CENTRE FOR LAW AND DEMOCRACY

Zimbabwe

Analysis of the Freedom of Information Bill, 2019

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Introduction[1]

Zimbabwe passed the Access to Information and Protection of Privacy Act in 2002 and this included a regime for giving individuals a right to access information held by public authorities or the right to information (RTI). The Act is weak, garnering just 70 points out of a possible 150 on the RTI Rating[2] – an internationally recognised methodology for assessing the strength of legal regimes governing RTI that was developed by the Centre for Law and Democracy (CLD)[3] and Access Info Europe (AIE)[4] – and ranking in 98th place out of the 124 countries currently assessed on the RTI Rating. Furthermore, due to the very harsh regime for regulating and controlling the media that ran alongside the right to information provisions in the Act, it had no credibility among the public and was rarely if ever used to seek information from public entities.

It is, therefore, welcome that a new, dedicated right to information law, in the form of the Freedom of Information Bill, 2019 (Bill) is being prepared. It is high time for Zimbabwe to renew its commitment to RTI and it is also important to have a dedicated enactment on this.

This Analysis provides an assessment of the Bill based on international standards relating to the right to information. It also takes into account better comparative national practice in this area. Guidance as to both international standards and better national practice is provided, in part, by the RTI Rating. To support this, an informal RTI Rating assessment of the Bill has been done[5] and the table below shows a breakdown of the specific scores achieved in each of the seven categories of the RTI Rating:

Section	Max Points	Score	Percentage
1. Right of Access	6	4	67%
2. Scope	30	15	50%
3. Requesting Procedures	30	11	37%
4. Exceptions and Refusals	30	19	63%
5. Appeals	30	17	57%
6. Sanctions and Protections	8	2	25%
7. Promotional Measures	16	4	25%

[2] Available at: http://www.RTI-Rating.org.
[3] See www.law-democracy.org.
[4] See http://www.access-info.org.
[5] Note that a formal assessment involves more steps, including independent review by local experts, which was not done in this case.

Total score	**150**	**72**	**48%**

According to this assessment, the Bill only achieves a score of 72 points out of the maximum possible total of 150, or 48%, and only two points stronger than the current Act. If this were the final version of the law, Zimbabwe would rank in 90th place globally out of the 124 countries currently on the Rating, or well into the bottom one-third of all countries. Looked at from the perspective of individual categories, the Bill scores below 50% in three categories, namely Requesting Procedures, Sanctions and Protections, and Promotional Measures. This is a shame because these are all categories where stronger scores are relatively easy to obtain. Interestingly, the category of Exceptions and Refusals is one where the Bill achieves among its highest scores, namely of 63%. This bucks global trends as this is often an area where countries do poorly.

Our assessment suggests that the Bill has been put together rather quickly, incorporating provisions from different laws, mainly from around Africa, but without necessarily building a strong, integrated law. As a superficial but telling example, it refers frequently to information officers but does not define these (instead defining a different concept, namely "responsible person") and it never actually requires public entities to appoint an information officer (or even a responsible person). We believe that the quality of the law could be improved substantially simply by working to create a more professional and better integrated version.

Another issue to be considered is whether giving the Zimbabwe Media Commission oversight powers for the right to information is necessarily the best approach. While this creates certain efficiencies, inasmuch as it avoids the need to establish a new body, it will also create or continue confusion about whether this is a citizen or media right (and it should be the former). This confusion may also be fostered by the reference, in the preamble to the Bill, to freedom of expression and freedom of the media, as well as access to information. The former references do not appear to be helpful. In any case, if the Media Commission is retained as the oversight body, the right to information law will need to be much clearer about the powers of the Commission in case of information appeals and also to allocate it a clearer promotional role for this right.

The Bill is currently being reviewed by Parliament so there are still opportunities to improve it. To help facilitate this process, this Analysis makes specific recommendations as to changes that would bring the Bill more fully into line with international standards.

1. Right of Access and Scope

The 2013 Constitution of Zimbabwe includes a direct guarantee of the right to information in section 62. This is very welcome as it makes it clear that the right to information law is of special status since it gives effect to a constitutionally guaranteed right. At the same time, this guarantee is unfortunately limited to cases where "the information is required in the interests of public accountability". While promoting public

accountability is an important goal of right to information legislation, it is only one goal. Others include promoting participation, limiting corruption, creating a good environment for business and realising personal goals. Furthermore, including a qualification like this in the Constitution means that officials may question whether or not a request for information will promote accountability, which could undermine the right. While this issue is beyond the scope of a discussion about the Bill, it is something to be considered in possible future reviews of the Constitution.

Despite the clear constitutional guarantee for the right, the Bill fails to include a clear statement along these lines, i.e. to the effect that access is a right. Instead, Article 7(1) merely provides that anyone wishing to access information may make a request, which is not the same thing at all.

The Bill is also very weak in terms of referring to the wider benefits served by the right to information. The preamble refers to public accountability and section 3(c) refers to accountability and effective governance but the full set of benefits is much broader, including such values as ensuring public participation, increasing awareness about the activities of the government so as to enhance accountability, promoting the proper use of public funds and reducing corruption, and facilitating good management and the effective provision of public services, as well as supporting the satisfaction of personal goals and creating a positive environment for business.

Better practice is also to require those tasked with interpreting the law – whether they be information officers, the Commission or the courts – to do so in the manner which best gives effect to these benefits. By necessity, many provisions in RTI laws, and especially the exceptions, are cast in fairly broad terms. It is, for example, very difficult for an RTI law to define notions such as national security or privacy precisely. Providing guidance as to how these terms should be interpreted can help ensure that the law achieves its main objective of promoting transparency. The Bill fails to refer to the issue of interpretation.

Section 7(1), which serves as the main functional guarantee of the right, refers to "any person" but fails to define this term. Better practice is to make it clear that this covers anyone, regardless of citizenship or residence, and also legal persons. Section 2 does define information broadly but this is somewhat undermined by the last part of the definition, which refers to the idea of a request being made for the information. This is not a proper part of the definition of information, since information is information whether or not someone makes a request for it.

Better practice is for right to information laws to make it clear that applicants have a right to request either information or specific documents. Where an applicant knows the document he or she is looking for, such as the budget or a particular report, he or she can indicate that in the request. However, applicants often do not know this. And, in other cases, they may want information, such as how much money was spent on a certain item over a period of years, which either forms only part of a document or needs to be compiled from different documents. There are numerous examples of requests being

refused for not indicating the document that an applicant is looking for so better practice is to provide for a right to request both documents and information.

The main bodies which are covered by the right to information law are a "public entity, public commercial entity or the holder of a statutory office". The "holder of a statutory office" is reasonably clear and a "public commercial entity" is defined in the Bill as a company which is owned or controlled by the State. However, the main definition of a "public entity" comes from the Public Finance Management Act, [Chapter 22:19]. This has a very limited definition of a "public entity" as any body corporate established by a statute "for special purposes", a Stated owned company, a local authority or a partnership which the Minister deems to be covered. It may be noted that the Public Finance Management Act separately defines a "constitutional entity" but this is not incorporated into the definition of "public entity" in the Bill. It is not entirely clear what is covered by this definition but presumably even ministries would not be covered since they are not created by statute and do not otherwise fall within this definition. The same would presumably be the case for the legislature and the main courts (perhaps excluding statutory courts).

Ultimately, this approach is fundamentally flawed. The right to information law should define "public entity" directly to include all constitutional and statutory bodies, ministries, sub-ordinate bodies and all other bodies that are owned, controlled or financed by a public entity. Better practice is also to cover any other body that undertakes a public function.

Article 3(a) states that an object of the Bill is to give effect to the right to information in line with the Constitution. The Constitution, for its part, follows the South African approach of guaranteeing not only access to information held by public entities but also access to information held by private parties where that information is needed "for the exercise or protection of a right". However, in practice, the Bill fails to put that into practice. While it defines a private entity, it never actually creates a right to access information held by private entities, even where the information is needed for the exercise or protection of a right. Instead, it uses this phrase in a confusing way in several other places – namely sections 3(c)(ii), 4(b) and 5 – to qualify rights which should not be limited in this way. Thus, section 3(c)(ii) sets, as one of the objects of the Bill, to "ensure that appropriate assistance is afforded to members of the public seeking to exercise their right of access to information in order to facilitate the exercise of the right". This is completely inappropriate and seems to represent confusion about the proper place of the notion of exercising a right. Assistance should be provided whatever the goals of seeking information may be.

Finally, section 40(2)(f) allows the Commission, by regulation, to exclude "persons, organisations or institutions" from the scope of the law. This is completely inappropriate and unnecessary. Some laws allow the relevant minister to add bodies but not to exclude them.

Recommendations:

- In due course, consideration should be given to amending the Constitution so that its guarantee of the right to information is not limited to information needed to promote public accountability.
- The law should include a clear and unqualified statement of the right to access information.
- The law should also include much broader references to the wider benefits of the right to information and it should require those tasked with interpreting the law to do so in the manner that best gives effect to those benefits.
- The law should define who has a right to make requests broadly, to include foreigners and legal persons as well as citizens.
- The definition of "information" should not include a reference to the idea of the information being the subject of a request.
- The law should make it clear that applicants have a right to access both information and documents.
- The definition of a public entity should be included in the right to information law and it should include all three branches of government operating at all levels, constitutional and statutory bodies, bodies which are owned, controlled or substantially financed by another public entity, public commercial entities and private bodies which undertake a public function.
- The law should guarantee properly the right to access information held by private bodies which is needed for the exercise or protection of a right, in line with the Constitution.
- Section 40(2)(f) should be removed from the law.

Right of Access

Indicator		Max	Points	Article
1	The legal framework (including jurisprudence) recognises a fundamental right of access to information.	2	2	63 (of Const.)
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	7(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	1	Preamble, 3(c)
	TOTAL	**6**	**4**	

Scope

Indicator		Max	Points	Article
4	Everyone (including non-citizens and legal entities) has the right to file requests for information.	2	1	7

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	2
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	4	2, 40(2)(f), s. 2 of the Public Finance Act
8	The right of access applies to the legislature, including both administrative and other information, with no bodies excluded.	4	0	2, 40(2)(f), s. 2 of the Public Finance Act
9	The right of access applies to the judicial branch, including both administrative and other information, with no bodies excluded.	4	2	2, 40(2)(f), s. 2 of the Public Finance Act
10	The right of access applies to State-owned enterprises (commercial entities that are owned or controlled by the State).	2	2	2, 40(2)(f), s. 2 of the Public Finance Act
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	2, 40(2)(f), s. 2 of the Public Finance Act
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	2, 40(2)(f), s. 2 of the Public Finance Act
	TOTAL	**30**	**15**	

2. Duty to Publish

The main focus of most RTI laws is on requests, including the procedures for making them, exceptions to the right of access and the system of appeals. At the same time, the other system for providing practical access to information – namely through proactive disclosure – is indispensable to ensure a robust flow of information to the public.

The only provision in the Bill which addresses proactive publication is section 5, which calls on public entities generally to have a "written information disclosure policy through which it discloses information in the interests of public accountability or that is required for the exercise or protection of a right". This is useful but it is very vague and would no doubt be implemented by different public entities in completely different ways. It is also far too limited inasmuch as accountability, as noted above, is only one of the benefits that is associated with the right to information. Proactive disclosure should serve a number of other benefits, including e-government, personal goals, business development, fostering participation and so on. Finally, the reference to "exercise or protection of a right" here is again misplaced. While it is perfectly possible for proactive disclosure to serve this benefit, this is not the primary goal of proactive disclosure.

In addition to the general obligation set out in section 5, the law should provide for a minimum list of categories of information that need to be disclosed by all public entities, thereby setting common minimum standards in this area. Examples of the types of information that should be included on the list include information about the organisation and functioning of entities, their development plans, the services they provide and the fees associated with them, relevant legal and other rules relating to their operations, annual budget information including spending information and audited accounts, any official complaints mechanisms, along with actual complaints and responses, the specific beneficiaries of public services and programmes, a list of those who have been awarded licences, permits, concessions or other authorisations, a list of the officers and employees of public entities and their functions and salary grades, specific information about information officers, including their contacts, and how to make a request for information.

Furthermore, in addition to the a list, experience shows that public entities become vastly more capable in terms of proactive publication over time. As a result, it is useful to build a system into the right to information law which allows for these obligations to be extended and increased periodically. Often this power is given to the oversight body (i.e. the Commission) but it could also be allocated to a central government actor, such as the Ministry of Information.

Recommendations:

- The general obligation to engage in proactive disclosure should be expanded by referring to a wider list of benefits that are served by this sort of disclosure.
- In addition to this general obligation, the law should set out a minimum list of categories of information that all public entities must disclose on a proactive basis.
- Consideration should also be given to granting a central body – such as the Commission or the Minister of Information – the power to extend the list of proactive publication obligations over time.

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

3. Requesting Procedures

The Bill scored just 11 points or 37% on this category of the RTI Rating, despite the fact that it is relatively simple and normally not very controversial to establish strong requesting procedures. This is also a very important part of the law for both applicants and public entities. Poor or unclear procedures can make it difficult for applicants to use the law and also be confusing for public entities, since it is not clear exactly how they are supposed to process requests.

The RTI Rating category Requesting Procedures covers two main sets of procedures, namely the making and then the processing of requests. In terms of the former, the Bill fails to set out anywhere what information must be provided when making a request. As a result, each public entity would likely set its own requirements in this regard, leading to a patchwork of approaches across the civil service, with some public entities making it unnecessarily onerous to make a request. Better practice in this area is to require applicants to provide only an address for delivery of the information (which could be an email for an electronic request) and a sufficiently clear description of the information sought to allow the public entity to locate it. Better practice is also to provide specifically that public entities may not ask applicants about their reasons for making a request, which is ultimately irrelevant to the processing of the request.

Section 7(1) provides that requests shall be made in writing but does not otherwise set any rules for how requests may be lodged. Better practice here is to allow applicants to lodge requests personally, by fax, by mail, electronically or in any other way that the public entity has the capacity to receive them.

In many cases, applicants may have problems making requests. For applicants who are illiterate or disabled, they may have problems producing a written request at all. In this case, better practice is to require the information officer to help them reduce a written request to writing, including by giving them a copy of the written request for their records. The Bill does provide, in section 3(c)(ii), on Objects of the Act, that appropriate assistance should be provided to members of the public but this is not translated into any specific obligations for information officers in the rest of the Bill. For other applicants, they may have trouble describing accurately the information they are seeking. In this case, and especially where a vague, unclear or potentially unduly broad request is received, the information officer should provide assistance to the applicant to describe exactly what information he or she is seeking.

Another challenge for many applicants is presenting requests to the correct public entity, given that they are not necessarily familiar with how the civil service is organised. Section 12 deals with cases where the information officer cannot find requested information. It

allows 21 days to inform the applicant that the information is not held. That is too long. Furthermore, where the information officer is aware of another public entity that holds the information, he or she should transfer the request to that other public entity. It may be noted that section 12(2) provides that where the information is subsequently found, the information officer must notify the applicant within 14 days. While this is generally positive, 14 days is unnecessarily long to take to notify the applicant.

In terms of the second procedural issue, namely the processing of requests, section 13 provides that where applicants request access in one of a number of formats, they should be given access in that format. This is positive. However, section 13(4)(c) provides for an alternative format to be used when giving access in the requested format is "inappropriate, having regard to the physical nature of the information". Given that section 13(4)(b) already protects against harm to preservation of documents, section 13(4)(c) is unnecessary and could be abused by officials.

Section 8(1) requires public entities to respond to requests as soon as possible and in any case within 21 days, which we assume are working days, although this should be clarified. Better practice is to create an initial presumption that requests be responded to within shorter time limits, ideally of just ten working days. Section 9 provides for extensions to this for up to 14 further days. The Bill takes a rather unique approach here, requiring the information officer to seek the consent of the applicant for such a delay, but the effect of not obtaining consent seems merely to trigger the right of the application to lodge an appeal against the delay with the Commission. If this is correct, it does not seem to be a real system of consent. In any case, the normal approach here is to leave the question of an extension to the discretion of the information officer but allow the applicant to lodge an appeal where the extension does not appear to be justified. This seems to be what, in practice, the Bill provides for so it might be clearer to remove the language about consent and just revert to the normal practice here.

Beyond section 9, section 11 allows for access to be deferred in certain cases, namely where the information has been prepared for presentation to Parliament or for reporting to a public entity or the information is *sub judice*. For reports to public entities, there is a 30-day time limit on the deferral but the other two grounds for deferral do not appear to be time limited. This is unnecessary. Sections 20-30 already set out comprehensive grounds for exceptions and there is no need to add to these via a system of deferrals. At the very least, a maximum time limit for all of these types of deferrals should be set.

Section 17 sets out the regime of fees for requests. It does not refer to fees merely for lodging a request but neither does it provide explicitly that making a request is free. Sections 17(2) and (3) refer to the ideas of "time prescribed" or "prescribed hours" in relation to fees but in fact the Bill never sets out any such limit. More importantly, section 17(4) allows for charges not only for the cost of copying information (section 17(4)(a)) but also for a range of other actions, such as the time required to search for and prepare information, and to inspect any record. This is not in line with better practice. Access to information is a human right under both the Constitution and international law and citizens should not have to pay staff time for civil servants to exercise this right. Better

practice, therefore, is to limit fees to the real costs of reproducing and sending information. It is also better practice to provide up to 20 pages of photocopies for free.

Better practice is also to provide for fee waivers for impecunious applicants. Section 17(5)(a) does grant the Minister the power to establish fee waivers but it would be preferable for the law to do this directly (and for the Minister simply to indicate how that will work). This also highlights another problem with the Bill, which is that section 17(5) grants the Minister the power to regulate fees, while section 40(2)(a) grants this power to the Commission, in consultation with the Minister. This discrepancy clearly needs to be resolved.

The Bill fails to set out any framework for the reuse of information. Such a framework is important to make it clear that once applicants receive information, they are free to use (reuse) it however they may wish. In some cases it would be appropriate to require reusers to acknowledge the source and/or author of the original information. Where a third party holds intellectual property rights, such as copyright, in the information the right of reuse might be restricted. In many cases, States attach open reuse licences to information which has been produced by a public entity in the first place or in relation to which a public entity owns the intellectual property rights. This is the approach taken, for example, in the work of the Creative Commons and their licences.[6] Ideally, the law would mandate the creation of a regime of licences to underpin an open reuse policy.

Finally, sections 8(5) and (6) refer to the idea that applicants have a right to assume that information provided to them under the law is "true and accurate". Right to information laws give individuals a right to access whatever information public entities may hold (subject to the exceptions). It is misplaced to seek to warrant the accuracy or any other quality of this information. Sometimes, public entities hold inaccurate information. The right of access applies whether or not the information is accurate. Indeed, one of the benefits of these laws is to improve the quality of information held by government. These provisions could also open up the government to liability in case the information was not in fact accurate.

Recommendations:

- The law should set out clearly what information applicants are required to provide when making a request which should be limited to a description of the information sought and an address for delivery of it. As part of this, the law should state explicitly that applicants do not have to provide their reasons for making a request.
- The law should provide that requests can be submitted in various ways, including electronically.
- Information officers should be required to provide appropriate assistance to applicants. When an applicant cannot prepare a written request, the

[6] See https://creativecommons.org.

information officer should be required to reduce an oral request to writing and give the applicant a copy. Where an applicant is having problems describing the information clearly, the information officer should help with that.

- Where a public entity does not hold requested information, they should be required to inform the applicant within five or ten rather than 21 days. Where they know of another public entity that holds the information, they should transfer the request to that entity and inform the applicant about this. Finally, where information is later found, the applicant should be informed about this quickly, say within five days.
- Section 13(4)(c), providing for an alternative format to be used when giving access in the requested format is "inappropriate, having regard to the physical nature of the information", should be removed.
- The time limit for responding to requests should be reduced from 21 days to five or ten days and the law should make it clear that these are working days.
- The system for extending the time limits in section 9 should be amended and, instead of requiring the information officer to seek the consent of the applicant, should simply set the conditions for extensions, with the applicant having the right to appeal against an extension where he or she does not believe it was justified.
- The system of deferrals in section 11 should be removed from the law. At the very least, a maximum time limit should be established for all types of deferrals, preferably of not more than 30 days.
- The law should provide explicitly that it is free to make requests.
- In terms of fees for responding to requests, the law should make it clear that fees may only be charged for the market cost of reproducing and sending information.
- Consideration should be given to providing for a set number of pages, say ten or twenty, to be given for free and to establishing fee waivers for impecunious applicants directly in the main legislation.
- The confusion in the Bill about which body will set central rules on fees should be resolved.
- The law should establish at least a framework of rules on reuse, for example by creating a set of rules around open licences.
- Sections 8(5) and (6) should be removed from the law.

Indicator		Max	Points	Article
13	Requesters are not required to provide reasons for their requests.	2	0	

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	
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	1	7(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	3(c)(ii)
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	0	3(c)(ii)
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	2	7(2)
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	0	12
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	2	13, 16
21	Public authorities are required to respond to requests as soon as possible.	2	2	7(3), 8(1)
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	8(1)
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	9, 11
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	0	
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	
	TOTAL	**30**	**11**	

4. Exceptions and Refusals

The regime of exceptions is the most complicated part of any RTI law and yet it is absolutely key since it determines which information will be disclosed and which may justifiably be withheld. It is also very important to get the regime of exceptions right. It is essential to ensure that legitimately confidential information is protected but it is equally important to ensure that exceptions are not overbroad or unduly discretionary since otherwise they will undermine the whole thrust of the RTI law. The Bill performs comparatively well on exceptions, earning 19 points out of 30 or 63% in this category.

International standards maintain the balance between protecting legitimate secrecy interests and ensuring robust transparency by requiring exceptions to meet three conditions. First, they must protect only legitimate confidentiality interests. These tend to be quite similar in most RTI laws since the types of interests that need protecting do not vary much from country to country. Second, information should be withheld (kept confidential) only if disclosure of the information would pose a risk of harm to a protected interest (and not just because information "relates" to an interest). Third, even where disclosure of information would pose a risk of harm, it should still be disclosed where the benefits of this – for example in terms of combating corruption or exposing human rights abuse – would outweigh that harm. This latter is often referred to as the public interest override (because where the overall public interest in disclosure outweighs the harm, that overrides the exception).

A first issue here is the relationship between an RTI law and secrecy laws given that secrecy provisions are often scattered across a number of different laws adopted at different times which do not necessarily conform to the standards in the right to information law, Constitution or international law regarding RTI. Technically, section 20 of the Bill provides that access to information may only be refused if the information falls within the regime of exceptions provided for in that law. At the same time, that is not actually a clear instruction that the right to information law overrides exceptions in other laws in case of conflict, and a statement to that effect should be added to the law.

In terms of the specific interests which are protected, as set out mainly in sections 21-30 but also in section 6, the Bill includes a relatively large number, namely five, of exceptions which are not considered to be legitimate under international law, as follows:

- Section 6(a) entirely excludes from the ambit of the law information "relating to the deliberations or functions of Cabinet and its committees". It is highly problematical to exclude entirely from the ambit of the law any category of information. This means that, even if the law provides for a general public interest override for exceptions, it will still not apply to this type of information. A number of especially Common Law countries do exclude Cabinet documents but this is not in line with international standards. Instead, exceptions should be harm-based (so, for example, limited to protecting the free flow of information and ideas within Cabinet). This prevents this exception from being abused to include documents which are not sensitive but have simply been presented to Cabinet. The formulation of this in the

Bill is particularly problematical inasmuch as it is very widely formulated ("relating to") and would potentially cover documents which were never even presented to let alone discussed in Cabinet.

- Section 6(b) entirely excludes from the ambit of the law "information protected from disclosure in victim friendly courts". It is not entirely clear to us what this covers or why it was included in the Bill. However, the first point noted above also applies here. Second, whatever interest is sought to be protected here could, to the extent that it is legitimate and yet not already covered by the other exceptions, be set out in a proper, harm-based exception.
- Section 27(1)(b)(ii) covers information the disclosure of which would prejudice international relations, which is legitimate, but section 27(1)(b)(i) covers information provided in confidence by another State or international organisation. While this may appear to be legitimate, it would in fact cover any document which another State had happened to classify, regardless of when and whether the information was actually sensitive. In practice, the exception provided for in section 27(1)(b)(ii) is sufficient because if disclosing classified information would not harm relations and the information is not sensitive on any other ground then there is no need to withhold it.
- Two of the exceptions are generally cast in an appropriate fashion but are then followed by lists of information which the exception "shall include", which are themselves far too broad. Thus, section 27(2) provides a list of examples of security and international relations information which, as a mandatory list, is vastly overbroad. It includes, for example, any information relating to the quantity or characteristics of weapons, even though this information in relation to the large majority of weapons is in fact not sensitive. It also includes all information relating to the position adopted or to be adopted by the State in a negotiation, which again goes far beyond what is sensitive. The same problem applies to section 28, covering State economic interests. Here, for example, the (again mandatory) list in section 28(2) covers government borrowing, which is public information in almost every State, and any contemplated trade agreement, which again is a matter of important public debate in most contexts. A key problem with these lists is that they do not include any harm test. Despite the temptation to clarify exceptions through this sort of list, it is in fact preferable not to do this since it inevitably leads to overbroad exceptions. If the lists are retained they should at least make it clear that they are simply examples of the primary exception which are subject to the harm governing that exception, and not mandatory types of information to be withheld.
- Section 30 is titled "Operations of public entities" and covers what is sometimes referred to as 'internal documents". Section 30(1)(a) essentially covers all advice, regardless of whether the release of this would cause any harm, while sections 30(1)(b) and (c) are harm-tested. Given that the latter two cover everything which is in fact sensitive in this space, there is simply no need for the former. Similarly, section 30(2)(c), covering preliminary or working information, fails to incorporate a harm test and is, in any case, unnecessary if the free and frank provision of advice is already protected.

There are a number of other problems with the regime of exceptions. Section 15 provides for a complex procedure in cases where the release of medical information to the applicant may cause serious harm to that person's physical or mental health. This is both unrealistic and paternalistic – as reflected in the fact that it is not found in other right to information laws – and should be removed.

Section 21(2) establishes a list of exceptions to the privacy exception, which is useful. However, section 21(2)(g) contains three items separated by the conjunction "and", meaning that information would need to satisfy all three conditions, whereas the conjunction here should be "or", so that meeting one of the conditions would engage the exception to the exception.

Section 22 covers confidential commercial information of third parties and section 22(1)(a) refers to "trade secrets". However, the definition of a trade secret in section 2 fails to require that the third party put a significant amount of effort into creating the trade secret, which is normally incorporated into the definition of a trade secret. Otherwise, a third party could stumble upon something which was formally public and then hide it, claiming it as its own trade secret. Section 22(2) makes it mandatory ("shall refuse a request") for a private body to withhold its own sensitive commercial information. This does not make sense since any private body should have the right to decide on its own whether or not to disclose this information (i.e. this exception should be discretionary – "may refuse" – rather than mandatory – "shall refuse").

Section 28, protecting State economic interests, goes too far inasmuch as it provides very general protection to ideas such as "national economic interests or financial welfare" (section 28(1)), the "financial interests of the State" (section 28(3)(b)) and a computer programme owned by the State (section 28(3)(d)). The latter fails to incorporate a harm test while the first two are simply too general to be clearly defined (as opposed, for example, to the specific financial interests of a particular public entity, which may be assessed more directly).

Article 31 allows public entities to refuse to process requests which are "manifestly frivolous or vexatious". This is not inherently unreasonable given that citizens can purposefully waste the time of public entities through making vexatious requests. However, to prevent this from being abused by information officers, these terms need to be carefully and narrowly defined.

Most of the exceptions in the Bill do include clear harm tests, the second part of the test for exceptions under international law, and, where they do not, this has already been pointed out above.

When it comes to the third part of the test for exceptions under international law, namely the public interest override, the Bill falls very far short. Only two exceptions provide for anything resembling a public interest override, namely section 22(3)(c), which overrides commercial interests of third parties where this would facilitate accountability and transparency, and section 28(5)(c), which overrides a limited set of State economic

interests again for the same benefits. Better practice in this regard is to provide for a full public interest override for all exceptions so that whenever the public interest in accessing the information is greater than the risk of harm from disclosing it the information shall be disclosed.

Better practice is to provide for overall time limits after which exceptions cease to apply. The Bill includes only two such limits, of 20 years, namely for international relations (section 27(3)) and operations of public entities (section 30(3)). These limits should apply to every exception which protects a public interest, such as national security and public order. To address the rare cases where information remains sensitive, for example on national security grounds, after 20 years, the law could provide for an exceptional procedure for extending the limit.

It is important to consult with third parties when a request is made for information supplied in confidence by them. The Bill provides for extensive consultations with third parties but there are a few problems with the approach taken. First, the definition of a third party, in section 2, covers anyone other than the applicant. However, the public entity should also be excluded here. Then, the main provisions on this, such as section 32, refer to "information of any third party". It is not clear what this might cover. Better practice, as suggested above, is to engage this right only where the third party provided the information on a confidential basis. Finally, once third party rights are engaged, the information cannot be released "until any right of the third party to appeal the release of the information has expired or until any appeal lodged by the third party has been finally determined in terms of section 40" (section 8(7)). This effectively allows third parties to delay release for a considerable amount of time with almost no effort. Given that access is a human right, this is not appropriate. Also, practice in countries around the world shows clearly that it is incredibly rare that sensitive third party information gets released. Rather, the far greater risk is that access to non-sensitive information is refused. All of this suggests a better practice approach of requiring information officers to take third party comments into account but then releasing the information if they deem it not to be sensitive. The third party can then appeal and claim compensation if, ultimately, higher decision-makers deem the release to have been inappropriate.

Recommendations:

- The right to information law should provide explicitly that, in case of conflict, its provisions override secrecy provisions in other laws.
- Section 6 should be removed. If this is deemed to leave legitimate secrecy interests without protection, those should be incorporated into the main regime of exceptions, rather than being excluded entirely from the scope of the law, and rendered subject to a harm test.
- Sections 27(1)(b)(i), 30(1)(a) and 30(2)(c) should be removed from the law.
- The lists provided for in sections 27(2) and 28(2) should ideally be removed entirely but, if they are retained, it should be made clear that they do not establish mandatory categories of information to be withheld but are just

intended to elaborate on the main exception (and, as a result, remain subject to the harm test for that exception).

- Section 15 should be removed from the law.
- The three items in section 21(2)(g) should be separated by the conjunction "or" instead of "and".
- The definition of a "trade secret" in section 2 should include the idea that the party claiming the trade secret invested significant resources into creating it in the first place.
- Section 22(2) should authorise but not require private entities to withhold their own sensitive commercial information.
- The references to "national economic interests or financial welfare", the "financial interests of the State" and a computer programme owned by the State should be removed from section 28.
- The terms "manifestly frivolous or vexatious" in section 31 should be carefully and narrowly defined.
- A comprehensive public interest override applying to all exceptions should be incorporated into the law.
- A 20-year overall time limit should apply to all exceptions which protect public interests, which may in exceptional circumstances be overridden through applying a special procedure.
- Third parties should be defined as anyone other than the applicant or the public entity, while third party rights should be engaged only where information has been provided by the third party in confidence. A third party should have a right to either consent to the disclosure of information or provide reasons why they feel it should be kept confidential, and to have those reasons taken into account, but they should not be able to delay the release of information until their rights of appeal have been exhausted. Instead, on appeal following the release of the information, they should be able to claim compensation.

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	4	20
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	5	2, 6, 15, 20-34

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	4	20-34
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	1	20-34
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	20-34
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	1	2, 8(7)
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	8(8), 14
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	8(9)
	TOTAL	**30**	**19**	

5. Appeals

The existence of an independent and effective administrative oversight body is, in practice, the most important factor in distinguishing more successful from less successful RTI regimes. Put differently, almost all of the RTI regimes which are more effective in practice benefit from strong and independent oversight bodies. There are many reasons for this, starting with the issue of appeals. The vast majority of applicants simply do not have the money or time to take cases to court, so an administrative oversight body is the only way they can expect to get any independent review of their requests. In addition, in most cases, these bodies have far broader mandates than simply dealing with appeals, including to undertake a number of promotional roles (the Bill does very poorly in terms of Promotional Measures).

The primary approach taken in the Bill towards appeals is to allocate responsibility for them to the Zimbabwe Media Commission and then to leave the details to the rules regarding this body, which are found in the Constitution and another Bill, the Media Commission Bill. There are two key problems with this. First, it is far from clear that the Media Commission is the best body to undertake this task. While it represents a sort of efficiency in the sense that it avoids the need to create another administrative oversight body, this approach also has some serious problems. One is that it creates the impression that this is a media right, whereas that is not at all the case. This may lead to confusion

among the public leading to low demand for information, which would ultimately be fatal to the success of this law. This problem is all the more serious given the unfortunate inclusion of the current access to information rules in a law which also imposes serious restrictions on media freedom.

In addition, the experience of countries around the world which have allocated information oversight functions to bodies that essentially deal with other issues has not been positive. Essentially, in these cases, the bodies tend to focus far more energy and expertise on their other functions, leaving information oversight in the position of a second class cousin and undermining the successful implementation of the right to information law. This is particularly likely in this case, given that there is very little relationship between the expertise required to regulate the media and the expertise required to oversee the right to information.

The second key problem is that the proposed provisions regarding the Media Commission do not give it the specialised powers it needs to undertake information oversight functions effectively. Unlike the first problem, this problem could at least theoretically be addressed by including these specialised powers in the right to information law.

We therefore recommend that the approach of allocating oversight to the Media Commission be reconsidered in favour of creating a dedicated right to information oversight body, such as an information commission.

The following analysis is based on the current set of proposals although our primary recommendation is to reconsider this whole approach. A first issue is that the Bill fails to provide for an internal appeal to a higher authority (i.e. than the information officer) within the public entity which first entertained the request. This can be useful in terms of giving the entity a second chance to resolve any problems with the way it has processed the request.

It may be beyond the scope of the right to information law, but the rules providing for the independence of the Commission could be improved. Looking at the Constitution, the tenure of members does not appear to be set for a fixed period of time, which is essential, and the President plays too great a role in the making of appointments to the Commission. This could be addressed, for example, by providing for a greater role for civil society and members of the public in terms of making nominations and commenting on a long list of nominees.

It is important that information oversight bodies be able to exercise appropriate powers when investigating appeals. This should include the power to review any information that is classified, to compel witnesses to appear and give testimony and, where necessary, to conduct inspections of public entities (for example to determine whether their claims that they do not hold information are true). The Media Commission Bill 2019 does not appear to allocate these powers clearly to the Media Commission (see, for example, sections 8 and 10). In any case, the Information Bill does not even make it clear that the

powers that the Commission has in media cases would also apply to information investigations.

When it comes to remedies, the Bill only provides for very general powers on the part of the Commission to substitute its decision or confirm the original decision (section 38(2)). Specific powers are needed in the information context, such as to order the disclosure of information and to order compensation in appropriate cases.

It is unclear from the Media Commission Bill whether the Commission's decisions are actually binding (see sections 12 and 13). It has the power to issue both orders and recommendations, suggesting that the former are indeed binding. However, a complex process is proposed for enforcing its orders, which ultimately involves applying to a court for a new decision in this case, which in turn suggests that the original order was not really binding. A common solution in such cases is to allow the oversight body to register its decisions with the court, once the period for appealing against those decisions has expired, at which point the decisions become the equivalent of court decisions and a failure to implement them becomes a contempt of court.

Section 16 of the Media Commission Bill makes it clear that interested parties may appeal its decisions to the courts. However, the Bill does not make this clear in the case of information appeals, which needs to be clarified.

Neither Bill provides clearly that appeals to the Commission are free of charge and do not require a lawyer. This should be clarified. Otherwise, according to section 36(3) appeals shall be accompanied by the prescribed fee, if any. It is not clear what this refers to but it should be removed. There should be no fee simply for lodging an appeal and, should the appeal be successful and the information ordered to be disclosed, any fee relating to disclosure should be dealt with at that time. However, at that point better practice would be to provide the information for free given that the applicant has already been forced to go through the appeal process, which should not have happened in the first place (since the information was ordered to be disclosed in the end).

Section 35(1) of the Bill provides for an appeal against a decision of the information officer. Not all failures to apply the law may result in a decision. For example, a failure to respond to a request may be achieved simply through silence. Better practice in this regard is to allow for an appeal for any claimed failure to respect the rules relating to requests.

Section 37(6) provides, where an appeal against a decision to release information is being considered by the Commission, for the applicant to be informed. This is useful but the applicant should also be given the right to make representations in this case.

Better practice is to require public entities, on appeal, to bear the burden of proving that they acted in accordance with the rules in the law (i.e. to impose the burden of proof on them). This is derived from the fact both that the right to information is a human right and that the public entity is well positioned to show that it acted in accordance with the

law whereas it is almost impossible for the applicant to show that it did not. For example, where a public entity claims information is exempt, it can justify that based on the content of the information whereas the applicant has no idea what is in the information, since he or she has not see that information, and so cannot prove that it is not exempt.

In many cases, appeals will highlight wider problems within the public entity in terms of receiving and processing requests. For example, the entity may not have appointed or properly trained an information officer or it may not be managing its records properly. In such cases, simply ordering a remedy for the applicant is not enough; rather, structural measures need to be taken to address the problem. Better practice is to give the oversight body the power to order the public entity to put in place such measures.

Recommendations:

- The primary approach to appeals taken in the Bill, namely of allocating this function to the Zimbabwe Media Commission, should be reconsidered in favour of creating a dedicated information appeals body, such as an information commission. At a minimum, far more precise rules on the powers and mandate of the Commission in the area of information should be provided for.
- Consideration should be given to providing for an internal appeal to a higher authority within the same public entity that first entertained the request.
- Consideration should be given, to the extent possible, to bolstering the independence of the Commission including by providing for security of tenure for members and by allocating a larger role to the public and civil society to nominate members and to comment on proposed appointees.
- The Commission should explicitly be given a set of specific powers when it is investigating an information appeal including to review any information that is classified, to compel witnesses to appear and give testimony and, where necessary, to inspect the premises of public entities.
- The law should also allocate explicit remedial powers to the Commission, including to order the disclosure of information and to compensate applicants.
- To render the decisions of the Commission truly binding, the law should provide for the Commission to register those decisions with the court, once the period for appealing them has expired, at which point they effectively become court decisions.
- The law should make it clear that interested parties may appeal from a decision of the Commission relating to information to the courts.
- The law should make it clear that appeals to the Commission are free of charge and do not require a lawyer, and section 36(3) should be removed.
- Applicants should have the right to lodge an appeal for any claimed failure on the part of public entities to respect the rules relating to requests.
- Section 37(6) should provide that, in addition to being informed about appeals against decisions to disclose information, applicants should be given a right to make representations.
- The law should place the burden of proof in appeals on public entities.

- The law should give the Commission the power to order public entities to undertake structural measures to improve their ability to receive and process requests in accordance with the rules in 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	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	2	35
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	A237, 248 of 2013 Const.
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	2	17-19 of Media Commission Act
40	There are prohibitions on individuals with strong political connections from being appointed to this body and requirements of professional expertise.	2	2	A236(2), (3) and 248(2) of the Const.
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	1	ss. 8, 10 Media Commission Act
42	The decisions of the independent oversight body are binding.	2	1	ss. 12, 13 Media Commission Act
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	38(2), s. 12 Media Commission Act
44	Requesters have a right to lodge a judicial appeal in addition to an appeal to an (independent) oversight body.	2	1	s. 16 Media Commission Act
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	3	35
47	Clear procedures, including timelines, are in place for dealing with external appeals.	2	2	36, 37, 38
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**	**17**	

6. Sanctions and Protections

The Bill does very poorly in this category, earning only two points out of a possible eight, or 25%. It is very important that the RTI law provide for sanctions for officials who wilfully obstruct its implementation. If this sort of behaviour is not subject to punishment, officials will feel they do not really need to respect the law. This is not addressed properly in the Bill. It provides, in section 40(3), for the Commission to adopt regulations providing for penalties for contraventions of the other regulations. First, this does not make sense since penalties should apply to any breach of the law and not just the regulations. Second, it is not appropriate for something as important as this, and which can lead to individuals being sanctioned directly, to be provided for in regulations. Instead, and consistently with the practice of the vast majority of right to information laws, penalties should be provided for in the primary legislation.

Best practice is also to provide for sanctions for public entities which are systematically failing to respect the RTI law. The rationale for this is that problems regarding RTI are often institutional in nature rather than being the fault of one or another individual. While it is appropriate to punish officials who wilfully obstruct access, it can be more effective to impose sanctions on public entities as such, in an attempt to get them to change their (institutional) behaviour. This sort of rule is not found in the Bill.

Section 39 does provide for protection for officials who disclose information in good faith and without gross negligence. However, the Bill fails to provide protection for whistleblowers, those who, in good faith, disclose information about wrongdoing. This is important to provide for at least a basic framework of protection for these individuals.

Recommendations:

- Section 40(3) should be removed and, instead, the primary legislation should provide for broad responsibility (punishment) for officials who wilfully obstruct the disclosure of information.
- Consideration should be given to providing for sanctions for public entities which are systematically failing to implement the law.
- Consideration should also be given to providing for a basic framework of protection for whistleblowers in the law.

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	0	
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	2	39
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

RTI laws need some support to be implemented properly and this is what is covered in the Promotional Measures category of the RTI Rating. The Bill again does poorly on this category, earning just four points out of a possible total of 16, or 25%. An important reason for this is that no promotional responsibilities in the area of access to information have been imposed on the Commission.

The Bill refers throughout to the idea of information officers but section 2, including the definitions, does not define "information officers" but, instead, refers to the idea of a "responsible person" as the person responsible for keeping, organising and maintaining (but not disclosing) information. More importantly, the Bill never actually requires public entities to appoint an information officer and nor does it set out clearly the responsibilities of these individuals.

As noted above, no central body is given responsibility for promoting implementation of the law. This leaves a huge gap which can be expected to undermine seriously implementation in practice. An obvious candidate for this, given the approach taken in the Bill, would be the Commission although this is where having a dedicated oversight body would be far preferable.

The Bill also fails to task any body with responsibility for raising public awareness, another essential task to ensure proper implementation of the law, although it does include this among the objects of the law (see section 3(c)(i)). In addition to a central body leading on this, each public entity should be required to support public education efforts.

It is clear that if public entities cannot locate information or need to spend a lot of time doing so they will struggle to meet their obligations under the law. Better practice in this regard is to put in place a proper records management system, something which is

completely missing from the Bill. Such a system starts by mandating a central body to set minimum records management standards for all public entities. This avoids both the inefficiency of having each public entity do this separately and ending up with a patchwork of different standards across the public sector. There will then need to be training to build the capacity of public entities to apply the standards and, finally, some sort of system for monitoring performance and addressing the problem of entities which are failing to manage their records properly.

Best practice laws also require public entities to publish lists of the actual documents that they hold, while good practice at least requires them to publish lists of the types or classes of documents they hold. Neither of these obligations is provided for in the Bill.

Best practice is also to require public entities to provide appropriate training to their officials. Information officers clearly need more in-depth training than other officials but all officials should at least receive some awareness training about the law and the obligations it creates. No such obligation is provided for in the Bill.

A robust system of reporting is needed to be able to follow what is happening under the law and to identify problems and bottlenecks and then to rectify them. Section 18 requires each public entity to prepare an annual report for the Commission on what it has done to implement the law, including reasonably detailed statistical information about the number of requests received and how they have been processed. However, the Bill fails to go on to task the Commission to prepare a central report on overall efforts to implement the law, including aggregate statistics on requests and how they have been dealt with. This latter report should be tabled before parliament and also made widely publicly available.

Recommendations:

- The law should require all public entities to appoint an information officer and it should also set out the general responsibilities of these individuals. Consideration should be given to removing the definition of a "responsible person" and instead allocating the roles currently given to these individuals to information officers.
- The law should give a central body a general mandate to promote proper implementation of the law and to raise public awareness about its provisions and the rights it creates for citizens, while each public entity should also have a responsibility to raise public awareness.
- The law should also put in place a proper records management system that involves the setting of standards by a central body, the provision of training and a monitoring system to promote compliance with the standards.
- Public entities should be required to publish lists of the documents they hold or at least of the categories of documents they hold.

- The law should require public entities to provide appropriate training to their officials on the right to information law.
- The law should require the Commission to prepare a central report annually on overall efforts to implement the law.

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	1	2
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	1	3(c)(i)
57	A system is in place whereby minimum standards regarding the management of records are set and applied.	2	0	
58	Public authorities are required to create and update lists or registers of the documents in their possession, and to make these public.	2	0	
59	Training programmes for officials are required to be put in place.	2	0	
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	18
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**	**4**	