning obstruction of access, also provides for sanctions for wrongful use of information. We presume that this is unnecessary and that other laws in Vietnam already adequately protect against these sorts of behaviours. We also note that the spirit of these rules is inappropriate inasmuch as we are talking here about information which is held by public authorities, which should not lead to such results as inciting violence or religious division, or infringing the honour of third parties.

The draft Law does not establish a system for addressing the problem of public authorities which systematically fail to meet their information disclosure obligations. Such measures are useful to address the problem of persistent non- or underperformers and to send a signal to all public authorities that failure to implement the law will not be accepted.

In addition to sanctions, a strong RTI law should include adequate legal protections to ensure that officials can disclose information freely without the risk of being penalised for doing their duty. Better practice is to provide protection for good faith disclosures pursuant to the law. Officials already face important historical barriers to disclosure (the culture of secrecy) and they need protection for good faith acts if this is to be addressed. The draft Law fails to include any such provisions.

Another important protection is for whistleblowers, those who, in good faith, release information which discloses wrongdoing. Once again, the draft Law fails to include any such provisions.

Recommendations:

- Consideration should be given to establishing a more independent system for imposing disciplinary measures on those who obstruct access and for establishing specific, tailored penal rules relating to obstruction of access (for example, the unauthorised destruction of information).
- The rules providing for sanctions for wrongful use of information should be removed from the right to information law.
- A system for imposing sanctions on public authorities which systematically

fail to respect the right to information should be developed.
- The law should provide protection to officials who disclose information in good faith pursuant to the law.
- The law should provide protection for whistleblowers.

Indicator		Max	Points	Article
50	Sanctions may be imposed on those who wilfully act to undermine the right to information, including through the unauthorised destruction of information.	2	2	8, 23(2), (3), 28
51	There is a system for redressing the problem of public authorities which systematically fail to disclose information or underperform (either through imposing sanctions on them or requiring remedial actions of them).	2	0	
52	The independent oversight body and its staff are granted legal immunity for acts undertaken in good faith in the exercise or performance of any power, duty or function under the RTI Law. Others are granted similar immunity for the good faith release of information pursuant to the RTI Law.	2	0	
53	There are legal protections against imposing sanctions on those who, in good faith, release information which discloses wrongdoing (i.e. whistleblowers).	2	0	
	TOTAL	**8**	**2**	

7. Promotional Measures

Experience in other countries demonstrates that a number of promotional measures are necessary for the successful implementation of a right to information law. The draft Law does relatively well in this area, scoring 9 out of 16 points, or above 50 percent, but there are a number of areas where it could still be further improved.

Promotional work, such as awareness raising and other efforts to support compliance with and understanding of the law, are important to getting a new RTI system off of the ground. The draft Law fails to allocate central responsibility to any body to take the lead on promotional and support measures. In many countries, this role is allocated to the independent oversight body, but it can also be given to a government authority.

Articles 23(1)(d) and 24(3) and (5) refer generally to the obligation of public authorities to maintain their records in a "systematic, sufficient, comprehensive manner and is easy for searching". These obligations are positive but they are not enough to ensure good records management in practice. Records management is a complex science and responsibility for this cannot be allocated to individual public authorities. Instead, better practice is to give a central, expert body the power to

develop and then apply records management standards for the whole civil service, which can be amended and strengthened over time, as public authorities gain capacity in this area.

A number of provisions in the draft Law, including Articles 12(1)(c), 23(1)(b) and 24(2), refer to the idea of public authorities publishing lists of information subject to proactive publication. This is useful but better practice is to require public authorities to publish lists of all of the documents they hold, or at least all of the categories of information that they hold. This can assist requesters in locating the information they want more effectively, and save time and effort due to better targeting of requests for information.

Article 26(2) refers to the idea of People's Councils reviewing annual reports of People's Committees on the right to information,but the draft Law does not actually place a positive obligation on public authorities to report annually on what they have done to implement the law. Better practice in this area is to require every public authority to produce either a dedicated report on implementation of the right to information law or a section in their general annual report on this issue. This should include detailed statistical information on the number of requests received and how they have been dealt with (for example, average time limits to respond, fees charged, exceptions relied upon and so on). A central body should then be given the responsibility of compiling this information into a central overview report which details what is happening across the public sector in this area. Such a system of reporting is essential to gaining an understanding of what is happening with implementation of the law, and therefore to taking remedial measures to address implementation challenges.

Recommendations:

- A central body should be given overall responsibility for undertaking promotional work to support implementation of the right to information law, including public awareness-raising and providing advice and support to public authorities.
- A fully-fledged system for records management should be put in place which includes having a central body set binding records management standards for all public authorities.
- Consideration should be given to requiring public authorities to publish lists of all of the documents they hold or at least lists of the categories of documents they hold.
- All public authorities should be required to produce annual reports on what they have done to implement the right to information law and a central body should be given responsibility for producing a consolidated central report on this issue.

Indicator		Max	Points	Article
54	Public authorities are required to appoint dedicated officials (information officers) or units with a responsibility for ensuring that they comply with their information disclosure obligations.	2	2	6(3)
55	A central body, such as an information commission(er) or government department, is given overall responsibility for promoting the right to information.	2	0	
56	Public awareness-raising efforts (e.g. producing a guide for the public or introducing RTI awareness into schools) are required to be undertaken by law.	2	2	25(1)(b),(c)
57	A system is in place whereby minimum standards regarding the management of records are set and applied.	2	1	23(1)(d), 24(3), (5)
58	Public authorities are required to create and update lists or registers of the documents in their possession, and to make these public.	2	1	12(1)(c), 23(1)(b), 24(2)
59	Training programmes for officials are required to be put in place.	2	2	23(1)(a)
60	Public authorities are required to report annually on the actions they have taken to implement their disclosure obligations. This includes statistics on requests received and how they were dealt with.	2	1	26(2)
61	A central body, such as an information commission(er) or government department, has an obligation to present a consolidated report to the legislature on implementation of the law.	2	0	
	TOTAL	**16**	**9**	