CENTRE FOR LAW AND DEMOCRACY

Egypt

Comments on the Draft Bill Concerning Freedom of Information

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Introduction

Almost immediately following the ouster of Mubarak in February 2011, the Egyptian Government, with the assistance of the World Bank, started work on right to information legislation. A draft was shared with at least some civil society organisations, and consultations were held with the Ministry of Information and Communications and the Information and Decision Support Center (IDSC). These efforts were relatively short-lived, however, and by around September 2011, interest within Government appeared to have waned and the consultations stopped.

Civil society, however, has sustained its interest in what it sees as a crucial piece of democratic legislation. A group of civil society actors, members of the larger National Coalition for Media Freedom (NCMF),[1] along with other interested stakeholders, have continued to work to develop a civil society draft Bill Concerning Freedom of Information (draft Bill). These Comments contain an analysis by the Centre for Law and Democracy (CLD) of the draft Bill.

Overall, the draft Bill is very strong in terms of giving effect to international standards relating to the right to information. Particular strengths include the wide scope of the law, the requesting procedures and the regime of exceptions, but the draft Bill is also strong in terms of the promotional measures it calls for.

At the same time, there are a number of ways in which the draft Bill could still be further improved. These include clarifying a number of points which remain unclear (as an example, it is not clear whether references to days means calendar or working days), adding in interpretive rules, giving public authorities more time to meet their proactive publication obligations, imposing a 20-year presumptive time limit on exceptions, increasing the independence and powers of the Commissioner, and providing for sanctions where public authorities seriously fail to respect their obligations under the law. Also, consideration should be given to whether or not the law should apply to purely private bodies and, if so, the rules should be adapted so as to apply more comprehensively to them.

These Comments are based on international standards regarding the right to information, as reflected in the *RTI Legislation Rating Methodology*, prepared by CLD and Access Info Europe (CLD/AIE RTI Rating).[2] They also reflect better legislative practice from other democracies around the world.[3] We have prepared an

[1] See www.ncmf.info.

[2] This document, published in September 2010, reflects a comprehensive analysis of international standards adopted both by global human rights mechanisms, such as the UN Human Rights Committee and Special Rapporteur on Freedom of Opinion and Expression, and by regional courts and other mechanisms in Europe, Africa and Latin America. It is available at: http://www.RTI-rating.org.

[3] See, for example, Toby Mendel, Freedom of Information: A Comparative Legal Survey, 2nd Edition (2008, Paris, UNESCO), available in English and several other languages at:

assessment of the draft Bill based on the RTI Rating and the relevant sections of this assessment are pasted into the text of these Comments at the appropriate places. The overall score of the draft Bill, based on the RTI Rating, is as follows:

Section	Max Points	Score
1. Right of Access	6	3
2. Scope	30	29
3. Requesting Procedures	30	28
4. Exceptions and Refusals	30	29
5. Appeals	30	20
6. Sanctions and Protections	8	6
7. Promotional Measures	16	14
Total Score	**150**	**129**

This score would put Egypt in fourth place globally among all countries which have adopted right to information laws, just behind Slovakia, India and Slovenia, and easily at the top of the countries in the MENA region, of which only two – Jordan and Tunisia – have so far adopted such legislation.

1. Right of Access and Scope

The present Constitution of Egypt, perhaps not surprisingly, does not recognise a fundamental or human right to information. There will undoubtedly be significant civil society pressure to include this in the new constitution, which will be a key priority in the coming months.

Article 3 of the draft Bill creates a clear presumption in favour of access to information held by public authorities, in accordance with the rules it establishes. Article 4 goes further, providing for access to information held by private bodies where this could facilitate the exercise or protection of any right. In this respect, the law follows the South African approach of extending its scope beyond public authorities, even defined broadly. There is considerable merit, at least in theory, to this given the vast quantities of information held by private bodies. At the same time, it remains an approach which most countries have avoided, and which has proven to be difficult to implement in South Africa.

Article 2 sets out a number of aims of the law, including the establishment of a right to information in accordance with international standards, while maintaining protection for overriding public and private interests. The right is aimed at addressing social and economic problems, assisting with planning and development,

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http://portal.unesco.org/ci/en/ev.php-URL_ID=26159&URL_DO=DO_TOPIC&URL_SECTION=201.html.

enhancing accountability and encouraging public participation. The draft Bill does not, at least formally, take the next step and call for the law to be interpreted in the manner that best gives effect to these goals.

The draft Bill defines both information and records very broadly, respectively as any material which communicates meaning and as any set of recorded information (Articles 1(a) and (d)).

It also describes the scope of public authorities covered by the obligation of openness very broadly to include all executive bodies, at every level of government, all three branches of government, bodies which are owned, managed or funded by the State (i.e. including State owned enterprises), bodies established under the Constitution or any law, and bodies which undertake public functions. Although definition refers to all branches of government, it is not absolutely clear whether the legislature and judiciary are included. The draft Bill also defines private bodies as bodies working in the areas of commerce and business, whose assets are privately owned, and which have legal personality.

In terms of the right of access, Articles 3 and 4 both refer, at least in the English translation, to the right of individuals to access information. This would appear to exclude legal bodies.

Recommendations:

- The new constitution should include clear guarantees for the right to information.
- Consideration should be given to whether or not to include a right to access information held by private bodies under the main right to information law or to leave this issue to be addressed through sectoral legislation (for example, focusing on the environment or public health issues).
- The law should include a specific clause calling for it to be interpreted so as best to give effect to the goals it sets for itself.
- The law should make it clear that the legislative and judicial branches of government are included within its scope.
- The law should make it clear that legal, as well as natural, persons have the right to request and receive information.

Right of Access

Indicator		Max	Points	Article
1	The legal framework (including jurisprudence) recognises a fundamental right of access to information.	2	0	

2	The legal framework creates a specific presumption in favour of access to all information held by public authorities, subject only to limited exceptions.	2	2	3,4
3	The legal framework contains a specific statement of principles calling for a broad interpretation of the RTI law.	1	0	
	The legal framework emphasises the benefits of the right to information?	1	1	2
	TOTAL	**6**	**3**	

Scope

Indicator		Max	Points	Article
4	Everyone (including non-citizens and legal entities) has the right to file requests for information.	2	1	3,4
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.	4	4	1(a),(d)
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).	2	2	3,4
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.	8	8	1(f)
8	The right of access applies to the legislature, including both administrative and other information, with no bodies excluded.	4	4	1(f)
9	The right of access applies to the judicial branch, including both administrative and other information, with no bodies excluded.	4	4	1(f)
10	The right of access applies to State-owned enterprises (commercial entities that are owned or controlled by the State).	2	2	1(f)
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).	2	2	1(f)
12	The right of access applies to a) private bodies that perform a public function and b) private bodies that receive significant public funding.	2	2	1(f)
	TOTAL	**30**	**29**	

2. Duty to Publish

Article 7 imposes an obligation on public authorities to publish, on a routine basis and without waiting for a request, a wide range of types of information. This includes information about the authority itself, about the services and programmes

it provides/runs, about opportunities for public consultation and complaints, about public tenders and the allocation of other public benefits, and about how to make requests for information. Those affected by a decision must be provided with the reasons for it.

Article 7(2) requires public authorities to update this information monthly or at least quarterly, and generally to try to ensure that as much information as possible is made available proactively, so as to minimise the need for individuals to make requests for information. Pursuant to Article 38, public authorities are given 90 days to bring themselves into compliance with these rules.

This is a broad and ambitious set of proactive publication obligations. It may, however, not be realistic to expect all, or even most, public authorities in Egypt to be able to meet fully, or even substantially, these obligations within a 90-day period. Rather, it might be more realistic to assume that many public authorities will require quite some time – even some years – to meet these obligations. This has been the experience in many other countries with proactive publication obligations.

Instead of putting in place requirements which are almost certain to be breached, due to capacity constraints as opposed to bad faith, it might be preferable to develop a system which grants public authorities some time to bring themselves into compliance with their proactive publication obligations, albeit while monitoring their progress and setting clear overall timelines. Thus, the system could establish annual targets and given a central body, such as the Information Commissioner, a monitoring and oversight role.

Another shortcoming with this system for proactive publication is that, outside of the general obligation to provide reasons to those affected by decisions, it does not impose any obligation on public authorities to go beyond Internet dissemination of information and to make an effort to ensure that the many people in Egypt who do not have access to the Internet are still able to access relevant information.

Recommendations:

- Consideration should be given to putting in place a system which would allow for the full proactive publication obligations to be realised over some time, while ensuring that regular progress is being made towards full compliance over time.
- Consideration should be given to requiring public authorities to make an effort to use systems of dissemination that ensure that all Egyptians can access relevant information, not just the minority of citizens that have access to the Internet.

Note: The RTI Rating did not assess the duty to publish and so no excerpt from it is provided here.

3. Requesting Procedures

The draft Bill includes very comprehensive procedures for making requests for information. Every public authority is placed under a very general obligation to establish an "effective system specifically for receiving and processing" requests (Article 8). This implies that it is free to file requests, but that is not made explicit.

Requests may be made in written form, including electronically, and orally. Where requests are made orally, the information officer is required to reduce them to writing and to provide a copy to the requester, although there is no obligation for the officer to sign the request. A request is not required to contain reasons or any personal details other than contact details (for purposes of responding to the request), although a request to a private body must stipulate why the information is needed for the exercise or protection of a right. A receipt must be given to the requester upon making a request, although no time limit is stipulated for this (Article 9).

Information officials are required to provide assistance where requests do not specify the information sought clearly enough, or where the requester needs such assistance due to illiteracy, disability or for any other reason (Article 9(2)). Where a public authority does not hold the information sought, it shall, within five days, inform the requester of this fact or transfer the request to a public authority that does hold the information, in which case the requester shall be notified (Article 13). It is not clear when the time limits for responding to requests start to run in case of transfer of a request.

Requests must be processed within 15 days, although it is not indicated whether these are calendar or working days. The original 15-day period may be extended by a second 15-day period where it would be difficult to process the request in the original 15 days due to the need to compile or search through a large number of documents, or to consult with third parties. In this case, the requester shall be notified. Where information is needed to protect an individual's life or liberty, the request must be answered within 48 hours (Articles 10(1)-(3)). The 48-hour time period might fall entirely within a weekend, making it almost impossible for public authorities to meet these standards.

Notice must be provided for requests that are either denied or accepted. In the former case, the notice must indicate the exact reason for the denial, including the specific provision in the law relied upon for this purpose, the name of the person who made the decision to deny the request and information about the requester's right to appeal. Where a request is accepted, the notice must indicate the form in

which the information will be provided and any fees to be charged (Articles 10(5)-(7)).

Where a requester specifies a preferred form, access to the information shall normally be provided in that form, unless to do so would harm the preservation of the record. In that case, the requester shall instead be given the following options for access: the possibility of examining the record and making a copy using his or her own equipment, obtaining a copy of the record, or getting a written transcript of the record. Where records are in danger of becoming damaged, a digital copy should be made, so as to ensure ongoing capacity to disclose the record (Article 11). These are positive rules but, where there is a risk of damage to a record, it may not be realistic to offer the requester the stipulated forms of access because these are precisely the sorts of forms of access that may threaten the preservation of frail records. Instead, access should be provided in a form that does not threaten preservation of the record.

Fees may be charged but these may not exceed the actual costs of copying records and sending them to the requester, and rules on fees are to be set centrally by regulation. The draft Bill does not provide for an initial number of free copies (for example of 15 or 20 pages). Fees may not be charged for requests for personal information or in the public interest, where the requester is below the poverty line or where the public authority fails to meet the timelines for responding to requests. Disabled requesters cannot be charged greater fees, just because they require special forms of access (Article 12).

Article 6 makes it clear that when information is provided in response to a request, the requester has the right to publish the information via any means. It might be useful to go beyond this and make it clear that there are no limitations on reuse of the information in any way, although this rule should also recognise the legitimate rights of third party copyright holders.

Recommendations:

- The law should make it clear that it is free to file requests.
- Where information officers reduce oral requests to writing, they should be required to sign and date those requests.
- The law should set a time limit, for example of five days, on providing receipts for requests.
- The law should stipulate what the time limits are for responding when requests have been transferred to another public authority.
- The law should make it clear that the 15 days for responding to a request refers to calendar days, while consideration should be given to providing for urgent requests to be answered within two working days.
- An alternative system for providing access to frail records, for example by

offering the requester access in those forms which would not harm its preservation, should be developed.

- Consideration should be given to providing for the first 15 or 20 pages of copies to be given to requesters for free.
- The law should provide for freedom of reuse of information obtained via a request for information, subject to such constraints as may be necessary to protect the interests of third party copyright holders.

Indicator		Max	Points	Article
13	Requesters are not required to provide reasons for their requests.	2	2	9(4)
14	Requesters are only required to provide the details necessary for identifying and delivering the information (i.e. some form of address for delivery).	2	2	9(4)
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.	2	2	8,9
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.	2	2	9(2)
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.	2	2	9(2)
18	Requesters are provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed 5 working days	2	2	9(5)
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.	2	2	13
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).	2	2	11
21	Public authorities are required to respond to requests as soon as possible.	2	2	10(1)
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).	2	2	10(1),(2)
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	10(3)

24	It is free to file requests.	2	1	12
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.	2	1	12(1),(3)
26	There are fee waivers for impecunious requesters	2	2	12(2)
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.	2	2	6
	TOTAL	**30**	**28**	

4. Exceptions and Refusals

As with the procedures for making requests, the draft Bill includes a very comprehensive and progressive regime relating to exceptions. Article 5 provides that the right of access set out in Articles 3 and 4 applies notwithstanding other laws which limit or restrict the disclosure of information, or any administrative classification of information. This is a very important rule in the Egyptian context, where there are a large number of excessively broad secrecy rules.[4]

Articles 15-21 set out the specific exceptions to the right of access, which include privacy, third party legal and commercial interests, relations with other States, legal privilege, national security, the administration of justice, and the effectiveness or development of policies, while they are still being developed. These are all legitimate grounds for refusing to disclose information, and the definition of the exceptions is clear and precise. In many cases, exceptions to the exception (for example for private information) or procedural protections (for example for national security sensitive information) are provided for, further limiting the scope of the exceptions. All of the exceptions are harm tested.

Article 24 (there are no Articles 22-23) contains a public interest override whereby information must be disclosed where the overall public interest in disclosure is greater than the harm that this would cause to an interest which the exceptions would otherwise protect. The public interest is not defined in an exclusive manner but examples are given, such as threats to health, the environment or security, or

[4] See, for example, UNESCO, Assessment of Media Development in Egypt (2011: UNESCO, Cairo), p. 9. Available in English at: http://www.4shared.com/office/Ej-nK1sl/English_Document.html and in Arabic at: http://www.4shared.com/office/18nTeSoY/arabic_document.html.

exposing corruption, criminal acts or mismanagement. This rule only applies to requests made to public authorities, and not to requests made to private bodies.

Article 18 also provides for a mechanism for consultation with third parties. An interesting aspect of this is that it establishes a good mechanism for facilitating access to relevant information where the third party does not object. However, as with the public interest override, this system appears to be limited to requests made to public authorities, even though it would also be useful to apply it in the context of requests to private bodies.

The draft Bill does not explicitly require information to be released as soon as an exception ceases to apply, although this is implied from the general nature and language of the regime of exceptions. It also fails to provide for overall time limits for secrecy, apart from in the case of national security, where the limit is 30 years.

Article 14 contains a severability clause, so that only information which is covered by the regime of exceptions will be withheld, and the rest of any requested record will be made available.

Recommendations:

- Consideration should be given to extending the public interest override and the rule on consultation with third parties to requests made to private bodies.
- Consideration should be given to making it explicit that exceptions cease to apply when the risk of harm no longer exists.
- The law should establish an overall time limit for all exceptions to protect public interests, preferably of around 20 years.

Indicator		Max	Points	Article
28	The standards in the RTI Law trump restrictions on information disclosure (secrecy provisions) in other legislation to the extent of any conflict.	4	4	5
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.	10	10	15-21

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.	4	4	15-21
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.	4	4	24
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.	2	1	19
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.	2	2	18
34	There is a severability clause so that where only part of a record is covered by an exception the remainder must be disclosed.	2	2	14
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.	2	2	10(5),(7)
	TOTAL	**30**	**29**	

5. Appeals

Article 25 of the draft Bill provides for an internal appeal to the head of a public authority where a request has been denied, but not for other potential breaches of the law. A decision must be provided within ten days, which "shall be final". It is not clear what the phrase "shall be final" means, since the law provides for external appeals to both the Information Commissioner and the courts.

Article 26 provides for the appointment of an Information Commissioner, to be chosen by a majority vote in the People's Assembly and then formally appointed by the President. There are prohibitions on individuals who have strong connections to political parties, who hold elected positions or who have been convicted of a crime involving moral turpitude from being appointed. Commissioners hold office for five years, and may be reappointed once. The draft Bill provides expressly that the Commissioner shall be independent and that his or her salary is the same as that of a judge of the Supreme Constitutional Court. The budget of the Commission is presented to and approved by the People's Assembly.

These are generally robust guarantees for the independence of the Commissioner. One gap here is that Commissioners do not benefit from protection against

dismissal, once appointed. Another tool to promote both independence and accountability that is found in many laws is a requirement that only individuals with relevant expertise and of good reputation may be appointed as Commissioner. Finally, it might be useful to require Commissioners to be elected by a super majority, say a two-thirds vote, to limit the risk of a majority party in the People's Assembly putting in a candidate of their choice.

In terms of the structure and powers of the office of the Commissioner, the draft Bill does not mention an office, apart from stating that the budget shall be approved by the People's Assembly. It would be useful to include at least a framework of rules relating to the office, such as that the Commissioner has the power to hire such staff as may be necessary, in accordance with his budget, to carry out his functions and so on.

In terms of powers, the Commissioner has all powers as are necessary to enable him or her to carry out his or her functions. He or she also has the specific power, in the context of an appeal, to examine any records and to "ask" any individual to provide evidence. It is not entirely clear, however, that the Commissioner has the power to legally compel the production of evidence (including information) and witnesses to testify. Furthermore, most oversight bodies have the power to conduct investigations, including on-site investigations, either in the context of an appeal or at their own motion. This is not mentioned in the draft Bill.

Individuals who have gone through the internal appeals process at a public authority or whose requests for information from a private body have been denied may lodge an appeal with the Commissioner. As with internal appeals, this is unduly limited; the right of appeal should apply whenever a requester feels the law has not been followed. The Commissioner shall decide appeals within ten days and may deny the appeal, order disclosure of information, alter the fees that have been charged or compel the body to take such other measures as may be necessary to address the wrong (Article 27). While it is important that appeals be decided in a prompt manner, the ten-day deadline is almost certainly unrealistic, especially if the Commissioner is supposed to investigate claims properly and taking into account the possibility that there may be 100s or even 1000s of appeals in due course. The law is silent as to where the burden of proof lies in appeals. Given that the body refusing the information is seeking to limit a fundamental right, it is appropriate to place the burden of proof on them, and this is done in the laws of many countries.

In many countries, in addition to having the power to order appropriate remedies for the requester, oversight bodies have the power to impose structural remedies on public authorities, for example requiring them to train their officials properly or to put in place appropriate systems for processing requests. This can be an efficient

way to improve the overall system, and to reduce the flow of appeals to the oversight body.

Where a requester is not satisfied with the decision of the Commissioner, he or she also has the right to appeal to the administrative court. In this case, the court shall issue a prompt decision in the case.

Recommendations:

- Requesters should be able to lodge appeals, both internal and before the Commissioner whenever they believe that the law has not been respected, not just when this involves a denial of their request (other grounds would include breach of the time limits, charging excessive fees and not providing information in the form sought).
- The law should provide protection for Commissioners against dismissal.
- Consideration should be given to imposing positive requirements for individuals to be appointed as Commissioner, such as relevant expertise and standing in the community.
- Consideration should be given to providing for Commissioners to be elected by a super-majority of the People's Assembly.
- Consideration should be given to adding at least a framework of rules relating to the office of the Commissioner.
- To the extent that it is not clear, the law should indicate expressly that the Commissioner has the legal power to compel witnesses to testify and public authorities to provide evidence.
- Consideration should be given to giving the Commissioner the power to conduct investigations both pursuant to appeals and of his or her own motion.
- The ten-day deadline for deciding appeals should be replace with a requirement to decide them as quickly as possible but within an overall maximum more like 60 days.
- Public authorities should bear the burden of proving that any refusal to grant a request for information was justified.
- Consideration should be given to giving the Commissioner the power to impose structural remedies on public authorities, in addition to granting remedies to individual requesters.

Indicator		Max	Points	Article
36	The law offers an internal appeal which is simple, free of charge and completed within clear timelines (20 working days or less).	2	2	25
37	Requesters have the right to lodge an (external) appeal with an independent administrative oversight body (e.g. an information commission or ombudsman).	2	2	27

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.	2	1	26
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.	2	2	26(7),(8)
40	There are prohibitions on individuals with strong political connections from being appointed to this body and requirements of professional expertise.	2	1	26(2)
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.	2	1	27(2)
42	The decisions of the independent oversight body are binding.	2	2	27(5)
43	In deciding an appeal, the independent oversight body has the power to order appropriate remedies for the requester, including the declassification of information.	2	2	27(4)
44	Requesters have a right to lodge a judicial appeal in addition to an appeal to an (independent) oversight body.	2	2	28
45	Appeals (both internal and external) are free of charge and do not require legal assistance.	2	2	
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.).	4	1	25(1),27(1)
47	Clear procedures, including timelines, are in place for dealing with external appeals.	2	2	27(4),28(2)
48	In the appeal process, the government bears the burden of demonstrating that it did not operate in breach of the rules.	2	0	
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)	2	0	
	TOTAL	**30**	**20**	

6. Sanctions and Protections

The draft Bill provides for both minor and more serious criminal sanctions for officials who obstruct access. Pursuant to Article 33, fines of between LE5,000 and 20,000 (approximately USD850-3,300) may be imposed on anyone who obstructs the disclosure of information contrary to the law, or obstructs the work of a public or private body or the Commissioner. Pursuant to Article 33(b), a three-year prison sentence may be imposed on anyone who "damages, destroys or steals records".

It is useful to have a two-tier system for sanctions. Experience in many countries has shown, however, that a system that combines administrative and criminal sanctions

can be very effective. Criminal sanctions can be reserved for the most egregious cases, but it is complex and time consuming, procedurally, to apply them. Administrative sanctions can be imposed more easily on officials who are being obstructive and so is a useful alternative option.

Article 34 provides broad protection against civil, criminal or employment-related sanctions for any act done in good faith in the performance of any duty or exercise of any power under the law. This would cover civil servants, the Commissioner and his or her staff. Consideration should be given to extending this protection to include protection against administrative sanctions.

Article 35 also establishes a good framework for whistleblower protection, providing protection against legal, administrative or employment-related sanction for anyone who discloses information about wrongdoing, defined broadly.

The law does not, however, provide for sanctions to be imposed on public authorities which are failing, even egregiously, to fulfil their obligations under the law. Such authorities could, for example, be exposed to fines or similar measures in such cases.

Recommendations:

- Consideration should be given to transforming the sanction in Article 33 from a criminal to an administrative sanction, and perhaps lowering the fines that may be imposed.
- Consideration should be given to providing protection against administrative sanctions for acts done in good faith pursuant to the law.
- Consideration should be given to providing for sanctions to be imposed on public authorities for serious or egregious failures to respect the provisions of the law.

Indicator		Max	Points	Article
50	Sanctions may be imposed on those who wilfully act to undermine the right to information, including through the unauthorised destruction of information.	2	2	33,33(b)
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).	2	0	
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.	2	2	34

53	There are legal protections against imposing sanctions on those who, in good faith, release information which discloses wrongdoing (i.e. whistleblowers).	2	2	35
	TOTAL	**8**	**6**	

7. Promotional Measures

The draft Bill provides for a strong complement of promotional measures. Pursuant to Article 31, each public authority must appoint a dedicated information officer to lead the authority in the discharge of its responsibilities under the law. All other employees are bound to cooperate with these officers to this end.

The draft Bill takes a relatively innovative approach to the issue of overall leadership on implementation. The Information Commissioner is given a number of monitoring and promotional roles (Article 32), while a special internal nodal body, the Supreme Information Council, comprised mainly of ministerial representatives, plays a leading internal role, including in terms of setting policy and standards. Members of the Council are appointed by the Prime Minister and approved by the People's Assembly. Providing for both internal and external leadership on this issue could be a very effective way of ensuring strong implementation. At the same time, the role of the Council is somewhat limited. It might be more effective to give it wider powers and responsibilities in relation to internal implementation efforts (such as training; see below).

The Information Commission is given some public awareness raising responsibilities, including a general role in this area and a specific obligation to produce a guide for the public on their right to information and how to exercise it. At the same time, this is a massive task which can only really be done with the cooperation and involvement of the whole of the public sector, and especially those bodies with extensive public outreach, such as ministries of health and education. Placing a general obligation on all public authorities to conduct outreach work within the scope of their ongoing activities, and allocating some leadership role to the Council, would be useful here.

Article 6(c) of the draft Bill calls on all public authorities to manage their records in accordance with the provisions of the law on the National Archives. It is not clear what the point of this is, since they are presumably already required to do this (i.e. to comply with other laws). More pertinently, the Council is tasked with setting minimum standards for the "keeping, managing, and disposing of records in the form of a binding charter". It would be useful to make it clear that this is not something that is to be set in stone but, rather, something to be continually revised to provide for increasingly strong record management rules.

Article 7(1)(i) of the draft Bill, on proactive disclosure, requires all public authorities to publish a list of the categories of information they hold, as well as all records which are available on an electronic basis. This is probably a realistic starting place. At the same time, it might be useful to extend this over time to include a requirement to publish a full list of all of the records each pubic authority holds.

There is no obligation on public authorities to ensure that their staff receive appropriate training on implementation of the new legislation. The Commissioner is given a mandate to cooperate with public authorities in the area of training. This, however, is not the same thing as placing a primary obligation on public authorities in this area, among other things because the Commissioner has no power to require them to cooperate or, indeed, to conduct training. This is another area where the Council, as a high-level internal body, could play a useful role.

Article 30 places an obligation on all public authorities to produce an annual report on the activities they have undertaken to implement the law, including in relation to the processing of requests. These reports are to be presented to the relevant minister, who shall then present it to the Prime Minister and Information Commissioner, and make it public. Pursuant to Article 32(5), the Commissioner is then required to prepare a consolidated report annually on implementation, to be presented to the People's Assembly and published. Pursuant to Article 26(7), the Commissioner is required to produce an annual report on his or her own work, which shall also be presented to the People's Assembly and published.

Recommendations:

- Consideration should be given to allocating Council wider powers to the Supreme Information, for example in the areas of public awareness raising and training for officials.
- Consideration should be given to placing a general obligation on all public authorities to conduct public outreach work.
- The law should make it clear that the charter for record management is something that will be revised on a periodic basis, as public authorities gain capacity in this area, so as to provide for increasingly strong standards.
- Consideration should be given to building a system into the law for extending the requirement to publish a list of *all electronic records* to publishing a list of *all records*, for example by giving the Commissioner or the Council the power to order this.
- Public authorities should be required to ensure that their staff receive appropriate training on implementation of the law.

Indicator		Max	Points	Article
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.	2	2	31
55	A central body, such as an information commission(er) or government department, is given overall responsibility for promoting the right to information.	2	2	29,32
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.	2	2	32(4),(6)
57	A system is in place whereby minimum standards regarding the management of records are set and applied.	2	2	6, 29(5)(c)
58	Public authorities are required to create and update lists or registers of the documents in their possession, and to make these public.	2	1	7(1)(i)
59	Training programmes for officials are required to be put in place.	2	1	32(3)
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.	2	2	30
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.	2	2	26(7),32(5)
	TOTAL	**16**	**14**	