

Palestinian Draft Law On the Right of Access to Information (2012)

Chapter One General Provisions

Article (1) : Definitions

For the purposes of the implementation of the provisions of this Law, the following definitions apply to the key terms and designations listed below:

Authority: Palestinian National Authority (PNA).

Commissioner General: Commissioner General of Information.

Office: Office of the Commissioner General of information.

Public Institution: All ministries, departments, executive and regulatory bodies; legislative, judicial and executive institutions; local bodies, civil society organizations (charities, unions and federations) and any party that receives State funding; private institutions that manage public facilities, perform public works, or that possess information on the environment or public health and safety matters; and any other institution considered by the Commissioner General to be of a public nature for the purposes of the implementation of this Law.

Competent Employee: Employee designated by a public institution to process requests for information in its possession.

Public Figure: A person who has a leading position in the State such as a member of the Legislative Council, the Council of Ministers, the Supreme Judicial Council, the Office of the Presidency, or of security sector institutions; or a person who holds a senior position in a political party, union or federation known in the community; or any other person considered by the judicial authorities to be a public figure for the purposes of this Law.

Information: Written or electronically-stored records and documents, drawings, maps, tables, pictures, films, microfilms, sound recordings, videos tapes, graphs, or any information accessible via special devices; and any information considered by the Commissioner General to fall within the scope of this Law.

Alternative format: A format that enables persons to obtain the information they require in a format that responds to their specific needs.

Article (2): Law Purposes

This law shall aim to:

1. Enable persons to exercise their right of access to information held by public institutions, in accordance with the provisions of this Law.
2. Foster a culture of transparency and accountability within Palestinian public institutions in a spirit of openness vis-à-vis the general public.

Article (3) : Information Disclosure

All information held by public institutions shall be accessible unless stipulated otherwise by this Law on security or other grounds.

Article (4): Competent Employee

Each public institution shall appoint a person tasked with the responsibility of processing requests for information. These persons shall be empowered with the authority to access and retrieve the required information.

Article (5) Information Management and Storage

Public institutions shall manage and store information in their possession in an orderly manner to facilitate information retrieval, and shall store information electronically whenever possible.

Article (6) Employee Training

Public institutions shall organize training courses for their employees on the importance of the right to access information, on how to facilitate the exercise of this right, and on information storage and retrieval mechanisms.

Chapter Two

Principles of the Right of Access to Information

Article (7)

The obligation to publish key information

Each public institution shall publish an annual report that, at a minimum, will include:

1. Information on : administrative and working procedures and regulations; objectives and achievements; problems encountered; budget and audited accounts; and the services the institution provides to the general public.
2. The procedural steps to be taken by individuals who wish to learn about the public policy and projects of the institution.
3. The type of information held by the institution and details of how it is managed and stored.
4. Information on any decision or policy adopted by the institution that may affect the general public, including the rationale behind them, and their intended impact.
5. Official regulatory body reports about the institution.
6. Any other information that the Commissioner General considers should be published.

Article (8) Industrial Institutions – disclosure obligations

Industrial institutions, both public and private, shall publish semi-annual reports that must, at a minimum, include:

1. The location (s) and nature of any toxic substances utilized, and information on the potential risks posed by them.
2. Manufacturing waste discharge levels.
3. Means of waste disposal.

Article (9) Public Institution Public Meetings

A public institution must announce the date, place and purpose of each of its public meetings; the public may not be prohibited from attending these meetings, except in cases stipulated under this Law.

Article (10) Protection of Informant

1. An employee who, in good faith, discloses information about irregularities or breaches of the law shall be protected and may not be penalized in any way for making the disclosure.
2. Journalists' information sources may not be disclosed unless the sources wish to be identified, or in cases where a court orders source disclosure to prevent a crime or because the information was obtained in an illegal manner.
3. A person who obtains information legally classified as confidential is not liable to prosecution on condition that the information is not obtained by that person acting in an ex officio capacity or in another illegal manner, and that the public is granted access to the information in question. 9

Chapter Three

Information Requests

Article (11) Submission of Request

Requests to access information shall be submitted in writing to the public institution that possesses the required information. Such requests may be submitted via electronic mail, provided they contain sufficient detail to enable the competent employee to retrieve the information with minimum effort.

Article (12) Notification of Receipt of Request

Upon receiving the request, the competent employee shall immediately notify the requesting party of the date of receipt of the request, the type of information requested, and the time required to respond to the request.

Article (13) Response to Request

The competent employee shall respond to each request within 7 days of receipt, a timeframe that may be prolonged by a maximum 7 days if the request entails the retrieval of a large amount of information, or if access to the information involves consultation with a third party or another public institution. Non-response within a maximum period of 14 days shall be considered a rejection of the request.

Article (14) Request Approval

If the request is approved, the competent employee shall make the information requested available and determine the associated fee chargeable to the requesting party. If the request is for more than one item of information, the competent employee should allow the requesting party to access all the available items of information required that are not subject to the access restrictions stipulated under this Law on security or other grounds.

Article (15) Submission of Information

Upon approval of the request, the competent employee shall provide the required information to the requesting party in accordance with the established procedures of the public institution. Responses to information requests shall not be exclusively verbal and must include a copy of the document containing the information requested. Instructions issued by the Commissioner General shall indicate how the requesting party can obtain a copy of the required information.

Article (16) Alternative Information Format

When requested and to the extent possible, the competent employee shall provide information in an alternative format that meets the requirements of the requesting party. The competent employee may transform information into an alternative format on condition that the requesting party agrees to cover the associated costs.

Article (17) Referrals of Requests to Another Institution

The competent employee may, with the prior agreement of the requesting party, refer a request to another institution if that institution is considered better placed to respond to the request in terms of the ready availability of the information required and its ability to provide it in alternative formats. In such cases, requests are considered to have been submitted to the public institutions to which they have been referred.

Article (18) Rejection of Request

If the request is rejected, the competent employee shall state the reason (s) for the rejection in a written response to the requesting party. The reasons for the rejection of a request may not extend beyond the following considerations:

1. The institution does not possess the requested information.
2. The requested information is subject to the access restrictions imposed under this Law on security or other grounds; the competent employee shall explain the nature of the restrictions and how they affect access to the information requested.

Chapter Four Exceptions

Article (19) National Security and Public Order

The competent employee shall refuse to release any information whose disclosure risks endangering the defence capabilities and national security of the State. This includes information on:

1. Weapons, tactics, strategies and military forces, as well as military operations which aim to protect the homeland.
2. Intelligence information utilized, in accordance with the applicable laws, to thwart any act of aggression or crime that endangers the internal and/or external security of the State.
3. International communications and correspondence related to defence matters, including military alliances.

Article (20) Information about a Foreign Party

The competent employee shall refuse to disclose any information concerning a foreign State or organization with which an agreement has been concluded to keep this information confidential, provided that the employee can prove the existence of such an agreement.

Article (21) Access to Information Over 20 Years Old

The competent employee shall not refuse to disclose information referred to in Articles (19) and (20) of this Law if it is more than 20 years old and still held by a public institution, except in cases where a decision by the Commissioner General to keep the information confidential for a further fixed time period is justified and adequately explained.

Article (22) Information on Judicial Investigations

Public institutions responsible for the investigation of crimes and oversight of law enforcement and police action shall refuse to disclose information if it risks jeopardizing a criminal investigation, or compromising the reputation of a person who has not been convicted of any crime or wrongdoing. The public prosecutor may order partial disclosure of criminal investigation proceedings in corruption cases if he/she deems it necessary to inform public opinion.

Article (23) Economic Security Issues

Without prejudice to the applicable laws, the competent employee may refuse to disclose professional or commercial information of a confidential nature pertaining to the public institution if it risks causing material damage to the economic interests of the State, or undermining its ability to manage the national economy.

Article (24) Commercial Secrets

The competent employee shall refuse to disclose any information containing professional secrets to a third party, or disclose information which may

undermine the competitiveness of a third party unless that party agrees to such disclosure.

Article (25) Internal Affairs of the Institution

The competent employee may refuse to disclose any information that relates to the internal affairs of the institution and its staff, including internal orders and preliminary discussions and proposals.

Article (26) Privacy

1. The competent employee shall refuse to disclose any information about the private life of a third party or which might endanger the safety of any person, except in the following cases:
 - a. The person concerned agrees to the disclosure.
 - b. The information concerned is available in the public domain.
 - c. Disclosure is required by court order or approved by the Commissioner General.
 - d. The requesting party is a custodian of the third party.
 - e. If the requesting party is a relative of the third party, and provided that the request is submitted at least 20 years after the death of the latter.
2. Any person intending to publish information about a public figure shall not be prevented from accessing or publishing such information. In the event that the information proves to be incorrect, a financial penalty can be imposed on the person who publishes it, in accordance with the applicable provisions of the Law.

Chapter Five

Commissioner General of Information

Article (27) Office of the Commissioner General of Information

Pursuant to the provisions of this Law, an Office of the Commissioner General of Information shall be established. It shall enjoy the legal personality and independence it requires to exercise its functions. The Office shall be allocated a special budget within the public budget of the Palestinian National Authority.

Article (28) Powers of the Office

The Office shall be considered as an authority of appeal for persons whose access to information requests have been rejected. The Office shall aim to ensure implementation of the provisions of this Law and to achieve the goals set out therein. Accordingly, it shall be entitled to exercise the following powers:

1. Develop, regulate and implement the programmes, plans and policies pertaining to the defence of the right of individuals to access and obtain information.
2. Raise public awareness about the importance of ensuring the right of access to information and the positive results to be gained from the exercise of this right at the level of the individual, society and the State.
3. Contribute to the training of public institution employees and officials on the importance of the right to access information, on how to facilitate the exercise of this right, and on information storage and retrieval mechanisms.
4. Monitor infringements of the right of access to information and publish reports and studies highlighting impediments to the exercise of this right and ways to eliminate them.

Article (29) Office Headquarters

The Office headquarters shall be located in Jerusalem and branches may be established in all Governorates.

Article (30) The Office Acts as an Appeal Authority

The Office shall be considered an appeal authority for persons who wish to contest:

1. Rejection of a request for information.
2. The fee charged for accessing information.
3. Rejection of a request to obtain information in an alternative format.
4. The prolongation of the time period authorized to respond to an information request beyond the maximum timeframe imposed under Article (13) of this Law.
5. The fact that his/her information request was referred to more than one institution without his/her prior approval, as required by this Law.
6. Other outcomes that the Commissioner General of Information agrees to examine on appeal.

Article (31) Dates of Appeal

An appeal must be submitted to the Office no later than 30 days after the request has been rejected or 30 days after the date of any decision of the institution against which the requesting party wishes to lodge an appeal.

Article (32) Response to the Appeal

The Office shall respond to an appeal no later than one month after its submission. Upon registration of the appeal, the Office shall immediately notify the relevant institution in writing that its rejection of the access to information request concerned has been appealed and request to be informed of the precise reasons for the rejection.

Article (33) Appointment of the Commissioner General of Information

The Commissioner General of Information shall be appointed to preside over the Office by decision of the Council of Ministers that is subject to the subsequent approval of the Palestinian Legislative Council. The appointee may serve a maximum of two four-year terms. His/her salary and other financial entitlements shall be determined within the framework of the nomination decision-making process.

Article (34) Functions of the Commissioner General

The Commissioner General shall follow up and rule on appeals lodged with the Office, appoint Office staff and regulate their work routine.

Article (35) Full-Time Commissioner General

The Commissioner General must be devoted full-time to the functions of the position and may not simultaneously engage in any other work or hold any other position or function, regardless of whether or not the latter are remunerated.

Article (36) Dismissal of a Commissioner General

The services of the Commissioner General shall be legally terminated in the event that :

1. 1.He/she simultaneously performs another function and/or holds another position.
2. 2.He/she is convicted of a crime or wrongdoing involving corrupt or immoral behaviour.
3. 3.He/she is detained or is declared bankrupt. 15

Article (37) Binding Recommendations of the Commissioner General

Recommendations issued by the Commissioner General are binding on all public institutions.

Article (38) Mandates of the Commissioner General

The Commissioner General shall be empowered with the authority to:

1. Enter any public institution and inspect its registers and papers and any documents related to information for which access has been requested.
2. Interrogate any employee in private in order to access the required information.
3. Refer to the judiciary persons responsible for concealing, damaging or modifying information with a view to intentionally distort the truth and prevent it from being presented to the judiciary.
4. Question ministers and any other senior State officials in the event that they issue orders to conceal information. If the Commissioner General considers that the reasons given for such orders are unjustified, he/she may immediately refer the matter in writing to the President of the Authority, the Prime Minister or the Chairman of the Legislative Council for appropriate follow-up.

Article (39) Reporting

The Commissioner General shall submit reports every six months to: the Palestinian Legislative Council, the President of the National Authority, and the Prime Minister. The reports shall contain:

1. Cases of unjustified refusal to provide information.
2. Operational problems encountered by the Commissioner General in the discharge of his/her duties.
3. Recommendations considered appropriate by the Commissioner General.

Chapter Six Fees

Article (40) Access to Information Fees 16

Fees associated with access to information requests shall be determined by regulations drawn up by the Commissioner General and issued by the Council of Ministers. The fee shall not exceed the actual cost of the copying process or the market price of the requested copies.

Article (41) Appeal Fees

The appeal fee shall not exceed 10 Jordanian dinars or the equivalent amount of the legal currency in circulation.

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Chapter Seven **FINAL PROVISIONS**

Article (42) Challenges to Decisions of the Commissioner General

The decisions of the Commissioner General may be challenged before the administrative judiciary, and persons may also request the judiciary to declassify information that is not accessible on security and other grounds as defined under the relevant provisions of this Law.

Article (43) Sanctions against employees who refuse to release information in compliance with this Law

An employee who fails to provide requested information in a manner that is inconsistent with this Law, or who provides incorrect or false information, shall be considered liable to face disciplinary sanctions, as provided for under this Law.

Article (44) Cancellation

Any clause that is inconsistent with the provisions of this Law will be revoked.

Article (45) Executive Regulations

The Council of Ministers shall issue the regulatory framework for the implementation of this Law within a period not exceeding six months from the date of publication of the Law.

Article (46) Enforcement, Execution and Publication

All competent authorities [—] each one within its respective sphere of jurisdiction [—] shall implement the provisions of this Law, which will enter into force one year after its publication.