

The No-Nonsense *guide to* The Right to Information

The citizens of at least 90 countries and territories now have laws enabling them to obtain government records and other information. Transparency is one indicator of an open and democratic society, so freedom of information is crucial. But access can still be problematic. A freedom of information law in principle does not guarantee access in practice. So, what does it mean to have a 'right to information'? Why is it important? What has been its impact?

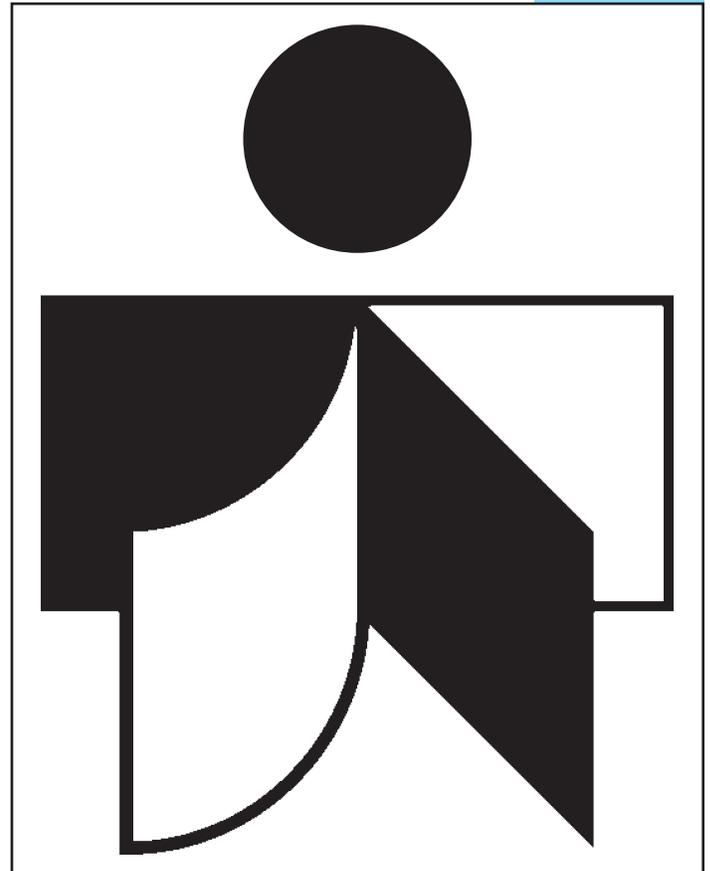
Freedom of information, including the right to access information held by public bodies, is now recognized as crucial to democracy, good governance, and full citizenship. It is also a fundamental human right, protected under international law and, in many countries, under constitutional law.

Freedom of information gained widespread recognition during the last 25 years. In this period national governments, intergovernmental organisations, and international financial institutions adopted laws and policies which provide for a right of access to information held by public bodies.

The primary source of this right is to be found in the universally recognized right to freedom of expression, which includes the right to seek, receive and impart information and ideas. In a general sense, it can also be derived from recognition that neither democracy nor the protection of human rights can function without freedom of information.

Equally, the right to freedom of information can only be effective if it is guaranteed by law, and if the ways in which it is to be exercised are set out clearly in legislation or in binding policy statements. Over time, authoritative statements, court decisions, and national practices have elaborated certain minimum standards which legislation and policies must meet.

The right to information is now recognised as inherent to the dignity of all human beings. It is also essential to democracy, to informed participation in electoral and decision-making processes, to public



UNESCO's international symbol of information literacy, designed by Edgar Luy Pérez (Cuba).

accountability, and to tackling corruption and abuses of power. Today, denying people's right to information and obstructing the transparency of public bodies is held to be fundamentally undemocratic.

The media's role in society includes acting as a watchdog of government and enhancing the free flow of information to the public. This function can be undermined not only by government secrecy, which denies the media access to information on matters of public interest, but also by laws which unduly restrict freedom of expression.

Legal frameworks differ from country to country, but examples of repressive laws and authoritarian practices include licensing of publishing and broadcasting outlets aimed at constraining dissent, criminal defamation laws used to silence critical voices, and prior censorship. Furthermore, government control

over publicly funded media, particularly national broadcasters, often prevents these media from reporting in a fair and balanced manner and best serving the public interest.

BACKGROUND TO THE RIGHT TO INFORMATION

A number of international bodies responsible for promoting and protecting human rights have recognised the fundamental and legal nature of the right to freedom of information, as well as the need for effective legislation to ensure that the right is respected in practice.

In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR), in which freedom of information falls under the right to freedom of expression. Article 19 states:

‘Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.’

In 1966, the UN General Assembly adopted a legally binding treaty called the International Covenant on Civil and Political Rights. Its Article 19 also guarantees the right to freedom of opinion and expression in terms very similar to the UDHR:

‘Everyone shall have the right to freedom of opinion. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any media of his choice.’

In 1993, the UN Commission on Human Rights established the office of the Special Rapporteur on Freedom of Opinion and Expression, part of whose mandate is to clarify the content of the right to freedom of opinion and expression.

As early as 1995, the Rapporteur noted, ‘The right to seek or have access to information is one of the most essential elements of freedom of speech and expression.’ Since 1997 the Rapporteur has commented on the right to freedom of information in every annual report.

The April 2009 report to the UN Human Rights Council highlights the social exclusion of people affected by chronic poverty and the marginalization of people belonging to ethnic minorities and

other vulnerable groups.

The Rapporteur emphasized ‘the need for access to information to be guaranteed as a means towards securing participation and accountability’. He urged ‘Governments to deregulate the communications and media environment to allow free and fair information to flow more effectively to civil society.’

In recent years there has been a shift away from the historical and commonly understood term ‘freedom of information’ towards the more contemporary ‘right to information’. In part this followed debates about the nature of communication rights in the information society, but it is also a consequence of pressure from those lobbying for access to information held by public bodies.

All proponents of the right to information, knowledge, and communication recognize the importance of information to maintaining democracy and to full participation in society. Since effective democracies require accountability and good governance, the public must have:

‘A right to scrutinise the actions of their leaders and to engage in full and open debate about those actions. They must be able to assess the performance of the government and this depends on access to information about the state of the economy, social systems and other matters of public concern. One of the most effective ways of addressing poor governance, particularly over time, is through open, informed debate.’¹

Sustainable development also requires people to be able to participate in the decisions that affect their lives. They need to be able to access information, but also to make their voices heard. Marginalized people especially are often excluded from these processes by geography and/or lack of resources or skills.

Other groups – including women, people with disabilities, and people living with HIV and AIDS – are silenced by social structures and cultural traditions. Access to information that citizens can use to shape political and social agendas and hold their governments to account is, therefore, essential to genuine development.

Such participatory information and communication processes encourage change in political and social behaviour. They contribute significantly to better, more transparent and accountable governance, to the creation of a dynamic civil society capable of monitoring government and commerce, and to rapid and more equitable economic growth.

In this respect, information is power and, as the examples in the blue panels show, it can cut both ways.

THE RIGHT TO INFORMATION IN INDIA

India's Right to Information Act (2005) is one of the best known. It gives India citizens access to records of the Central Government and State Governments. Under the provisions of the Act, any citizen may request information from a 'public authority', which is required to reply within 30 days.

The following story shows how the Act works, especially in tackling corruption.

Mahavir is a member of the Thati Baal Panchayat and his village comes under the Bilangana Development Area, District Tehri. The 25-member Baal Panchayat works in the areas of health, education and cleanliness of the village and is assisted by the Mount Valley Development Association (MVDA). In January 2009, the Baal Panchayat received training from the Mountain Children's Forum and MVDA on the 'Right to Information Act'.

The group attended a two-day intensive workshop which culminated in the filing of a number of RTI applications. The applications have to be filed by an individual so Mahavir decided to ask the Block Education Department to give him information about the attendance requirements of a primary school teacher. The village has a primary school and there are 46 children who attend this school. In the last 3 years the teacher was present for only 10 days a month.

On receipt of the application, the Block Education Officer along with an 11-member team visited the village. The teacher was absent on that day and had to be called from his residence. During the course of questioning it was learnt that not only had the teacher not been attending school but he had not been distributing scholarships to the children.

The Block Education Officer issued an instruction that the teacher was to distribute the scholarship money to the children in the month of March and must attend school every day.

Since then the teacher has been attending school every day, classes are being held regularly and finally everyone is learning something new every day.

Source: January 2009 - http://www.mymountains.org/workshops/RTI_successStory_tehri.html

INFORMATION IS POWER

Who controls information controls power. At the core of democracy is the ability of the people to participate, i.e. to influence leaders and decision-makers through openly expressed public opinion. Studying available options, meaningful public policy discussions and informed political debate, voting in accordance with best interests and beliefs, can only fully take place if there is open access to a diversity of information sources.

Without access to information, citizens cannot hold their government accountable. Access to information such as annual reports, accounts, and policy or legislative reviews allows for monitoring of government performance. As the government demonstrates its accountability, trust in the government grows, creating a healthy relationship between the government and its citizens.

The right to access information is a powerful tool that allows the most disadvantaged groups of society to become involved in initiatives that directly affect them. Lack of information blocks that participation by limiting their rights and freedoms and places them in a position of vulnerability.

Even so, it is generally accepted that it is impossible to have complete freedom of information. International and national laws defining the right to access public information generally list exceptions to the right. Most commonly these are: to respect the rights or reputations of others; to protect national security or public order; and to protect public health or morals.

NINE PRINCIPLES UNDERLYING FREEDOM OF INFORMATION

According to the human rights organization Article 19, nine principles should underpin freedom of information legislation.²

Principle 1: *Maximum Disclosure*. Legislation should be guided by the principle of maximum disclosure, which involves a presumption that all information held by public bodies is subject to disclosure, and that exceptions apply only in very limited circumstances. Exercising the right to access information should not require undue effort, and the onus should be on the public authority to justify any denials.

Principle 2: *Obligation to Publish*. Freedom of information requires public bodies to do more than accede to requests for information. They must also actively publish and disseminate key categories of information of significant public interest. These categories include operational information, costs, information on complaints, procedures for public input, and the

content of decisions affecting the public.

Principle 3: *Promotion of Open Government.*

Legislation needs to make provision for informing the public about their access rights and promoting a culture of openness within the government. As a minimum, a law should make provisions for public education and dissemination of information regarding the right to access information, the scope of information available, and the manner in which the right can be exercised. Also, to overcome the culture of secrecy in government, a law should require training for public employees, and encourage the adoption of internal codes on access and openness.

Principle 4: *Limited Scope of Exceptions.* Requests for information should be met unless the public body shows that the information falls within a narrow category of exceptions, in line with a three-part test:

- The information must relate to a legitimate aim listed in the law;
- Disclosure must threaten substantial harm to that aim; and
- The harm must be greater than the public interest in disclosure.

Restrictions that protect government from embarrassment or exposure of wrongdoing can never be justified.

Principle 5: *Process to Facilitate Access.* All requests for information should be processed quickly and fairly by individuals within the public bodies responsible for handling requests and complying with the law. In the case of denial, a procedure for appeal to an independent administrative body, and from there to the courts, should be established.

Principle 6: *Costs.* The cost of access to information should never be so high as to deter requests. Public interest requests should be subject to lower or no fees, while higher fees may be charged for commercial requests.

Principle 7: *Open Meetings.* Legislation should establish the presumption that all meetings of governing bodies are open to the public so that the public is aware of what the authorities are doing, and is able to participate in decision-making processes. Meetings may be closed, but only where this can be justified and adequate reasons are provided. To facilitate attendance, adequate notice of meetings should be given.

Principle 8: *Disclosure Takes Precedence.* Other legislation should be interpreted in a manner that renders it consistent with the disclosure requirements of legislation. In particular, in case of a conflict between the freedom of information law and a secrecy law, the former should prevail.

Principle 9: *Protection for Whistleblowers.* Legislation should include provisions protecting individuals from legal, administrative or employment-

THE RIGHT TO INFORMATION IN GUATEMALA

NGO-led right-to-know movements sometimes believe that media coverage will gravitate toward their cause through kindred laws of attraction. Yet little do they realize that the 'media' they seek is not one lumbering mass, but a loose assortment of business, journalistic, and technical professionals who may have little or no interest in right-to-know laws. Hence, 'the media' require extensive and targeted courting.

For example, Guatemala's right-to-know campaign languished for years with only marginal media coverage. Finally, the country's national chapter of Transparency International (Acción Ciudadana) assumed leadership of the movement and forged alliances with the owners of leading news publications. *El Periódico*, for example, provided Acción Ciudadana with two free advertising spots for every one purchased, and *Prensa Libre* provided on-demand coverage for congressional discussion of the law.

related sanctions for releasing information on wrongdoing.

WHAT HELPS AND WHAT HINDERS

The introduction of laws on the right to information has had considerable impact. The following comes from a report published by the Open Society Justice Initiative.³

1. *Freedom of Information Laws Make a Difference:* Freedom of information laws have had a significant, positive impact – the rate of responses to information requests was nearly three times higher in states with such laws.

2. *Requests Are Often Met With Silence:* Even in countries that have freedom of information laws, the government frequently fails to respond to requests for information. 56% of the requests made in countries without freedom of information laws went unanswered and 38% of the requests made in countries with freedom of information laws went unanswered.

3. *Transitional Countries Outperformed Established Democracies:* One of the study's most striking findings is that countries transitioning to democratic rule provided a higher percentage of information in response to requests than did two mature democracies. Armenia, Bulgaria, Peru, Mexico, and Romania produced more frequent and higher-quality responses than France or Spain. However, this does not mean that the governments of France and Spain are less transparent

overall. France makes significant amounts of information available in published reports and on government websites, so the failure to respond to requests did not always mean the information was unavailable to the public.

4. *Civil Society Involvement Helps:* Countries where civil society movements were active in the processes of drafting, adopting, and implementing access to information laws had a better response rate.

5. *Discrimination Plays a Role:* People from excluded or vulnerable groups – namely, racial, ethnic, religious, or socio-economic groups routinely subjected to discrimination – tended to receive fewer responses than persons who presented themselves as journalists, representatives of NGOs, or business persons.

6. *European Countries More Responsive:* Europe, where freedom of information laws have been more widespread and longstanding than elsewhere, saw a greater percentage of responses than did Latin American and African countries. This is because access to information has developed in different regions during different periods as civil movements responding, for example, to human rights violations and corruption gained momentum.

7. *Inconsistent Responses:* The study found that, where pairs of identical requests submitted by different people were presented to government bodies, the responses received were inconsistent 57% of the time. This was the case even in countries where government bodies responded most frequently to requests. In many cases, the inconsistency reflected discrimina-

tory behaviour by government personnel toward the persons who requested the information.

Furthermore, the study found that, where the same request was submitted twice and yielded non-compliant responses, the noncompliance manifested itself in different ways. In contrast, where government bodies surveyed were generally compliant with access to information laws and principles, the way they responded to requests for information tended to be uniform.

8. *Written Refusals Are Rare or Lack Legitimate Grounds:* In instances where government bodies refused to provide the information requested, they almost never put their refusals in writing. The study showed that, in countries with freedom of information laws, government bodies made written refusals to provide requested information 5% of the time and that, in countries without freedom of information laws, only 2% of the time.

Of the written refusals that were received, approximately 40% cited reasons recognized as legitimate under international and regional law for refusing the requests for information. But approximately 60% of the written refusals cited reasons not recognized as legitimate under international and regional law.

CIVIL SOCIETY AND THE MEDIA

A World Bank Institute report stresses the importance of civil society's involvement in drafting access to information laws.⁴ Taking the example of Zimbabwe, where an access to information and privacy law was introduced in 2002, it identifies exemptions and restrictions that rendered the law virtually meaningless.

The report argues that civil society organizations (CSOs) need to ensure adequate provisions in order to hold governments to account for promises made regarding legislation, to raise public awareness of the importance of access to information, and to promote the concept of access in ways that can be readily and easily understood. CSOs can also research the information needs and perceptions of citizens, contribute to the shape of legislation, campaign for its effective implementation, and monitor its enforcement.

The report highlights the complex but vital role of the media. In some cases media organizations are indifferent or opposed to access to information because they fear loss of media freedom or the undermining of privileged information networks. Where the media can be mobilized, however – as they were in Mexico (in part) and the United Kingdom – the impact of their campaigning can be very significant.

The International Federation of Journalists recently added its voice to the debate:

THE RIGHT TO INFORMATION IN UGANDA

In 2009 Uganda carried out drilling for oil in the East Africa Rift, but contracts between the government and oil companies remained secret. Tullow Oil and Heritage Oil companies explored 15 wells in the lake Albertine basin of Uganda with 100% success rate. However, the Ugandan government has refused to disclose the production sharing agreements they signed in 2001, saying there are confidentiality clauses barring parties from disclosing it.

But, according to article 41 of the 1995 Constitution of Uganda, citizens have a right to information in the hands of the government unless an exception is shown. Ugandan activists have petitioned the Uganda High Court to compel the government to make public the contents of the agreement in line with Ugandan legislation. The later Access to Information Act 2005 obliges the government to respect citizens' right to information.

‘The experience of freedom of information campaigns around the world is sweet and sour, with the taste of success being followed quickly by resistance from political and official institutions that are constructing bureaucratic obstacles to limit transparency. The campaign... has only been partly won. Some countries have yet to take the first steps and among those that have, new battles have to be fought to keep them on track.’⁵

Civil society and the media can work together for greater accountability and to strengthen the right to information in practice.

FURTHER INFORMATION

The Freedom of Information Advocates Network (<http://foiadvocates.net/>) is an international information-sharing network of organizations and individuals working to promote the right of access to information. Members of FOIANet are civil society organizations with active programmes to promote the right to know.

FOIANet also runs a discussion list for news and debate on the right of access to information; there are currently over 400 people on this list, including CSO representatives and lawyers, academics, information commissioners and others with a specialised interest in the right to information. The network launched and promotes International Right to Know Day which takes place on 28 September of every year.

<http://www.freedominfo.org/> provides country by country breakdown of the state of freedom of information across the world.

<http://www.right2info.org/> brings together information on the legal frameworks for the right to information from more than 80 countries, organized and analyzed by topic.

<http://www.wobbing.eu/> brings together news and country updates on the right of freedom of information in Europe. Country laws can be found in the country breakdown sections. ■

Notes

1. *The Right to Information in Latin America: A Comparative Legal Survey*, by Toby Mendel. Quito: UNESCO (2009), p. 4.

2. *Global Trends on the Right to Information: A Survey of South Asia*. London: Article 19, Commonwealth Human Rights Initiative, Human Rights Commission of Pakistan, Centre for Policy Alternatives (2001).
3. *Transparency & Silence A Survey of Access to Information Laws and Practices in Fourteen Countries*. New York: Open Society Institute (2006). http://www.soros.org/initiatives/justice/focus/foi/articles_publications/publications/transparency_20060928
4. *Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa, and the United Kingdom*, by Andrew Puddephatt. Washington: The International Bank for Reconstruction and Development/The World Bank (2009).
5. *To Tell You the Truth: The Ethical Journalism Initiative*, by Aidan White. Brussels: IFJ (2008), p. 121.

This No-Nonsense Guide is a resource compiled by Philip Lee and published by the World Association for Christian Communication (2009).

The World Association for Christian Communication (WACC)

promotes communication for social change. It believes that communication is a basic human right that defines people’s common humanity, strengthens cultures, enables participation, and creates community.

WACC’s key concerns are media diversity, equal and affordable access to communication and knowledge, media and gender justice, and the relationship between communication and power. It tackles these through advocacy, education, training, and the creation and sharing of knowledge.

WACC is responsible for the Centre for Communication Rights portal – a source of documents and materials about all aspects of communication rights.

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