NEWSLETTER

ICIC

SPECIAL EDITION

PRESENTATION

By Adrián Alcalá Méndez, on behalf of ICIC Presidency
Chairman National Institute for Transparency Access to Information and Personal Data Protection of Mexico INAI

The International Day of Universal Access to Information (IDUAI) powerfully reminds us of the fundamental right to access information. As we commemorate this day, we must recognize that this right is not merely a legal entitlement but a critical enabler of transparency, accountability, and public participation in decision-making processes. These elements are vital for the health and sustainability of democratic societies.

This Special Dossier is part of the celebration of IDUAI by the International Conference of Information Commissioners (ICIC), which seeks to underscore the importance of fostering a global dialogue on access to information (ATI). In the same vein, it is a product of a conversation that brings together diverse perspectives and experiences, highlighting the critical role of ATI in governance, development, and the protection of human rights. In a world where information is power, the ability to access, share, and use information is central to exercising many other rights and freedoms. Therefore, IDUAI is not just a celebration but a call to action for governments, civil society, and individuals to reaffirm their commitment to ensuring that everyone has the right to access information.

ATI is foundational to the functioning of democratic institutions. It allows citizens to make informed decisions, participate in public life, and hold their governments accountable. Without information, there can be no trust, and without trust, the very fabric of democracy begins to unravel. Hence, it empowers individuals and communities to understand the decisions that affect their lives, question those in power, and demand better outcomes. It is a tool for fighting corruption, ensuring justice, and promoting sustainable development.

This year's focus on "Mainstreaming Access to Information and Participation in the Public Sector" is crucial in deepening democratic governance. The relevance of this theme lies in its emphasis on integrating access to information as a fundamental component of public sector operations, ensuring that transparency and citizen engagement are not just ideals but standard practices. By embedding ATI into the fabric of public institutions, we can foster a culture of openness where citizens are informed and empowered to participate actively in decision-making processes.

In this context, the IDUAI serves as a critical opportunity to reflect on the progress that has been made in advancing ATI, as well as the challenges that remain. It is a day to celebrate the successes of those who have worked tirelessly to promote transparency and accountability, but also to recognize the work that still needs to be done. The Dossier is an important contribution to this ongoing effort, providing a space for critical reflection, dialogue, and learning.

This document aims to provide a platform for sharing best practices, lessons learned, and innovative approaches to overcoming barriers to ATI. Through the contributions of experts, practitioners, and advocates worldwide, we seek to deepen the understanding of access to information's role in governance and human rights. We also want to inspire action towards fully realizing this right for everyone, regardless of their background or circumstances.

Therefore, the Dossier we present today is a testament to the power of collaboration and shared learning between ICIC members in advancing the right to information. We hope to contribute to a more nuanced and comprehensive understanding of ATI and its role in governance and human rights by bringing together voices from different regions, sectors, and disciplines. We also hope to inspire continued efforts to promote and protect this fundamental right in recognition of its critical importance to the functioning of democratic societies.

The IDUAI is a call to action. It is a day to reaffirm our commitment to the principles of transparency, accountability, and participation, and to recognize the vital role that access to information plays in the governance of democratic institutions. The ICIC is fully committed to sharing knowledge, experiences, and best practices to advance the global conversation on ATI.

INTRODUCTION

By Blanca Lilia Ibarra Cadena, on behalf of ICIC Presidency
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THE IMPORTANCE OF TRANSVERSALIZING PUBLIC POLICIES
TO HELP VULNERABLE GROUPS ACCESS INFORMATION IN THE DIGITAL AGE

Access to Information (ATI) is universally recognized as a fundamental human right essential for the functioning of democratic societies. It empowers individuals by giving them the knowledge and tools to make informed decisions, hold governments accountable, and actively participate in the public sphere. In the Digital Age, where information is increasingly accessed and disseminated, ensuring that everyone, especially vulnerable groups, can access this information is critical.

Vulnerable groups, including people with disabilities, the elderly, low-income individuals, minorities, and rural populations, often face significant barriers to accessing information. These barriers can be exacerbated by the rapid digital transformation, which, while offering new opportunities for information dissemination, also presents unique and unprecedented challenges. For these groups, the digital divide, lack of digital literacy, and other socio-economic factors can impede their ability to access the information they need.

This article aims to explore the importance of transversalizing public policies to enhance access to information for vulnerable groups, particularly in the context of the digital age.

By examining how ATI contributes to the realization of political, social, and economic rights, presenting a diagnostic on the current challenges and opportunities. We seek to advance the global conversation on ensuring universal *ATI* for all.

For vulnerable groups, having access to information can significantly enhance their capacity to make decisions that affect their lives. For example, access to healthcare information can help individuals make informed choices about their health; furthermore, access to legal information can enable them to understand their rights and seek justice when needed. Therefore, public information empowers these groups by giving them the knowledge they need to navigate complex systems and advocate for their needs and interests.

Making public policies of access to information holistic for vulnerable groups is crucial for creating an inclusive society whose individuals can exercise their rights fully. By ensuring that ATI is not treated as a standalone issue but is integrated across various sectorsand policy areas, governments can address the unique and specific challenges faced by marginalized populations. This approach recognizes that vulnerable groups often encounter multiple, overlapping barriers that prevent them from accessing information and can only be effectively addressed through an in-

tegral and cross-sectoral strategy. Transversalization ensures that ATI is embedded in the design, implementation, and evaluation of policies in education, health, social services, and beyond, thereby promoting more significant equity and social justice.

In Mexico, the National Institute for Transparency, Access to Information, and Personal Data Protection promoted the Criteria for Obligated Subjects to Guarantee Accessibility Conditions that Allow the Exercise of the Human Rights of Access to Information and Protection of Personal Data for Vulnerable Groups, which function as reference framework in the creation of accessibility mechanisms so that all people without distinction can exercise their right of access to information.

The National Transparency Platform (PNT), which houses data from public institutions and through which requests for information are processed, has accessibility measures such as intuitive icons or voice assistants that can help people with some type of disability to access information held by public institutions.

Furthermore, we have developed a Reference Protocol to Incorporate the Gender Perspective in Resolutions on Access to Public Information, which not only aims to adequately identify the gender perspective in the Resolutions of the Plenary of the INAI, but also seeks to contribute for institutions to generate differentiated data with this category gradually. And, with this, increasingly include women in the decision-making process. In the same sense, there is the Rights Awareness Program (PROSEDE), which seeks to generate synergies with Civil Society Organizations- so that vulnerable groups can exercise their right to know by doing workshops, designing platforms, and making infographics, among other strategies.

As these experiences demonstrate, ATI is a powerful tool for empowerment and agency, particularly for vulnerable groups that are often marginalized in society. Access to accurate, timely, and relevant information is crucial for these individuals to make informed decisions, exercise their rights, and participate fully in public life.

To truly achieve universal access to information, it is essential to build inclusive information ecosystems that prioritize the needs of vulnerable groups. This requires a coordinated effort from governments, guarantor bodies, civil society organizations, and the private sector. Public policies must be designed with a focus on inclusivity, ensuring that ATI is accessible in multiple formats and languages and sensitive to different populations' diverse needs.

In this regard, guarantor bodies must continue to play a vigilant role in enforcing ATI rights and advocating for marginalized communities. Meanwhile, civil society organizations can support these efforts by providing grassroots-level insights and by working directly with vulnerable groups to ensure that their voices are heard. By working together, these stakeholders can create a robust and inclusive ATI framework that empowers all individuals to participate fully in society and exercise their rights.

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The International Conference of Information Commissioners (ICIC) is committed to promoting and protecting the Access to Information (ATI) worldwide. ATI is fundamental to transparency, accountability, and the protection of human rights. In commemoration of the ***International Day for Universal Access to Information (IDUAI) 2024***, ICIC Secretariat called its membership to celebrate with a "*Special Newsletter*" and contribute with a short essay that explore various aspects of ATI. The objective of this "Special Newsletter" is to foster a deeper understanding and dialogue around the importance of ATI. By sharing diverse perspectives and experiences, we hope to advance the global conversation on ensuring universal ATI for all.

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AFRICA

MAINSTREAMING ACCESS TO INFORMATION AND PUBLIC PARTICIPATION IN THE PUBLIC SECTOR

by Advocate Pansy Tlakula - Chairperson: Information Regulator

INFORMATION REGULATOR (SOUTH AFRICA)

When it was enacted, South Africa's access to information law, the Promotion of Access to Information Act 2 of 2000 (PAIA), was a trail-blazing piece of legislation, one of the first dedicated access to information laws enacted in Africa. The passage of this law followed a transition into the democratic dispensation after the fall of the undemocratic system of government that was symbolized by a culture of unresponsiveness and secrecy by public and private bodies of South Africa. This secrecy and unresponsiveness had led to the abuse of power and the violation of human rights. However, the transition to democracy and the promulgation of PAIA marked the dawn of a new era. Not only did PAIA uphold the right of access to information, but it set out procedures for requesting information, established the obligations of public and private bodies to respond to such requests, and provided grounds upon which a request for access to information be denied.

Since the adoption and implementation of PAIA, the country has made significant inroads to mainstreaming the implementation of PAIA, and it has thus achieved milestones over the past twenty-three years. PAIA empowers the Information Regulator of South Africa (IRSA) to monitor how effectively public bodies are giving effect to the constitutional right of access to any information. Furthermore, IRSA is empowered to receive annual reports from public bodies on statistics relating to how each public body has processed requests for access to any information held by the body. This allows the IRSA to monitor compliance and participation of public bodies in promoting and respecting Access to Information (ATI).

SETBACKS

However, dating back as far as two years after its implementation, PAIA came under much criticism on the basis that the full enjoyment of the right of access to information was being limited by the tendency of public officials to ignore the requests for access to information (what is generally called "deemed refusals). There have also been various assertions that the legislation was being honoured in breach rather than in compliance, and the enforcement mechanism was non-existent. However, the enforcement environment for PAIA was changed with the promulgation of the Protection of Personal Information Act 4 of 2013 (POPIA), South Africa's data protection law, which created IRSA with a dual mandate for oversight of both PAIA and POPIA.

Since the amendment of PAIA, which granted the IRSA powers and duties on the promotion of access to information with effect from 30 June 2021, the organisation has commissioned public opinion surveys (on a yearly basis) on the awareness of the public about the right of access to information and to understand the extent to which the public is able to assert this vital right. Outcomes from these surveys have consistently revealed that the awareness of the right of access to information is generally low across the country, despite PAIA having been in effect for over twenty-three years now. The results of the 2023/24 public opinion survey conducted by the IRSA revealed that 19% of the nationally representative sample indicated awareness about their right of access to information and PAIA as the enabling legislation. This is a significantly low level of awareness given that the right has been enshrined in the constitution for thirty years, and the law has been in force for nearly twenty-five years.

COMPLIANCE

In as much as PAIA has a section dedicated to the grounds for refusal under which the public body may not grant access to requested information, the influx of complaints from the members of the public to IRSA partly reflects on public bodies[1] compliance efforts with the legislation. It has been noticeable through compliance assessments conducted by IRSA that there are fundamental challenges with compliance by public bodies, which impede the members of the public's ability to assert their right of access to information.

The challenges of making PAIA work as it should result from demand and supply dynamics regarding the exercise of the right. On one hand, the low levels of awareness about the right of access to information among the public means the law is not used as often by the public to address whatever challenges they encounter in engaging with the State. On the other hand, there is also a lack of institutional arrangements amongst public bodies to dispatch information when requested, which means that even when requests are made, the public bodies lack the capacity and infrastructure to deal with the requests effectively and efficiently. Added to this problem is the issue of poor record keeping and records management in the public sector.

[1]A study by the Open Society Justice Initiative two years after PAIA was enacted found that 63% of access to information requests in South Africa were simply ignored, what is technically termed "deemed refusals" or "mute refusals". See, Transparency and Silence. A Survey of Access to. Information Laws and Practices in 14 Countries. Open Society Justice Initiative. (2006)

Despite the existence of policy directives such as the National Archives and Record Service of South Africa Act 43 of 1996 and the enabling policies and regulations, the public sector has not invested sufficient resources needed for proper record-keeping systems to enable effective access to requested records or information.

Regrettably, the PAIA annual reports (reports submitted by public bodies to IRSA detailing how they are complying with PAIA) do not require Information Officers to report on requests not granted due to unavailability of records. However, in 2023, IRSA received seven complaints based on requests not being granted due to records not existing. Even though this number seems 'insignificant', it does create concern given the possibility that many more incidents of this nature go unreported to IRSA. Further compounding the problem is the low compliance with some of the basic requirements for the provision of enablers for access to information, such as the publication of manuals (or publication schemes). From the PAIA-compliance assessments conducted by the Regulator, it has been established that public bodies do not keep their up-to-date PAIA Manuals (a PAIA Manual helps members of the public with contact details and information regarding which records are readily available without making a request). The unavailability of up-to-date PAIA manuals impedes the ability of the public to exercise their right to access records held by the bodies. For example, some of these PAIA Manuals still contain an outdated request form, which means that the Regulator ends up rejecting almost 30% of the complaints it receives as a result of the requestors having used the outdated request forms.

It is somewhat disappointing that effective implementation of PAIA is still hindered by challenges experienced within public bodies despite the fact that the legislation has been in existence in the statute books for over twenty-three years. The bodies that are mostly non-compliant are the local government bodies. In 2023 alone, the IRSA PAIA annual report indicated that out of 257 municipalities in South Africa, only 51 municipalities submitted their annual reports. This is a crucial compliance requirement in terms of section 32 of PAIA that enables IRSA to monitor the effectiveness of public bodies in giving effect to the constitutional right of access to any information. Poor compliance with PAIA by local authorities has highlighted the need for the IRSA to be sufficiently resourced to provide comprehensive training in that crucial sphere of government. In 2023 alone, the IRSA trained over forty (40) local government structures nationally, including municipalities and municipal entities, on compliance with the ATI law and handling requests for records from the public.

Examples stated above signify that public bodies' compliance is not satisfactory, and if not addressed, it will make exercising the right to information difficult, if not impossible.

MAINSTREAMING ACCESS TO INFORMATION

Despite the implementation and compliance challenges outlined above, the mainstreaming of access to information and public participation has also been manifested in various layers of society. PAIA has added value and penetrated spaces where it was least expected that it would and successfully fostered the right of access to information.

In 2018, a Non-Profit Organisation (NPO) known as 'My Vote Counts' successfully challenged the constitutionality of PAIA on its ability to compel political parties to disclose sources of their private funding. The court held that PAIA was inconsistent with the Constitution of the Republic insofar as it failed to give effect to the right of access to information about political parties' source of funding. This action by an NPO led to the amendment of PAIA to incorporate the public's right to gain access to information pertaining to political parties and their sources of funding. This landmark judgment necessitated an amendment of PAIA and, therefore, enabled voters to make informed decisions when electing political parties and independent candidates into office. In June 2020, the amended PAIA, which gave effect to the decision, was signed into law. This judgement and the subsequent amendment of PAIA conveyed a strong message on the importance of access to information. It further broadened the scope and value of the ATI law in South Africa.

Another recent reference relating to mainstreaming access to information was demonstrated when the IRSA acted on a complaint received from a member of the public and utilised PAIA to deal with a matter involving a music recording label, a private body. This was regarding the issue of access to the records relating to the music royalty revenue received for the broadcast of sound recordings and music videos. To thoroughly deal with the complaint, in 2022, the IRSA conducted public hearings. Subsequently, an Enforcement Notice, having the same force and effect as a court order, was issued compelling the recording label and the royalties collection agency in question to release all the records requested by the complainant. Given the South African history, which is embedded in secrecy and lack of transparency, full mainstreaming of access to information and effective participation in the public sector is not something that could be easily attained overnight. However, being in the know and continuously uncovering impediments preventing full implementation of PAIA presents much-needed possibilities for further mainstreaming access to information and realising effective and much-needed participation in the public sector.

= Success stories outlined in this article (and others) are a true testament to this =

In 1995, Pansy Tlakula was appointed by President Mandela as one of the first commissioners of the South Africa Human Rights Commission. The other positions that she has occupied include the following: Chairperson of the African Commission on Human and Peoples Rights and its special Rapporteur on freedom of Expression and Access to Information; Chairperson and Chief Electoral Officer of the Electoral Commissions. In June 2019, Pansy was elected to the United Nations Committee on the Elimination of Racial Discrimination. In 1995, Pansy Tlakula was appointed by President Mandela as one of the first commissioners of the South Africa Human Rights Commission. The other positions that she has occupied include the following: Chairperson of the African Commission on Human and Peoples Rights and its special Rapporteur on freedom of Expression and Access to Information; Chairperson and Chief Electoral Officer of the Electoral Commissions. In June 2019, Pansy was elected to the United Nations Committee on the Elimination of Racial Discrimination.

THE AMERICAS

ANALYSIS OF A PUBLIC POLICY FROM ITS CREATION TO ITS IMPLEMENTATION

THE CASE OF THE ACCESS TO INFORMATION LAW IN THE CITY OF BUENOS AIRES

By María Gracia Andía, head of the OGDAI - GCBA

INTRODUCTION

In 2023, Argentina celebrated 40 years of democracy. In the process of recovery of the democratic system and reconstruction of rights, institutional developments occurred, such as the reform of the National Constitution in 1994 and consequently the sanction of the first Constitution of the City of Buenos Aires as an autonomous subnational jurisdiction in 1996. This Constitution organizes its institutions as a participatory democracy and establishes the right to request, disseminate and receive information; it establishes that citizens have the right of access to information. This fundamental right contributes to consolidating a more robust and participatory democracy where the involvement of informed people allows greater prominence and control of the decisions of the rulers.

In these eight years of application of Law 104 on Access to Public Information of the City, we observe the successes of said law and the opportunities for improvement regarding some complex aspects that its implementation has presented. In this sense, the objective of this article is to show the complete cycle of a public policy that today we consider a State policy. The article analyzes the evolution, implementation and challenges of Law 104 on Access to Public Information in the Autonomous City of Buenos Aires (CABA). This law, passed in 1998 and modified in 2016, has been a fundamental pillar in the development of a more transparent government in the city, promoting the right of access to information ("right of ATI") as a primary right in a participatory democracy.

REGULATORY EVOLUTION OF THE RIGHT OF ATI IN CABA

In 1998, the City of Buenos Aires (hereinafter, CABA) passed for the first time a law on access to public information, Law 104. This marked the beginning of a process of openness and transparency that advanced a paradigm shift in the government of the city. Eighteen years later, in 2016, the Law was updated by a participatory methodology called "Dialoguing Buenos Aires" in which involved academics, residents, civil

society organizations and different areas of government, in recognition of the need to modify it in accordance with new international standards and the latest advances in the state of the art of this Law enshrined at the jurisprudential level. This new law deepens a paradigm of transparency where State information is at the service of the people and is presumed to be public. The State of the City of Buenos Aires has been working on this cultural change since 1998 and the improvements since the modification in 2016 are evident. As a demonstration of the regulatory quality achieved, the World Bank placed CABA in the 90th percentile (World Bank, 2019). From a regulatory perspective, the text of Law 104 has positive aspects. Not only were international standards adopted, such as broad legitimacy, principles of interpretation, obligations of active transparency, a restrictive regime of exceptions, designation by the obliged subjects of those responsible for access to information, administrative and judicial claims and a Guarantor body. In addition, it provided, in accordance with the realities of the City: the design of a double-tiered procedure; the possibility of holding a hearing and of reaching an agreement on the delivery of information between the parties involved; expeditious and reasonable deadlines; the creation of enforcement authorities and the guarantor bodies in the three branches of the State destined to guarantee the exercise of this right.

IMPLEMENTATION OF THE LAW AND THE ROLE OF THE GUARANTOR

The Guarantor of the Right of Access to Information (henceforth, "OGDAI") has been instrumental in the implementation of the law. This body not only resolves complaints but also promotes active transparency and the reuse of public data. The Law establishes clear obligations for a wide spectrum of obliged subjects, including private entities that manage public funds. In addition, the OGDAI has the function of mediating in cases of complex requests, facilitating agreements between the requesters and the obliged subjects. Law 104 has achieved a broad scope and recognition of the right of ATI, allowing anyone to request information without having to justify their interest. The inclusion of a well-defined system of exceptions and the implementation of short deadlines for the resolution of ATI requests and claims have been significant advances.

From the perspective of the implementation of Law 104, the following can be considered successes: **a)** the broad interpretation of the scope and legitimacy of the right; **b)** the application in specific cases of the principles of interpretation: maximum urgency, presumption of publicity and accessibility; informality, non-discrimination, efficiency, completeness, dissociation, transparency, open formats, limited scope of exceptions, in dubio pro petitor, good faith and free of charge; **c)** the development of criteria that extend the heterogeneous universe of obligated subjects beyond the centralized administration, reaching diverse subjects with their own particularities; **d)** the restrictive interpretation and application of the regime of exceptions by the Guarantor; **e)** respect for brief and reasonable procedura deadlines; **f)** the frequent and flexible use of the dialogical tools of the law,

such as the agreement on the delivery of information between the obligated subject and the requester when the information required is voluminous, difficult to obtain or dispersed in various areas of government; **g)** the measures adopted to promote compliance with the obligations of active transparency and the proactive publication of clear, structured and understandable information that is not subject to impediments for its reuse by third parties; **h)** the use of the second tier not as a mere reviewing instance, but as an opportunity to provide the remaining information under the supervision of the Guarantor body; **i)** the formulation of interpretative guidelines for the Law when resolving ATI claims, which provides legal certainty to both the obliged subjects and the claimants because they can know the Guarantor's criteria in advance; **j)** the evaluation of compliance with the Law on Access to Public Information, with instruments such as the Government Transparency Index prepared by the General Directorate for Monitoring Control Agencies and Access to Information (DGSOCAI), which allow the identification of good practices and challenges, generating institutional incentives that allow improving transparency processes. Regarding proactive transparency, the Guarantor carried out specific actions of targeted transparency. The objective has been the proactive and systematic dissemination of information directed at groups in vulnerable situations. In these cases, work was done for women heads of single-parent families and for elderly people. The Guarantor developed guides with specific information of interest to these groups and held awareness workshops on the right of ATI. The right of ATI is a tool for the exercise of other rights and, according to the presentation of the Model Law 2.0 of the Department of International Law of the Legal Secretariat of the OAS, "it empowers citizens, particularly those sectors that are in vulnerable situations, allowing them to obtain adequate knowledge of the means at their disposal to improve their standards of living and have better opportunities to participate in the benefits of economic growth."

Finally, the leading role of the Guarantor on the global stage through regional and international networks, together with national and subnational guarantor bodies, has allowed, firstly, to share experiences, successes and challenges in the implementation of legal standards; secondly, to contribute to the development of a theoretical framework of this right, as well as know-how regarding application practices and, thirdly, to generate instances of coordinated work in the area of access to information.

IN CLOSING: CHALLENGES AND OPPORTUNITIES

The update of Law 104 entailed a change in the cultural paradigm, a transformation of the State in which each of its agents knows and tries to comply with the obligations established by the Law. This is the result of multiple actions. We can highlight, from the public administration, the training and awareness-raising carried out by the Enforcement Authority. From the society, the extended exercise of the right of ATI by individuals and civil society organizations allows for the constant improvement and refinement of the

ATI system. Among the pending challenges we find, for example, that: **a)** Law 104 does not provide for a specific sanctioning regime, with the consequent difficulties in the enforcement of the resolutions issued by the Guarantor, which are binding; **b)** the particularities of each of the obligated subjects of the private sector; **c)** the legislative design of the ATI system of Law 104, which is better suited to the functioning of the Executive Branch, which generates a disparity in the levels of implementation of the Law between the three branches; **d)** the unreasonable and abusive exercise of the right of ATI and, in some cases, the extended exercise of the right to judicial protection under Law 104 with the intent of collecting legal fees; **e)** the institutionalization of coordination among different organizations and areas related to the subject of transparency and integrity that operate within the scope of application of many different laws, as a result of the absence of legal provisions that promote coordinated work between these entities.

The future holds challenges that should be highlighted: **a)** strengthening targeted transparency as a tool that allows empowering vulnerable groups and leaving behind the concept of niche rights; **b)** algorithmic transparency in a context in which artificial intelligence becomes increasingly prominent in our society and algorithms make decisions that affect people's lives in critical areas; **c)** the development of adequate and effective document and archive management strategies in a world in which information is generated at a dizzying pace; **d)** the consolidation of a model of environmental democracy that understands access to environmental information and mechanisms for public participation in this matter, in the context of the global climate crisis; **e)** the promotion of the integrity of information based on strengthening the capacities of public institutions to promote access to reliable and accurate sources of information to deal with the growing "information pollution" through the proliferation of fake news and disinformation.

Thus, the ATI agenda expands and becomes even more challenging in pursuit of building stronger democracies, which is why access to information policies play a crucial role in combating the democratic crises that the region presents.

María Gracia Andía holds a PhD in Law and Public Policy from Northeastern University (Boston, MA, USA) and was a Visiting Scholar at Columbia University (New York, NY, USA). She is a professor of undergraduate and graduate law at the University of San Andrés. In 2018, she was appointed as the first Head of the Guarantor Body of the Executive Branch and her mandate was ratified for 5 more years. She is a member of the Institute of Methodology of Social Sciences of the National Academy of Moral and Political Sciences. She was an associate researcher at the Center for the Implementation of Public Policies for Equity and Growth (CIPPEC). She has been a consultant for international organizations (World Bank Group, Americas Society and Council of the Americas) and an advisor to the Chamber of Deputies of the Nation and the Legislature of the C.A.B.A.

TRANSPARENCY COUNCIL:
15TH YEARS OF PUBLIC VALUE GENERATION FROM ACCESS TO PUBLIC INFORMATION

By PhD Bernardo Navarrete

The Transparency Council of Chile (TC), as the body that guarantees the right of access to information, has played a committed role in building trust and opening public actions since the publication of the Law on Access to Public Information in Chile. 2009.

This path began with the political and social recognition of the every democratic system, which is the strengthening of the principle of transparency in favor for institutional trust, the promotion and exercise of the right of access to public information and its impact both in terms of governance and in the development and protection of human rights: the objective has been to promote effective citizen participation and the scrutiny and social control of those who work in the public sector.

The permanent work that the Transparency Council implemented has been guided by the principles that were raised in the creation of this law, ensuring that transparency is positioned in the discourse of authorities and institutions and that it is understood as part of the generation of value in the conception of the public. On the other hand, the exercise of this right has had an impact on reducing opacity in institutions, enhancing citizen participation in decision-making and opening up State actions in favor of a healthier democratic life.

Today, among the strengths of the Chilean transparency system, the increased use of the Transparency Portal (PTE) by citizens stands out with more than 40 million visits and an important and growing exercise of the right of access to public information (DAIP). This is evidenced by the more than 2 million requests for access to information made, according to historical data until April 2024.

If we analyze the data obtained mainly from the PTE - a platform created in 2013 and which has become a key piece of the system - in 2023 alone, 7,500,000 visits were registered, the highest number in its history, and access requests (SAI) approached 303,000, which compared to 2018 represents an increase of 7,000% in the last 5 years.

In addition, the number of public institutions which adopted the Transparency Portal for processes of active transparency or right to access public information have increased. To 2024 more than 1000 institutions are using this platform. An action that makes possible tracking and traceability of the requirements, such as monitoring the quality of published information.

PROMOTING AN IMPORTANT AND GROWING DAIP EXERCISE

The importance than the citizenship is giving to the public access to information from public organizations can be identified in the increasing of the registers of cases presented to the Transparency Council. At the same time, this information evidences the intense use that people are making of the tools established by the law when any person is not satisfied with the actions of the institution, either through claims ("reclamos") in Active Transparency or through the Right of Access to Public Information ("amparos") filed with the CPLT, which must decide about them.

The responses to the demands of an increasingly empowered citizenry have translated into a continuous growth of cases in the Transparency Council, and the innovations that have been implemented have enabled this Council to reduce the deadlines of its processes, which points to an improvement in efficiency levels in access to information. For example, the number of cases presented to the CPLT has exceeded 4,000% growth if the first registration in 2009 is compared to that of 2023, the year in which 13,800 cases were reached.

When adding the annual records, the total number of cases exceeds 90,000. Regarding the types of decisions, of which are declared admissible, in 73% the Council decides that what is required must be delivered in whole or in part. The above allows us to affirm that, for the most part, those who request information manage to access what they request and although there are many challenges that remain, the times have been shortened. Of a total of more than 85 thousand cases resolved by the Council, the average resolution period was 75 days, which, compared to the 2019 records, points to a reduction of over 20%. Related to an optimization of the Transparency Council processes, we must talk about the Alternative Conflict Resolution System (SARC), an innovation which has demonstrated a positive impact in achieving alternative solutions and reducing processing times, thereby this system facilitates access to information and improving the experience of people who use the transparency tools.

ROLE OF THE CHILEAN TRANSPARENCY COUNCIL IN FACILITATING THE DAIP AND ENFORCING THE LAW

Chilean Transparency Council has based their actions strengthening the capacities of organizations with compliance obligations in three strategic pillars: guarantee, supervise and promote the right of access to information. In relation to the line of inspection, between 2010 and 2023, the Transparency Council developed nearly 15.000 processes, considering specific inspection activities and expanded the universe of audited organizations, over 1.150 institutions. The work on TC has incorporated a perspective of permanent improvement in their inspection processes, which included a redesign of the model after several years of operation, moving towards a comprehensive perspective. From a model based on specific standards, the Transparency Council developed a line that that allows the incorporation of topics of public impact and matters of citizen interest. These actions collaborate with the understanding of the exercise of

this right and to bring it closer to people, promoting citizen participation and the exercise, effective and protection of other rights. It is also worth highlighting the powers that the Council has to sanction non-compliance with regulations, a function that has been emphasized in recent years. According to the Transparency Law, the Council can file investigations and apply fines to public officials upon verification of these non-compliance. In its 15 years of history, the Council only between 2022 and 2023 registered an increase of 50% in the number of summaries initiated by the organization, reaching 143 processes in this last year, in which the highest records of cases are also evident. sanctioned people.

POSITIONING OF TRANSPARENCY AND ACCESS TO INFORMATION ON THE PUBLIC AGENDA

Regarding the promotion of the right of access to information, more than 180 thousand people have been trained in more than 3,500 training activities in the history of the Council, both for State officials and citizens. Added to this is the implementation of a network of *"transparency liaisons"* in obligated public services, with more than 3,500 officials.

The Chilean Transparency Council has also been characterized by a people-centered management, added to a focus on assisting users of the law through different services channels, registering nearly 160,000 consultations between 2009 and 2023.

CHALLENGING TIMES

These 15 years of transparency history allow to confirm that the advances have been numerous and relevant, as well as the challenges that we can visualized, those that will carry out actions whose effects will not be immediate. Some of them are addressed by the project that improve the actual regulation -known as “Transparency 2.0”-, this initiative continues to be processed in Parliament after 5 years of discussion.

However, we know that there are pending challenges, associated, for example, to maintain and reinforce the autonomy of the Council for Transparency, continuing to expand the general transparency regime, and strengthening active transparency so that it becomes the main mechanism for access. to public information.

In Chile, we are facing a momentum that need some changes, times -as it was15 years ago- that requires assuming the essential nature of knowing and understanding the decision-making processes and details of public actions, as well as the ways to access relevant information for citizen purposes.

Along this path, inter-institutional coordination must be a requirement, particularly based on adjustments to other regulatory bodies, taking into consideration the bill on the protection of personal data - whose parliamentary discussion closed in July 2024 -. We will face new times of constant and critical exercise of the right of access to information, always in balance with privacy. This situation will require coordinated actions with the new Data Protection Agency *-created in the context of this initiative-*, to ensure the correct protection of the rights of access to information and privacy.

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He has been an advisor in the National Congress (Senate), Presidency of the Republic and in the Ministry General Secretariat of the Presidency. His areas of research are public policies and subnational governments.

MAINSTREAMING ACCESS TO INFORMATION AND PARTICIPATION IN THE PUBLIC SECTOR

By: César Córdova Valverde

The Ombudsman´s Office of Ecuador, as the primary authority responsible for transparency and access to public information, is dedicated to advancing this human right. To achieve this goal, the Ombudsman´s Office has implemented a range of legal, methodological and technical tools designed to ensure that obligated entities consistently and transparently publish their information. This information must be recorded in various transparency formats- active, passive, focused, and collaborative- on the National Transparency Portal (NTP), which serves as the mandatory national repository for these disclosures.

In Ecuador, the human right to access public information is guaranteed by the National Constitution :

1. The right to seek, receive, exchange, produce and disseminate truthful, verified, timely, contextualized, and plural information about facts, events and processes of general interest, without prior censorship and with subsequent responsibility.

2. The right to free access to information generated by public entities or by private entities managing public funds or performing public functions. Information may only be withheld in cases explicitly established by law. In instances of human rights violations, no public entity may deny access to information.

It is implemented through the Organic Law on Transparency and Access to Public Information (LOTAIP, by its acronym in Spanish) , which guarantees and regulates the right of access to public information in accordance with the Constitution and international instruments ratified by Ecuador. This law aims to protect, respect, promote, and ensure that public information is accessible, timely, complete and reliable, enabling the exercise of individuals' rights.

The LOTAIP was reformed in 2023, introducing significant challenges for both the general population and the obligated entities. The current law emphasizes the importance of using language that is tailored to the intended audience, ensuring that information is communicated clearly and precisely. Additionally, the information must be published in open data formats, facilitating its circulation and reuse so that the public can access, analyze, reprocess, evaluate and repurpose it.

[1]The National Transparency Portal (NTP) version 1.0 was developed by the Ombudsman's Office and has been in use since April 2024. In September 2024, version 2.0 will be launched, which has been co-created in collaboration with the counterparts of the Ombudsman´s Office of Ecuador.
[2]Refer to Article 18, numbers 1 and 2 of the Constitution of the Republic of Ecuador for relevant details.
[3]LOTAIP, published in the Official Gazette No. 245 of February 7, 2024.

The reformed LOTAIP also highlights advancements in both active and passive transparency, incorporating more comprehensive information and establishing new mechanisms for the public to request access to public information. Furthermore, the law embraces new forms of transparency, such as focused and collaborative transparency, aimed at encouraging active participation of the public as strategic partners in strengthening national public management.

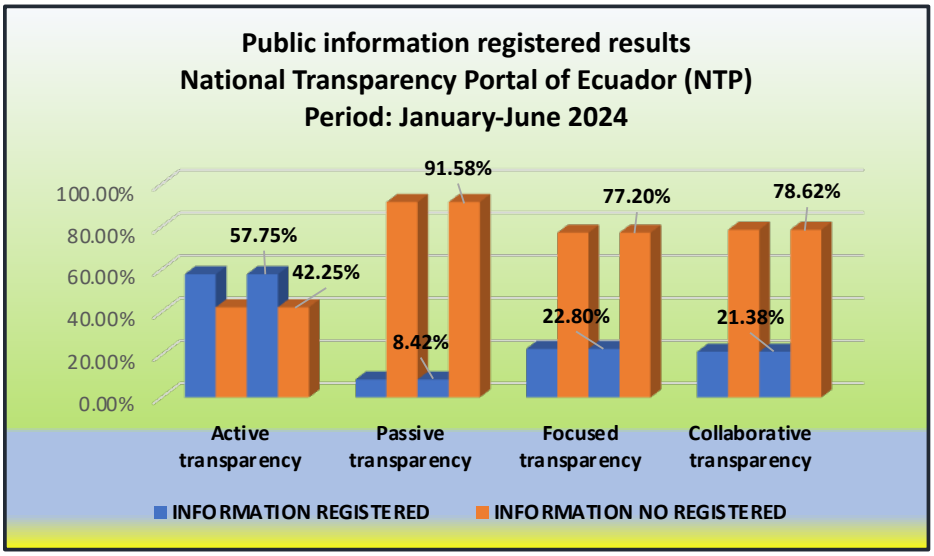
This secondary regulation allows obligated entities to rigorously apply legal criteria in accordance with the principles and approaches established by national standards and it determines the procedure to ensure compliance with state obligations regarding the promotion and protection of the fundamental right of access to public information.

On the other hand, the National Transparency Portal is a technological tool that enables people to access information through a single national repository in real-time, becoming an effective mechanism for the opening and dissemination of public information.

However, the implementation of the NTP has faced complications regarding its use, adaptation and full application, particularly in handling and processing requests for access to public information. To address these issues, obligated entities need to implement changes and establish better coordination strategies for registering information in the NTP.

The transition from closed formats to open data represents a significant shift, requiring obligated entities to transform how they fulfill their obligations to guarantee the human right of access to public information. For citizens, becoming familiar with open data presents a major challenge, particularly with second-generation transparency forms such as focused and collaborative transparency, which demand empowerment and active participation to enhance the quality of life. It is essential for people to learn how to use, reuse, and redistribute this information under free licenses. Therefore, multi-actor collaboration is crucial to promote mechanisms that support the exercise and enforcement of the right to access public information.

According to the results obtained from the NTP between January to June 2024, 57.75% of obligated public entities entered information generated under active transparency; 8.42% recorded requests for access to public information (active transparency), indicating that these entities did not register them in the portal; 22.80% registered information under focused transparency; and 21.38% recorded information under collaborative transparency.



Note. Adapted from the National Transparency Portal, Ecuador: https://transparencia.dpe.gob.ec/

The results indicate an initial phase in the interaction with the first and only national repository. It is expected that by December 2024, the registration of quality information will be consistent, comprehensive and fully aligned with the national regulatory framework.

To address the challenges related to transparency and access to public information, it is essential to implement training programs, provide support, and offer technical advice nationwide. In this context, the use of educational communication strategies and resources is crucial for enhancing citizens' capacities and knowledge, enabling them to access and utilize public information without restrictions The implementation of LOTAIP 2023 offers the Ecuadorian State a significant opportunity to enhance transparency by aligning with the Sustainable Development Goals of the 2030 Agenda. This approach prioritizes people in public management, aiming to meet their needs and, in doing so, contribute to the individual and collective well-being of Ecuadorian society.

The enforcement of national standards that guide the exercise of the human right to access public information ensures the interoperability of published data. This guarantees that public information can be exchanged in a standardized and disaggregated manner using data sets, metadata and data dictionaries, thereby ensuring compliance with the obligations established for the four types of transparency: active, passive, focused and collaborative.

César Córdova Valverde was appointed Ombudsperson of Ecuador in Charge on September 18, 2021, and also served as President of the Transparency and Social Control Function from February 2022 to December 2023. He holds a Doctorate in Jurisprudence, a degree in Political and Social Sciences from the University of Cuenca (Ecuador), and several advanced degrees, including a PhD in progress in Constitutional Law at the University of Buenos Aires.

He has conducted extensive academic research on Indigenous Justice and ancestral customary law; as well as on the Right to Property and Assisted Reproduction as a right.

With nearly 30 years of experience in legal management and rights defense, he has played a significant role in safeguarding the rights of Ecuadorians at both national and international levels. Before his current role, he served as General Secretary of the Council for Citizen Participation and Social Control and as a legal advisor for Ecuador's Customs.

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MAINSTREAMING ACCESS TO INFORMATION AND CITIZEN PARTICIPATION IN THE PUBLIC SECTOR

By José Martínez Vilchis Commissioner President of the Transparency, Access to Public Information and Protection of Personal Data of the State of Mexico and Municipalities Institute (INFOEM)

Liberal democracy has pillars that support the way in which the State itself is conceived: freedom, justice, a robust legal scaffolding, defense of human rights, identity between governors and governed, among others (Mouffe, 2016) .Of all of them, one that receives little attention is precisely the last one: identity between governors and governed; this identity exists as a need for legitimacy of governments and is strengthened by principles that are fundamental in 21st century democracies, such as transparency, access to public information and accountability. Without these elements, governance is lost, the legitimacy of governments is jeopardized and citizen confidence begins to fall.

Therefore, it is essential to address and rethink the importance of access to public information in light of new global challenges, at the same time, it is essential that this reflection includes the importance of citizen participation to ensure a more and better informed public debate, especially in light of political phenomena such as the growing wave of populist governments that tend to opacity, as well as the growing tendency to create and disseminate fake news, in addition to the momentum of generative artificial intelligence, which, as well as contributing to access to public information, can also become an element that strengthens the creation of information that does not contribute to public debate.

In this way, this article seeks, in a first part, to expose the importance of access to information; in a second part, the importance of citizen participation to access public sector information and, finally, some challenges for the integration of information and citizen participation in the public sector will be presented.

ACCESS TO PUBLIC INFORMATION IN MEXICO

Mexico has been characterized for being at the forefront in terms of democratic advances, thus, it is recognized for its laws on electoral matters and, of course, for its legislation on access to public information. In this case, the General Law of Transparency and Access to Public Information contains the necessary elements suggested by international treaties on the matter so that the general population can access the documents that the obligated subjects have in their possession and thus, guarantee that the population can generate a debate with greater quality on the way in which the public space is organized, thus, article 4 of the Law recognizes that:

The human right of access to information includes requesting, researching, disseminating, seeking and receiving information. All information generated, obtained, acquired, transformed or in possession of the regulated entities is public and accessible to any person under the terms and conditions set forth in this Law, in the international treaties to which the Mexican State is a party, the Federal Law, the laws of the local States and the regulations applicable to their respective competencies; it may only be classified exceptionally as temporarily reserved for

reasons of public interest and national security, under the terms set forth in this Law (Diario Oficial de la Federación , 2015)

That is to say, this legislation understands the need to address access to information as a key Human Right, that is, as a right that opens the door to others, such as health or education; at the same time, this legislation is based on the need to build a more solid democracy from a liberal point of view. This is fundamental, because access to information is not a new demand, but is a constituent part of modern democratic states and is based on the assumption that there is no information held by governments that should be withheld from citizens, except for those exceptions that are already provided for in the Law.

Following this logic, it can be said that a government that actively publishes information regarding its management strengthens democracy, since it offers elements to the population to make critical evaluations regarding the way in which public resources are used, in addition, it allows that, thanks to this criticism, governments of different orders can make adjustments to their public policies (INAI, 2015).

Now, as the laws themselves point out, in order to recognize that governments are complying with the access to information, it is necessary to comply with ordering and classification criteria that allow that, as a whole, the information is integrated in such a way that it is useful. Some of these principles are free of charge, accessibility, inclusion, integrity, among others.

CITIZEN PARTICIPATION IN THE PUBLIC SECTOR

In recent years, the executive branch of the Mexican government has denigrated various civil society organizations, especially when they conduct investigations into the way in which the nation's assets are being administered or when they criticize the future of a proposed law or infrastructure project. This condition discourages citizen participation, limits the scope of governance and prevents the creation of a solid identity between the governed and the governors. While it is true that criticism from the Presidency of the Republic has focused on organizations of Mexican public sector, mainly the independent ones, it is also true that citizen participation in Mexico is not precisely among the most robust. The National Institute of Statistics and Geography (INEGI) itself has pointed out the low levels of associative density in the country compared to Brazil, the United States, Argentina or Chile (Chávez & González Ulloa, 2018). This becomes a problem, because the absence of a synergy between government and civil society organizations attempts against the most unprotected population, in fact, as pointed out by the Ibero-American Charter for Citizen Participation in Public Management (CLAD, 2009).

The greatest challenge of citizen participation in public management is to promote its universalization, in order to create conditions that allow the most vulnerable sectors to access citizen participation for the defense and demand of their rights, establishing it as a means for social transformation (p. 2).

Therefore, citizen participation not only requires public information that allows them to better understand how decisions are being made and, based on this, to make suggestions for improvement; it also requires favorable political conditions that allow for its existence and strengthening, situations that do not seem to exist in the current context.

However, citizen participation does not necessarily come from organizations; it is also possible to promote it through the relationship between the government and the governed with mechanisms of direct democracy, such as participatory budgets, which, although they have not become popular throughout the country, do have positive experiences in Mexico City and some of its municipalities.

Perhaps the Citizen Consultations are the participation mechanisms that have been promoted by the Federal Government in Mexico, as an example, the consultation that was held to judge the former presidents, although in the end the participation was not enough for the exercise to be binding, it did manage to mobilize citizens of all political forces and even got other non-electoral organizations to show their support for the mechanism.

CHALLENGES TO THE INTEGRATION OF ACCESS TO INFORMATION AND CITIZEN PARTICIPATION

As we have seen, both access to information and citizen participation face significant challenges for their full exercise, some of which have to do directly with the way in which the government conceives transparency, access to information and accountability. Today, with the rise of populist governments, opacity in the way public resources are spent has become a concern not only in Mexico, but also in other parts of the world, becoming one of the main challenges to overcome.

Another challenge has to do with the culture of participation in the country, as we have already seen, Mexico does not have a strong identity between citizens and government as other countries in the continent, so changing the culture is essential to achieve an integration of access to information with a real synergy with the institutions of the Mexican State.

Mexico's opportunity to achieve this integration lies in the institutional strengthening of its transparency and personal data protection agencies; however, it is necessary to warn that the current reform proposals promoted by the Presidency of the Republic distance this possibility and, on the contrary, could move the country even further away from its human rights objectives.

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In the State of Mexico, he was President of the Citizen Participation Committee of the Anticorruption System; Director of the National Institute for the Evaluation of Education; Counselor of the Electoral Institute of the State of Mexico. He currently serves as Commissioner President of the Transparency, Access to Public Information and Protection of Personal Data of the State of Mexico and Municipalities Institute (INFOEM).

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GUARANTEEING THE RIGHTS OF ACCESS TO INFORMATION AND PARTICIPATION OF CHILDREN

By María del Rosario Mejía Ayala Commisioner of the Institute of Transparency, Access to Public Information and Personal Data Protection of the State of Mexico and Municipalities (INFOEM)

In terms of human rights, and specifically the so-called “key rights”; designated as such because it is precisely these that allow people to know and exercise their rights in a comprehensive manner; the implementation of effective public policies that respond to a design with a perspective on childhood and adolescence, responding to the needs of this sector of the population, has been seen as deficient, and even in many areas, non-existent, as it does not respond to the current social dynamics, to the reality of the individual problem that has become a public problem and requires a solution through a tripartite conjunction of civil society, academia and government.

These policies, when expressed in laws, budget allocation, delimitation and operation of plans, programs and projects of all kinds, among other actions, have not comprehensively taken into account the rights of access to information, privacy and data protection of children; sometimes leaving the responsibility of the latter to the children's sector and their family environment, releasing the government from its general obligation ; in addition, they must be harmonized with the international treaties of which the Mexican State is a party.

In this order of ideas, it is worth mentioning the mandate of the Convention on the Rights of the Child, which establishes that States Parties shall adopt all administrative, legislative and other measures to give effect to all the rights recognized in its text, where, in addition to listing the rights in general, article 17 recognizes the need for the media to ensure the right of access to information for children in order to promote their social, spiritual and moral well-being and their physical and mental health, in addition to developing appropriate guidelines to protect children and adolescents from all information and harmful material to their well-being.

In light of the above, it is necessary to remember that when we talk about transparency , the information required is not only limited to general information on the management of public resources by the State, but also to specific and useful information to facilitate decision-making by citizens in matters of education, health, security, economic and political activities, among others, where we see a clear discrimination towards the child and youth sector, since according to the Constitution, they are not considered citizens because they have not reached the legal age; however,

they have rights that must be guaranteed for their security and integral development. For this reason, we must move towards focused transparency, which consists of "the disclosure, by public and/or private entities, of public information directed to a defined audience," taking into account that access to information tends to acquire greater impact when it focuses on specific and well-defined areas of people's interest, which must include the places and methods of access to information, which must be directed to the child and youth sector, appropriate to their respective ages, characteristics and development level, without failing to take into account the possible presence of intersectionality.

Regarding privacy and protection of personal data, in addition to guaranteeing access to technology, the Committee on the Rights of the Child has issued various general observations, of which number 25 stands out, regarding the rights of children in relation to the digital environment; which, being in constant evolution, represents important challenges for information and communications technologies, where networks, applications and digital devices are found, and in general all automated systems, the metaverse, data analysis, biometrics, among others; in addition to giving access to minors, do not represent a risk of rights violation.

In order to issue this General Comment, in addition to consulting and receiving input from States Parties, the target sector was consulted, and in these, children were of the opinion that the digital environment should support, promote and protect their safe and equal participation: "We would like the government, technology companies and teachers to help us manage unreliable information online."; "On the Internet, people share their information...this can be dangerous if a malicious person has access to it." "I am... worried that my data is being shared despite my privacy settings. I can see my preferences in ads and I often get spammed because my email is shared."; "[I need to learn more about] safety and security... but I don't have a teacher [who can teach this]."

Therefore, as Autonomous Organizations in charge of privacy and personal data protection, we must comply with the mandate and promote, protect, encourage and verify respect for and guarantee the rights of children, raising awareness among their entire environment about their need to take advantage of technology advances for their comprehensive development, as established by international treaties such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the aforementioned Convention, in addition to the third paragraph of article 6 of the CPEUM, and ensure that none of these put their integrity and security at risk.

It should be noted that in March 2019, the Government of Mexico responded to a concept note sent by the aforementioned Committee to contribute to General Observation 25, referring to what has been done and the projects initiated since 2016, even though most of them refer to digital inclusion and education, the cybersecurity mechanisms mentioned there have not moved at the same speed as digital attacks and vulnerabilities.

This fact invites us to redefine short, medium and long-term objectives around the guarantee of the rights of access to information, privacy and protection of personal data for children, where they can enjoy what information and communication technologies (ICTs) offer without putting their integrity and that of their family at risk, to take the step forward and make safe digital coexistence, a reality.

A graduate and Master in Law from the Autonomous University of the State of Mexico, she initially practiced her profession through strategic litigation within the civil and family branches. Her interest and experience in the field of human rights led her to be appointed by the Legislature of the State of Mexico as Counselor of the Codhem. In 2013, she was appointed General Secretary of the Human Rights Commission of the State of Mexico, a position she held until July 2021, where she stood out for her coordinated work with the different levels of government in order to ensure that the needs of society, especially of groups in vulnerable situations, are met in accordance with the international treaties of which the Mexican State is a party, such as the establishment of specialized care areas for girls, boys and adolescents, people with disabilities, the elderly and people in homeless situations, among others; In addition to the above, it is necessary to mention her great work in the area of equal treatment and opportunities between women and men, as well as prevention and attention to gender violence.

She was appointed by the LX Legislature of the State of Mexico as Commissioner of the Institute for Transparency, Access to Public Information and Protection of Personal Data (Infoem) on August 13, 2021. Beginning her duties with the firm conviction that only through coordinated work, the rights of access to information and protection of personal data; fundamental for the full development of a democratic and transparent society, and a vital exercise for accountability; will be guaranteed. For this reason, work has been done on the central axes in the protection of Human Rights such as professionalization, socialization and platforms for their promotion and guarantee.

THE RIGHT OF ACCESS TO INFORMATION AS A BASIC ELEMENT OF DEMOCRATIC GOVERNANCE

By PhD. Luis Gustavo Parra Noriega Coordinator of the Digital Government Commission at the INCAM

Access to information has been consolidated as a fundamental pillar for democratic governance, transparency and the protection of human rights. In a world where information is an essential resource, to guarantee its access and to encourage citizen participation in the public sector are key elements to strengthen accountability, promote more just and equitable societies, and promote sustainable development.

This right is intrinsically linked to freedom of speech and is recognized as a fundamental human right, being an indispensable condition for involvement in public life and informed decision-making. Without access to truthful and timely information, citizens cannot fully exercise their rights or actively participate in democratic processes. This reinforces the idea that it is necessary for the full realization of other rights, such as the right to education, health and political participation (Mendel, T. 2008).

Although the right of access to public information has a modernist approach in the theoretical field, its essence has always been present in the formation of a democratic State. This model is distinguished from absolutist systems, among other reasons, by respect for human freedoms and the principle of the general interest of the State. It is precisely from the liberal perspective of this principle that the right of access to public information acquires a crucial importance, since a State that maintains secrecy or privileged information would act in benefit of a "particular interest," which would distort the very essence of democracy.

According to the approach of some political scholars, publicity should be considered as an element that benefits or improves the usefulness of Parliament, assessments that are perfectly applicable to the entire public administration (Betntham, J. 1999), therefore to any area of the public sector. These benefits acts as a counterweight to the exercise of power, since it is necessary to limit it in order to: avoid abuses, with citizen oversight being the best method to achieve this, as well as to evaluate management and performance; to gain the people's trust in the actions developed by the public sector (government), which reduces suspicions of possible irregularities and strengthens its authority and legitimacy (Aguilar Rivera, 2008).

The proliferation of fake news, unsubstantiated data and hate speech also represents a threat to democracy and human rights in the world, so it is imperative to outline and implement cooperation mechanisms for the construction of a culture of Peace and to strengthen those already in place, and the right to information has a fundamental role; finally, to enrich and improve public debate so that, although citizens do not participate directly in government management, they can, through this right, inform themselves and influence public decisions.

It is important to say that the public sector plays an important role in the promotion of access to information. The institutions, as guarantors of public information, have the responsibility to ensure that citizens can access information efficiently and without unnecessary barriers. This not only involves the proactive disclosure of relevant information, but also the creation of mechanisms that facilitate access to public documents and data, ensuring that information is accessible to all, including those in vulnerable situations.

Therefore, transparency in the public sector is a key factor for accountability. A transparent government, which allows access to information, can create citizens who monitor the actions of their representatives and demand explanations about the management of public resources. This accountability process not only strengthens trust in institutions, but also contributes to the prevention of corruption and the promotion of integrity in the public service (Fox, 2007).

On the other hand, citizen participation is another essential element in the consolidation of an inclusive and participatory democracy. Access to information empowers citizens, allowing them to get involved in decision-making that affects their lives and communities. By providing complete, accurate, clear, timely and understandable information (Wampler & Avritzer, 2004), the public sector facilitates active participation in the design, formulation and execution of public policies, which, in turn, generates more effective policies aligned with the real needs of the population, which are more inclusive and equitable solutions (Fung, 2006).

Despite the advances in the promotion of the Right of Access to Information, there are still significant challenges in its effective implementation. According to Roberts (2006), these include technological barriers, lack of resources and capacities in some sectors of government, misinformation and data manipulation, inadequate or insufficient legislation, as well as institutional resistance, which can limit access to information. It is also relevant to the inequality in access to information; in fact, while new technologies have facilitated the availability of information, they have also created a digital divide that leaves out those who do not have access to the Internet or lack digital skills (Norris, 2001).

It is crucial that governments adopt comprehensive approaches to overcome these obstacles, including ongoing training of public officials, modernization of information management systems and promotion of a culture of transparency and openness, improved digital access, inclusive citizen participation, civic education and information literacy, implementation of open digital platforms and continuous monitoring and evaluation.

Finally, in the current context, marked by globalization and digitalization, access to information takes on an even more critical dimension. Information and communication technologies offer new opportunities to improve access to information, but also pose new challenges related to privacy, data security and misinformation (Florini, A. 2007). It is essential that governments work in collaboration with other actors, as Banisar (2006) says, including the private sector and civil society, to develop strategies that guarantee equitable and secure access to information in a digital environment.

By incorporating the Right of Access to Information in all dimensions of public management, not only is democratic governance strengthened, but it also promotes more just, equitable and human rights-respecting societies. It is also an essential means for achieving the Sustainable Development Goals of the 2030 Agenda, especially the Goal 16.10, which focus on ensuring public access to information and protecting fundamental freedoms, in accordance with national laws and international agreements.

In this sense, it is imperative that we continue working on the implementation of policies and practices that facilitate this key right. Only through a renewed commitment to these principles will we be able to ensure that citizens feel they can participate in public processes and thus be able to face the challenges of the 21st century together and build a more transparent and participatory future for all.

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Coordinator of the Digital Government Commission at the INCAM- National Lawyers College.
National Coordinator of the Comission for Personal Data Protection of the National Transparency Sistem (SNT) 2023-2024.

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THE DISAPPEARANCE OF AUTONOMOUS AGENCIES FOR TRANSPARENCY AND DATA PROTECTION IN MEXICO

By Sharon Morales Martínez Commissioner of the Institute for Transparency, Access to Public Information, and Protection of Personal Data of the State of Mexico and Municipalities.

Over the past decade, autonomous agencies dedicated to transparency and data protection in Mexico have been crucial for the consolidation of a democratic state and the guarantee of access to public information. The National Institute for Transparency, Access to Information, and Personal Data Protection (INAI) has played a critical role in defending fundamental rights, allowing citizens to monitor and hold their governments accountable. However, the recent constitutional reform proposal, aimed at eliminating these agencies under the guise of "organizational simplification," has raised significant concerns about the future of transparency and data protection in Mexico. This analysis delves into the potential consequences of this reform, highlighting the risks it poses to democracy, the fight against corruption, and Mexico's international reputation.

The Importance of Autonomy

The autonomy of institutions like INAI is essential for maintaining a system of checks and balances that counteracts executive power. These agencies operate independently, enabling them to make decisions based on technical and legal criteria without being subject to political influences that could compromise their integrity. INAI's independence has been key to ensuring that transparency and data protection policies are implemented impartially, safeguarding citizens' rights and ensuring public information is available to everyone.

The principle of autonomy is not merely a theoretical concept; it has practical implications that are reflected in the quality of Mexico's democracy. Without an autonomous agency to oversee access to information, the risk of the executive branch centralizing and controlling public information at its discretion significantly increases. Such control could lead to opaque practices, where the information disclosed is selective and favors the interests of the current administration. The loss of autonomy in these agencies would not only erode transparency but also weaken the citizens' ability to exercise democratic control over their government.

Setbacks in Transparency and Access to Information

Since its creation, INAI and state-level transparency agencies have been responsible for significant advances in governmental openness in Mexico. These advances have strengthened accountability and promoted a culture of transparency across all levels of government. However, the proposed reform that seeks the elimination of these agencies could dismantle these achievements, potentially returning the country to a time when access to information was limited and dependent on the goodwill of the authorities.

One of the most apparent risks of this reform is the reduction in independent oversight capacity. The disappearance of INAI would mean that no independent agency would be exclusively responsible for ensuring that public institutions fulfill their transparency obligations. This could create a climate of distrust among citizens regarding the veracity and availability of the information provided by the government. Without an independent oversight mechanism, the likelihood of abuses in public information management would increase, as would the risk of access to information being used as a tool of power rather than a citizen's right.

The Risk to Personal Data Protection Rights

In the digital age, personal data protection has become a fundamental human right. Citizens' personal data must be handled with the utmost responsibility and protected from any misuse. INAI has been a key defender of this right, establishing standards and procedures to ensure that personal data is handled securely and responsibly. However, the proposal to eliminate this agency leaves a worrying gap in the protection of these rights.

Without an independent agency to oversee personal data protection, the risk of this information being mishandled or even exploited for political or commercial purposes increases. The lack of clarity about who would assume these responsibilities creates uncertainty and could lead to an environment where citizens' privacy is constantly at risk. Furthermore, in a context where digitalization is increasingly prevalent in everyday life, the protection of personal data becomes even more critical. Centralizing this function within the executive branch, without an independent agency acting as a counterbalance, could result in less transparent management, more susceptible to political manipulation.

Another concerning aspect of the proposed reform is the fragmentation of the functions of autonomous agencies, distributing them across various government departments. This dispersion would not only complicate governance but also dilute the responsibility and expertise these agencies have developed over the years. Specialization is crucial for the effectiveness of these agencies; for instance, INAI has accumulated considerable expertise in managing transparency and data protection, enabling it to address these issues with a level of competence that would be difficult to replicate across multiple departments with other priorities.

Fragmentation would also result in significant administrative inefficiencies. Without a centralized authority, the processes for accessing information and protecting data could become slower and less effective. This could translate into a frustrating experience for citizens, who would not know where to turn to exercise their rights. Moreover, the lack of coordination between various departments could lead to a decline in service quality, negatively affecting public perception of the government's ability to handle sensitive issues like transparency and data protection.

Impact on the Fight Against Corruption

Transparency is one of the fundamental pillars in the fight against corruption. INAI has played a crucial role in this area, promoting accountability and facilitating access to information that can expose corrupt acts. The disappearance of this agency would severely compromise the effectiveness of anti-corruption measures in Mexico.

Without an independent body ensuring access to information, investigations and complaints about corruption would face greater obstacles. Centralizing control over public information within the executive could result in less willingness to make compromising information public, making it more difficult to

identify and sanction corrupt acts. Furthermore, the lack of transparency not only hampers the ability of citizens and the media to monitor the government, but it also erodes trust in public institutions, a key element in the fight against corruption.

Legitimacy and International Trust

On the global stage, the existence of autonomous agencies like INAI has been seen as a positive sign of Mexico's commitment to transparency and human rights protection. The elimination of these agencies could have negative consequences for the country's reputation within the international community.

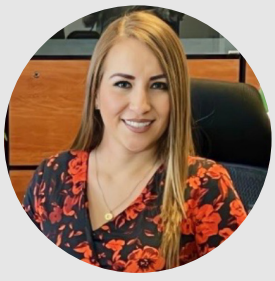
The disappearance of INAI and other autonomous agencies could be interpreted as a setback in the protection of fundamental rights, damaging Mexico's credibility in international forums and trade agreements that require transparency guarantees. Additionally, international investors value the existence of a transparent and predictable regulatory environment. Eliminating these agencies could increase the perception of risk, reducing the country's appeal to investors. Trust in a transparent and accountable system of government is essential for maintaining strong commercial and diplomatic relations, and any move that suggests a lowering of these standards could have long-term economic and political repercussions.

The Future of Transparency in Mexico

The reform proposal, which also seeks the elimination of autonomous agencies responsible for transparency and data protection at the state level, represents a serious regression for fundamental rights. These agencies not only guarantee the exercise of essential rights for citizens but also serve as control mechanisms to balance state power.

Centralizing these functions within the executive and fragmenting their responsibilities among various government departments poses significant risks to democracy, public trust, and the country's ability to protect human rights. Rather than simplifying and improving governmental efficiency, this reform could weaken the institutions that have been fundamental to the development of a more transparent and accountable government.

For these reasons, it is essential to reconsider the implications of this reform and seek alternatives that strengthen, rather than weaken, the institutions that promote transparency and data protection in Mexico. Only through a firm commitment to these principles can we ensure that Mexico continues to progress towards a fairer, more equitable, and participatory democracy where transparency is a driver of positive and lasting change.



Sharon Morales Martínez. She actively participates in the National Transparency System, serving as Technical Secretary of the Data Protection Commission in 2023, and is currently the Coordinator of the Human Rights, Gender Equity, and Social Inclusion Commission. She holds two international certifications, one in Personal Data Protection and another in Transparency, Accountability, and Anti-Corruption. She was a Human Rights Defender at the former Secretariat of Justice and Human Rights of the State of Mexico and has participated in various courses and seminars. She has been a Commissioner of the Institute for Transparency, Access to Public Information, and Protection of Personal Data of the State of Mexico and Municipalities since August 2021

ASIA

INTEGRATING FOI INTO THE FILIPINO WAY OF LIFE

YOUTH MOBILIZATION, ONLINE ENGAGEMENT, AND LOCAL INITIATIVES

By Deniel Angelou G. Echevarria Lead, Communications and International Affairs Freedom of Information – Program Management Office Presidential Communications Office Republic of the Philippines

The Philippines, an archipelago of over 7,600 islands, has a complex socio-political history. Following its colonial past under Spain and the United States, and subsequent political upheavals, the country adopted its 1987 Constitution. This document enshrined the right to Freedom of Information (FOI), but it lacked a clear and actionable mechanism for exercising this right, leaving the possibility of access to government-held information uncertain. It was not until 2016 that the first mechanism for FOI was formally established through Executive Order No. 2, s. 2016, which laid the foundation for the FOI Program under the Presidential Communications Office (PCO). However, despite the normalization of FOI in other parts of the world, the concept remains relatively unfamiliar in the Philippines. Further complicating the picture is the country's constitutional republic structure, where power is divided among the executive, legislative, and judicial branches, but the current FOI Program only applies to the executive branch. Local governments, which enjoy a degree of autonomy, are encouraged but not mandated to implement FOI mechanisms.

Despite these challenges, the essence of FOI in the Philippines is largely seen as a bridge to other rights. The FOI Program's legal framework is confined to the Executive Branch, limiting its reach across government branches. Still, the PCO through its Freedom of Information-Program Management Office (FOI-PMO), continuously strives to empower citizens by maximizing the mechanisms of FOI despite legal, bureaucratic, and cultural barriers.

SOCIAL MEDIA AS A TOOL FOR FOI ACCULTURATION

As the social media capital of the world, the Philippines boasts over 86.98 million internet users, with 86.75 million actively engaging on social media platforms as of January 2024. A Statista survey conducted in early 2024 revealed that 61% of Filipinos used Facebook as a primary news source, with YouTube and Facebook Messenger following at 45% and 26%, respectively. However, rampant information disorder—such as misinformation and disinformation—complicates efforts to provide accurate information through these channels.

To navigate this chaotic online landscape, the FOI-PMO actively engages the public via social media platforms like Facebook, Instagram, and X, with Facebook being the most popular among its followers. The FOI-PMO uses these channels to post vital government advisories, national holidays, FOI-related campaigns, and updates on collaborative activities and workshops. Additionally, the use of Facebook Messenger provides citizens with a quick and easy way to inquire about FOI matters. Understanding that a majority of Filipinos' attention is focused on social media, the FOI-PMO taps into its team's creativity, producing highlight videos, catchy social media cards, and relatable content to reach broader audiences. Language also plays a crucial role in this engagement; while English is widely understood, Filipino is used strategically, depending on the target audience.

FOI AT FACE VALUE

While social media plays an essential role in reaching the masses, the Philippines' archipelagic nature makes face-to-face interactions crucial for effective FOI advocacy. The FOI-PMO conducts various capacity development and policy orientation activities, particularly for the FOI officers within the Executive Branch who process requests. Given the relatively young nature of the FOI Program, initial efforts focused on training and capacitating these officers.

Beyond internal government training, the FOI-PMO aims to increase public

awareness and demand for FOI requests through targeted flagship programs. One such initiative is the FOI Youth Ambassadors Camp, designed to cultivate partnerships with the youth by empowering student leaders from State universities and Colleges (SUCs) across the country. This three-day camp equips participants with the tools and knowledge needed to promote FOI in their communities, encouraging them to become advocates of transparency.

Another key program is FOI for Librarians, which capitalizes on the pivotal role of librarians as information gatekeepers. The FOI-PMO provides librarians with the skills to use the FOI platform as a research tool, offering them 5.5 Continuing Professional Development (CPD) credit units upon completing the workshop. This initiative not only promotes FOI in academic research but also encourages librarians to advocate for partnerships between their institutions and the FOI-PMO. This includes the installation of FOI Kiosks in libraries and onboard participation in the electronic FOI (eFOI) portal, fostering transparency and accountability in SUCs.

GOING BEYOND LEGAL BOUNDS

One of the significant challenges in implementing FOI across the country has been the high number of request denials in the eFOI portal. Many of these denials are due to the nature of the requests, which often seek local data that national agencies cannot provide. Recognizing the need for FOI mechanisms at the local level, the PCO partnered with the Department of the Interior and Local Government (DILG) in 2018. This partnership marked the beginning of efforts to bring FOI to local government units (LGUs), encouraging them to adopt local FOI ordinances.

This "coalition of the willing," as it has come to be known, now includes 83 provinces, municipalities, and cities that have enacted FOI ordinances—a modest start when considering the vast local governance structure of the Philippines. The FOI-PMO plays a crucial role in guiding LGUs through the entire process, from drafting ordinances to implementing FOI policies. Through these initiatives, the FOI-PMO is building a network of localities committed to transparency and accountable governance, further mainstreaming access to information across all levels of government.

FROM KNOWLEDGE TO EXPERIENCE

The *future of FOI in the Philippines* lies in the convergence of youth empowerment, strategic social media engagement, and local government collaboration.

The FOI-PMO's multi-pronged approach to increasing public awareness through youth initiatives like the FOI Youth Ambassadors Camp ensures that the next generation of leaders is well-equipped to advocate for transparency. This youth-driven approach is complemented by the FOI-PMO's proactive use of social media, where most Filipinos spend their time. Through creative, relatable content, the FOI-PMO reaches millions, engaging them with the tools and information necessary to exercise their right to access public information.

In addition to digital efforts, the FOI-PMO recognizes that face-to-face interaction and localized governance are essential to ensuring that FOI reaches all corners of the archipelago. The partnership with LGUs is a critical step in broadening the program's reach, enabling communities to implement FOI ordinances that address local concerns. These combined efforts of empowering the youth, harnessing social media, and expanding local FOI initiatives are steadily transforming FOI from a policy on paper into a practical tool for every Filipino citizen.

Ms. Deniel Echevarria, with an undergraduate degree in Mass Communication and a Master's degree in International Studies, serves as the Lead for Communications and International Affairs at the Freedom of Information – Program Management Office (FOI-PMO). She oversees key initiatives such as the FOI Youth Ambassadors Camp, localization efforts, and public information campaigns. Additionally, she manages international collaborations like the Asian Access to Information Alliance and the ASEAN Symposium on Enhancing Public Access to Information, among various other significant projects.

EUROPE

MAINSTREAMING ACCESS TO INFORMATION AND PUBLIC PARTICIPATION IN THE PUBLIC SECTOR

by: Besnik Dervishi, Information and Data Protection Commissioner of Albania

Transparency is the cornerstone of trust between public institutions and the public. When public officials withhold information without a legal basis, it is more than a mere procedural lapse, it undermines the culture of openness, questions professionalism, and raises concerns about potential hidden motives.

Albania is recognized for having one of the most comprehensive legal frameworks for the right to information adopted in 2014, with one of the best laws globally, further strengthened by last year's improvements. RTI is also guaranteed by the Constitution of the Republic of Albania. We have also ratified the Convention 205 of the Council of Europe on "Access to Official Documents," and incorporated it into our national legislation, while few countries have done so. Our alignment with the EU legal framework regarding open data and the reuse of public information has been almost fully achieved. The Commissioner's Office is also tasked with reviewing complaints arising from the law on notification and public consultation.

While acknowledging the progress made, including by public authorities, as we now have more information in circulation than ever before, we believe the path to achieving the highest standards of transparency remain long and challenging.

The RTI law requires public authorities to proactively publish key information on their websites to enhance transparency and reduce individual requests. We provide guidance on RTI compliance, handle complaints, and issue binding recommendations and decisions. Fines for non-compliance are a last resort. We also conduct training to educate the public and officials.

The Commissioner's Office is consistently committed to sharing its expertise through international activities, collaborating closely with counterpart authorities, contributing within various working groups, and participating in events organized by the UN, OECD, OSCE, and the Council of Europe. Notably, we hosted in June 2024 the most significant global event in the field of access to information, the XV Edition of the International Conference of Information Commissioners (ICIC).

Moreover, the EU screening process has shown that our public administration is more than capable of facing the challenges of European integration, with our Office contributing modestly in several areas.

Implementing the Right to Information globally goes beyond imposing penalties for violations, it encompasses fostering a culture of transparency, civic awareness, and ethical accountability.

Transparency is not just a strategic objective but a crucial element in the fight against corruption. It establishes clear standards for institutional behavior, making corruption nearly impossible, as any corrupt act inherently involves a lack of transparency.

Any official document must be public by nature, and this should be the culture that guides us.

RTI ACHIEVEMENTS AND PROGRESS

Despite challenges, Albania has seen notable progress in enforcing access to information. The rise in citizen requests reflects increased public awareness, prompting many public institutions to improve responsiveness and transparency. The Office of the Commissioner has played a key role by issuing decisions compelling authorities to release information and raising awareness about transparency. Moving forward, priorities include enhancing public authorities' capacity to handle requests efficiently through training, clear guidelines, and improved coordination.

CHALLENGES IN ENFORCING THE RIGHT TO INFORMATION

Public authorities face several key challenges in maintaining transparency and fulfilling their legal obligations. A major issue is the neglect of Transparency Programmes, as social media platforms are prioritized for real-time updates while the legally mandated programmes remain outdated. Additionally, there is widespread resistance or a lack of awareness within administrative bodies regarding proactive information disclosure, including higher management biographies, budget data, and public service information. This negligence leads to delays in responding to public complaints and a growing perception of inefficiency, which not only creates unnecessary costs but also negatively impacts progress toward EU integration goals.

Further complications arise from frequent changes in coordinators, limited access to decision-makers, and delays in verifying responses, which all undermine the transparency process. Public contracts often contain vague confidentiality clauses, leading to confusion over compliance with the law. Authorities sometimes unjustifiably refuse to release information, citing potential legal risks without proper reasoning. Misinterpretations of copyright law, unnecessary delegation of information requests, and

poor internal coordination exacerbate the situation, while municipal councils struggle with public notifications and consultations, further weakening transparency efforts across public institutions.

There is a cultural barrier to the effective enforcement of access to information law. In some cases, public officials are resistant to the idea of sharing information, viewing it as a threat to their authority or a potential source of criticism. This mindset is also rooted in a legacy of opacity which also relates to the Albanian dictatorship regime in the past.

LEVERAGING TECHNOLOGY FOR TRANSPARENCY

By embracing digital tools and technologies, we can make access to information more efficient, accessible, and user-friendly. The Office of the Commissioner manages a transparency portal under the domain pyetshtetin.al, which provides information on public authorities' transparency programmes, information coordinator's contact details, publications and guidelines on RTI, etc. It serves as a central website where citizens may find information to contact public authorities. It also contains an integrated electronic register where individuals may submit information requests with PAs and track the progress of their request. Moreover, another source where citizens may submit information requests is within the E-Albania portal through a dedicated electronic register which is similar to the one in pyetshtetin.al. With respect to open data practices, a governmental open data portal has been established which aims to facilitate the search for open data provided by public sector bodies.

In conclusion, while there are significant challenges to enforcing the right to information in Albania, there are also many positive developments and promising perspectives for the future. By addressing the remaining challenges and building on the progress made so far, we rely on collaboration with both national and international stakeholders so we can create a more transparent, accountable, and democratic society.

Besnik Dervishi has served as the Information and Data Protection Commissioner since his appointment in 2014, following with his re-election in 2019. He is a graduate of the Law Faculty of Tirana University since 1986. He also had roles as a Member of Parliament and Minister. Mr. Dervishi has contributed to the domestic legislation reform on the right to information and the protection of personal data, ensuring alignment with European Union legal framework and international acts. Furthermore, Mr. Besnik Dervishi lectures at the University level and the School of Magistrates.

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MAINSTREAMING ACCESS TO INFORMATION AND PUBLIC PARTICIPATION IN THE PUBLIC SECTOR

by: Jennifer King, Legal Expert with contributions from Paulien Van de Velde-Van Rumst, Inquiries Officer both in the Office of the European Ombudsman

The principle of transparency in a democratic system of governance is a prerequisite for both accountability and for allowing citizens to participate, to the greatest extent possible, in public life. The founding treaties of the European Union (EU) stipulate that '[i]n order to promote good governance and ensure the participation of civil society, the Union institutions, bodies, offices and agencies shall conduct their work as openly as possible'[1]. However to be able to participate, citizens and those resident or established in the Union must have access to information about the decisions that are being taken on their behalf. Thus, the right of public access to documents of the EU administration is a key instrument in ensuring the transparency of the EU's administration.

The right of public access to the documents of the EU's administration is firmly embedded in the founding Treaties of the EU2, in the Charter of Fundamental Rights of the EU3, and in secondary legislation of the EU4 . This secondary legislation defines the principles, conditions and limits governing the fundamental right of public access to documents. It specifies that EU institutions must ensure the "widest possible" access to their documents where transparency is the rule and non-disclosure is the exception. It also requires the EU administration to provide an electronic register of its documents and to make certain types of documents proactively available, especially documents related to the EU's legislative process.[5]

Under the EU's rules, public access to documents can be denied only if disclosure would undermine a limited number of defined private and public interest exceptions[6] , which are broadly in line with those set out in Article [3] of the Council of Europe Convention on Access to Official Documents (Tromsø Convention). Some of these exceptions are mandatory in nature and others are relative, in the sense that they require the institution to balance competing private and public interests to determine whether there is an overriding public interest in disclosure. This is a key distinction between the EU's rules on public access to documents and the Tromsø Convention, in that this balancing of competing interests is not required in all cases under EU legislation on access to documents.

It is important to note that the EU's rules on public access to documents are premised on access to documents and not on access to information. However, in practise the distinction is not an important one given the wide definition of a document. Furthermore, under the European Code of Good Administrative behaviour, institutions should also reply to requests for access to information.[7]

[1] Articles 1 and 10(3) of the Treaty on European Union ('TEU') and Article 15(1) of the Treaty on the Functioning of the European Union ('TFEU')
[2] Article 15(3) TFEU.
[3] Charter of Fundamental Rights of the EU.
[4] Regulation 1049/2001.
[5] Articles 11 and 12 of Regulation 1049/2001.
[6] These interests are set out in Article 4 of Regulation 1049/2001.
[7] https://www.ombudsman.europa.eu/en/publication/en/3510 (cf Article 22)

THE ROLE OF THE EUROPEAN OMBUDSMAN

The European Ombudsman (Ombudsman) was established by the EU's Maastricht Treaty in 1992 as an independent and impartial body that promotes good administration and holds EU institutions to account. Her mission is to serve democracy by working to create a more effective, accountable, transparent and ethical EU administration.[8] The Ombudsman deals with complaints from the public that concern the administrative activities of the EU administration and can also conduct inquiries on her own initiative. In 2023, the Office received 2366 new complaints and opened 383 inquiries[9]. When looking at the totality of Ombudsman inquiries, one can see that about one third of them concern transparency-related issues, which includes access to information and documents[10].

Under the EU's rules on public access to documents, the Ombudsman is one of two means of redress where an institution refuses to grant access following a two-stage process including implicitly, that is, if the EU institution concerned does not reply on time. In this role, the Ombudsman has encountered several challenges in trying to mainstream access to information.

CHALLENGES ENCOUNTERED IN HANDLING PUBLIC ACCESS INQUIRIES

Whilst it is fair to say that the EU administration has taken important steps to improve the transparency of its documents, the Ombudsman has identified a number of challenges in handling public access inquiries. This article sets out three examples.

Under the EU's rules of public access to documents, the definition of a 'document' is broad and includes "any content in whatever format relating to the policies, activities and decisions" of the EU administration. However, in some instances, the definition of a document has been narrowly construed and the Ombudsman has had to consider whether emails and SMS or instant messages are 'documents' within the meaning of those rules in light of the institutions' own rules on the recording of documents. The Ombudsman found that the failure by an institution to search for text messages on the basis that they are generally short-lived and require no follow-up action, and thus do not as a rule fulfil the institution's recording criteria, amounted to maladministration[11]. Concerning emails, notwithstanding the claim that they were short-lived and technical in nature, the Ombudsman found that they were documents within the meaning of the EU's rules and the institution and should have identified and then assessed if they could be disclosed. Not to do so constituted maladministration.[12]

[8] European Ombudsman, "The European Code of Good Administrative Behaviour", Publications Office, 2015, retrieved on 10 March 2022, https://data.europa.eu/doi/10.2869/64594
[9] Annual Report 2023, para 5.1.
[10] Annual Report 2023, para 5.3.
[11] Case 1316/2021/MIG
[12] Cases 211/2022/TM and 1378/2022/TM

Another challenge is the application of exceptions in circumstances, which have already been dismissed by the EU's Courts or by the Ombudsman. This is particularly the case for legislative documents, which are subject to a higher level of transparency requirement. In addition, the Ombudsman noted that institutions refused public access to legislative documents in reply to initial requests but granted public access in reply to requests for review. This resulted in access being granted only after crucial stages of the law-making process have been completed, when access is no longer equally meaningful for the requesters and the general public. Based on these cases, the Ombudsman opened an own-initiative inquiry last autumn[13] into the extent to which the European Parliament, the Council of the EU, and the European Commission apply EU law and implement EU court decisions, and by extension the decisions of the European Ombudsman, when it comes to public access requests for legislative documents. This inquiry is on-going but it is expected that at least preliminary outcomes will be known by the end of the year.

Finally, another major challenge to the effective exercise of the fundamental right of public access to documents is the delayed processing of access requests. The Ombudsman had received a large number of complaints against the European Commission, the executive branch of the EU and thus the largest entity in terms of administrative activities concerning its delay in handling requests and therefore launched an own-initiative inquiry into the matter.

The inquiry showed that systemic and significant delays occur when it came to dealing with requests for review.[14] The Ombudsman found this is maladministration as she considers that access delayed is access denied. She made a recommendation to the Commission to correct this situation, as a matter of priority. She also set out a series of suggestions addressing particular issues she identified during her inquiry. She also brought the matter to the attention of the European Parliament, which in March of this year endorsed the Ombudsman's findings and recommendation unanimously. The Office continues to raise the issue of delay with the institution and she is closely monitoring developments.

HOW THE EUROPEAN OMBUDSMAN, AS A SOFT POWER, WORKS TOWARDS 'MAINSTREAMING' ACCESS TO INFORMATION

Despite the fact that the Ombudsman's decisions and findings are not legally binding, her power to hold EU institutions publicly to account results in a high acceptance rate by EU institutions.[15]

In 2022, for example, EU institutions responded positively to the Ombudsman's proposals (solutions,recommendations and suggestions) in 81% of inquiries.[16]

[13] OI/4/2023/MIK
[14] In 2021, 85% of decisions on those requests for review were delayed with over 60% of those taking over twice the legal time limit.
[15] P. Bartlett Quintanilla, H. Darbishire, & A. Pavlou, "Guide on Access to EU documents – Accessing Information from the European Union", Access Info Europe, 2013, p. 42.
[16] European Ombudsman's annual report 2023.

There are a number of reasons for this, first, the mandate of the Ombudsman under her Statute is to identify and remedy instances of maladministration, which relies on constructive engagement with the EU administration by proposing solutions[17] or making recommendations[18], which aim at resolving the issues identified. The Ombudsman may also make suggestions for improvement to optimize a certain practice of an EU institution in the future.[19]

Second, the Ombudsman carries out her inquiries in a very transparent way, and publishes the various inquiry steps, the contents of meeting reports and the formal replies of the EU administration in those cases, which are of particular public importance. By so informing the public and civil society of the progress of these inquiries, the EU administration is encouraged further to give effect to her proposals and recommendations. That said, it is sometimes difficult to measure the impact of the Ombudsman's work, especially where the reform takes time or where the proposal/recommendation was initially rejected by the EU administration but implemented at a later stage.

The Ombudsman has also used her role to highlight the need by institutions to anticipate policy areas/topics that may generate particular public interest so that they have considered in advance what documents should be made public, and then how to publish such information in user-friendly and accessible formats. One clear priority for the Ombudsman has been, in view of the delays and other issues, an emphasis on greater proactive transparency via public registers. The Ombudsman has also launched a guide on the right of public access to EU documents on her website, which can be consulted for specific questions about the applicable rules, for example, on the exemptions from transparency that the EU institutions may invoke when refusing access, or to find relevant case-law.[20] This guide is intended both for those handling public access requests within the EU administration aswell as citizens and civil society.

INTERNATIONAL TRANSPARENCY STANDARDS AND MAINSTREAMING ACCESS TO INFORMATION IN THE EU

Whilst the EU's administration is not bound by international transparency standards such as the Tromsø Convention or the United Nations' Sustainable Development Goal (SDG) 16, these standards may nevertheless be important in promoting access to information of the EU in a number of respects:

First, international transparency standards recognise the need to have inclusive and transparent public institutions. As mentioned, the EU's public access to

[17] Article 1 of the Implementing Provisions of the European Ombudsman, retrieved on 10 March 2022, https://www.ombudsman.europa.eu/en/legal-basis/implementing-provisions/en
[18] Article 6(3) of the Implementing Provisions of the European Ombudsman.
[19] Article 6(1) of the Implementing provisions of the European Ombudsman.
[20] Available at https://www.ombudsman.europa.eu/en/document/en/163352

documents rules require wider access for legislative documents to allow EU citizens and civil society hold the EU's co-legislators, the Parliament and the Council of the EU, to account and ensure greater and more effective participation of citizens and civil society in the legislative process. This is a shared and common value and one which must be promoted and protected.

Second, as the number of parties to the Tromsø Convention grows, more Member States will commit to ensuring greater transparency of information held by their public authorities. Currently seven EU Member States have ratified this convention.[21] This should in turn promote a culture change in the EU to create the reflex of transparency by design of the EU administration and their documents from the outset.

Finally, there has been some discussion on the proposed reform of the EU's rules on public access to the documents of its administration, which has been in place for more than 23 years. It may be useful for those framing any revision to look to the international standards as laid down in the Tromsø Convention and in the UN's SDG 16 to reference best practices.

Conclusion

As one of two redress bodies provided for under the EU's rules on public access to documents, the Office has over 23 years of experience in conducting public access to documents inquiries. In that role, the Ombudsman has continuously promoted the mainstreaming of access to information of the EU administration. This role is not without its challenges as highlighted above, but perhaps more than ever, it is important to ensure that the dual democratic principles of participation and oversight are safeguarded.

Paulien Van De Velde-Van Rumst is a lawyer by training and joined the European Ombudsman's Office in 2023 as an Inquiries Officer in the team dealing with public access to documents. Paulien is also a doctoral candidate in law at the European University Institute (Florence). She is currently completing her thesis on EU legitimacy and accountability when negotiating and implementing Free Trade Agreements by examining the role played the European Parliament and civil society in this context.

Jennifer King qualified as a lawyer in Ireland in 1996 and worked in private practise becoming a partner. In 2016 she joined the Legal Service of the European Commission and then the Legal Service of the EU Agency, the Single Resolution Board in 2018 before joining the Office of the European Ombudsman as a legal expert in 2021.

[21] Estonia, Finland, Hungary, Lithuania, Slovenia, Spain and Sweden

PUBLISHING DATA ABOUT PUBLIC FUNDS

HUNGARIAN EXPERIENCES 2022-24

by PhD. Julia Sziklay

Nemzeti Adatvédelmi és Információszabadság Hatóság

INTRODUCTION

One of the function of freedom of information is to guarantee the right of access to the data concerning the use of public funds. Public funds are collected by the state, usually through taxation and are distributed to fulfill public needs and benefit the whole society – theoretically. There is an enormous need to control the spending of public moneys, including the previous decision making process, in order to prevent misuse or ineffectivity and also to sanction any criminal activity. That is why FOI is a core element fighting against corruption.

We are facing quite a lot of problems in connection with financial transparency in Hungary. Although the high standard legal requirements are quite clear, the general attitude of the obligated entities very often does not meet the necessary requirements. These facts have been also stated by international scorings: according to the global survey of OBS (Open Budget Survey) Hungary's transparency score of 22 in the OBS 2023 is substantially lower than its score in 2021.[1]

Public availability of budget documents in Hungary

Document	2015	2017	2019	2021	2023
Pre-Budget Statement	⊘	●	●	⊘	●
Executive's Budget Proposal	●	●	●	●	⊘
Enacted Budget	●	●	●	●	●
Citizens Budget	⊘	⊘	●	●	⊘
In-Year Reports	●	●	●	●	●
Mid-Year Review	⊘	●	●	●	●
Year-End Report	●	●	●	●	●
Audit Report	●	●	●	●	●

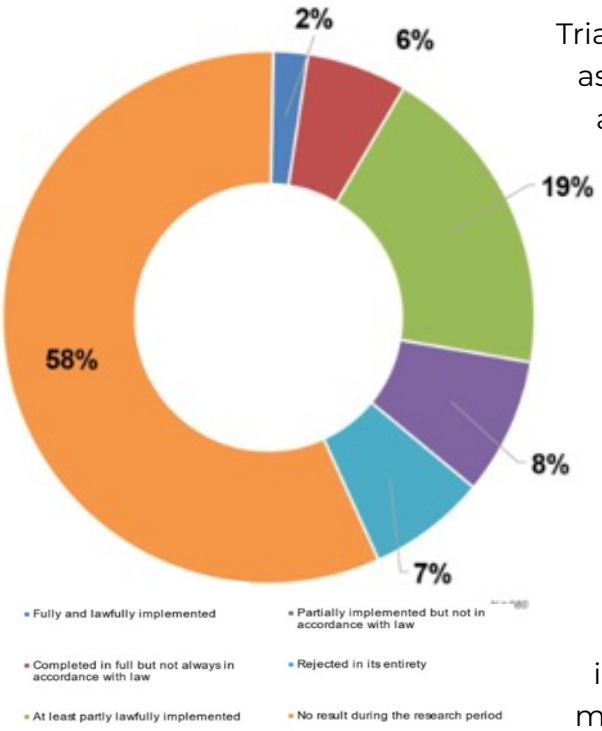
KEY

● Available to the Public ● Published Late, or Not Published Online, or Produced for Internal Use Only ⊘ Not Produced

Another reliable source of the analyses is a research study from 2022 under the direction of the National Authority for Data Protection and Freedom of Information. The Authority's aim in implementing the project was to conduct a comprehensive, science-based mapping of the status of freedom of information as a fundamental constitutional right in Hungary. The target group-specific researches examined the practices of implementing the obligation to publish data of public interest or data accessible on public interest grounds under Act CXII of 2011 on the Right to Informational Self-determination and on the Freedom of Information (FOI Act). Research Nr. 3 examined the public access to non-public-administration organizations that do not belong to the target groups of local or central public administration but manage public funds (e.g. publicly owned companies; foundations with a state or local government background, higher education institutions operating as public budgetary bodies).

The results of the website analyses (N=1000) showed that almost two-thirds (63%) of the organizations surveyed had no indication of publication on any platform (inspite of the clear legal electronic puplication obligation).

[1] https://internationalbudget.org/sites/default/files/country-surveys-pdfs/2023/open-budget-survey-hungary-



Trial data request was sent to the same number of organizations as the website analysis as well. The measurement tool for the trial data requests was a pre-defined set of criteria on the basis of which the researchers processed and recorded in a database the characteristics of the responses to the data requests. The researchers used 6 easy-to-answer questions and easy-to-fulfil criteria in a trial data request (e.g. providing regulations governing the electronic publication of data of public interest or asking for the annual (aggregated) salary, remuneration, regular allowances, and reimbursement of expenses for the organization's top manager for 2020.) According to the findings[2] only 21 organizations (2%) responded to the test data request in full, i.e. all the 6 data requests on different subjects were lawfully answered; 7% of the organizations refused to answer the data request in full and the survey period passed unsuccessfully for the vast majority of organizations, 58%, with regard to all data requests.

In summary, as the website analyses showed and the trial data requests confirmed, there is a clear lack of aspiration to transparency among this target group, which may be due to issues of attitude but also, perhaps in most cases, to a lack of knowledge.

SUBSTANTIAL CHANGES IN LEGAL REGULATIONS AFFECTING FREEDOM OF INFORMATION FROM 2022

Recently there has been some conflicts between the Hungarian political leadership and the EU which resulted in a so-called conditionality mechanism linked to the supervision of the use of EU budgetary funds. In the course of the procedure, Hungary has committed to adopt a number of remedial measures considered by the Commission as capable to address the (rule of law) concerns raised[3], including the introduction of some measures to improve financial transparency, which resulted in some substantial modifications of the FOI Act.

First, major changes were made to the rules of reimbursement claimable for complying with requests for data of public interest with a view to facilitating access to data of public interest. The possibility of claiming reimbursement because of the disproportionate use of labour resources was deleted and with regard to the remaining cost elements (the cost of the data storage medium/making copies and the costs of delivery), the implementing decree established limits.

Another amendment – incorporated in the law as lex specialis – determines the rules of FOI court action. Basically, similarly to press litigation, the amendment speeds up the process of the procedure and generally requires expedited hearing.

Finally, a new ***Central Information Public Data Registry*** was set up, which enables targeted

[2] https://infoszab.hu/sites/default/files/2023-03/NAIH_Comprehensive%20Study_FIN.pdf pp.47
[3] https://www.consilium.europa.eu/en/press/press-releases/2022/12/12/rule-of-law-conditionality-mechanism/

access to the most important financial management data of budgetary organs in an integrated central database on a new platform, in particular, the data of budgetary support amounting to at least five million HUF (appr.13323 EUR) granted by them from domestic or European Union funds, public procurements, contracts and payments which are updated every two months and will be accessible for 10 years. The Registry enables the classification and comparison of the data. Obligees are to disclose the data generated on or after 29 November 2022 for the first time by 28 February 2023 at the latest. The rules concerning the mode and accurate content of the disclosure are set forth in a separate sub-chapter of the FOI Act and in a specific Government Decree on the detailed rules of the Registry. The reports are to be filed using a downloadable datasheet in accordance with the Guidance in the User Rules. As the operator of the new registry, the National Data Asset Management Agency[4] publishes the data on the workday following the receipt of the datasheet. If a budgetary organ fails to meet its obligation to disclose the data on this platform, or discloses inaccurate or incomplete data based on request the Authority launches ***an authority procedure for transparency or may launch an authority procedure for transparency ex officio.*** The strict procedural and competential rules are quite unique in the field of freedom of information, since up to this point the supervisory authority has used exclusively ombudsman-like "soft" powers to regulate the obligated bodies (such as warning or issuing public notices). The period open for conducting a new authority procedure is 45 days. In the event of an infringement, the Authority orders expedited compliance with the disclosure obligation, which shall not be later than within 15 days. If the budgetary organ still fails to comply within 15 days, the Authority may impose a fine, the amount of which may extend from a hundred thousand to fifty million HUF.

EVALUATION OF THE NEW PUBLISHING OBLIGATION

In view of the fact that the deficiencies of the operation of the new Platform and of regular reporting by the organs may jeopardise the payment of EU funds, the Authority pays particular attention to monitoring compliance with this new obligation and the elimination of infringements. By 6 February 2024, 1,836 budgetary organs submitted 7,268 reports to the Platform, of which 5,930 reports were made on completed data sheets free of formal errors. The Transparency Authority Division of the Authority, in operation from 1 March 2023, monitored 740 organs and launched 109 procedures by 28 June 2023. During the period from 29 June 2023 to 28 December, an additional 312 organs were monitored and 75 authority procedures for transparency were launched. Of the 160 decisions made in authority procedures for transparency, the Authority established infringements in 145 decisions, of these it ordered the budgetary organ to improve or supplement its report in 25 decisions. Fines had to be levied in less than 10 procedures. The Authority's decisions were challenged at the court in two (still ongoing) cases. **The Authority did not impose fines according to substantive law, because the budgetary organ terminated the infringements in every procedure and in 120 procedures not even an order was needed.**

Orders were related to the termination of minor deficiencies but it was not necessary to impose fines according to substantive law even in these procedures as the clients terminated the infringements prior to bringing the decision.

[4] https://navu.hu/en/node

The lack or deficiency of performance was frequently due to a misinterpretation of the law. Several organs arrived at the erroneous conclusion that they had to provide data only with respect to contracts in force or only after the performance of the contract. It follows from the law that the coming into being of a contract already generates an obligation to provide data, this obligation is not linked to the entry into force of the contract. The legislator's intention was to publish the contracts that were concluded and this was not subject to the condition of the contracts being in force.

A clear deficiency of Section 37/C of the FOI Act is that its scope does not cover all the organs performing public duties and spending public moneys, but the budgetary organs only. For instance, the new obligation does not apply to municipalities (it does, however, apply to the budgetary organs founded by them, such as the mayor's offices).

However, from the experience gained in almost a year of authority procedures for transparency it can be established – despite the minor deficiencies and some not really user-friendly conditions (e.g. the too widely used Captcha-tests) – that the new publiction obligation of budgetary organs has proved to be an efficient means to increase the transparency in the use of public funds. As a result of the authority procedures for transparency, the use of HUF 324.9 billion in public funds became more transparent on the platform by 27 September 2023.

Many organs provide data for the Platform that have no general publication scheme at all, or they have one, but there are no financial data on them at all. As it is no longer mandatory to republish the data affected by the new obligation on the websites of the organs, the new Platform is increasingly becoming the central database for the most important financial data. It contains data, which can be found in other public databases, but here public procurement data, grant data and payments can be found collected in a single database for 10 years. It is possible to conduct searches in the database, for instance, we can learn which ministries concluded contracts with a given contracting party.

As a result of the authority procedures for transparency, budgetary organs reported that:

- "They built the obligation into their work processes, rules and quality assurance audits,"
- "They renewed their internal processing and commitment processes; their acceleration became necessary, hence to speed up the data entry and uploading processes, they initiated the development of new rules,"
- "Labour force was regrouped within the organisation in order to be able to comply with their reporting obligations on time in the future,"
- "Uploading was not carried out because of an internal communication problem, but new procedures were introduced".

These corrective solutions at organisational level should be underlined not only because they can facilitate the lawful compliance with the new obligation, but they also meet the general obligation to publish as well.

Dr. Julia Sziklay earned her law degree, summa cum laude, from the ELTE University of Science, Faculty of Law in 1995, and in 1998, completed a second major in political science from the same institution in Budapest. In 2012 she was awarded a Ph.D from Pécs University of Science, Faculty of Law (with the thesis “The establishment, development and social effects of the informational rights”). She is the author of numerous publications of studies and articles.

In 1995 she began working with Hungary’s first Privacy Commissioner at the newly created special ombudsman’s office supervising the two constitutional rights of data protection and freedom of information right. Since 1995 she has been working at the supervisory authority at different positions, between 2018-23 as Head of the Freedom of Information Department. In this capacity she was responsible for organising the first international Case Handling Workshop for FOI practitioners in November, 2018 in Budapest. She was also the coordinator of the KÖFOP-2.2.6-VEKOP-18-2019-00001 special comprehensive EU research project "Exploring local practices of freedom of information and increasing their effectiveness in Hungary”between 2019-22.

In 2023 she was appointed as Vice President – International Affairs of the National Authority for Data Protection and Freedom of Information (NAIH).

NECESSARY PREREQUISITES FOR EFFECTIVE ACCESS TO INFORMATION

by Oliver Serafimovski

Република Северна Македонија
АГЕНЦИЈА ЗА ЗАШТИТА НА ПРАВОТО НА СЛОБОДЕН ПРИСТАП ДО ИНФОРМАЦИИТЕ ОД ЈАВЕН КАРАКТЕР

Free access to public information is an important tool for achieving full transparency and openness of institutions to citizens, which is a strong tool in the fight against corruption. This right allows citizens to get to know the work of the institutions, without intermediaries, to participate in public affairs and decision-making, through a legal process in a real and responsible way.

When, for example, the budget of the local community is publicly available, its residents can find out whether new roads, public facilities or educational scholarships will be awarded in their community.

The right to free access to the information held by the institutions strengthens the principle of responsibility in the work of all power holders. It creates conditions for quality in the construction and stability of the system of a democratic society.

The right to free access to information in the Republic of North Macedonia is guaranteed by the Constitution of the Republic of North Macedonia. Namely, Article 16, paragraph 3 reads: "Free access to information, freedom to receive and transmit information is granted". The legal framework was established in 2006 with the adoption of the Law on Free Access to Public Information, which allowed the requesting and receiving of information about the work of all institutions, which is essential for the transparency and accountability of society.

With this concept, citizens can request and receive information from institutions at the central and local levels, to exercise control over their work, especially for spending budget funds.

The law created the legal basis for the creation of a specialized body for the protection and exercise of the right to free access to public information, that is, the Commission for the Protection of the Right to Free Access to Public Information.

In 2019, a new law on free access to public information was adopted, with which the Commission ceased its work and transformed into an Agency for the Protection of the Right to Free Access to Public Information.

Funds for its operation are provided from the state budget, and the Agency submits an Annual Report on its work to the Parliament.

The Agency aims to protect and implement the constitutionally guaranteed right to free access to information through the effective and independent application of the appeal procedure, informing the public, continuous education of information holders, as well as taking measures to improve the legal framework, especially for promoting and increasing transparency, the readiness of the holders of information to provide comprehensive information, as well as to acquaint as many citizens as possible with their right arising from the Law.

According to the Law on free access to public information, this right aims to achieve publicity and openness in the work of the holders of information and to enable natural and legal persons access to the requested public information.

Officials for mediating public information with information holders are crucial in realizing the citizens' right to free access to public information, guaranteed by the Constitution of the Republic of North Macedonia. By ensuring the implementation of the Law on Free Access to Public Information ("Official Gazette of The Republic of North Macedonia" No. 101/2019), they directly provide citizens with quick, simple and easy access to all the information they possess and have at their disposal holders of information:

- For which there is an obligation to publish on the holder's website (proactive publication), i.e. to provide access to information based on an access request;
- Which provides insight into the work of the holders.

For the successful and efficient implementation of the above-mentioned obligations, for which they are responsible according to the Law, the interaction of the information mediating officials with all other employees of the information holders is necessary, and the understanding of the responsible persons among the holders of the information is especially important (the minister, the director, the managers) and their sensibility for the transparent and open operation of the institutions.

As a rule, the responsible person for the holder of information has to establish and maintain a system of smooth, effective communication between the official and other employees of the holder of information, especially with the management officers.

Such a communication system is relevant for each separate obligation delegated to the official.

Namely, the responsible persons in the institutions, according to their role, are responsible for the implementation of the Law on FAPI, in the direction of ensuring smooth and full implementation of the obligations established by the Law, and not only the officials for mediating public information.

Hence, it can be safely said that the basic responsibility for the implementation of the Law lies with the responsible persons in the institutions and the officials responsible for deciding on access to public information. Therefore, it is of crucial importance to ensure that the officials regularly and promptly inform the responsible persons and other employees about the legal obligations, bearing in mind that insufficient knowledge of the legal matter on the right of access to information makes it difficult to exercise the right of access to public information.

According to the above, the Agency prepared a Guide for the delegation of competence (https://aspi.mk/wp-content/uploads/2024/07/ASPI-ENG-Translation-_-2.-Водич-за-делегирање-на-надлежност-2-_-A-GUIDE-ON-DELEGATION-OF-AUTHORITY-.pdf). The purpose of this Guide is to help the responsible and managerial persons among the holders of information in determining the officials for mediation with public information and specifying their obligations in the direction of the correct application of the Law on FAPI, which on the other hand side leads to building open and transparent institutions and strengthening democratic processes in society. Hence, the correct application of the principle of delegation of authority in the area of free access to public information has a dual purpose:

- It enables the information broker to successfully carry out his legally established duties, as well as

- It positively reflects on the work environment and the general functionality of the holder of the information, as well as on the degree of legal certainty that the holder enjoys in the public.

The Agency continuously conducts educational training for officials, to ensure the correct application of the Law and facilitate their work in terms of implementing the legal provisions. These additional recommendations are prepared as necessary prerequisites for effective access to public information, which are useful both for officials and persons responsible for access to public information in institutions, as well as for other officials involved directly or indirectly in the process of provision of public information. These recommendations aim to indicate the necessary organizational prerequisites, the fulfilment of which can facilitate the work of the officials, as a link between the requesters and the holders of information, that is, the public information that the holders of the information possess and have at their disposal.

In short, for effective access to information, it is necessary:

- To provide constant support by the persons responsible for efficient and independent work of the officials for mediating public information;
- To establish effective internal cooperation between officials and other employees in the organizational units in whose scope public information is created, as well as with public relations officers (spokespeople);
- To establish internal procedures and cooperation with the persons responsible for the proactive publication of information on the web pages of the holders (responsible for maintaining the web pages)

1. Support of the responsible persons (ministers, directors) for the efficient and independent work of the officials for mediating the information

Due to the complexity of the tasks of officials, which involve deciding on the availability of various information created within the scope of the institution, which as a rule are not the product of his work, but of all employees and the authority as a whole, the official does not and cannot have a decision role in what will be available to the public.

When it comes to information for free access to which there are no legal restrictions, it is provided upon request or published on the website of the authority promptly, within the legal deadlines, and in this segment the timeliness in providing the information or proactive publication to the greatest extent it depends only on the knowledge and responsibility of the official.

However, when it comes to "sensitive" information (for which there are legal restrictions or from the experience of the secondary authority it follows that in many cases there is no will to provide access to the information), practice indicates that the decision on the availability of such information is not made independently by the official, but by the head of the authority or the managing official, regardless of the prescribed independence of the official and their responsibility for the implementation of the Law.

The efficiency and regularity of the actions of officials in resolving requests for access to information and fulfilling the obligation to proactively publish information on the authority's website are largely determined by the attitude of the responsible persons towards transparency and openness of the institutions.

The responsible person's attitude towards transparency is already visible during the appointment of the official. These should be employees with strong personal integrity, well acquainted with the scope of work of the authority and the organization of the work.

For proper handling of requests for access to public information within the legal deadlines, it is also important to appoint more persons to mediate with the information, as prescribed by the Law on FAPI (art. 8, paragraph 1). In this way, timely processing of requests is ensured in case of absence of the official (vacation, illness, business trip, etc.).

This is especially recommended for larger institutions and institutions to which a greater number of requests for access to information are submitted, as well as bodies with organizational units outside their headquarters, to appoint a larger number of officials and to agree on their mutual relationship and continuous communication.

It is also important to establish a quick channel of communication between the official and the head of the authority, to familiarize them with the current requirements for access to information and the way of legal action.

Close cooperation of the official with the public relations service is necessary, if any, to correctly identify and distinguish requests for access to public information, from, for example, answers to questions by the media.

Also, since access to public information involves the participation of a larger number of employees, the responsible person of the authority should encourage to draw up procedures at the level of the institution, that is, the way of cooperation between the organizational units of the authority that has the required information with the official, as well as with the official responsible for publishing content on the authority's website (the administrator of the website).

The support of the responsible person of the institution to the official for mediating the information in the implementation of the Law on FAPI also affects the relationship and cooperation of the official with other employees of the institution on whom access to public information depends.

2. Cooperation of officials and other officials involved in the process of resolving requests for access to information

The effectiveness of the institution in the field of free access to public information depends on the existence of cooperation between the public information mediation official and other employees who are directly or indirectly involved in the decision-making process for information access requests. Therefore, it is important to establish good internal communication, that is, to establish written procedures with which all employees of the institution should be familiar, which refer to the process of preparing the information contained in the request and the process of making the decision about their availability, as well as the process of preparing information that should be proactively published on the institution's website.

The requester, in some cases, submits the request for access to public information to the holder without emphasizing that it is a request for information in accordance with the Law on FAPI, therefore it is necessary to determine what kind of request it is and who handles the request: the official, the public relations service or an individual organizational unit in the institution.

Therefore, it is recommended that holders, agree in advance to the procedures/steps on how the request will be processed from the archive/office to the official, as well as from the official to the relevant organizational unit, which participates in the resolution of the request and vice versa. The mutual exchange of information on received requests and familiarization with the content of the request, and its identification (depending on whether it is a request for access to information, another request from the scope of the institution, a request from a journalist, etc.) as well as joint coordination for its resolution (for example, during the implementation of the Harm Test, the

employees who will provide legal support when dealing with more complex requests for access to information prepare solutions, etc.), are crucial for a correct and timely decision on the request for access to information.

The Harm Test is the highest level of decision that can be made by the holder when assessing whether the requested information is of public interest or to enable or restrict access to the requested information, therefore recommends that, in addition to the official, other relevant officials participate in the implementation of the damage test, that is, employees of the holder of the information.

3. Designation of persons responsible for proactive publication and establishment of internal procedures for publication of information on holders' websites

For the sake of transparent publication of information, it is necessary to ensure cooperation between the officials and officials who are in charge of maintaining the website, as well as the organizational units where the information appropriate and necessary for publication is prepared and finalized.

The above includes establishing cooperation and established written procedures related to:

- The procedure for preparing the information that should be proactively published on the holder's website (Article 10 of the LFAPI)

Therefore, for correct and timely publication, close cooperation and agreement between the employees in the organizational units of the holder with the official and the official responsible for publishing the contents of the website is necessary in terms of which information and in what form (open data) are placed /or are moved on the website. In some cases, concerning certain information for publication, the persons responsible for the protection of personal data may have a certain role.

Officials in institutions should cultivate openness in their work and constantly indicate that proactive transparency is the best solution because the public will always find a way to find out what they are interested in.

In any case, the official should be familiar with the information published on the holder's website and he should confirm whether the publication of the information is following Article 10 of the Civil Code.

Therefore, the official is obliged to encourage and promote the publication of information and periodically check the content of the website, together with the employees responsible for their area of work. Namely, they should check the information for the reasons that it should be correct, complete and up-to-date.

A good practice that officials can practice is setting up a special link/banner (PUBLIC INFORMATION) in which they will publish the requests for free access to information that they received and acted upon within the legal term, thereby informing future applicants not to submit the same requests to receive the information already given and received. This means that they will reduce the number of requests submitted based on LFAPI, in such a way that they will direct the requester to the link/banner from the website where the received requests have been moved, and at the same time, on which the official has already acted.

CONCLUSION

Free access to public information is an important tool to achieve full transparency and openness of institutions to citizens, i.e. it is a powerful tool to fight corruption.

Through this right, the doors are opened for citizens to become familiar with the work of the institutions without intermediaries, to participate in public affairs and in the making of important decisions of their interest, as well as to influence their content and their effective implementation.

Access to public information held by institutions is a condition for the quality and effective enjoyment of other rights and freedoms (freedom of opinion). The realization of the citizens' right to public information is not possible without the right to freedom of reception and dissemination of information, that is, without free access to information.

This right also strengthens the responsibility in the work of all bearers of social responsibility and creates conditions for the quality and stability of institutions.

"LET THE PEOPLE KNOW THE FACTS AND THE COUNTRY WILL BE SAFE"

Abraham Lincoln (1809-1865), 16th President of the United States

Oliver Serafimovski has worked for the Commission, now the Agency for the Protection of the Right to Free Access to Public Information, since 2007 as an Advisor for Analysis in the Department for Cooperation and Analysis in the Department for Cooperation, Transparency, and Education.

From then until today, he has been in constant communication, cooperation, and exchange of information and data about the situation to promote and protect the right of free access to public information, and above all increase the active transparency of the institutions holding information in the Republic of North Macedonia.

By monitoring and analyzing the websites of information holders, he is continuously engaged in increasing active transparency, both quantitatively and qualitatively. As one of the few experts in the field of proactive transparency in the country, he is part of the team of trainers for conducting the training, which the Agency regularly organizes for officials with information holders, in the direction of consistently enabling the exercise of the right of access to public information in North Macedonia. He is regularly and actively involved in the preparation of the institution's annual reports.

Also, as one of the few connoisseurs of the meaning and need to publish the data that information holders have and create in an open format, he is part of the national team of experts working in this field. He is part of the team in charge of implementing the National Strategy for Transparency of the Government of the Republic of North Macedonia.

Furthermore, he is the author of several texts and publications that have been published on the Agency's website: www.aspi.mk.

In short, with his work, Oliver Serafimovski makes a huge contribution to the realization and protection of the basic human right of access to public information in the Republic of North Macedonia, and especially to increase the proactive transparency of institutions.

INTERNATIONAL DAY FOR UNIVERSAL ACCESS TO INFORMATION

by Alberto Oliveira, President of CADA

We have been pointing out that the demand for the right to know should not be seen by the requested organisations as a nuisance, but rather as a sign of an active and interested community. This active participation should be cherished, encouraged and stimulated.

This right cannot be overemphasised, now that more than 30 years have passed since the first law on access to administrative documentation in Portugal (Law no. 65/93, of 26 August), and almost a decade since UNESCO declared 28 September the International Day for Universal Access to Information.

The International Day for Universal Access to Information should be used as another moment to reflect on how to expand the possibilities of access to information.

Sometimes, some public entities say they fear that once information is made available it may be treated wrongly or without impartiality.

Access to free information cannot be conditioned by fear of how it will be used. The benefits of an administration that is open, clear and available to inform far outweigh any distortions here and there. The very pretence of access to information and documentation is to be welcomed.

The annoyance that is occasionally felt by the requested organisations due to insistent requests for access, as well as not being a legal reason for refusal - except in case of abuse - should be eliminated, due to the very certainty of the compensation that is achieved, given the general positive effect that access has.

First and foremost, by hiding nothing, you are in a much better position to challenge erroneous or malicious interpretations, to denounce rumours and confront judgements based on mere suppositions.

Whether through active dissemination or reactive communication, access to information is an element more in the chain of individual and community participation in public affairs.

Effective knowledge and openness to administrative documentation, particularly that relating to public procurement, land use planning, urbanisation and building, the environment in general, economic and financial support, planning of interventions in the education, social and health sectors, recruitment and management of human resources, allows for better citizen participation, promotes more appropriate intervention, restricts the margin for illegality and increases the credibility of the administrative activity.

Knowledge and the contribution it brings are elements that aggregate and promote better solutions and their understanding and acceptance.

This year, 2024, the theme of the UNESCO celebration is, ***'Mainstreaming Access to Information and Participation in the Public Sector".***

It is precisely this motto that the Portuguese Commission for Access to Administrative Documents (CADA) has successively underlined.

In the introductory note to the annual rapport 2024 we stressed **'The need to internalise the duty of transparency'**. And emphasised: 'Administrative documentation is not the property of each entity. Administrative documentation belongs to the community, and can only be withheld from its knowledge for effective legal reasons (...). Only if it is necessary to preserve other rights at a higher level should the administration deny the documentation. People should not be forced to give up their right to information because of the obstacles that are placed in their way, or forced to go to court.'

For the sake of the effectiveness and efficiency of the Administration, for the sake of protecting the rights of all citizens, for the sake of progress, healthy development, confidence in the rule of law, and its consolidation, everyone must realise the role they have to play in this part of their activity. It is this understanding that is always required of those who intervene, whatever capacity in which they intervene.

In Portugal, when there are doubts as to whether access should be granted, the Administration can, as it often has, consult the Commission for Access to Administrative Documents. And, obviously, everybody may lodge a complaint with the CADA against the refusal of access.

Portuguese law has opted for a commission that deals with the right of access to administrative information and documentation, in its broader terms. And its spirit is precisely that the Commission should be a provider, an ombudsperson, not against the Administration rather seeking its collaboration, in order to obtain the best solution.

Whatever the vehicle of knowledge, the important thing is, as stated in the 2030 Agenda for Sustainable Development, adopted by the United Nations General Assembly in 2015, that no one is left behind; so every effort should be made to ensure the highest degree of accomplishment of this objective.

He has a vast experience in the public service. He has served as Judge (Justice) of the Supreme Administrative Court; he was also appointed as Vice-president of the Supreme Administrative Court; he hold the position of Judge (Justice) of the Supreme Court of Justice. In the same vein, he was Member of the Consultative Council of the Prosecutor General's Office and Deputy Prosecutor General.

ENSURING ACCESS TO INFORMATION AND PARTICIPATION IN THE PUBLIC SECTOR IN UKRAINE

by Yuliia Derkachenko Representative for Informational Rights of the Ukrainian Parliament Commissioner for Human Rights

Омбудсман України
Ombudsman of Ukraine

Ensuring access to information is a crucial element of democracy, providing citizens the right to promptly receive reliable information about the operations of state bodies and be aware of decision-making processes through various forms of interaction with authorities.

In Ukraine, the right to information is guaranteed by the Constitution and numerous laws and regulations. Ukrainian legislation aligns with European standards on access to information and ensures citizens a wide range of rights in this area.

Ukraine's long journey towards independence and its commitment to democratic values are reflected in Constitution. Historically, this has shaped the strong constitutional guarantees of access to information, including Articles 34 and 50, which ensure everyone the right to freedom of thought and speech, as well as the free expression of their views and beliefs.[1]

Everyone has the right to freely collect, store, use, and disseminate information by oral, written, or by other means of their choice.[1] At the same time, the right to information is not absolute and may be restricted under martial law or a state of emergency to protect national security, territorial integrity, public order, prevent disorder or crimes, safeguard public health, protect the reputation or rights of other persons, maintain the confidentiality of information, or uphold the authority and impartiality of the judiciary.[2]

The primary legislative act that outlines the procedures for exercising and ensuring each person's right of access the information which is in possession of public authorities, other public information administrators, and information of public interest is the Law of Ukraine "On Access to Public Information" (hereinafter - the Law).

The Law establishes principles of transparency and openness in the activities of public authorities, free obtaining, dissemination, and any other use of information that has been made public or disseminated in accordance with the Law, except for certain legally established restrictions. It also guarantees equal rights irrespective of race, political, religious or other beliefs, sex, ethnic and social origin, financial standing, place of residence, language or other features.[3]

Special attention should be given to the **"presumption of openness of public information,"** as stated in Article 2 of the Law, which means that public information is open by default unless otherwise specified by law. This means that in Ukraine, public information is inherently open, and any restrictions on access are exceptions.[3]

[1] Constitution of Ukraine 28 June 1996 https://rm.coe.int/constitution-of-ukraine/168071f58b
[2] Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya(2010) https://www.refworld.org/reference/themreport/unhrc/2010/en/147046 p. 381
[3] Law of Ukraine "On Access to Public Information" ([13] January [2011]) No. [2939]-VI https://zakon.rada.gov.ua/laws/show/2939-17#Text

Ukrainian legislation on access to information has several advantages. Notably, information holders are not limited to state or local self-government bodies but can also include any legal entity possessing information of public interest. Moreover, Ukrainian law provides for administrative liability for violations of the Law, ensuring effective protection of citizens' rights to information. In 2020, Ukraine ratified the Council of Europe Convention on Access to Official Documents (CETS No. 205) also known as the Tromsø Convention. However, compared to the Tromsø Convention, Ukrainian legislation on access to information offers several advantages: it provides more detailed regulation of the procedures for granting access to information, sets specific deadlines, introduces enhanced mechanisms for protecting the rights of requesters, and requires public authorities to systematically and promptly publish information on their websites. While the Tromsø Convention focuses primarily on access to official documents, Ukrainian legislation covers a broader spectrum of public information access.

PROVIDING INFORMATION UPON REQUESTS FOR INFORMATION

One of the most common ways to ensure access to information is through submitting a request for information. Under the Law, a request for information is an individual's request to an information administrator to provide public information in possession. Any person may submit a request for information, regardless of whether the information concerns them personally, without needing to explain the reason for the request. Information administrator must provide a response to the information request not later than five business days after the date of receiving the request. If information request concerns information necessary for protecting life or freedom of an individual, state of environment, quality of food products and household goods, accidents, catastrophes, natural hazards and other emergencies, which have taken or may take place, the response must be provided no later than 48 hours after the date of receiving the request.[3]

Considering the principle of openness and the guarantee of maximum simplification of the request procedure enshrined in the Law, the requirements for filing a request are minimal. A request for information must include: the name (or title) of the requester, their postal or email address, as well as contact details if available, general description of information or type, name, number or content of the requested document, if the requester is aware thereof, signature and date if the request is submitted in writing.[3]

Additionally, the Law does not require the information holder to identify the requester or establish the purpose for obtaining and using public information. This implies that the information holder should not focus on the requester's identity or personal circumstances but should operate under the assumption that such information is open by default and should be provided in response to a request.

[3] Law of Ukraine "On Access to Public Information" (13 January 2011) No. 2939-VI https://zakon.rada.gov.ua/laws/show/2939-17#Text
[4] Law of Ukraine "On Information" (02 October 1992) No. 2657-XII https://zakon.rada.gov.ua/laws/show/2657-12#Text

However, during martial law, Ukraine has faced numerous challenges, particularly in the area of access to public information. Administrators of public information may need to restrict access to public information to protect national security, territorial integrity, public order, and other critical interests.

In case of restricting access to information, the Law mandates that information holders consider the "three-part test".[3]; [4]

Access to information shall be restricted under the law subject to the combination of the following requirements:

1. solely in the interests of the national security, territorial integrity or public order in order to prevent the unrest or crimes, protect public health, protect the reputation or rights of other people, prevent the disclosure of information received confidentially, or maintain the authority and impartiality of justice;
2. disclosure of information can cause significant harm to such interests;
3. the harm from publication of the information outweighs public interest in obtaining the information.[3];[4]

SYSTEMATIC AND PROMPT DISCLOSURE OF INFORMATION

The Law requires information holders to systematically and promptly publish information in official print publications, on official websites, information boards, and by other means. Systematic and prompt publication of information by public information holders offers several significant advantages. It helps to increase the transparency of government activities and other institutions, ensures citizens' access to up-to-date information, strengthens trust in government, and promotes public oversight. Moreover, regularly publishing necessary information reduces the need for specific requests, thereby decreasing the burden on information administrators and allowing for more efficient use of resources. The most common method of disclosure is the publication of public information on the official websites of information holders on the Internet. Additionally, the Law specifies that if an information administrator has an official website, such information must be published there.

The Law outlines the types of information that must be disclosed, including information on the use of budget funds, organizational structure, mission, functions, powers, and main tasks of the information administrator, and regulations adopted by the administrator. Considering the obligation to publish additional information about the activities of public authorities as mandated by other laws, this list is not exhaustive. Furthermore, information administrators are required to publish public information in the form of open data. According to the Law, public information in the form of open data is information that can be processed automatically by electronic means, is freely accessible, and can be used without restriction.[3]

[3] Law of Ukraine "On Access to Public Information" (13 January 2011) No. 2939-VI https://zakon.rada.gov.ua/laws/show/2939-17#Text

The advantages of public information in the form of open data include increased transparency and accountability of public authorities, fostering economic development by enabling the creation of new products and services based on data, supporting civic participation and innovation, and allowing analysts, academics, and journalists to research and monitor important public issues more effectively. Open data provides free access to information, reduces corruption risks, and improves the quality of management decisions. In Ukraine, numerous services utilize open data, allowing anyone to access information about every legal entity registered in Ukraine, any court decision, or how a member of the Ukrainian parliament voted, among other things.

Ensuring access to public information in Ukraine is a vital element of democracy, contributing to increased transparency, accountability, and trust in government. Ukrainian legislation meets and even exceeds international standards in certain respects, providing broad public access to information and enhanced mechanisms for protecting the rights of requesters. Systematic and timely publication of information reduces the burden on public authorities and enhances the effectiveness of management decisions. Despite challenges, especially under martial law, Ukraine continues to improve its mechanisms for accessing information, balancing openness with the need to protect national security.

Yuliia Derkachenko
Representative for Informational Rights of the Ukrainian Parliament Commissioner for Human Rights

In collaboration with specialists from the Department for Monitoring of Observance of Informational Rights: Oleksandr Yurchenko, Viktoriia Demchyshyna, Serhii Bezuhlyi, Anastasiia Chernysh.

[3] Law of Ukraine "On Access to Public Information" (13 January 2011) No. 2939-VI https://zakon.rada.gov.ua/laws/show/2939-17#Text

ACCESS TO INFORMATION IN THE UNITED KINGDOM

by Deborah Clark, Upstream Regulation Manager

The openness and transparency enabled by access to information are fundamental to our democracy. They underpin trust and confidence in public services, which is essential because the decisions made here can impact us all. In England, Wales and Northern Ireland, the Freedom of Information Act (FOIA) and Environmental Information Regulations (EIR) are the mechanisms by which people can exercise their right to know, helping enable informed participation in the public sector. As the regulator of these laws we are here to provide clear advice and guidance, and regulatory certainty, so that public authorities can get it right. Our purpose is to empower people through information, and we have a strategic enduring objective to promote openness, transparency and accountability. It's not just about strict compliance with the legislation; we also have a duty under section 47 of FOIA to 'promote the following of good practice by public authorities' in relation to FOIA and its Codes of Practice. Good FOI practice helps build trust and confidence in those responsible for making public information available and makes it easier for citizens to exercise their rights and participate in the public sector. To develop and promote good practice, we engage with the FOI community – users, campaigners, academics, public authorities and government – listening, sharing, learning and promoting best practice through publishing tools, templates, guides and blog updates, as well as undertaking wider engagement.

It's also not just good practice in responding to requests for information. We know that proactive transparency is important. Research published[1] this year in Scotland showed that 93% of people want public bodies to publish as much as possible, 68% will look on websites first when they want information (compared to 12% who will go straight to a request) and 90% are more likely to trust an organisation that publishes more about its work.

So being proactive builds trust, and crucially benefits citizens by enabling greater informed participation in the public sector by providing swiftly accessible information on issues that matter to them. From the perspective of public authorities, understanding what people are interested in can help them consider whether proactive publication of this information would benefit not only those they exist to serve, but also

[1] Public awareness of FOI | Scottish Information Commissioner

their own organisations. We have seen evidence of the beneficial impact[2] greater accessibility to proactively published information can have on case-handling times. As well as increasing trust with service users and helping to reduce information request handling times, this openness and transparency can help drive improvements in service delivery and efficiency.

Some recent projects include working with a civil society organisation, mySociety[3] , to help encourage more proactive publication in the public sector, with a focus on key public interest information.

We analysed a sample of more than 150,000 requests made during 2022 and identified common themes in the information that has been asked for and publicised that by five different sectors: Education, Health, Local Government, Central Government, and Emergency services.

This project linked to one of the challenges set out in the Information Commissioner's open letter to senior leaders[4] issued in March this year: ***"Look at what people are asking you about and actively publish it."***

We are now undertaking work to further understand the measurable impact of proactively publishing more information on both request volumes and handling times. We are doing this by asking public authorities to let us know what effect publishing more information is having on the number of requests made to them under access to information legislation and how quickly these can be responded to.

Another current work strand we are working on is expanding our reach to young people. Educating the next generation about their information rights and how to use them is crucial for continued meaningful participation with government and the wider public sector. To do this we have collaborated with the National Education Nature Park which, led by the Natural History Museum, empowers children and young people to make a positive difference to both their own and nature's future. We have designed resources for educator and classroom activities.

The educator resources explain the right to request environmental information and describe how these rights could be used by students, such as asking about air quality or local issues which might affect a school or college grounds, like planned housing developments. It also gives examples of what could be done with the information, such as using it as the basis of a research project or for speaking to their local member of parliament to instigate change.

The classroom activities are group by age. The main objectives for 7 – 11 year olds are to think about the local environment, who might be "in charge" of the different things which make up the environment, what information could be asked for and how to go about it. The objectives for 11 – 16 year olds are to learn about rights to ask for information about the environment and what public authorities have to do, and to consider how information can be used to help be more engaged with the local area.

[2] London Borough of Camden: Building a compliance culture, streamlining case handling processes | ICO
[3] mySociety is a not for profit group pioneering the use of online technologies, including the widely used Alaveteli platform, to empower citizens to take their first steps towards greater civic participation.
[4] Information Commissioner calls for senior leaders to take transparency seriously | ICO

The resources explain that knowledge is power and that information obtained through access to information legislation helps contribute to our community and to the country as informed, engaged citizens. This work will help children and young people feel empowered to voice their concerns and gain the vital skills needed to take action for their future.
We recognise that public authorities do already proactively publish a vast amount of information which can be accessed without the need for an information request under FOIA and EIR. We have recently issued guidance[5] for the public as to how they can find such information to help people find what they are looking for.

We will continue to develop and promote good practice to enable easy and efficient access to public information so that everyone has the opportunity and skills to participate in civic life.

Deborah Clark manages the ICO's FOI Upstream Regulation team – a team designed to provide more support for public authorities dealing with FOI requests and to promote good practice. Deborah has worked in freedom of information since its implementation. She spent 9 years as a Senior Case Officer in ICO before moving onto management roles which have included the Casework team dealing with complaints about the police and justice sector, the Insight and Compliance Team and the FOI Policy team.

[5] How to access information from a public authority | ICO - specifically 'Searching for information'.

OCEANIA

AN AUSTRALIAN PERSPECTIVE ON ACCESS TO INFORMATION

by Elizabeth Tydd, Australian Information Commissioner

In Australia, national, state and territory regulators join together each year in highlighting the importance of access to information, focussing our activities around 28 September to align with the ***International Day for Universal Access to Information (IDUAI)***.

For the Office of the Australian Information Commissioner (OAIC), we have embraced the IDUAI theme of ***"Mainstreaming Access to Information and Participation in the Public Sector"*** through two important initiatives that, combined, will uplift the capacity of Government agencies to deliver the intent of the right to access information – a more accountable and transparent system government. Promoting the right to access information as a mainstream or core capability will ensure that we all enjoy a more participative and robust democracy. At a time when democracies are under threat, mainstreaming this right will ensure that the Australian public sector can uphold their duties of accountability and stewardship. These values are effective treatments against corruption, misinformation and disinformation.

The FOI Act aims to increase public participation in government processes and increase scrutiny, discussion, comment and review of government activities. It provides us with a tool to promote open government.

One of the OAIC's strategic objectives is to drive a cultural and capability uplift across the FOI landscape, and ensure the FOI system delivers for all.

This involves reframing FOI as being part of a core service delivery of government, and essential to building trust underpinned by proactive publication, rather than an administrative or regulatory burden.

In 2024 we released of our third five-yearly review of the Information Publication Scheme (IPS). We also conducted an inaugural survey of agency training and guidance requirements. Working with these two important data sets we can institute action to better meet agency capability needs and therefore ensure that we advance a more open and accountable government for the Australian community.

The IPS encourages Australian Government agencies to release information to the public proactively, and is intended to encourage greater openness and transparency in government, reflecting the pro-disclosure goals of the Freedom of Information Act.

The IPS requires agencies to publish a broad range of information on their website and permits agencies to proactively publish other information. It is a statutory responsibility for agencies subject to the FOI Act.

As the federal regulator, we use the IPS review to gain insights into Australian Government agencies' levels of proactive publication, areas for improvement, and some of the challenges faced. We encourage Government agencies to review the results and trends, and use the review as an opportunity to look more closely at proactive release and how it could be improved to foster an 'open by design' culture across government.

For us, it is a key tool to help achieve the aim of mainstreaming access to information and participation across the public sector, to draw upon the theme of this year's IDUAI Global Conference.

This year's review has shown some improvements from previous reviews in 2018 and 2012, and indicates a strong commitment across the Australian Government to the IPS and a proactive disclosure culture. Most agencies surveyed had reviewed the operation of the IPS in their agency (94%) and more agencies indicated that the information is available free of charge.

Agencies also identified significant challenges to publishing public sector information including:

- information asset management
- discoverable and useable information
- effective information governance, and
- identifying the best ways to engage the community.

The key actions for Australian Government agencies that we identified from this year's review are to:

- Have a strategy to increase open access to information
- Use training to increase the culture of proactive publication
- Invest in information asset management, such as developing and maintaining an IPS information register
- Identify connections between information provided in response to FOI requests, information published on the disclosure log and what should be routinely published
- Consider the categories of information published proactively
- Promote feedback mechanisms, including providing clear information for individuals about how to make a complaint or provide feedback.

The results of our inaugural FOI practitioner survey are also informing development of a credible and impactful plan to uplift agency capability. This action will ensure we can deliver the intent of this year's IDUAI.

In summary, the survey demonstrated that there is a need to uplift agency capacity and capability in areas including decision-making, procedural requirements and the appropriate application access refusal reasons, including the reliance on exemptions and practical refusals. The survey also showed that 80% of agencies reported using the FOI Guidelines most to assist with the conduct of their FOI functions and that guidance in the form of checklists, e-learning modules and targeted guidance were most effective.

To address this need, and considering the most effective guidance types to mainstream core accountability and stewardship capabilities, we plan to:

- issue revised Guidelines and practical tools/fact sheets to assist practitioners and decision-makers with responding and deciding requests under the FOI Act
- develop a self-assessment tool for agencies to complete, which will generate areas for focus and suggested treatments
- develop e-learning modules explaining practitioners' obligations under the FOI Act
- continue to host webinars on particular areas of interest, including making timely decisions and utilising extension of time provisions under the Act, and discussing investigation outcomes and recommendations for agencies to improve their information access practices.

This program of action will also create a mindset among agencies that FOI applicants deserve good service delivery, and of ensuring applicants have a clear understanding of the best way to use the system.

We also seek to demonstrate how advances in digital technology can assist the FOI process. Mainstreaming access to information and participation requires a true collective effort across government, and in particular, the commitment of senior leaders across government agencies.

IDUAI (or, IAID as it also known in Australia) provides an important opportunity to promote the principles of access to information, celebrate the work of those across government who help to ensure it, and raise awareness in the community of their rights to access information.

After all, information held by Government agencies is managed for public purposes and must be treated as a national resource. The public's right to access that information is a natural extension of that, and helps support and fortify our healthy democracy.

Elizabeth Tydd took up the position of Australian Information Commissioner in August 2024 after initially holding the role of Freedom of Information Commissioner. Prior to that, she served two 5-year terms as the Information Commissioner at the Information and Privacy Commission (IPC) of New South Wales. She has also occupied a number of statutory decision-making roles in NSW commissions and tribunals. She holds a Bachelor of Laws and Master of Laws from the University of Technology Sydney, and postgraduate qualifications in leadership and policy from Harvard University.

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SUPPORTING PUBLIC PARTICIPATION THROUGH TRANSPARENCY IN NEW SOUTH WALES:
ARTIFICIAL INTELLIGENCE AND INFORMATION ACCESS LAWS

by Rachel McCallum Chief Executive Officer and Information Commissioner NSW Information and Privacy Commission NSW

Artificial Intelligence (AI) and automated decision-making (ADM) are transforming public administration, including the public sector in New South Wales (NSW), the most populous state in Australia. For the interest of our fellow members of the ICIC, this short article references three recent developments in NSW and describes two of the existing tools under NSW information access laws that support public sector transparency and public participation.

FOCUS ON TRANSPARENCY UNDER THE NSW INFORMATION ACCESS FRAMEWORK

Access to government information in NSW is subject to the oversight of an independent Information Commissioner, supported by a separate integrity agency called the Information and Privacy Commission NSW (IPC). The state of NSW has had sophisticated government information access laws[1] for fifteen years – sophisticated because since 2009 they have recognised that authorising, and in some cases mandating, transparency outside the context of individual applications to access government information is a pillar of a strong system of representative democracy. For the IPC, the 2024 International Day for Universal Access to Information (IDUAI) has prompted it to consider how to expand the use of the existing information "push" tools NSW agencies have under our state's information access laws about their use of technology. This article describes three recent developments in NSW and two of these existing tools.

[1] Government Information (Public Access) Act 2009 (NSW) and Government Information (Information Commissioner) Act 2009 (NSW)

RECENT CONSIDERATION OF AI AND ADM REGULATION IN NSW

There is no AI-specific legislation in the state of NSW yet but there has been significant recent interest in how governments and parliaments should respond from legal and governance perspectives to the challenges that AI presents.

The NSW Artificial Intelligence Assessment Framework is a recent policy framework that was developed by the NSW Government with the aim of providing a comprehensive and structured approach to safe and responsible use of AI at a sub-national level. This framework provides that AI solutions must be designed with adherence to mandatory AI Ethics Principles, promoting responsible AI use that is subject to principles of community benefit, fairness, privacy, security, transparency, and accountability.[2]

The NSW Ombudsman's 8 March 2024 report, A map of automated decision-making in the NSW Public Sector, also emphasised the importance of transparency and accountability in the use of ADM systems. Following on from the Ombudsman's 2021 special report The new machinery of government: using machine technology in administrative decision-making[3], the 2024 report is a detailed map of ADM use as identified by agency respondents. The report highlighted the potential risks of unlawful, unjust, or unreasonable decisions made by ADM systems and stressed the importance of compliance with administrative law[4].

In mid-2023, a committee of the upper house of the NSW Parliament commenced an inquiry to consider the current and future extent, nature and impact of AI in NSW, including the social, economic and technical opportunities, risks and challenges it presents[5]. The IPC made a submission to the inquiry and both the Information Commissioner and Acting Privacy Commissioner appeared in 2024 as witnesses at a hearing, with evidence given about the importance of privacy and transparency cited in the final report. The final report of the committee recommended (inter alia) that the NSW Government conduct a regulatory gap analysis, as soon as possible, in consultation with relevant industry, technical and legal experts to:

- **assess the relevance and application of existing law to artificial intelligence**
- **identify where changes to existing legislation may be required**
- **determine where new laws are needed.**

The NSW Government's response to the inquiry is due to be tabled in the NSW Parliament in October 2024.

EXISTING TRANSPARENCY TOOLS TO SUPPORT PUBLIC PARTICIPATION

For Right to Know Week NSW 2024, celebrated in the lead-up to the IDUAI, the IPC is releasing the results of its latest two-year survey into community attitudes towards information access and data sharing. The results include that 74% of respondents agreed that agencies should be required to publicly report on any systems used to inform agency decisions that impact an individual. In NSW, there are two main tools under information access laws that contain mandatory elements that can assist in achieving this desired transparency.

[2]Digital NSW (July 2024). NSW Artificial Intelligence Assessment Framework. Retrieved from https://www.digital.nsw.gov.au/policy/artificial-intelligence/nsw-artificial-intelligence-assessment-framework

[3]NSW Ombudsman (29 November 2021) The new machinery of government: using machine technology in administrative decision-making. Retrieved from https://www.ombo.nsw.gov.au/Find-a-publication/publications/reports-to-parliament/other-special-reports/the-new-machinery-of-government-using-machine-technology-in-administrative-decision-making

[4]NSW Ombudsman (8 March 2024) A map of automated decision-making in the NSW Public Sector - Introduction and Brief Observations. Retrieved from https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0004/145093/Introduction-and-Brief-Observations.pdf

[5]NSW Parliament (27 June 2023). NSW Legislative Council Portfolio Committee No. 1 Inquiry: Artificial Intelligence (AI) in New South Wales, Terms of Reference. Retrieved from https://www.parliament.nsw.gov.au/lcdocs/inquiries/2968/Terms%20of%20reference%20-%20PC%201%20-%20Artificial%20intelligence%20(AI)%20in%20New%20South%20Wales.pdf

The first is publication of a mandatory Agency Information Guide (AIG). Under the Government Information (Public Access) Act 2009 (GIPA Act), NSW agencies are each required to publish a guide that provides information about their structure, functions, and the types of information they hold.

Section 20 of the GIPA Act specifically mandates that agencies must also have a guide that is reviewed and updated regularly. Of particular interest in the context of this year's IDUAI theme about public participation, and the IPC's focus on the intersection with awareness about AI and ADM, section 20(1)(a) and (b) state that an AIG is to:

- describe the ways in which the functions (including, in particular, the decision-making functions) of the agency affect members of the public, and
- specify any arrangements that exist to enable members of the public to participate in the formulation of the agency's policy and the exercise of the agency's functions[6].

In recognition of this year's IDUAI, and following on from the NSW Ombudsman's extensive mapping work, the IPC is calling on NSW agencies to be more specific about their AI and ADM uses in their Agency Information Guides, to increase transparency for the public and enable more effective participation.

The second tool is annual reviews of proactive information release programs. Under the GIPA Act, NSW agencies are also empowered to proactively release information to the public, unless there is an overriding public interest consideration against disclosure[7]. Agencies are also required to review their proactive release programs each year, with the outcomes of that review reported publicly and to the IPC. By releasing information proactively, agencies can improve their service delivery and increase community participation in government processes and decision-making.

In recognition of this year's IDUAI, the IPC is also calling on NSW agencies to increase their level of effort and the rigour of their annual processes for reviewing information for proactive release, including by participating in research through the IPC's online annual reporting tool[8] to increase transparency for the public and enable more effective participation.

Conclusion

As bespoke regulation and policies for AI and ADM remain under active review by governments and parliaments around Australia, the IPC welcomes the opportunity to promote existing NSW legislative pathways that support transparency and participation in the public sector.

[6] Government Information (Public Access) Act 2009. Retrieved from https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-2009-052
[7] Section 7, Government Information (Public Access) Act 2009. Retrieved from https://legislation.nsw.gov.au/view/html/inforce/current/act-2009-052#statusinformation
[8] See information about the IPC NSW GIPA Tool at https://www.ipc.nsw.gov.au/information-access/agencies/ipc-gipa-tool

Rachel McCallum
Chief Executive Officer and Information Commissioner NSW
Information and Privacy Commission NSW

Rachel McCallum is the NSW Information Commissioner and Chief Executive Officer of the Information and Privacy Commission NSW. Ms McCallum has thirty years' experience in legal practice, regulation and policy development, including in information access, privacy, elections, and integrity areas. She has served in the NSW state and Australian federal public sectors, including senior roles with the NSW Electoral Commission and the Department of Premier and Cabinet.

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QUEENSLAND AND WESTERN AUSTRALIA
– A JOURNEY TO MAINSTREAMING ACCESS TO INFORMATION

by the Office of the Information Commissioner Queensland and the Office of the Information Commissioner Western Australia

Proactive release of information by government to the community helps build trust and confidence, while also empowering the public to take an active role in civil society. Giving the public opportunities to provide input into government decision-making leads to more effective governance, improved public service delivery, and more equitable outcomes. These fundamental principles underpin mainstreaming access to information and require participation at all levels of the public sector.

The latest comparative data set in Australia, the National Dashboard – Utilisation of Information Access Rights 2022-23, suggests that jurisdictions following a push model (where information is proactively released to the community) are in a better position to serve the community.

In Queensland, Australia, the Right to Information Act 2009 (RTI Act) is based on a push model.

This means information is released proactively, unless there is a good reason not to, while protecting and respecting personal information.

The push model in Queensland promotes pro-disclosure to assist the community with accessing government information, decreasing the number of formal requests for information made under the RTI Act, while also upholding human rights (in particular the right to information).

2008 was a landmark year in Queensland's RTI journey, with the release of 'The Right to Information – Reviewing Queensland's FOI Act' .

The independent review by Dr David Solomon advocated recasting the RTI Act as an act of last resort.

This would significantly shift Queensland's information access regime from a pull model to a push model.

The Solomon Review was the catalyst for change in Queensland and set the wheels in motion for Queensland's new legislation, the RTI Act, which came into effect in 2009.

Importantly, the report noted there was little point in legislating for access to information if there was not ongoing political will to support its efforts.

The report also recommended that public sector agency leaders should foster a work culture that shows a commitment to RTI and ensure staff induction programs and agency-wide training opportunities support this too.

That sentiment was echoed by the 2022 Coaldrake Report, titled 'Let the sunshine in: Review of culture and accountability in the Queensland public sector'.

To address concerns around openness and transparency, Professor Peter Coaldrake AM highlighted that culture and tone was critical from the top down, while also recommending parliamentary committee involvement in setting budgets for integrity bodies and contributing to key appointments, and introducing a mandatory notification data breach scheme.

With further legislative amendments in 2023 and 2024, Queensland continues to take steps towards strengthening and improving its information access and privacy frameworks, which ultimately seek to build greater trust between the community and government.

Across the other side of the country, the access to information landscape is evolving in Western Australia (WA).

WA's current legislation is the Freedom of Information Act 1992 (FOI Act). In recent years there have been calls to update the legislation towards a push model, support FOI culture and implementation, and improve proactive release.

In 2021, the Office of the Information Commissioner WA (OIC WA), together with the Office of the Victorian Information Commissioner and the South Australian Ombudsman engaged independent researchers at Monash University to conduct a major research project, exploring the culture of administering FOI legislation and access to government-held information in WA, Victoria and South Australia.

The three-year project culminated in the Monash University report titled 'The culture of implementing Freedom of Information in Australia'.

The study intended to independently assess how government sector FOI practitioners, executives, and ministers in parts of Australia view information access, and the factors that shape their attitudes.

Monash University made 11 recommendations intended to support the culture and administration of FOI in Australia, plus specific recommendations for each state involved in the study.

For WA the report recommended:

Review and reform of the FOI Act

Update the OIC WA website to be user friendly to both applicants and practitioners

Provide sectors with more bespoke education and examples

Examine how proactive release could assist sectors by releasing commonly requested documents by default.

The OIC WA has welcomed the report and is planning a long-term response in relation to the recommendations.

Vitally, the report sought feedback from FOI practitioners in each of the participating jurisdictions, and their collective sentiment was compelling.

It was reassuring for the OIC WA to note that the report recognises that FOI officers have a deep knowledge and understanding of the purposes, functions and challenges facing the FOI system, and have ideas about how to improve the system.

It is important to hear about the challenges faced, and the opportunities that practitioners pursue to improve information access.

Their ideas for reform and resourcing can help us understand ways to achieve more effective and proactive information disclosure from the public sector.

A sentiment mirrored by many participants in the study was summarised best by one of the FOI practitioners interviewed for the report.

“I would describe my role as ensuring that the principles underpinning FOI legislation are met. Just to make sure that the whole process runs smoothly and that the goals of transparency are achieved,” they said.

The OIC WA is supportive of the findings and recommendations of the report and will be exploring how the office can best respond to the recommendations over the next 12 months.

Although both states are at different stages on their information access journeys, both the OIC Queensland and the OIC WA continue on a path to mainstreaming improved access to information in order to support greater public participation in government. This will ensure more legitimate governance by establishing closer links with citizens, improved public service delivery that understands citizen’s explicitly expressed needs, and greater social cohesion. It’s an enduring journey but vital for a healthy and thriving democratic society.

Written by the Office of the Information Commissioner Queensland and the Office of the Information Commissioner Western Australia

FREEDOM OF INFORMATION: CULTURE AND REFORM IN VICTORIA

by Oficce of the Victorian Information Commissioner

OVIC
Office of the Victorian Information Commissioner

Article for the International Conference of Information Commissioners special edition newsletter

Public access to information is an expression of integrity within a democratic society. An informed public can lead to better informed decisions at the ballot box and more robust public policy debate. This is the fundamental premise of government accountability and the method by which strong access to information **(ATI)** laws can tangibly lead to better policy outcomes for constituents in a democratic system. In Victoria, the Office of the Victorian Information Commissioner (OVIC) is responsible for regulating, protecting and advocating for public ATI.

Rapid technological and economic development has transformed our world, leaving no sector untouched. Victorian freedom of information legislation **(FOI Act)** was passed at the beginning of this transformation, at a time when no one could have anticipated how the world was about to change. Not unexpectedly, legislators could not write solutions to future problems into freedom of information **(FOI)** law, and there is now a dramatically different information environment than the one in which the FOI Act was legislated.

The result of an outdated FOI legislation has been:

- an increasingly high number of FOI requests received by agencies;
- a high proportion of requests for an applicant's own personal information, in particular, public hospital patient records;
- decreasing timeliness in agencies and Ministers making decisions on FOI requests;
- an increase in review applications and complaints made to OVIC;
- an increasing number of review applications made to the Victorian Civil and Administrative Tribunal **(VCAT)**; and
- an increase in the cost to government, its agencies and the civil justice system.

OVIC has identified several problems in the FOI Act that are responsible for these results. Firstly, the policy model of the FOI Act uses a 'pull' model of information access with limited mechanisms or incentives for proactive and informal release by agencies or Ministers.

[1]OVIC. Submission to the Victorian Parliament's Integrity and Oversight Committee – Inquiry into the operation of the Freedom of Information Act [1982] (Vic), p. [23].

A 'pull' model means agencies mostly release information after receiving a request, even if it is information that could otherwise have been released outside of the formal FOI process. This leads to a high number of FOI requests that would not need to be lodged if the information was released proactively. These kinds of requests clog the Victorian FOI system and cause agencies difficulty in resolving requests within the legislated timeframes.

This difficulty is compounded by the complexity and technicality of the wording of the FOI Act. This complexity is difficult for the public to engage with and lends itself to complicated procedural and administrative processes that are burdensome for agencies to administer. Attempts to fix this through legislative reform have only added to the complexity and technicality, with inconsistent and piecemeal changes

FOI REFORM ON THE POLICY AGENDA

An opportunity for legislative change is now before legislators with the Victorian Parliament's Integrity and Oversight Committee's Inquiry into the operation of the FOI Act. In written submissions and at an in-person hearing, OVIC has advocated for a new, modern ATI framework that makes it easier and more efficient for the public to access government-held information.

This framework should enable government to provide greater proactive and informal release (PAIR) of information, while protecting information from disclosure where the public interest requires it.

These changes would represent the third generation of ATI law in Australia and bring FOI processes into the 21st century. Simplicity in ATI laws, complemented by the principles of PAIR, would enable more efficient and effective public participation in the institutions of government.

These principles also free up agencies' resources by greatly reducing the administrative burden, a burden that was underscored in Monash University's report on its study into the Culture of FOI, to which OVIC was a partner organisation.

AN EXECUTIVE-PRACTITIONER DISCONNECT

Whilst some Victorian agencies are proactively releasing information, the study identified adisconnect between organisational leaders and the practicalities of delivering PAIR. Where executives were positive about PAIR, the study indicated that some lacked an understanding of the organisational barriers to enacting it as described by practitioners. This executive-practitioner disconnect could also explain the lack of resources directed to FOI teams, as leaders

remain supportive of the work FOI teams do but may be unaware of the complexity of that work and the resources it requires.

A disconnect is further evidenced in executives' understanding of records management. The report found that some executives viewed good records management as a burden, an overhead and a mere legal or compliance hurdle to be cleared. However, effective records management is key to business efficiency particularly in relation to a timely response to FOI requests.

When information is stored properly, it can be accessed and released quickly – easing the administrative burden that is currently crippling the FOI system.

Repairing this executive-practitioner disconnect is critical to maintaining FOI administration.

Even with the prospect of FOI law reform, the culture of FOI cannot be legislated – it must be cultivated organically. Part of this is understanding that responsibility for public ATI is not siloed within the FOI team of an organisation – it is the responsibility of all public servants and organisational leaders. This culture permeates through to everyday activities such as document naming conventions and storing them in correct, and easily identifiable, locations rather than squeezing another *"Document 1"* thumbnail onto our computer desktop.

CULTIVATING POSITIVE FOI CULTURES

Public servants' everyday FOI mindfulness must be cultivated and supported by top-down leadership and proactive governance. This can take the form of in-depth training, adequate resourcing and the development of PAIR and records management policies. The key is organisational leaders taking active steps to rectify the executive-practitioner disconnect identified in the report. In gaining a more functional understanding of FOI administration, FOI can be viewed less as an adjunct to business operations and more as embedded into its internal infrastructure.

OVIC shares responsibility for empowering organisations to foster resilient FOI cultures. OVIC's mission is to promote and uphold information rights in Victoria by building trusting relationships with public sector entities. The intention is that organisations feel engaged in ongoing, meaningful dialogue about access to information. This takes the form of consistent guidance, support and consultation on the issues that affect public sector organisations. For example, OVIC works with Victorian public sector organisations to adopt PAIR policies which can help rectify practitioner confusion identified in the Culture of FOI Report.

The report also recommended greater collaboration between public record offices and FOI regulators, such as between OVIC and the Public Record Office Victoria (PROV), to strengthen agency knowledge around records management best practice and FOI efficiency. OVIC and PROV regularly work together to provide organisations with the information they need to deliver best information management practices. The Information Commissioner, Sean Morrison, recently delivered the Keynote Address at the

PROV Records Management Network event where he spoke about the close relationship between records management and FOI.

Where the report points to improvements that must be made, it also recognises that the culture of FOI in Victoria has come a long way since the enactment of the FOI Act. Long-serving Victorian FOI practitioners were clear in saying that there have been a lot of positive changes including in resourcing FOI and in educating agencies and the public. Acknowledging these positive changes is important and recognises that FOI culture can be improved and cultivated among the Victorian public sector.

It makes sense that an overhaul of the FOI Act is desperately needed. Maintaining an Act developed at a time when information practices resemble so little of those today has led to a clunky, burdensome FOI system in Victoria.

Modernising processes, simplifying administration and legislating a 'push' model of information access are critical to improving FOI outcomes for the public and agencies. Until this occurs however, what we can change is the culture of FOI within our public sector organisations. When culture builds from both ends of an organisation, it is rewarded with a trusting and cohesive corporate identity. An identity that values FOI and understands how it protects the integrity of public institutions is one that can foster trust with the public and deliver better services and policy outcomes for citizens.

In short, cultivating strong FOI cultures in our public organisations is essential to keeping government accountable to the people by whom it was elected.

OVERVIEW OF NEW ZEALAND'S OFFICIAL INFORMATION FRAMEWORK AND THE OMBUDSMAN'S ROLE

by New Zealand's official information

New Zealand prides itself on being open and transparent, with strong and long standing access to information laws. And we want to keep it that way. An informed citizenry is essential in a modern democratic society. We wish to preserve this by ensuring access to reliable information sources as a counter to the ever increasing volumes of mis- and dis-information.

We're a small country of some 5.3 million people, highly interested in how we are governed. We were the first country to give women the right to vote in 1893. We rank among the top ten of the OECD countries for voter turnout—78 percent in the 2023 general election. We were the first of the non-Nordic countries to adopt the Scandinavian Ombudsman concept in 1962—primarily to hold the government to account for its administrative conduct. We have been part of the Open Government Partnership since 2013—a programme to improve openness and engagement between government and citizens.

New Zealand is consistently rated by the Transparency International Corruption Perceptions Index (CPI) as one of the least corrupt countries in the world. But we must avoid complacency. In 2023, New Zealand slipped to third place on the CPI. This demonstrates how vital it is to continuously prioritise and commit to the highest levels of transparency in government decision making, accountability, and integrity.

Among other measures[1], New Zealand has three vital pieces of legislation that help to protect it against government corruption:

- Ombudsmen Act 1975 (OA);
- Official Information Act 1982 (OIA); and
- Local Government Official Information and Meetings Act 1987 (LGOIMA).

These laws support transparency, accountability, and the ability of New Zealanders to exercise their fundamental rights.

The OIA and LGOIMA enable the public to request official information held by Ministers of the Crown, and some 4,000 public sector agencies, organisations or other bodies, operating in both the central and local government spheres.

A key purpose of New Zealand's official information laws is to 'increase progressively the availability of information' to enable the public to more effectively participate in government policy setting and decision making; and make public sector officials and ministers accountable. The laws also protect information that should not be released.

It had not always been that way. Up until 1982, it was a criminal offence in New Zealand to release official information without the Minister's authorisation under the Official Secrets Act 1951.

[1]Such as the Protected Disclosures (Protection of Whistleblowers) Act 2022.

This changed following a review in 1978, when the Danks Committee recommended: 'The Government should reaffirm its responsibility to keep the public informed of its activities and make official information available unless there is good reason to withhold it'.

This meant the question for holders of official information became "How can we quickly and responsibly make a good decision to release as much information as possible?" rather than "How can we withhold this information?".

Agencies must now consider if the legal grounds for withholding the requested information are outweighed by the public interest in releasing the information. And this must be done on a case-by-case basis.

A key factor in enabling effective public participation in government is the timely release of official information. Agencies are required to make a decision on the request, and communicate it to the requester, as soon as reasonably practicable and within 20 working days—unless they have an extension. The legislation also places obligations on requesters, including being available to clarify their request.

People who request official information and are unhappy with the response have the right to complain to the Ombudsman.

Ombudsmen are empowered to investigate and review how ministers and agencies handle official information requests, such as:

- Grounds used for refusing some or all parts of a request;
- Delays in making a decision (which are considered to be a refusal of a request); and
- Charges for providing the requested information.

Ombudsmen also monitor agencies' official information practices, resources, and systems using their general investigation powers under the Ombudsmen Act. This includes:

- Providing impartial complaints handling—focusing on obtaining early resolutions, forming opinions, and making recommendations;
- Providing general advice to agencies on processing of a request;
- Undertaking interventions and investigations to identify where official information practices, resources, and systems, are vulnerable; and
- Reporting on, and monitoring the implementation of, Ombudsmen's suggestions and recommendations.

Ombudsmen have a role in lifting official information practice across the public sector. Recently this has included developing indicators of good practice and providing clear expectations of agencies and ministers, such as encouraging good decision-making processes and record keeping. Agencies can assess themselves the Ombudsman's expectations and indicators using a new online tool.

Ombudsmen also provide free on-line learning, and publish case notes of final opinions, guides, checklists, templates, and calculators, to assist agencies meet their legal obligations. Ombudsmen and their staff regularly speak to members of Parliament and agencies about access to information, and provide in-person training.

Go to the Ombudsman's Agency assistance webpage for all resources

A practice not enshrined in legislation but actively encouraged by Ombudsmen is the proactive release of official information as it complements the OIA and the LGOIMA's objectives. Cabinet papers, for example, are now being published within 30 business days of final decisions being made.

For several years, one of the New Zealand Ombudsman's strategic priorities has been to inform the public of their rights—enabling them to participate in government decision making or take action when they believe they have not been treated fairly.

The Ombudsman's annual work programme includes raising awareness through community engagements, public statements, and resources, across a range of platforms using a variety of languages and formats, particularly among New Zealand's minority communities. The Ombudsman also conducts surveys of the public's awareness and experiences of official information legislation and practices—last month 81 percent respondents said it was important they could access government information.

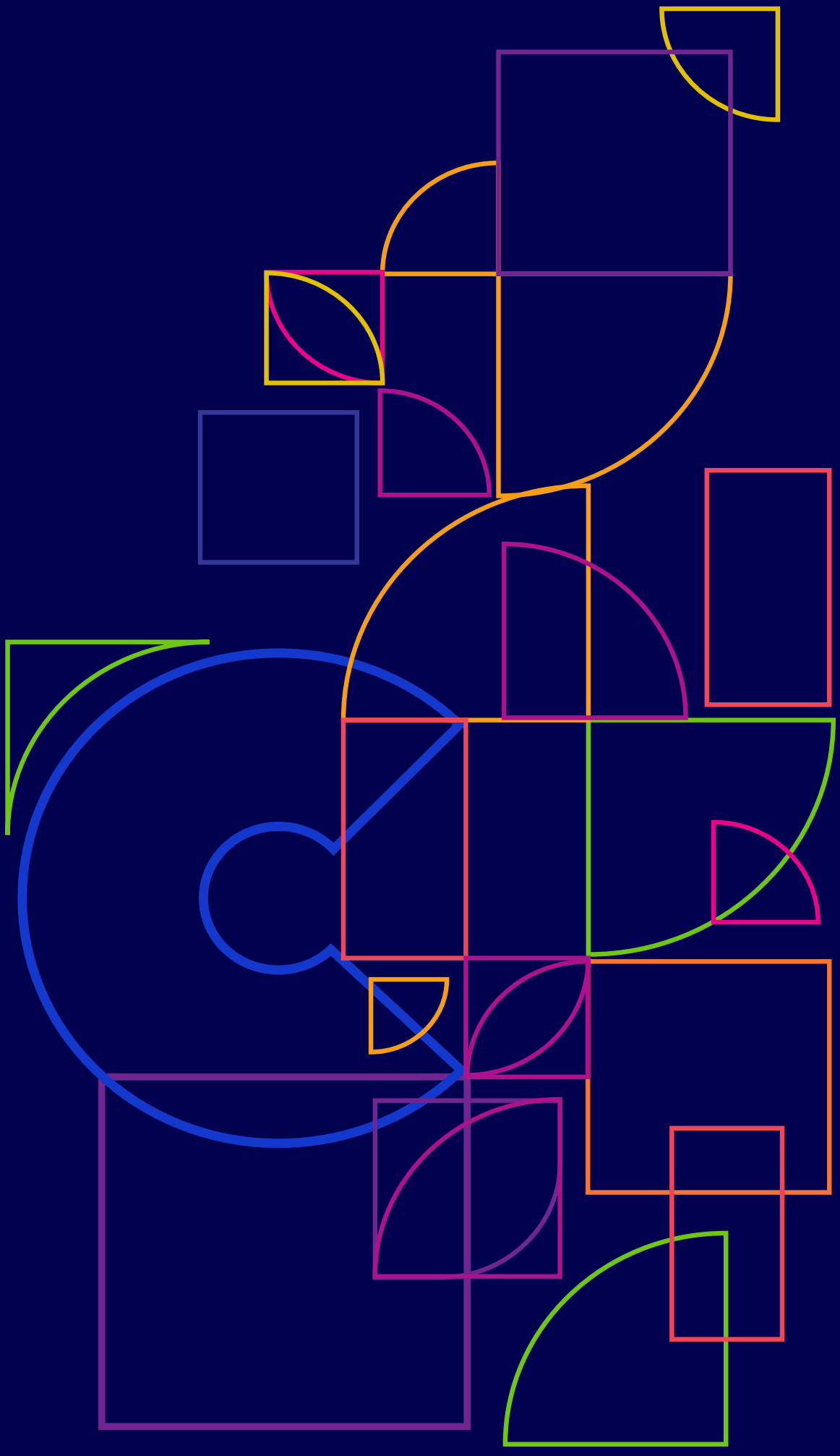
Go to the Ombudsman's Requests for official information webpage

The OIA and the LGOIMA are well used by New Zealand's media, and members of Parliament, as well the public, to find out more about government decisions. Policy directions have been changed, political lobbying has been revealed, and ministers held to account as a result of official information released under these laws.

Questions have been asked about the New Zealand's official information framework and if it remains fit-for-purpose after some 40 years. The Chief Ombudsman is of the view that it is—the OIA was tested during the global pandemic and not found wanting. However, improvements can always be made to how the legislation is implemented.

Go to Ombudsman's submission on proposed OIA review

Making official information available, and assuring the public that access is not denied unnecessarily, has contributed to greater transparency and accountability within New Zealand's public sector, and facilitated public participation in the making and administration of laws and policies. The challenge for New Zealand is to maintain its momentum, to ensure that access to information becomes mainstream.



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