

Requesters should not have to disclose their reasons for seeking access to information and requests should be able to be made in a range of forms, including oral, written and electronically. The onus of justifying any refusal to provide information rests on the party seeking to deny access. The principle of maximum disclosure also requires public authorities to produce information in accordance with international and domestic obligations, and to ensure that such information is subject to disclosure in accordance with these principles.

1.2 Definition of Information

The law on access to information should, in accordance with the principle of maximum disclosure, define information broadly to include any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the body that holds it and whether or not it is classified.

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- Ø a simple guide, or road map containing adequate information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a request for information;
- Ø a description of the powers and duties of its senior officers, and the procedure it follows in making decisions;
- Ø any regulations, policies, rules, guides or manuals regarding the discharge by that authority of its functions;
- Ø the content of all decisions and/or policies it has adopted which affect the public, along with the reasons for them, any authoritative interpretations of them, and any important background material; and
- Ø any mechanisms or procedures by which members of the public may make representations or otherwise influence the formulation of policy or the exercise of powers by that authority

Such information should be disseminated in an appropriate form, which ensures maximum access by all of the population and should be updated as necessary to ensure that it is current. Public authorities should, in addition to this minimum requirement, ensure the public dissemination of a wide range of other information, subject only to reasonable limits based on their capacity and resources, taking into account new technologies for disseminating information such as the Internet. Progressive implementation of this principle over time should ensure that increasing amounts of information are routinely made available to the public.

3.4 The Public Interest Override

Even if it can be shown that disclosure of the information would cause substantial harm to a legitimate aim, the information should still be disclosed whenever the overall public interest in disclosure outweighs the harm such disclosure would cause.

3.5 Application of the Three-Part Test

Any refusal to disclose information should be based on a specific, case-by-case application of the three-part test to that information at the time of the request. If part of the information requested falls within the scope of an exception, all information which is not subject to the exception should, to the extent it may reasonably be severed from the rest of the information, be disclosed. A process should be put in place to ensure the regular declassification of information over time.

3.6 Relationship with Other Laws

The access to information law should, to the extent of any inconsistency, apply to the exclusion of any provision in other legislation that prohibits or restricts the disclosure of information. At the same time, nothing in access to information law should be understood as limiting or otherwise restricting the disclosure of information pursuant to any other legislation, policy or practice.

4. RIGHT OF APPEAL

The law on access to information should provide for an individual right of appeal to an independent administrative body against a refusal by a public authority to disclose information. Everyone should have the right to appeal to this body in cases where a public authority fails to meet the time limits set out in the law, charges excessive fees for the provision of information, fails to give adequate notice of any refusal to provide information, unjustifiably refuses to disclose information, in whole or in part, or refuses to disclose information in the form requested

The independent administrative body may be either an existing body, such as an Ombudsman or Human Rights Commission, or one specially established for this purpose. The administrative body should be provided with adequate funding to undertake its functions, in a manner that protects its independence. Its independence should also be guaranteed in a range of other ways, including:

- Ø by a specific and explicit statement of independence in the law;
- Ø by a clear legislative statement of the powers of the body;
- Ø through the rules relating to membership, including clear conflict of interest rules and rules prohibiting the appointment of individuals with strong political links; and
- Ø by formal accountability to the public through a multi-party body.

The administrative appeals body should operate rapidly and in a cost-efficient manner. It should have all the necessary powers to fulfil its functions under the law, including

to provide information in the form requested. It should also have the power to refer appropriate cases of breach of the law to the courts. The decisions of this body should, to the extent possible, be enforced as legally binding.

The law on access to information should also provide for a full appeal to the courts on the merits against decisions of this administrative body.

5. MEASURES TO PROMOTE ACCESS

The law on access to information should include a series of provisions designed to promote its effective implementation. These should include, at a minimum, the following:

- Ø provision for public education, including through the schools, designed to promote understanding of the law as well as a culture of openness;
- Ø training and other measures designed to prepare public officials for implementation of the law and to address the prevailing culture of secrecy within government;
- Ø systems, along with adequate resources, to promote appropriate maintenance of records, including rules governing the archiving and destruction of records;
- Ø sanctions for those who wilfully obstruct access to information, including by destroying records;
- Ø protection for those who disclose information, reasonably and in good faith, which discloses evidence of wrongdoing (whistleblowers);
- Ø administrative sanctions for serious failures by public authorities to fulfil their obligations under the law;
- Ø provision for the publication and broad dissemination of a public guide on using the access to information law;
- Ø a requirement for public authorities to appoint dedicated information officers with specific responsibility for internal implementation of the law;
- Ø an obligation on public authorities to

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