Malawi

Analysis of the Access to Information Bill, 2015

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Introduction[1]

In July 2013, when Malawi formally announced its intention to join the Open Government Partnership, among the country's key commitments was to pass a right to information (RTI) law. In January 2014, the government passed an access to information policy which recognised the importance of RTI as a human right and made a formal commitment to pass an RTI law.[2] Finally, in November 2015, the Ministry of Justice released a draft Access to Information Bill (the Bill), which was prepared with assistance from the Media Institute of South Africa.

International observers welcomed these developments. The right to information is recognised as a human right both internationally and in Malawi's own constitution. However, over the past month, there have been worrying signs that Malawi's government is backsliding on its commitment to RTI. On 21 January 2015, Malawi's President, Peter Mutharika, threatened to veto the Bill unless it only applied to information which was created after its passage, which would severely limit the scope of its application and usefulness.[3] The Open Government Partnership also announced recently that it is reviewing Malawi's participation, due to the country's failure to produce an action plan for two successive years.[4]

This Analysis examines the Bill and makes specific recommendations to bring it into line with international standards and better practice laws around the world. The Analysis is based on the RTI Rating,[5] an internationally recognised methodology for assessing the strength of RTI legislation developed by the Centre for Law and Democracy (CLD) and Access Info Europe. According to the RTI Rating, the Bill scores a respectable 111 points out of a possible 150, which would make it the fifteenth best national RTI law in the world, and the fifth best in Africa:

Section	Max Points	Score

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[2] The Policy is available at: www.macra.org.mw/wp-content/uploads/2014/07/National-Access-to-Information-Policy.pdf.

[3] Toby McIntosh, "Malawi President Resists FOI Law, Seeks to Limit Use", FreedomInfo, 28 January 2016. Available at: www.freedominfo.org/2016/01/malawi-president-resists-foi-law-seeks-to-limit-use/.

[4] Toby McIntosh, "OGP Examines Membership of Kenya, Malawi, Montenegro", FreedomInfo, 28 January 2016. Available at: www.freedominfo.org/2016/01/ogp-examines-membership-of-kenya-malawi-montenegro/.

[5] Available at: http://www.RTI-Rating.org.

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Total score	**150**	**111**

Although this is a relatively high score, there is still scope for Malawi to do better. We urge Malawi's government to incorporate the following recommendations into the Bill and to pass it without delay.

1. Right of Access and Scope

An important starting point for a strong RTI system is constitutionally entrenching the right. Article 37 of the Constitution of the Republic of Malawi protects the right of every person to access all information held by the State or any of its organs. However, this provision is subject to the condition that the information must be required for the exercise of a right. This language is echoed in section 5 of the Bill.

The right to information, as an internationally recognised human right, should apply to all types of information held by all public bodies. As such, section 5 represents a serious limitation on the scope of the right which is likely to lead to officials requiring requesters to justify their requests rather than treating them as a right. Section 5 should also clarify that legal persons, such as corporations or non-governmental organisations, have a right to request information, and that requesters can ask for information, in addition to asking for specific documents.

Section 4 of the Bill, setting out is objectives, refers to several constitutional values, including promoting public trust, good governance and accountability. However, it does not explicitly note that these are benefits flowing from RTI and or call for the law to be interpreted broadly so as to give effect to these benefits.

A positive aspect of the Bill is its relatively broad scope of application. Section 2 defines information broadly as including an "original or copy of any material, record or document which communicates facts, opinion, data or any other matter regardless of its form, characteristics or date of creation, that is in the custody or under the control of a public body, private body or any information holder to which

this Act applies". Although this definition is broadly in line with international standards, recent comments by President Mutharika on the need to limit the scope of the Bill to information generated after its passage are deeply troubling, since this would severely undermine the Bill's usefulness. Very few countries limit their right to information legislation to material generated after the RTI law was passed and Malawi should not pursue this idea further.

Section 2 contains a broad definition of the bodies to which the Bill applies, including "the Government, a statutory body, or any other body appointed by the Government" as well as private bodies which are owned, controlled or financed by public funds or which carry out a statutory or public function or service. These definitions, along with the explanation in the Schedule attached to the Bill, are broadly in line with international standards. However, there is some uncertainty as to whether the Head of State is covered and this should be clarified in the Bill.

Recommendations:

- The words "so far as that information is required for the exercise of his rights" should be removed from section 5.
- Section 4 should clarify that the law should be interpreted broadly so as to give effect to accountability and good governance as benefits of the right to information.
- Section 5 should state that legal persons have a right to file information requests, and that requesters have a right to ask for both information and specific documents.
- The Bill should apply retroactively to all information, not just information generated after its adoption.
- The Schedule should be amended to clarify that the Bill applies to the President.

Right of Access

Indicator		Max	Points	Article
1	The legal framework (including jurisprudence) recognises a fundamental right of access to information.	2	1	37
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	2	5(2)
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	4, 5
	TOTAL	**6**	**3**	

Scope

Indicator		Max	Points	Article
4	Everyone (including non-citizens and legal entities) has the right to file requests for information.	2	1	5
5	The right of access applies to all material held by or on behalf of public authorities which is recorded in any format, regardless of who produced it.	4	4	2
6	Requesters have a right to access both information and records/documents (i.e. a right both to ask for information and to apply for specific documents).	2	1	
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	7	2 and Schedule
8	The right of access applies to the legislature, including both administrative and other information, with no bodies excluded.	4	4	2 and Schedule
9	The right of access applies to the judicial branch, including both administrative and other information, with no bodies excluded.	4	4	2 and Schedule
10	The right of access applies to State-owned enterprises (commercial entities that are owned or controlled by the State).	2	2	2 and Schedule
11	The right of access applies to other public authorities, including constitutional, statutory and oversight bodies (such as an election commission or information commission/er).	2	2	2 and Schedule
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	2	2 and Schedule
	TOTAL	**30**	**27**	

2. *Duty to Publish*

The proactive publication provisions are found in sections 15-17 of the Bill. Section 15 includes a list of categories of information which must be published within 30 working days of their production or receipt. While this list is reasonably ambitious, it could be improved by adding a requirement to publish detailed budget information.

According to sections 15 and 16, proactive publication is mainly meant to take place online, with only vague references to additional physical publications that are to be produced if possible. There is no question that digital publication allows for great efficiencies, including the provision of enormous amounts of information at little cost. However, it is important to bear in mind that the vast majority of Malawi's people do not have access to the Internet. As of 31 December 2014, Internet penetration in Malawi was just 6.1 percent.[6] As a consequence, while the Bill should maintain its emphasis on digital publishing, there should be a stronger requirement to supplement this by disseminating physical publications. This could include providing copies of the material for inspection at every public office and providing for copies of these documents to be obtained free of charge.

Recommendations:

- Section 15(2) should include a requirement to publish detailed budget information.
- The Bill should add physical publishing requirements to supplement the digital publishing requirements in sections 15-17 as suggested above.

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

3. Requesting Procedures

To ensure proper and efficient implementation, international standards require that right to information legislation include comprehensive rules relating to the requesting process. First and foremost, this means that the law should establish clear and simple rules for filing requests.

Section 18 provides for relatively clear and simple procedures for filing a request for information, including allowing both oral and written requests and only requiring the requester to provide the details necessary to locate and deliver the information. However, although the Bill does not explicitly require requesters to provide a reason for their requests, the language of section 57(b) suggests that reasons may need to be provided. This is reinforced by section 5, which requires reasons before one has a right to make a request for information. Requesters should never be expected to provide reasons for their requests because the right to information is a human right, which a person should not have to justify exercising. The Bill should be improved by

[6] Statistics via: www.internetworldstats.com/africa.htm.

adding a provision saying that requesters shall not be required to provide reasons for their requests.

Section 57 places significant restrictions on how requested information is used and should be deleted in its entirety. Although it may seem reasonable to prohibit the use of information for "unlawful purposes", such uses are by definition already offences and there is no reason why such crimes should be considered to be exacerbated simply because information obtained pursuant to a request was used to commit them. Moreover, section 57(b), which prohibits uses other than the original intention, and section 57(c), which prohibits uses that are detrimental to the interests of public officers or the public interest, are extremely vague and therefore open to abuse. It is also dangerous to conflate the public interest with the interests of public officers. Among the most important functions of the right to information is to expose corruption or mismanagement. These types of revelations are most certainly not in the interests of the public officers involved in the malfeasance, though they are a very clear and important public good.

The Bill requires the information officers which every public body is required to appoint to assist requesters in filing requests. There is also a special mechanism for assisting illiterate requesters in filing requests. While these provisions are positive, the Bill should also require information officers to follow up with requesters whose requests are unclear or overbroad, to help them address these problems. Another improvement to the requesting process would be to require public bodies to provide requesters with a dated receipt upon filing requests.

In terms of the rules for processing procedures, section 23 allows a public body to transfer a request within three working days if a different public body has a greater interest in the information requested. Although the quick timeline for such transfers is a positive feature, they should be reserved for instances where the original public body does not have the information being requested but knows of another public body which does. Whenever a public body has the information, they should be required to process the request themselves, although they are of course free to consult with colleagues in other agencies to assess whether any exceptions apply.

The Bill provides for reasonably quick timeframes for responding to requests. According to section 19(1), public bodies have a deadline of 15 working days for responding to requests, unless the information appears to be reasonably necessary to safeguard the life or liberty of an applicant, in which case they are required to respond within 48 hours. Although some countries provide for a shorter timeframe of 10 working days, this timeframe for response is still reasonably short, particularly in combination with the fact that the Bill does not provide for any possibility of an extension. However, section 19 could be improved by also requiring information holders to respond to requests as soon as possible, in order to

discourage needless delays or treating the 15 days as the set time for providing information.

According to international standards, it should be free to file a request for information and requesters should only be charged the actual costs incurred by the public body in reproducing and delivering the information. The Bill generally meets these standards, although it is important that when the Minister sets the fee scales, as required by section 24(3), he or she respects this rule (i.e. the fees do not exceed the actual costs of providing these services). The Bill could also be improved by providing fee waivers for indigent requesters, although this may be implied by section 8(1)(c).

Another hallmark of strong right to information legislation is that public bodies should be required to comply with requesters' preferences regarding the form by which information is accessed. Although section 22 lists several means of access, it does not explicitly state that the requester gets to select the manner that they want. This should be amended so that public bodies are required to comply with requesters' preferences regarding how they access information, except in cases where the information is not technically available in that form or providing it in that form would damage the record or require an unreasonable allocation of resources.

Recommendations:

- Section 18 should state that requesters do not have to provide reasons for their requests.
- Section 57, which limits how requested information can be used, should be deleted.
- Section 12 should be amended to require information officers to follow up with requesters where their requests are vague, overbroad or otherwise require clarification.
- Information officers should be required to provide a dated receipt when a request is lodged.
- Section 23 should only allow information holders to transfer requests if they do not have the information requested.
- Section 8(1)(c) should be amended to clarify that indigent requesters shall not have to pay any fees for accessing information.
- Section 22 should require public bodies to comply with requesters' preferences regarding how they access information.

Indicator	Max	Points	Article

13	Requesters are not required to provide reasons for their requests.	2	1	18
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	2	18
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	18
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	8(1)(c), 12(2), 18(1), (2), 59(2)(c)
17	Public officials are required to provide assistance to requesters who require it because of special needs, for example because they are illiterate or disabled.	2	2	8(1)(c), 12(2), 18(1), 59(2)(c)
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	23, 26
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	22, 59(2)(b)
21	Public authorities are required to respond to requests as soon as possible.	2	0	
22	There are clear and reasonable maximum timelines (20 working days or less) for responding to requests, regardless of the manner of satisfying the request (including through publication).	2	1	19, 27
23	There are clear limits on timeline extensions (20 working days or less), including a requirement that requesters be notified and provided with the reasons for the extension.	2	2	25(5)
24	It is free to file requests.	2	2	24(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	2	8(2)(b), 24, 59(2)(g)
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	57
	TOTAL	**30**	**17**	

4. Exceptions and Refusals

Although the right to information is not absolute, international standards recognise a limited number of legitimate interests which can be invoked in order to justify withholding information. A law's exceptions are among its most important features, since this draws the important line between information which must be disclosed and that which may be withheld.

A major problem here is that the Bill allows Malawi's Official Secrets Act (OSA) to overrule its provisions. The passage of an RTI law is meant to herald a break from the old, secretive ways of the past. Given that the Bill contains its own regime of exceptions for information that would harm national security, defence, and every other legitimate confidentiality interest, there should be no further need for additional grounds for secrecy, such as those found in the OSA. Some countries have repealed their version of the Official Secrets Act entirely, such as Ireland and Canada. In other countries, including New Zealand and the United Kingdom, the Official Secrets Act has been substantially limited in scope. If the OSA is to remain on the books, there should be a provision in the right to information law which states that, to the extent of any conflict, it overrides the OSA.

Although the Bill's exceptions are relatively well crafted, there are a few problematic exceptions which are overbroad. While it is legitimate to provide an exception for material the disclosure of which would harm personal privacy, the definition of personal information in section 2 includes vast amounts of information which will often be publicly available, including a person's educational background or employment history. The definition also includes vague standards such as information which relates to a "status or condition of the individual" and "any identifying number, symbol or other particular assigned to the individual". Privacy is difficult to define clearly, among other things because it includes a subjective element, which depends on the context and the particular individual. As a result, a provision which excludes anything that could potentially be private is to broad. Instead, information should only be exempt where its disclosure would in fact cause harm to a privacy interest. The Bill should specify that, while the types of information listed in section 2 could potentially be private, the determination as to whether particular information falls within the scope of the regime of exceptions should be made on a case by case basis depending on the potential for harm. Information should never be withheld in instances where it is already publicly

available, such as the educational or employment background of a person who has posted their resume online.

Section 3(2)(a), which excludes Cabinet records from the ambit of the Act, is also problematic. While Cabinet records can legitimately be withheld if their disclosure would cause harm to the deliberative process, this determination should be made on a case-by-case basis, rather than through a categorical exclusion of all Cabinet records. Similarly, although some court records need to be withheld in order to protect the integrity of the judicial process, the categorical exception in section 3(2)(b) of all court records prior to the conclusion of a matter goes beyond what is needed, protecting even innocuous or trivial information from disclosure. A preferable approach would be to add a narrower exception to section 30 for information the disclosure of which would harm the administration of justice.

Section 30(a), which among other things covers information which relates to the defence or security of a foreign government, is similarly overbroad and should be limited to information the disclosure of which would cause harm to the defence or security of a foreign government.

A positive feature of the Bill is its relatively robust public interest override, which mandates that information can only be withheld if the harm to the public interest would outweigh the benefit of the disclosure. The Bill also contains timely and effective procedures for consulting with third parties whose information is the subject of a request.

In the event that a request is refused, section 25 requires the public body to notify the applicant, stating the grounds for refusal and providing information about possible appeal mechanisms. This is in line with international standards.

Recommendations:

- Section 3(2)(c), which excludes information rendered secret by the Official Secrets Act, should be deleted and replaced by a provision which states that where there is a conflict between the OSA and the right to information act, the latter prevails.
- The definition of "personal information" in section 2 should be amended to say that it "potentially includes" the following information.
- Section 29 should be amended to allow for the withholding of information only where its disclosure would cause harm an individual's personal privacy.
- Section 3(2) should be deleted and replaced by an exception relating to information the disclosure of which would harm the deliberative process or the administration of justice.

- The relevant part of section 30(a) should be limited to information the disclosure of which would harm the security or defence of a foreign State.

	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	2	3(2)(c), 6
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	7	2, 3(2), 29-36
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	29-36
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	4	37, 38, 40(b)
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	2	
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	2	20, 39, 59(2)(e)
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	2	25
	TOTAL	**30**	**24**	

5. Appeals

Among the more important features of a strong RTI system is a robust appeals mechanism. The passage of an RTI law can be a dramatic change for officials who are used to working in an environment where secrecy is the norm, and a right to appeal is necessary in order to ensure that the rules are interpreted and applied in an appropriate manner.

A robust appeals system should have three stages. The first stage is an internal review of the decision. The Bill allows for this in sections 41-45. Applications for internal review are to be submitted to the information officer within sixty days of the initial decision. The request is then processed by the head of the public body, who is required to deliver a new decision within five working days. If they decide to refuse the request, the public body is to provide the applicant with the exact reasons for the refusal and with information about the external mechanisms. This is a well-crafted system, broadly in line with international standards. However, it is a mistake to force requesters to pursue a remedy here before they appeal to the Commission. While internal appeals should be encouraged, there will be instances where requesters are justified in feeling that it is a waste of their time, such as where they know that the initial decision was made by the head of the public body.

The second stage of the appeals process is an external review, which should be undertaken by an independent oversight body. In the Bill, this responsibility is delegated to the Human Rights Commission (the Commission). Generally speaking, international experience suggests that a better solution is to constitute a new, specialised Information Commission or Commissioner. Many human rights commissions lack the specific expertise required to interpret and apply RTI laws. Moreover, often when a government assigns the additional responsibilities of overseeing RTI to a human rights commission or similar existing body, they do not provide a concomitant increase in their funding and resources. Thus, while we would recommend that an Information Commission or Commissioner be established, if Malawi assigns these responsibilities to the Human Rights Commission they should also grant the Commission sufficient additional training and resources to carry out these new tasks.

Section 46(2) gives the Commission a relatively broad mandate, including the ability to review refusals to provide information, charging of excessive fees, breach of timelines or any other matter relating to requests. According to section 47, the Commission has the power to examine any record that is under the custody or control of a public body, while section 8(2)(d) allows it to inspect the premises of a public body. However, there is some uncertainty as to whether the Commission's decisions are legally binding. Sections 48-50 seem to imply that, once a decision is made, the impetus is on the public body to determine whether or not to take action.

However, section 54 grants the Commission the power to levy fines if their determinations are not followed, or if a public body fails to comply with any other provision of the Bill, and to apply to Court for an order compelling obedience if these fines are ineffective. This uncertainty should be clarified by including a statement, in section 48, that the Commission's determinations are legally binding and that, in addition to ordering disclosure, they can order impose other remedies on public bodies which are structurally failing to implement the law, such as providing additional training to their staff.

The Bill contains relatively clear procedures for the processing of appeals, including a timeframe of 30 days for resolving then. Better practice is also to state clearly in the law that appeals are free of charge and do not require a lawyer, although the Commission may already have such rules or an established practice along these lines in place. The Bill should also be amended to clarify that, in an appeal, the government bears the burden of demonstrating that they acted in compliance with the law, since requesters cannot be expected to show that information they have not seen should not be subject to an exception.

The third stage of appeals, applying for judicial review, is provided for in section 51.

Recommendations:

- Section 46(1), which requires requesters to exhaust their internal appeal before they appeal to the Commission, should be removed.
- Malawi should consider creating a new, specialised Information Commission or Commissioner to oversee implementation of the law or, in the alternative, should commit to providing additional training and resources to the Human Rights Commission to ensure that they are able to fulfill their new responsibilities under the law.
- Section 48 should clarify that the Commission's determinations are legally binding, and that they have the power to order any remedy they feel appropriate.
- Section 46 should clarify that appeals to the Commission are free of charge and do not require a lawyer and that, in an appeal, the government bears the burden of demonstrating that it acted in compliance with the law.

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	2	41-45
37	Requesters have the right to lodge an (external) appeal with an independent administrative oversight body (e.g. an information commission or ombudsman).	2	2	7, 8(1)(d), 27(2),

				46
38	The member(s) of the oversight body are appointed in a manner that is protected against political interference and have security of tenure so they are protected against arbitrary dismissal (procedurally/substantively) once appointed.	2	1	Const s. 129-131
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	Const s. 129-131
40	There are prohibitions on individuals with strong political connections from being appointed to this body and requirements of professional expertise.	2	1	Const s. 129-131
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	2	47, 8(2)(d)
42	The decisions of the independent oversight body are binding.	2	1	48, 49, 50, 54
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	1	48
44	Requesters have a right to lodge a judicial appeal in addition to an appeal to an (independent) oversight body.	2	2	51
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	41, 42, 46
47	Clear procedures, including timelines, are in place for dealing with external appeals.	2	2	46 (5)
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**	**19**	

6. Sanctions and Protections

Effective implementation of RTI legislation requires the availability of sanctions for officials who act in ways that undermine the right. Sections 55, 56 and 58 include appropriate penalties for officials who conceal, alter or destroy records which are the subject of a request, who wrongfully refuse to disclose information or who otherwise fail to comply with the law.

In addition to punishing officials who fail to fulfil their disclosure obligations, a strong RTI law should offer protections for employees who act in good faith to implement the law. Section 10 includes strong language here, prohibiting any sanction, including any employment related sanction, for good faith disclosures under the law or any other act done in good faith pursuant to the law. However, the Bill fails to make any mention of whistleblower protection, or protection for those who, in good faith, release information which discloses wrongdoing.

Recommendations:

- The law should provide protection for whistleblowers against any legal or employment-related sanction.

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	55-57
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	2	58, 59(2)(i)
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	2	4(e), 10
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**	**6**	

7. Promotional Measures

The Bill performs very well on the final category of the RTI Rating, namely promotional measures. This includes a requirement to appoint dedicated officials (information officers) in section 12, which will be an important ingredient in ensuring that public bodies work to implement their responsibilities under the law. Sections 8 and 9 grant the Commission a wide mandate to promote implementation, including by giving general direction regarding implementation of the law, raising awareness among the public about the right to information and publishing informational guides about this right and the operation of the law.

Section 13, which requires public bodies to put into place strong systems of record management, and to respect any rules in this area which may be set by the Minister, is another important measure, as is section 14, which requires employee training programmes. However, although section 17 requires information holders to publish a report on the categories of information they have published on a proactive basis, they should also be required to publish information about the documents in their possession, preferably including a register of all of the documents they hold.

The Bill also includes robust reporting requirements. Section 52 requires all public bodies to report annually to the Commission on their level of compliance with the law, while sections 53 and 11 require the Commission to develop its own annual report, including a general assessment of the status of implementation.

Recommendations:

- Section 17 should require public bodies to publish lists of all of the documents they hold or at least lists of the categories of documents they hold.

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	12
55	A central body, such as an information commission(er) or government department, is given overall responsibility for promoting the right to information.	2	2	8
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	4(f), 8(1)(a), 9
57	A system is in place whereby minimum standards regarding the management of records are set and applied.	2	2	13, 59(2)(d)
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	17
59	Training programmes for officials are required to be put in place.	2	2	14
60	Public authorities are required to report annually on the actions they have taken to implement their disclosure obligations. This includes statistics on requests received and how they were dealt with.	2	2	52
61	A central body, such as an information commission(er) or government department, has an obligation to present a consolidated report to the legislature on implementation of the law.	2	2	11, 53
	TOTAL	**16**	**15**	

The Centre for Law and Democracy is a non-profit human rights organisation working internationally to provide legal expertise on foundational rights for democracy