

# Right to information

A guide to best practice in transparency, accountability  
and civic engagement across the public sector

The Transparency and Accountability Initiative is a donor collaborative that includes the Ford Foundation, Hivos, the International Budget Partnership, the Omidyar Network, the Open Society Foundations, the Revenue Watch Institute, the United Kingdom Department for International Development (DFID) and the William and Flora Hewlett Foundation.

The collaborative aims to expand the impact, scale and coordination of funding and activity in the transparency and accountability field, as well as explore applications of this work in new areas.

The views expressed in the illustrative commitments are attributable to contributing experts and not to the Transparency and Accountability Initiative. The Transparency and Accountability Initiative members do not officially endorse the open government recommendations mentioned in this publication.

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# Right to information

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Open, participatory and accountable government is contingent on members of the public having access to the largest possible amount of information held by public authorities: it is the right to know what the government knows. Information should be withheld from the public only where absolutely necessary, on the basis of harm to legitimate interests, where there is no overriding public interest in knowing the information.

The right of access to information (right to information or RTI) has been recognised by international human rights tribunals (Inter-American Court of Human Rights and the European Court of Human Rights) and leading international authorities (including all four special mandates on freedom of expression at the UN, the Organization of American States, the Organization for Security and Cooperation in Europe and the African Commission, and the Inter-American Juridical Committee) as being an intrinsic part of the right to freedom of expression.

There are now over 80 countries which have access to information laws, a massive increase from the 13 countries in

1990, but this still leaves well over half of the 192 UN member states without a legal framework ensuring the public's right to information. Furthermore, in most of the countries that have RTI laws, practice is still mixed, with responsiveness to requests for information being unpredictable and proactive publication practices either poor or patchy. A culture of bureaucratic secrecy prevails in many public administrations and requesters are often asked why they want access to a particular document or piece of information. Exceptions are applied very broadly and timeframes for responding are often not respected. Information is not always provided in the requester's preferred format and in many countries limits on reuse are imposed by government copyright and other rules restricting reuse of public sector information unless a fee is paid.

All countries, irrespective of their current levels of transparency, should make the commitment to provide effective guarantees of the fundamental right to information. Countries should then commit to move up to the next level on each of the indicators elaborated below. Many countries will not fit neatly into one level and will need to adopt a mix of commitments.

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## Initial steps

### Goal

To ensure a basic right to information for all through a functioning legal mechanism for submitting requests and through proactive publication of core classes of information.

### Justification

The right to information is not complete without the freedom to make use of that information to form opinions, call governments to account, participate in decision-making or exercise the right to freedom of expression in any other way. This right of access to information places two key obligations on governments. First, they have an obligation to publish and disseminate to the public key information about what different public bodies are doing. Second, governments have the obligation to receive from the public requests for information and the obligation to respond, either by letting the public view the original documents or to receive copies of documents and information held by public bodies.

### Recommendations

#### 1. Legal framework guaranteeing the right to information

- a. The legal framework (constitution/statutory law/jurisprudence) recognises the right to information as a human/civil right.
- b. The legal framework creates a specific presumption in favour of access to all information held by public authorities, subject only to limited exceptions, calls for a broad interpretation of the RTI law and emphasises the benefits of the right to information.

#### 2. Legal framework for reactive disclosure of information (i.e. requests)

- a. An RTI law is adopted which meets minimum standards for the right to information, including that:
  - Everyone (including non-citizens and legal entities) has the right to file requests for information;
  - The right of access applies to all material held by or on behalf of public authorities and recorded in any format, regardless of who produced it;
  - The right applies to all branches of government and all private bodies performing public functions or that receive significant public funding;
  - Public authorities are required to respond to requests as soon as possible and within a maximum of 20 working days;
  - Filing of requests is free and centrally set fee schedules do not allow public authorities to levy charges that exceed actual costs of reproduction and delivery. Viewing records and receiving electronic copies is free and there are fee waivers for impecunious requesters;
  - Exceptions to the right of access protect interests that are recognised as legitimate under international standards and are subject to a test of a risk of actual harm and a mandatory public interest override. Partial access shall be provided for.

### 3. Protection

- a. An independent oversight body is established (e.g. an information commissioner) so that:
  - Requesters have the right to lodge an appeal free of charge and without the need for legal assistance;
  - In the appeal process, the government bears the burden of demonstrating that it has not operated in breach of the rules;
  - The oversight body has the mandate and power to perform its functions, including to review classified documents and to inspect the premises of public bodies.
- b. The decisions of the independent oversight body are binding and it has the power to order the disclosure of information.

### 4. Promotion

- a. Public authorities are required to appoint information officers (and information offices in larger institutions).
- b. Information officers and senior public officials from each public authority are trained on their openness obligations and on procedures for releasing information.
- c. Public information about the rights available is made available in key locations such as on websites and noticeboards and in places where this information is likely to reach a wide public.
- d. There is a commitment to review existing information management systems with a view to improving them in order to be able to answer requests within the timeframes established by the RTI law.

### 5. Proactive

- a. Public authorities are under a legal obligation to publish core classes of structural, financial and operational information.
- b. This commitment may, with a view to reducing the burden on public authorities, include a timetable for progressive roll-out at different levels of government (central, regional, local), making use of the communication channels available, such as websites or noticeboards.

- c. Key operational and financial documents are disclosed both in full and in ways that are comprehensible for members of the general public. This includes citizen-friendly texts and publication in the major languages of user communities.
- d. Sufficiently timely and comprehensive information is released about upcoming decision-making to facilitate public participation from the early stages in both executive and legislative branches (including information about decision-making processes and substantive information needed to participate in them).

### 6. Open government data

- a. Requesters have a right to request information by email whenever public authorities have functioning email systems.
- b. There is a commitment to open government data policies and a clear plan to implement them.
- c. The RTI law includes the right to access information in electronic format and the right to request and access entire datasets (databases) on the same cost basis as other information (i.e. free for electronic access).

### 7. Measure and evaluate

- a. All public authorities systematically collect data on the number of requests, rates of response, exceptions relied upon and classes of information proactively published.
- b. Public authorities report the information above annually to a central body (for example, an information commissioner), which publishes an annual report summarising this; the annual report is presented formally to parliament and made widely publicly available.

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## More substantial steps

### Goal

To ensure that the right of access to information is fully developed in the legal framework of the country and works well in practice, that significant volumes of information are published on a proactive basis and that there is effective oversight protection of the right.

### Justification

There are significant variations in how the right of access to information is protected by law and respected in practice around the world. Much information is still inaccessible because the

scope of access to information laws falls below internationally agreed standards, and because of governments' unwillingness or failure to publish information proactively. More comprehensive proactive publication of government information is crucial to governments becoming closer to citizens and to increased public awareness and understanding of government policies, programmes and obligations. Enhancing responsiveness and ensuring that the right to information is enforced and protected is essential to ensuring that the public know what their governments are doing and can participate in a meaningful way in decision-making.

## Recommendations

### 1. Legal framework for reactive disclosure of information (i.e. requests)

- a. The RTI law is amended to reflect better practice, for example by:
  - Extending the scope to cover the legislative and judicial branches;
  - Ensuring that the right of access applies to state-owned enterprises (commercial entities that are owned or controlled by the state);
  - Extending the scope of the right to the archives and to classified information;
  - Providing assistance to all requesters who need it, in a timely manner.
- b. The harm and public interest tests are applied rigorously in practice for all exceptions.
- c. The standards in the RTI law trump restrictions on information disclosure (secrecy provisions) in other legislation to the extent of any conflict.
- d. Laws that include secrecy provisions are amended/ repealed to bring them into line with the RTI law.

### 2. Protection

- a. The independent oversight body has the power to impose appropriate structural measures on public authorities (e.g. to conduct more training or to engage in better record management).
- b. Sanctions (administrative and/or criminal in nature) may be, and in practice are, imposed on those who wilfully act to undermine the right to information, including through the unauthorised destruction of information.
- c. There are legal protections prohibiting the imposition of sanctions (of a criminal, civil, administrative or employment-related nature) on those who, in good faith, release information pursuant to the law.
- d. There are, similarly, legal protections prohibiting the imposition of sanctions on those who release information which discloses wrongdoing (i.e. whistle-blowers), as long as they have acted in the genuine belief that they were exposing wrongdoing.

### 3. Promotion

- a. Basic training on the right of access to information is provided to all public officials and targeted training is provided to those in relevant positions.
- b. Training is provided to relevant officials in private bodies performing public functions.
- c. Awareness-raising campaigns to inform the public of their right to information are undertaken using multiple media.
- d. Responsibility and resources are allocated to a central body, such as an information commissioner, to promote implementation of the right to information.
- e. Effective information management systems are in place (one indicator of success is the percentage of requests answered within ten working days).

### 4. Proactive

- a. Public bodies publish an index or register of information held.
- b. All information released pursuant to freedom of information (FOI) requests is released proactively and is accessible via a searchable database.
- c. All laws and other legal rules, in both original and consolidated versions, are made available free of charge in a searchable database.
- d. Key classes of information needed for anti-corruption and accountability, such as contracts and reports on completion of contracts, declarations of assets and expenses data, are published in full (and not just in summary versions).
- e. Public consultations are held to test how relevant proactively published information is and to refine practices accordingly.

### 5. Open government data

- a. There is a commitment to ensure that all public authorities are online and email-enabled within a fixed period of time.
- b. Core classes of proactively published information are available in open and machine-readable formats.
- c. In order to ensure that government information is reusable, when electronic access is requested information is released in machine-readable and open source formats wherever possible.
- d. Internal regulations and public procurement rules require disclosure-enabling features to be designed into IT systems, including through anticipation of the need to sever information, which is subject to a legitimate exception, such as privacy.
- e. There is a commitment progressively to digitise information not currently held in digital format.

### 6. Measure and evaluate

- a. All public authorities gather detailed statistics on requests and responses and on proactive publication, and report every six months to the oversight body; these reports are also submitted to parliament and made public.
- b. The oversight body has the power to recommend remedial measures to public authorities.
- c. The oversight body or another body conducts and publishes regular public awareness surveys on RTI.

## Most ambitious steps

### Goal

To reach maximum standards of openness, including a highly developed proactive publication regime, and fully functioning and effective mechanisms for requests with rapid response times.

### Justification

Since 1990 the number of countries with access to information laws has skyrocketed from only 13 to more than 80. Governments with well-established RTI laws and systems already in place should focus on enhancing response times, measures for redress, citizen capacity to understand and exercise their rights, the depth, breadth and timeliness of proactive and reactive disclosures, the public's ability and freedom to reuse information and the collection of statistics on how government agencies are performing on RTI-related matters.

### Recommendations

1. Legal framework for reactive disclosure of information (i.e. requests)
  - a. The right is extended to private bodies when the information they hold is necessary for the protection of fundamental rights.
  - b. The RTI law is amended to contain an explicit override to exceptions which applies when requested information relates to violations of human rights, crimes against humanity, corruption or abuse of power, or threats to public health or the natural environment.
  - c. Other exceptions are narrowly construed in law and applied judiciously in practice, subject to a well-developed public interest test elaborated through guidance from the information commissioner and courts.
  - d. Timeframes for responses are reduced so that requests are answered rapidly and in a maximum of ten working days (with an extension possible for complex requests).
  - e. Effective internal measures are in place to address problems of access, such as delays, failure to respond, etc. For example, a central government body could be responsible for tracking and monitoring responses to identify problems and proposing solutions.
2. Protection
  - a. A system is in place for redressing the problem of public authorities systematically failing to disclose information or underperforming (either through imposing sanctions on them or requiring them to undertake remedial actions).
  - b. Comprehensive whistle-blower protections are in place, which are applied in practice.
  - c. The grounds for external appeals are broad, including systemic failures, for example relating to proactive publication obligations.
  - d. The information commissioner processes appeals and reaches decisions within an average of 30 working days (for countries that currently have significantly longer times for processing appeals, the commitment should be to reduce the current average time by 50%).
3. Promotion
  - a. Measurable levels of knowledge among public officials (including in obligated private bodies) are achieved regarding the public's right to know and proactive publication obligations.
  - b. Measureable levels of public awareness about the right to information are achieved.
  - c. Education on the right to know is introduced as a subject in school curriculums (for example for children in the 13–16-year age range) and courses on this are widely available at the university level (for example, for law and journalism students).
  - d. Significant power and funding is provided to a central body to promote the right to information. This should include a substantial budget for public education and the ability to require public authorities to take measures to address structural problems.
4. Proactive
  - a. Real-time updates are provided for core classes of information.
  - b. Real-time updates of financial spending information are provided.
  - c. National companies' registers are made available in full, free of charge, in online searchable versions.
  - d. Searchable databases of court jurisprudence are available to the public free of charge.
  - e. Full use of ICTs, including effective tagging and powerful search engines, is employed to make proactively published information rapidly discoverable.
  - f. There is a commitment to move beyond core commitments to make proactively available all information that the public might be interested in, subject only to the regime of exceptions.
5. Open government data
  - a. The reuse of information released to the public is not constrained by government copyright or other intellectual property or licensing restrictions; where necessary there is a commitment to abolish government copyright (i.e. copyright on information created by public authorities).
  - b. Special arrangements (legal or practical) that permit some public authorities to charge for the raw data produced as part of their core functions are reviewed and repealed; instead, access to such data is provided free of charge, including for purposes of reuse.
6. Measure and evaluate
  - a. Quarterly statistics are gathered by the oversight body, and published and sent to parliament.
  - b. Public consultations/focus groups are employed to facilitate direct public participation in debate on how to improve government openness, including how to make proactive published information accessible, relevant and comprehensible to the wider public.
  - c. Detailed metadata on all requests is published proactively on a regular (e.g. quarterly or monthly) basis in an open data format.



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