

General information

Country: The Bahamas

Name of the law and link: Freedom of Information Bill, 2012: <http://www.humanrightsinitiative.org/postoftheday/Bahamas-FOIBill-2012.pdf>

Comments:

| Section | Max Points | Score |
|------------------------------|------------|-------|
| 1. Right of Access | 6 | 3 |
| 2. Scope | 30 | 10 |
| 3. Requesting Procedures | 30 | 21 |
| 4. Exceptions and Refusals | 30 | 11 |
| 5. Appeals | 30 | 26 |
| 6. Sanctions and Protections | 8 | 4 |
| 7. Promotional Measures | 16 | 13 |
| Total score | 150 | 88 |

| Indicator | | Scoring instructions | Max | Points | Article | Comments |
|--------------|---|--|----------|----------|---------|--|
| 1 | The legal framework (including jurisprudence) recognises a fundamental right of access to information. | Score 0 point for no constitutional right to information. 1 point for a limited constitutional right, 2 points for a recognized constitutional right to access all public information. | 2 | 0 | | Not mentioned |
| 2 | The legal framework creates a specific presumption in favour of access to all information held by public authorities, subject only to limited exceptions. | No=0, Partially=1, Yes=2 | 2 | 2 | 6(1) | |
| 3 | The legal framework contains a specific statement of principles calling for a broad interpretation of the RTI law. The legal framework emphasises the benefits of the right to information. | 1 point for each | 2 | 1 | 4 | Describes objects but no obligation to interpret |
| TOTAL | | | 6 | 3 | | |

In questions with 2 points but just one answer, the scoring is No=0, Partially=1, Yes=2

| Indicator | | Scoring Instructions | Max | Points | Article | Comments |
|-----------|---|---|-----|--------|-----------|--|
| 4 | Everyone (including non-citizens and legal entities) has the right to file requests for information. | Score 0 point if only residents/citizens; 1 point for all natural persons; 1 point for legal persons. | 2 | 0 | 6(1) | Appears to be only citizens and residents as individuals |
| 5 | The right of access applies to all material held by or on behalf of public authorities which is recorded in any format, regardless of who produced it. | Score 1-3 points if limited definition of information such as not "internal documents" or databases excluded, 4 points for all information with no exceptions. | 4 | 2 | 2 | Record defined broadly but law only applies where record is held in connection with functions |
| 6 | Requesters have a right to access both information and records/documents (i.e. a right both to ask for information and to apply for specific documents). | Score 1 point for only documents, 1 point for information | 2 | 0 | 2, 6(1) | Only a right to access records |
| 7 | The right of access applies to the executive branch with no bodies or classes of information excluded. This includes executive (cabinet) and administration including all ministries, departments, local government, public schools, public health care bodies, the police, the armed forces, security services, and bodies owned or controlled by the above. | Score 4 points for central government agencies covered: 1 for the head of state, 1 for ministries, 1 for other non-statutory agencies created by the ministries, 1 for state and local government if the government is unitary. If it's a federalist system, 2 points for the non-statutory agencies. This can be determined by examining the length and thoroughness of the list, if such a schedule exists. Score 1 point for the archives. Add three points and deduct 1 for each exempted central agency (such as the armed forces, police, etc). | 8 | 3 | 2, 3 | No head of state or non-statutory bodies created by Ministries, armed forces and police excluded |
| 8 | The right of access applies to the legislature, including both administrative and other information, with no bodies excluded. | Score 1 point if the law only applies to administrative documents, 2-3 points if some bodies excluded, 4 points if all legislative branch at all levels of government | 4 | 0 | 2 | Not mentioned |
| 9 | The right of access applies to the judicial branch, including both administrative and other information, with no bodies excluded. | Score 1 point if the law only applies to administrative documents, 2-3 points if some bodies excluded, 4 points if all judicial branch at all levels of government | 4 | 1 | 3(5), (6) | Only to administrative functions |

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| 10 | The right of access applies to State-owned enterprises (commercial entities that are owned or controlled by the State). | Score 1 point if some, 2 points if all | 2 | 1 | 2, 3(4) | Only to 50% ownership or more, Minister may limit |
| 11 | The right of access applies to other public authorities, including constitutional, statutory and oversight bodies (such as an election commission or information commission/er). | Score 1 point if some bodies, 2 points if all | 2 | 2 | 2, 3(2) | Statutory bodies generally covered |
| 12 | The right of access applies to a) private bodies that perform a public function and b) private bodies that receive significant public funding. | 1 point for public functions, 1 point for public funding | 2 | 1 | 3(2) | Minister may extend to bodies which are essential to welfare or which receive government funds |
| TOTAL | | | 30 | 10 | | |

| Indicator | Scoring instructions | Max | Points | Article | Comments | |
|-----------|--|---|--------|---------|-------------|--|
| 13 | Requesters are not required to provide reasons for their requests. | Y/N answer 0 or 2 points | 2 | 2 | 6(3) | |
| 14 | Requesters are only required to provide the details necessary for identifying and delivering the information (i.e. some form of address for delivery). | Score Max 2 points and deduct if requesters are required to give any of the following: ID number, telephone number, residential address, etc. | 2 | 2 | 7(2)(b) | Only mentions a clear description of the record but is not really clear as to whether other information might be required |
| 15 | There are clear and relatively simple procedures for making requests. Requests may be submitted by any means of communication, with no requirement to use official forms or to state that the information is being requested under the access to information law. | Max 2 points. Considerations include that there is no requirement to state that the request is under the RTI law, nor to use an official form, nor to identify the document being sought. | 2 | 1 | 7(2)(a) | appears only to envisage fax or email submission |
| 16 | Public officials are required provide assistance to help requesters formulate their requests, or to contact and assist requesters where requests that have been made are vague, unduly broad or otherwise need clarification. | Score 1 point for help in formulation and 1 point for clarification procedures | 2 | 2 | 7(3), 11(1) | |
| 17 | Public officials are required to provide assistance to requesters who require it because of special needs, for example because they are illiterate or disabled. | Score Yes=2 point, No=0 | 2 | 1 | 49(1)(b) | Information managers are required to pay special attention to the disabled but this is not quite an obligation to assist |
| 18 | Requesters are provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed 5 working days | Score 1 point for receipt, 1 point for max 5 working days | 2 | 1 | 7(3)(b) | Very general obligation to acknowledge requests as 'prescribed' |
| 19 | Clear and appropriate procedures are in place for situations where the authority to which a request is directed does not have the requested information. This includes an obligation to inform the requester that the information is not held and to refer the requester to another institution or to transfer the request where the public authority knows where the information is held. | Score: 1 point for information not held, 1 for referrals or 2 for transfers | 2 | 2 | 8 | But envisages transfers where another body is 'most closely connected' to the record and only obliges transfers within 14 days |
| 20 | Public authorities are required to comply with requesters' preferences regarding how they access information, subject only to clear and limited overrides (e.g. to protect a record). | Score: 2 points for Yes, only 1 point if some limitations | 2 | 2 | 10 | |
| 21 | Public authorities are required to respond to requests as soon as possible. | Score: No=0, Yes=2 points | 2 | 2 | 7(4) | |

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| 22 | There are clear and reasonable maximum timelines (20 working days or less) for responding to requests, regardless of the manner of satisfying the request (including through publication). | Score: 1 point for timeframes of 20 working days (or 1 month, 30 days or 4 weeks). Score 2 points for 10 working days (or 15 days, or two weeks) or less. | 2 | 1 | 7(4)(a), (b) | 30 Calendar days |
| 23 | There are clear limits on timeline extensions (20 working days or less), including a requirement that requesters be notified and provided with the reasons for the extension. | | 2 | 2 | 7(4), (5) | |
| 24 | It is free to file requests. | Score: No=0, Yes=2 points | 2 | 2 | 13(3) | |
| 25 | There are clear rules relating to access fees, which are set centrally, rather than being determined by individual public authorities. These include a requirement that fees be limited to the cost of reproducing and sending the information (so that inspection of documents and electronic copies are free) and a certain initial number of pages (at least 20) are provided for free. | Score 1 point for fees being limited to reproduction and delivery costs and set centrally, 1 point for at least 20 pages free of charge or for fees being optional | 2 | 1 | 13(1), (2) | Costs may be charged for preparing information and it is only optional for the Minister to set central fees, although it is presumed that this will happen. |
| 26 | There are fee waivers for impecunious requesters | | 2 | 0 | 13(2)(c) | This is optional |
| 27 | There are no limitations on or charges for reuse of information received from public bodies, except where a third party (which is not a public authority) holds a legally-protected copyright over the information. | Score: No=0, Yes=2 points | 2 | 0 | | Not mentioned |
| TOTAL | | | 30 | 21 | | |

| Indicator | Scoring instructions | Max | Points | Article | Comments | |
|--------------|--|--|-----------|-----------|--|---|
| 28 | The standards in the RTI Law trump restrictions on information disclosure (secrecy provisions) in other legislation to the extent of any conflict. | Score 4 points for a resounding "yes" and 1/2/3 points if only for | 4 | 2 | 3(1), 55(4) | Very unclear, specific laws are preserved, but nothing is mentioned about conflicts with other laws |
| 29 | The exceptions to the right of access are consistent with international standards. Permissible exceptions are: national security; international relations; public health and safety; the prevention, investigation and prosecution of legal wrongs; privacy; legitimate commercial and other economic interests; management of the economy; fair administration of justice and legal advice privilege; conservation of the environment; and legitimate policy making and other operations of public authorities. It is also permissible to refer requesters to information which is already publicly available, for example online or in published form. | Score 10 points and then deduct 1 point for each exception which either (a) falls outside of this list and/or (b) is more broadly framed | 10 | 3 | 9(c), 11(2)(c), 17(a)(iii), 18(1), 19, 20(1)(d), 54(1) | unreasonably divert resources, delay if against public interest, the privileges of Parliament, the economy, Cabinet papers, conduct of public affairs, defamatory matter |
| 30 | A harm test applies to all exceptions, so that it is only where disclosure poses a risk of actual harm to a protected interest that it may be refused. | Score 4 points and then deduct 1 point for each exception which is not subject to the harm test | 4 | 0 | 15(b), 16(b), 25 | No harm test for communicated in confidence by another government, 'affect' an investigation, certificates for many exceptions |
| 31 | There is a mandatory public interest override so that information must be disclosed where this is in the overall public interest, even if this may harm a protected interest. There are 'hard' overrides (which apply absolutely), for example for information about human rights, corruption or crimes against humanity. | Consider whether the override is subject to overarching limitations, whether it applies to only some exceptions, and whether it is mandatory. | 4 | 2 | 6(5), 26 | Doubt to be resolved in favour of disclosure, but 26 limits the public interest test to certain exceptions, not including national security, law enforcement, cabinet confidences |
| 32 | Information must be released as soon as an exception ceases to apply (for example, for after a contract tender process decision has been taken). The law contains a clause stating that exceptions to protect public interests do not apply to information which is over 20 years old. | Score 1 point for each | 2 | 1 | 6(2) | There is a 30y limit on exceptions |
| 33 | Clear and appropriate procedures are in place for consulting with third parties who provided information which is the subject of a request on a confidential basis. Public authorities shall take into account any objections by third parties when considering requests for information, but third parties do not have veto power over the release of information. | Score: 1 point for consultation, 2 points if original time frames must be respected and the law allows for expedited appeals | 2 | 0 | 23(4) | Vague reference to regulations on third party rights under personal information only |
| 34 | There is a severability clause so that where only part of a record is covered by an exception the remainder must be disclosed. | Score 1 point if yes but sometimes can be refused (eg: if deletions render meaningless the document) and 2 points if partial access must always be granted | 2 | 2 | 12 | |
| 35 | When refusing to provide access to information, public authorities must a) state the exact legal grounds and reason(s) for the refusal and b) inform the applicant of the relevant appeals procedures. | Score Y/N: 1 point for a and 1 point for b | 2 | 1 | 7(5) | Reasons must be given and options available to the applicant, but not necessarily the exact legal grounds for the refusal |
| TOTAL | | | 30 | 11 | | |

| Indicator | | Scoring instructions | Max | Points | Article | Comments |
|-----------|---|--|-----|--------|----------------------------------|---|
| 36 | The law offers an internal appeal which is simple, free of charge and completed within clear timelines (20 working days or less). | Score 2 points if the internal appeal fulfills these criteria, 1 point if an appeal is offered that does not fulfill this criteria, 0 for no internal appeals. | 2 | 2 | 33, 34 | |
| 37 | Requesters have the right to lodge an (external) appeal with an independent administrative oversight body (e.g. an information commission or ombudsman). | 1 for partial, 2 for yes | 2 | 2 | 42 | |
| 38 | The member(s) of the oversight body are appointed in a manner that is protected against political interference and have security of tenure so they are protected against arbitrary dismissal (procedurally/substantively) once appointed. | Score: 1 point for appointment procedure, 1 point for security of tenure | 2 | 2 | DP Act, 2nd Schedule, s. 2(1), 3 | |
| 39 | The oversight body reports to and has its budget approved by the parliament, or other effective mechanisms are in place to protect its financial independence. | Score 1 point for reports to parliament, 1 point for budget approved by parliament | 2 | 0 | DP Act, 2nd Schedule, s. 6 | Some provision re. salary of commissioner |
| 40 | There are prohibitions on individuals with strong political connections from being appointed to this body and requirements of professional expertise. | Score 1 point for not politically connected, 1 point for professional expertise | 2 | 1 | 5 DP Act, 2nd Schedule, s. 4, | Some limited rules on this |
| 41 | The independent oversight body has the necessary mandate and power to perform its functions, including to review classified documents and inspect the premises of public bodies.. | Score 1 point for reviewing classified documents, 1 point for inspection powers | 2 | 2 | 36, 39(a), 45 | |
| 42 | The decisions of the independent oversight body are binding. | Score N=0, Y=2 points | 2 | 2 | 48 | |
| 43 | In deciding an appeal, the independent oversight body has the power to order appropriate remedies for the requester, including the declassification of information. | 1 for partial, 2 for fully | 2 | 2 | 44(2) | |
| 44 | Requesters have a right to lodge a judicial appeal in addition to an appeal to an (independent) oversight body. | Score Y/N with Y=2 points | 2 | 2 | 47 | |

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| 45 | Appeals (both internal and external) are free of charge and do not require legal assistance. | This can be applied to either administrative or judicial appeals. Countries that offer both need only fulfil this requirement for | 2 | 1 | | Not mentioned but some benefit of doubt given |
| 46 | The grounds for the external appeal are broad (including not only refusals to provide information but also refusals to provide information in the form requested, administrative silence and other breach of timelines, charging excessive fees, etc.). | Score 1 point for appealing refusals, 1 point for appealing other violations. This can be applied to either administrative or judicial appeals. Countries that offer both need only fulfil this requirement for administrative appeals in order to be awarded points. | 4 | 4 | 42(1) | |
| 47 | Clear procedures, including timelines, are in place for dealing with external appeals. | Score 1 point for clear procedures, 1 point for timelines. This can be applied to either administrative or judicial appeals. Countries that offer | 2 | 2 | 43(1) | |
| 48 | In the appeal process, the government bears the burden of demonstrating that it did not operate in breach of the rules. | Score Y/N and award 2 points for yes. This can be applied to either | 2 | 2 | 43(2), 47(2) | |
| 49 | The external appellate body has the power to impose appropriate structural measures on the public authority (e.g. to conduct more training or to engage in better record management) | 1 for partial, 2 for fully. This can be applied to either administrative or judicial appeals. Countries that offer both need only fulfil this | 2 | 2 | 43(3)(b), 44(2) | Power to require structural measures |
| TOTAL | | | 30 | 26 | | |

| Indicator | | Scoring instructions | Max | Points | Article | Comments |
|--------------|---|---|----------|----------|-------------------------------|---|
| 50 | Sanctions may be imposed on those who wilfully act to undermine the right to information, including through the unauthorised destruction of information. | Score 1 point for sanctions for undermining right, 1 point for destruction of documents | 2 | 1 | 39(d), 43(3)(c), 44(2)(d), 55 | Commissioner may refer criminal and disciplinary cases, offence to destroy or harm records |
| 51 | There is a system for redressing the problem of public authorities which systematically fail to disclose information or underperform (either through imposing sanctions on them or requiring remedial actions of them). | Score 1 point for either remedial action or sanctions, 2 points for both | 2 | 0 | | Not mentioned |
| 52 | The independent oversight body and its staff are granted legal immunity for acts undertaken in good faith in the exercise or performance of any power, duty or function under the RTI Law. Others are granted similar immunity for the good faith release of information pursuant to the RTI Law. | Score 1 for oversight body, 1 for immunity for others | 2 | 1 | 41, 54(2), (3) | Relatively broad protection for commissioner and staff, wider protection against defamation, breach of confidence and IP rules, protection against criminal offence if granted in accordance with law (but not just in good faith), OSA penalties preserved |
| 53 | There are legal protections against imposing sanctions on those who, in good faith, release information which discloses wrongdoing (i.e. whistleblowers). | Score 2 for strong protections, 1 for moderate protections | 2 | 2 | 50 | |
| TOTAL | | | 8 | 4 | | |

| Indicator | Scoring instructions | Max | Points | Article | Comments |
|--------------|--|-----------|-----------|------------|------------------------------------|
| 54 | Public authorities are required to appoint dedicated officials (information officers) or units with a responsibility for ensuring that they comply with their information disclosure obligations. | | | | |
| | Score Y/N, Y=2 points | 2 | 2 | 49 | |
| 55 | A central body, such as an information commission(er) or government department, is given overall responsibility for promoting the right to information. | | | | |
| | Score Y/N, Y=2 points | 2 | 2 | 39 | |
| 56 | Public awareness-raising efforts (e.g. producing a guide for the public or introducing RTI awareness into schools) are required to be undertaken by law. | | | | |
| | Score Y/N, Y=2 points | 2 | 1 | 39(e) | Commissioner can publicise the Act |
| 57 | A system is in place whereby minimum standards regarding the management of records are set and applied. | | | | |
| | Score Y/N, Y=2 points | 2 | 2 | 52 | |
| 58 | Public authorities are required to create and update lists or registers of the documents in their possession, and to make these public. | | | | |
| | Score Y/N, Y=2 points | 2 | 0 | | Not mentioned |
| 59 | Training programmes for officials are required to be put in place. | | | | |
| | Score Y/N, Y=2 points | 2 | 2 | 53 | |
| 60 | Public authorities are required to report annually on the actions they have taken to implement their disclosure obligations. This includes statistics on requests received and how they were dealt with. | | | | |
| | Score Y/N, Y=2 points | 2 | 2 | 40(3) | |
| 61 | A central body, such as an information commission(er) or government department, has an obligation to present a consolidated report to the legislature on implementation of the law. | | | | |
| | Score Y/N, Y=2 points | 2 | 2 | 40(1), (2) | |
| TOTAL | | 16 | 13 | | |