



Indonesia
How Requesters Can Use the Right
to Information

Participants' Manual

September 2011

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The Participant's Manual for the Indonesian training course *How Requesters Can Use the Right to Information* has been developed by the Centre for Law and Democracy, Canada, in cooperation with the Alliance of Independent Journalists (AJI), Indonesia.

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INTRODUCTION

Indonesia adopted a right to information law, in the form of the Public Information Disclosure Act, Act No. 14 of 2008, on 30 April 2008, and the law came into force two years later in May 2010. The Act is a relatively good one, which grants Indonesians the right to access information held by public authorities. Despite the two-year timeframe given for preparing for implementation of the law – which includes setting up the system of information commissions and having public authorities put in place internal implementation systems – relatively little had been done in this regard by May 2010. Since that time, however, more priority has been given to putting in place implementation measures.

Due in part to this, and due in part to other factors, the volume of requests for information from the media and civil society groups remains relatively low in Indonesia. Experience in other countries has demonstrated that without strong demand for information, successful implementation of right to information laws is unlikely.

To help address this problem, the Centre for Law and Democracy, a Canadian-based international human rights organisation (see www.law-democracy.org) is undertaking a project to promote better implementation of the Indonesian right to information law. A key objective of this project is to stimulate greater demand for information. The development and delivery of this training manual and training courses is an important part of this process. The idea is to empower local civil society groups to understand the key concepts underlying the right to information and to be able to use the Indonesian Act to obtain access to information.

The project also includes a focus on the supply side of information, working with various public authorities, as well as the Indonesian Information Commission to foster better supply-side practices. Finally, the project includes a focus on what might be considered to be the flipside of openness, trying to ensure that the secrecy law, which the Government of Indonesia has made into a legislative priority, is as consistent as possible with international standards.

CLD, working with its local partner on this training, the Alliance of Independent Journalists (AJI), Indonesia (see <http://ajiindonesia.org>), is using this manual to deliver initial training programmes in three different places in Indonesia, namely Jakarta, Surabaya and Lampung. Participants in these training sessions will use what they have learned to undertake a process of making requests for information. Throughout this process, CLD and AJI will provide support to these organisations, with a view to establishing a stronger track record of demand for information in the country.

This Participants' Manual is primarily designed to be used as a resource for training courses for NGOs, journalists and others. However, it may also be used, in conjunction with the accompanying exercises, as a self-study course and reference tool. In addition to the information provided directly in the Manual, there are also references to additional reading and support material.

This Manual is divided into eight sessions, each one corresponding to a session in the training course. The course starts with an introductory session, where participants get

to know each other, and the goals and expectations of the course are introduced. The first session focuses on defining the right to information, outlining its main characteristics and discussing why it is important. The second session looks at international standards regarding the right to information, and how these standards are reflected in better practice right to information laws.

The third and fourth sessions – Proactive Disclosure and Making Requests – provide an overview of the two main systems for providing access to information under both international law and the Indonesian law. They review in practical terms how these systems work and how civil society and others may take advantage of them.

The fifth session addresses the all-important question of restrictions on the right to information in the form of exceptions. It describes international standards in this area, as well as the specific rules under the Indonesian law.

The sixth session focuses on appeals against refusals to provide access and other actions by public authorities that breach the right to information. It again provides practical advice to civil society and others on international standards in this area, as well as how to use the systems provided for in the Indonesian law.

The seventh session looks at a number of problems that requesters may face, based on experience in countries around the world, such as refusals by public authorities to accept requests, silence from public authorities in the face of a request (mute refusals), and responses from public authorities that do not comply with the rules. It provides practical advice for trying to avoid these problems and for dealing with them when they do occur.

The eighth session goes beyond the systems of access under the law and addresses the important question of how to use the media to further openness on the part of government. It focuses on both using the media to bolster the chances of success when making requests, and how to use the media to create the greatest impact once information is obtained through a request.

The course ends with small group discussions among participants, supported by experts, to help the former develop a sound strategy for their requests for information. This will focus on ensuring that the requests fall within the scope of the Indonesian law, and that they fit well with the overall strategy and focus of each participating organisation.

Agenda: Training Course on How Requesters Can Use the Right to Information

DAY 1

- 0830 – 0900: Registration
- 0900 – 1000: Introductions and Discussion on Purpose of Course
- 1000 – 1115: Session 1: What is RTI and Why is it Important
- 1115 – 1130: Tea/Coffee Break
- 1130 – 1245: Session 2: Overview of the Legal Framework for RTI
- 1245 – 1345: Lunch
- 1345 – 1515: Session 3: Proactive Disclosure
- 1515 – 1530: Tea/Coffee Break
- 1530 – 1700: Session 4: Making Requests

DAY 2

- 0900 – 1030: Session 5: Exceptions
- 1030 – 1045: Tea/Coffee Break
- 1045 – 1200: Session 6: Appeals
- 1200 – 1300: Lunch
- 1300 – 1415: Session 7: Following up on Requests
- 1415 – 1430: Tea/Coffee Break
- 1430 – 1545: Session 8: Partnering with the Media
- 1545 – 1645: Session 9: Working Discussion on Proposed Requests
- 1645 – 1700: Comments and Closing Remarks

Session 1: Introduction to the Right to Information: What is it and Why is it Important

Open Discussion: What is the right to information? What are its main characteristics?

1. What is the Right to Information (RTI)

- The core of the right to information is that public authorities do not hold information on their own behalf, but on behalf of the public as a whole and that the public has a right to access this information.
- In practical terms, it means that anyone can make a request to a public authority for information, and that authority is supposed to provide the information.
- Of course there are certain limitations – some information must be kept secret, such as private personal information or sensitive commercial information – but these should be the exception and access should be the rule.
- This means that government must justify any refusal to make information public.
- This is a radical change from the existing or historical situation in most countries where governments operate largely in secret and have treated the information they hold as their own.

2. Status of RTI

- RTI is recognised as a human right under international law: this means that States are legally obliged to give effect to it.
- Globally, nearly 90 countries have adopted RTI laws, up from just 13 in 1990.
 - *Example:* Sweden was the first country to adopt an RTI law, in 1766. By 1990, 13 countries had adopted such laws, all but one Western democracies. Today, countries in all regions of the world – Asia, Africa, North and South America, Europe, the Pacific and the Middle East – have adopted such laws.
- Many inter-governmental organisations, such as the World Bank and Asian Development Bank, have also adopted RTI policies.
 - *Example:* The World Bank first adopted an access to information policy in 1994. A new policy adopted in December 2009 came into force in July 2010 and the World Bank has now been recognised as being one of the most open inter-governmental bodies.
- RTI is not directly protected in the Indonesian constitution, but the constitution does include provisions that could be read as including this right.
- In April 2008, Indonesia adopted Act No. 14 of 2008 on Access to Public Information Act (Keterbukaan Informasi Publik or KIP in Indonesian).

- This law gives Indonesian citizens the right to access information held by public authorities.
- Although the law came into force after two years, on 30 April 2010, implementation remains a challenge. This problem is not unique to Indonesia, and many countries have experienced problems with successful implementation of right to information legislation.

3. Why RTI is Important

Open Discussion: What are the benefits of the right to information? Why is it important in a democracy? Why is it important in Indonesia?

Some of the key reasons why RTI is important are as follows:

1. Corruption

- The right to information is a key tool in combating corruption and wrongdoing in government. Investigative journalists and watchdog NGOs can use the right to access information to expose wrongdoing and help root it out. As U.S. Supreme Court Justice Louis Brandeis famously noted: “A little sunlight is the best disinfectant.”

Example: One feature of the Ugandan education system, at least in the 1990s, was significant capital transfers to schools via local authorities. A public expenditure tracking survey (PETS) in the mid-1990s revealed that 80% of these funds never reached the schools. One of the actions taken by the central government to address this was to publish data in local newspapers regarding the monthly capital transfers that had been made to local governments. This meant that both officials at the schools and parents of students could access information about the (intended) size of the transfers. A few years after the programme had been implemented, the rate of capture had dropped to 20%.

2. Democracy and Participation

- Information is essential to democracy at number of levels. Fundamentally, democracy is about the ability of individuals to participate effectively in decision-making that affects them. Democratic societies have a wide range of participatory mechanisms, ranging from regular elections to citizen oversight bodies, for example of the public education and health services, to mechanisms for commenting on draft policies or laws. Effective participation at all of these levels depends, in fairly obvious ways, on access to information. Voting is not simply a technical function. For elections to fulfil their proper function – described under international law as ensuing that “[t]he will of the people shall be the basis of the authority of government” – the electorate must have access to information. The same is true of participation at all levels. It is not possible, for example, to provide useful input to a policy process without access to the policy itself, as well as the background information policy-makers have relied upon to develop the policy.

Example: Slovak law requires companies that engage in the harvesting of trees in forests to prepare a forest management plan, which must be approved by the Ministry of Agriculture. Historically, these plans were classified documents. A local NGO, the Vlk (Wolf) Forest Protection Movement, eventually managed to gain access to these plans, under the RTI law which had been adopted recently. Using information in the plans, Vlk managed to campaign successfully for larger areas of forest to be protected as nature reserves. Significantly, in 2005, amendments were introduced to forestry legislation to ensure that the information and background material used in developing forest management plans were made public. The new amendments also set a precedent for public participation in the development of forest management plans by allowing representatives of NGOs to be present at official meetings where the plans were discussed.

3. Accountability

➤ Democracy is also about accountability and good governance. The public have a right to scrutinise the actions of their leaders and to engage in full and open debate about those actions. They must be able to assess the performance of the government and this depends on access to information about the state of the economy, social systems and other matters of public concern. One of the most effective ways of addressing poor governance, particularly over time, is through open, informed debate.

4. Dignity and Personal Goals

➤ Commentators often focus on the more political aspects of the right to information but it also serves a number of other important social goals. The right to access one's personal information, for example, is an aspect of one's basic human dignity but it can also be central to effective personal decision-making. Access to medical records, for example, often denied in the absence of a legal right, can help individuals make decisions about treatment, financial planning and so on.

Example: In India, individuals have gone beyond using the RTI law simply to obtain information. Implementation of the RTI law is more robust than implementation of other rules (e.g. regarding the processing of applications for licenses or permissions, or the provision of benefits). As a result, individuals often use requests for information to resolve other sorts of service delivery problems (such as delay, obstruction or failure to apply the rules).

5. Good Business

➤ An aspect of the right to information that is often neglected is the use of this right to facilitate effective business practices. Commercial users are, in many countries, one of the most significant user groups. Public authorities hold a vast amount of information of all kinds, much of which relates to economic matters and which can be very useful for businesses. This is an important benefit of right to information legislation, and helps

answer the concerns of some governments about the cost of implementing such legislation.

Example: Openness is a key tool in ensuring that tendering processes are fair and free of corruption. Businesses that lose tenders may ask for key information about the bidding, such as the points awarded to the successful bid under each category and the overall value of the tender award. The World Bank now requires all successful bidders to provide this information on their websites.

6. Respect for Human Rights

➤ Human rights violations, like corruption, flourish in a climate of secrecy. Some of the worst human rights violations, such as torture, are almost by definition something that takes place behind closed doors. An open approach to government – which would include, for example, publication of investigations into allegations of human rights violations – is far more likely to result in respect for human rights.

7. Sound Development

➤ Openness promotes greater participation and hence greater ownership over development initiatives. This can help ensure sound development decisions and also good implementation of projects. It also helps ensure that development efforts reach the intended targets.

Example: In South Africa, local groups have used the RTI law to obtain water delivery benefits that they were due. In one example, villagers in Emkhandlwini had no water, whereas neighbouring villages were receiving water deliveries from municipal tankers. With the help of a local NGO, the villagers filed an RTI request for minutes from the council meetings at which water programmes had been discussed and agreed, for the council's Integrated Development Plan (IDP) and for the IDP budget. This information showed that there were plans to deliver water throughout the region, but that somehow Emkhandlwini had been left out. Armed with this information, the villagers were able successfully to reassert their claims for water.

Open Discussion: Can you think of some examples in Indonesia where access to information has provided these benefits? Are there other benefits that have been derived from access?

4. Basic Principles Governing RTI

Broadly speaking, six main principles underlie right to information laws:

1. Right of Access

➤ A right to information law should establish a presumption in favour of disclosure. In most cases, this will reverse the pre-existing practice of secrecy which hitherto prevailed in the public sector. This presumption should apply to all public authorities, defined broadly. This should include

all three branches of government, all bodies which are owned or controlled by government, including State owned enterprises, and bodies which are funded by the State or undertake public functions. It should also apply to all of the information they hold. As an example of the breadth of definition of information, a Swedish request for information related to the 'cookies' on the Swedish Prime Minister's computer. The request was granted, and the information disclosed revealed that there were in fact no cookies on his computer; in other words, at that time, the Swedish Prime Minister did not use the Internet. Finally, the right should apply to everyone, not just citizens. This should include legal persons (such as corporations).

2. Proactive Disclosure

➤ The law should place an obligation on public authorities to publish, on an automatic or proactive basis, a range of information of key public importance. Although the right to request and receive information is at the heart of an access to information law, automatic disclosure is also a very important means of ensuring that information is provided to the public. It helps ensure that all citizens, including the vast majority of citizens who will never make an access to information request, can access a minimum platform of information about public authorities. Automatic disclosure has received ever greater attention in modern right to information laws, and many include very extensive proactive publication obligations for public authorities.

3. Requesting Procedures

➤ The law should set out clear procedures for accessing information. Although this is rather mundane, it is at the same time fundamental to the successful functioning of a right to information regime. The law should, for example, make it easy to file a request (it should be possible to file one electronically or orally and, where necessary, requesters should be given assistance in filing their requests), strict timelines should be established for responding to requests, notice should be required to be given of any refusal to grant access to information and at least the outlines of the fee structure for successful requests should be set out in law.

4. Exceptions

➤ Fourth, and very importantly, the law should establish clearly those cases in which access to information may be denied, the so-called regime of exceptions. On the one hand, it is obviously important that the law protect legitimate secrecy interests. On the other hand, this has proven to be the Achilles heel of many access to information laws. The UK Freedom of Information Act 2000, for example, is in many ways a very progressive piece of legislation. At the same time, it has a vastly overbroad regime of exceptions, which fundamentally undermines the whole access regime.

➤ As with all restrictions on freedom of expression, exceptions to the right to information must meet a strict three-part test. First, the law must set out clearly the legitimate interests which might override the right of access. These should specify interests rather than categories. For example, it should refer to privacy rather than personal records, the latter being a category but

the former an interest which needs to be protected (another example would be national security rather than the armed forces). Second, access should be denied only where disclosure would pose a risk of harm to a legitimate interest. The harm should be as specific as possible. For example, rather than harm to internal decision-making, which is too vague for officials to apply properly, even if they are acting in good faith, the law should refer to impeding the free and frank provision of advice, a clear standard of harm. Finally, the law should provide for a public interest override in cases where the overall public interest would be served by disclosure, even though it might harm a legitimate interest. This might be the case, for example, where a document relating to national security disclosed evidence of corruption. In the long term, the benefit to society of disclosing this information would normally outweigh any short-term harm to national security. Under international law, the public interest override only works one way – to facilitate greater openness and not as a ground for secrecy – although in the Indonesian law it can work both ways.

➤ The relationship of right to information legislation with secrecy legislation poses a special problem. If the right to information law contains a comprehensive statement of the reasons for secrecy, it should not be necessary to extend these exceptions with secrecy legislation. This, along with the fact that secrecy laws are normally not drafted with open government in mind, and given the plethora of secrecy provisions that are often found scattered among various national laws, it is quite important that the right to information law should, in case of conflict, override secrecy legislation. Even more important is a rule specifying that administrative classification of documents cannot defeat the access law. In this context, it is worth noting that classification is often simply a label given by the bureaucrat who happens to have created a document, or his or her superior, and that this cannot possibly justify overriding the right to information.

5. Appeals

➤ A fifth key element in a right to information regime is the right to appeal any refusal of access to an independent body. Ultimately, of course, one can normally appeal to the courts but experience has shown that an independent administrative body is essential to providing requesters with an accessible, rapid and low-cost appeal. The role of this body is particularly important in terms of interpreting exceptions to the right of access, given the complexity and sensitivity of applying the regime of exceptions.

6. Promotional Measures

➤ A number of promotional measures are needed if implementation of right to information laws is to succeed:

- a. Public authorities should be required to appoint dedicated officials (information officers) or units with a responsibility for ensuring that they comply with their information disclosure obligations.
- b. A central body, such as an information commission(er) or government department, should be given overall responsibility for promoting the right to information.

- c. Public awareness-raising efforts (e.g. producing a guide for the public or introducing RTI awareness into schools) should be required to be undertaken by law.
- d. A system should be put in place whereby minimum standards regarding the management of records are set and applied, so that officials can respond to requests but also so that they can execute their duties properly.
- e. Public authorities should be required to create and update lists or registers of the documents in their possession, and to make these public.
- f. Training programmes for officials should be required to be put in place.
- g. Public authorities should be required to put in place tracking systems for requests for information and to report annually on the actions they have taken to implement their disclosure obligations. This should include statistics on requests received and how they were dealt with.
- h. A central body, such as an information commission(er) or government department, should be under an obligation to present a consolidated report on implementation of the law to the legislature.
- i. There should be sanctions for those who wilfully act to undermine the right to information, including through the unauthorised destruction of information.
- j. Officials should be granted legal immunity for acts undertaken in good faith to implement the RTI Law, including the disclosure of information.

Exercise A: Either in Groups or as a Discussion

Key Points:

1. The right to access information held by public authorities is a fundamental human right, protected under international law.
2. Some 90 countries worldwide, including Indonesia, have adopted RTI laws to give effect to this right.
3. The right is important for a number of reasons, including as an underpinning of democratic participation, to control corruption, to hold government to account, and to foster sound development.
4. The right has a number of key attributes, including that it establishes a presumption in favour of access to information, that access should be delivered both through proactive disclosure and the right to make requests for information, that exceptions to the right should be clear and narrowly drawn, that there should be a right to appeal against any refusals to provide access, and that public authorities should undertake a number of promotional measures to implement the law.

Further Resources

1. FOIANet, a global network of groups working on RTI:
<http://www.foiadvocates.net/> (links to individual groups available at:
<http://www.foiadvocates.net/en/members>)
2. Comparative legal survey on RTI laws in different countries:
http://portal.unesco.org/ci/en/ev.php-URL_ID=26159&URL_DO=DO_TOPIC&URL_SECTION=201.html
3. Website with news on RTI issues and developments: <http://freedominfo.org/>
4. Website with RTI laws and legal information: <http://right2info.org/>

Session 2: The Legal Framework for the Right to Information

Open Discussion: Do you think of the right to information as a human right? What difference does this make?

1. International Guarantees for RTI

- International law comes from States; this is both a strength and a weakness.
- International law mostly binds States, although it can also impose obligations on States to take action to prevent actions by private actors which breach rights.
- International law also imposes positive obligations on States to create an environment which fosters a free flow of information and ideas in society: the right to information is one of these positive obligations.
- Guarantees of the right to information are based on international guarantees of the right to freedom of expression: this includes the right to seek and receive, as well as to impart, information and ideas.
- Prior to 1999, there was very little recognition of RTI in international law but authoritative bodies started to make some clear statements about the right starting then:
 - *Example:* In 1999, the three special mechanisms on freedom of expression at the UN, OAS and OSCE stated:

“Implicit in freedom of expression is the public’s right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people’s participation in government would remain fragmented.”
 - *Example:* In 2004 the three special mechanisms stated:

“The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions.”
- These are, what are commonly referred to as soft law statements. The first binding international decision came in a very significant case decided in September 2006 by the Inter-American Court of Human Rights – *Claude Reyes et al. v. Chile* – which held very clearly that access to public information was a fundamental right. The Court stated:

“Article 13 of the Convention protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention. Consequently, this article protects the right of the individual to receive such information and the positive obligation of the State to provide it... The information should be provided without the need to prove direct interest or personal involvement in order to obtain it.”

- The Court recognised that the right to information, like all aspects of the right to freedom of expression, may be restricted. However, any restriction must be set out clearly in law and serve one of the limited set of legitimate aims recognised in Article 13 of the Inter-American Convention (which are identical to those recognised under Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR)). Importantly, the Court also held the following in relation to any restrictions on the right to information:
 - “Lastly, the restrictions imposed must be necessary in a democratic society; consequently, they must be intended to satisfy a compelling public interest. If there are various options to achieve this objective, that which least restricts the right protected must be selected. In other words, the restriction must be proportionate to the interest that justifies it and must be appropriate for accomplishing this legitimate purpose, interfering as little as possible with the effective exercise of the right.”
- Since that time, both the European Court of Human Rights and the UN Human Rights Committee have recognised the right. In a new General Comment on Article 19 of the ICCPR, the Committee has stated:
 - “Article 19, paragraph 2 embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production.”

2. Constitutional Guarantees for RTI

- As noted in the previous section, the Constitution of Indonesia does not include a direct guarantee of the right to information. However, Article 28F states:
 - Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by employing all available types of channels.

Open Discussion: Why is it important to have a right to information in the constitution? Does the current Article 28F protect the right to information? Do you think the Indonesian Constitution should be amended to provide for a more direct guarantee of this right (or do you think the country has other priorities)?

Exercise B: Either in Groups or as a Discussion

3. Legislation: Outline of Key Aspects

- In the previous session we outlined the key principles underpinning the right to information. Here, we outline how most right to information laws look in practice.
- The key elements in good RTI legislation are as follows:
 1. The main guarantee of the right: this should be set out clearly and be formulated as a right, as opposed to simply a procedure.

Example: The Indian Right to Information Act states: “Subject to the provisions of this Act, all citizens shall have the right to information.” This is a rights-based statement.

Example: The South African Act states: “A requester must be given access to a record of a public body” if that requester complies with the procedural rules. This is more of a procedural rights statement.

Example: Article 4(1) of the Indonesian law states: “Every person has the right to obtain Public Information pursuant to the provisions of this Law.”

2. It is useful for the law to set out clear purposes so as to guide its interpretation.

Examples: Both the Indian and South African laws include clear statements of purpose/objective.

Example: Articles 2 and 3 of the Indonesian law set out the purposes and objectives of the law.

3. The law also needs to define key terms, such as the type of information to which it applies and the public authorities to which it applies. These definitions can either be in the main provision on definitions (this is how it is done in the Indonesia law), or in separate provisions in the main body of the law.

4. There are two main ways of accessing information pursuant to a right to information law:

- a. Proactive publication, whereby the law requires public authorities to publish information even though no one has specifically made a request for it. This should apply to information of key public importance and a specific list of this information should be provided in the law (see Chapter V, Articles 9-16 of the Indonesian law).

- b. Information provided upon request: the law should set out clear procedures for making requests, such as how to make such a request (e.g. in written form, by email, orally), what information needs to be provided, how long the public authority has to respond, what fees it may charge and so on (see Article 22 of the Indonesian law).

5. The law should set out clearly the grounds upon which a request for information may be refused, generally known as the exceptions (see Articles 17-20 of the Indonesian law). These should be based on the idea

of harm (i.e. it is only where release of the information will harm an important interest that this may be refused) and be subject to a public interest override (so that information shall be released in the overall public interest, even if this may cause harm).

6. The law should then provide for a system of appeals where a request has been refused. In many cases – including in Indonesia – this involves setting up a special administrative body – such as an information commission – to hear appeals from refusals to provide information or other breaches of the law (e.g. taking too long to provide information or charging too much for it) (see Articles 35-50 of the Indonesian law).
7. The law should establish certain protections for officials who disclose information pursuant to the law in good faith, as well as sanctions for those who wilfully obstruct access to information. Often these provisions are found at the end of the law (see Articles 51-57 of the Indonesian law).
8. Finally, the law should impose some obligations on public authorities to undertake positive measures to ensure proper implementation of the law, such as reporting on their implementation activities on an annual basis, training officials, engaging in public awareness raising and so on. Unfortunately, the Indonesian law is rather weak in this area.

Open Discussion: Do you think that the approach set out above makes sense for Indonesia? In what ways might it need to be changed to adapt to local circumstances?

4. Regulations: Relevance

- Regulations do not need to be adopted by the parliament as a whole. While it is important for the main rules on RTI to be in primary legislation, regulations are useful for two main things:
 1. Spelling out in more detail certain matters which are found in the primary legislation. This might apply, for example, to the detailed procedures for lodging a request for information, which may be unnecessarily long to include in the primary legislation. Regulations may also further clarify issues such as the processing of appeals, the application of exceptions and so on.
 2. Setting rules which may change over time, for example the fees which may be charged for accessing information. It does not make sense to go back to the legislature every time these need to be changed.
- In Indonesia, the Information Commission has the power to adopt certain type of regulations, for example specifying in more detail the procedures for requesting information (see Article 22(9) of the law).

- In some countries, governments have obstructed the implementation of RTI laws by failing or refusing to adopt regulations. This should not happen. Even if the rules are not entirely clear in some areas, implementation should continue regardless of whether or not regulations have been adopted.

5. Main Obligations of Public Authorities

- The rules in the legislation are not quite the same thing as what public authorities need to do to implement the law.
- The main actions that public authorities need to take under a strong RTI law are as follows:
 1. Put in place systems for ensuring that they meet their proactive publication obligations. This may include the development of their websites so as to facilitate such publication.
 2. Appoint dedicated information officers.
 3. Establish the basic rules for lodging and receiving requests (known as SOPs in Indonesia).
 4. Put in place internal systems for processing requests.
 5. Put in place systems for improving their record keeping, ideally designed to foster improvements over time.
 6. Ensure that their employees receive the necessary training on the right to information. This should, in particular, focus on processing requests and applying exceptions.
 7. Undertake public outreach efforts so that the public understand their rights under the law.
 8. Report annually on the measures they have taken to implement the law, including through processing requests.
 9. Review classification of information to ensure that this is in line with the RTI law.
 10. Punish officials who obstruct implementation of the law and provide internal incentives for good implementation.

Open Discussion: Do you think that this is realistic for public authorities in Indonesia? Which of the above do you think are more important or are particular priorities? Do you know if the public authorities that you interact with have appointed information officers (Information Management and Documentation Officers pursuant to Article 13 of the Indonesian Law)?

Key Points:

1. The right to access information held by public authorities is a fundamental human right, protected as part of the right to freedom of expression under international law.
2. The Indonesian Constitution does not provide for direct protection for this right, but may be considered to provide indirect protection.

3. The structure of better practice RTI legislation is close to the guiding principles for this right, providing for two main ways to access information: through proactive disclosure and through processing of requests.
4. Regulations are an important way of adding detail to the legislation and of addressing issues that may be expected to change over time, such as costs.
5. Public authorities should be under a number of positive obligations, including to establish internal systems for proactive disclosure and processing requests, appointing dedicated information officers, providing training to their staff, ensuring their records are well-maintained and reporting on implementation.

Further Resources

1. *The Public's Right to Know: Principles on Freedom of Information Legislation* (London: ARTICLE 19, 1999). Available at: <http://www.article19.org/pdfs/standards/righttoknow.pdf>
2. *RTI Legislation Rating Methodology* (Centre for Law and Democracy and Access Info Europe, 2010). Available at: [http://www.law-democracy.org/?page_id\(8\)](http://www.law-democracy.org/?page_id(8))
3. Recommendation No. R(2002)2 of the Committee of Ministers of the Council of Europe to member states on access to official documents, adopted 21 February 2002: [http://www.coe.int/T/E/Human_rights/rec\(2002\)2_eng.pdf](http://www.coe.int/T/E/Human_rights/rec(2002)2_eng.pdf)
4. Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression of 6 December 2004. Available at: <http://www.unhchr.ch/hurricane/hurricane.nsf/0/9A56F80984C8BD5EC1256F6B005C47F0?opendocument>
5. *Transparency Charter for International Financial Institutions: Claiming our Right to Know* (Cape Town: Global Transparency Initiative, 2006). Available at: http://www.ifitransparency.org/doc/charter_en.pdf

Session 3: Providing Public Information Proactively

Open Discussion: Do you think public authorities should be legally obliged to publish certain types of information or that they should be free to do this at their own discretion? What kinds of information do you think are most important for them to publish proactively?

In this session, we refer to the proactive publication obligations of public authorities based on the Public Information Disclosure Act no 14/2008 and Information Commission Regulation no 1/2010 on Public Information Service Standards. We also discuss international standards in this area.

1. International Standards

➤ International standards place a clear obligation on public authorities to publish information proactively.

➤ In his 2000 Annual Report, the UN Special Rapporteur on Freedom of Opinion and Expression stated:

Freedom of information implies that public bodies publish and disseminate widely documents of significant public interest, for example, operational information about how the public body functions and the content of any decision or policy affecting the public.

➤ The *Declaration of Principles on Freedom of Expression in Africa* supports this, stating: “Public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest”.

➤ Principle XI of the Council of Europe’s (COE) Recommendation of the Committee of Ministers to Member States on access to official documents also calls on every public authority, “at its own initiative and where appropriate”, to disseminate information with a view to promoting transparency of public administration, administrative efficiency and informed public participation.

➤ The COE Recommendation also calls on public authorities to, “as far as possible, make available information on the matters or activities for which they are responsible, for example by drawing up lists or registers of the documents they hold”.

➤ Some of the key attributes of this obligation under international law are:

- To ensure that information of significant public interest is published.
- To ensure that this information reaches those who need it (e.g. if a project affects local people, it is not enough to publish information about it on the Internet, it should also be posted on local notice boards).

- To update this information regularly, as necessary.
- To ensure that this information is understandable for local people (e.g. that financial information is not presented in excessively technical terms).
- To increase the scope of information subject to proactive disclosure over time.

Open Discussion: Does the government publish the kinds of information you identified above as being important? Does it publish this only on the Internet or also in other ways? Is the information updated regularly?

2. Key Obligations of Public Authorities

- Under the Indonesia right to information law, public authorities have the following key obligations:
 - a. to make public information available in accordance with the Law;
 - b. to build and develop an information and documentation system so that public information is well and efficiently managed;
 - c. to issue regulations on standard operating procedures (SOPs) for the publication of public information in accordance with the Law;
 - d. to issue and update periodically the list of public information which is available;
 - e. to appoint an Information Management and Documentation Officer to implement his/her assigned roles, responsibilities and authorities;
 - f. to appoint a functional officer and/or information officer to assist the Information Management and Documentation Officer in carrying out his/her roles, responsibilities and authorities according to the need for this and budget availability;
 - g. to provide means and facilities for dissemination of public information, including through a notice board and information outlet in the office of each public authority, and on its official website;
 - h. to allocate sufficient budget to carry out these services;
 - i. to produce and publish a report on the public information services it has provided and to submit a copy of this report to the Information Commission; and
 - j. to monitor and evaluate its public information services.

3. Responsibilities and Powers of Information Management and Documentation Officers

- According to the law, Information Management and Documentation Officers are responsible for keeping, documenting, providing and/or delivering services relating to public information.
- Specifically, the Information Management and Documentation Officers are responsible for:

- (1) Coordinating the keeping and documentation of all public information.
- (2) Coordinating the collection of information from all unit/task forces of the public authority for purposes of proactive publication, including:
 - a. information to be made available and announced on a periodic basis; and
 - b. information to be made available at all times.
- (3) Coordinating the filing of the public information which is available in all unit/task forces of the public authority, based on updates from the officer-in-charge of these units/task forces, and at least once a month. This should be done according to archive rules and regulations.
- (4) Coordinating the provision and delivery of all services relating to public information for the public authority, including via proactive disclosure and via requests.
- (5) Specifically, coordinating the following tasks:
 - a. announcement of public information through various media so that it effectively reaches all stakeholders; and
 - b. delivery of public information in the Indonesian language, in ways that facilitate understanding and, if necessary, in another language used by a local community.
- (6) The Information Management and Documentation Officer is also authorised to do the following:
 - a. coordinate all units/task forces of the public authority regarding the delivery of public information services;
 - b. perform the consequential harm test in to determine whether or not to release information to the public
 - c. refuse requests for exempted information and provide notice of such refusals in writing with reasons and information concerning the right and procedures to challenge such refusal; and
 - d. if applicable, to appoint a functional officer and/or information officer within his/her scope of authority, including to produce, maintain and/or update the list of public information at least once a month.

4. Information to be Made Available on a Periodic Basis

➤ On a periodic basis, public authorities are obliged to publish the following information:

- (1) A profile of the public authority which includes:

- (a) the complete address, scope of activity, aims and objectives, roles and functions of the public authority and any subsidiary units;
- (b) the organisational structure, general overview of all task forces, and brief profile of key officers; and
- (c) a wealth compliance report of public officials that has been checked, verified and submitted to the Anti-Corruption Commission.

(2) A summary of the programmes and/or activities implemented by the public authority, which includes:

- (a) programme name and activity;
- (b) person-in-charge of the programmes and the activity implementing officer, and phone number and/or address;
- (c) the target and/or achievement of the programme/activity;
- (d) a schedule of the outputs of the programme/activity;
- (e) the budget of programme/activity;
- (f) the list of priorities of the public authority;
- (g) information on recruitment of employees and/or officials; and
- (h) information on recruitment of participants to the public education activities of the public authority.

(3) A summary of completed and ongoing activities and achieved results of the public authority's programmes.

(4) A summary of the public authority's financial report which includes:

- (a) budget plan and budget realisation report;
- (b) balance sheet;
- (c) cash flow and financial report note according to accounting standards; and
- (d) lists of assets and investments.

(5) A summary of its activities in terms of access to public information which includes:

- (a) the number of public information requests received;
- (b) the time needed to respond to these requests;
- (c) the number of requests for which partial or full access was provided and the number of requests refused; and
- (d) the reasons for refusals of requests.

(6) All of the regulations, decisions and/or policies issued by the public authority which are legally binding and/or generate public impact, which includes:

- (a) a list of all regulations, decisions and/or policies at the draft stage; and

(b) a list of all regulations, decisions and/or policies which have been enacted or issued.

(7) Information about the right of the public to access public information, the procedures to request such information, and to challenge any refusal of a request, the procedure to settle disputes and the person-in-charge and his/her contact details.

(8) The procedure to complain about an abuse of power or violation by an officer of a public authority or any party authorised by a public authority or contractually bound to a public authority.

(9) Any announcement of the procurement of goods and services.

(10) The procedure for emergency early warning system and evacuation in the public authority's office.

➤ This information must be announced periodically, at least once a year.

5. Information to be Made Available Immediately

➤ Certain information has to be published as soon as it becomes available:

(1) Where a public authority issues permits and/or contractually binds other parties which implement activities.

(2) Information which has the potential to threaten public safety and public order, which includes information about:

(a) natural disasters such as drought, naturally-caused forest fire, plant pest and disease, epidemic, plague, extraordinary events, space-related event or item;

(b) non-natural disaster such as industrial or technological failure, technological impacts, nuclear explosion, environmental pollution and space-related activity;

(c) social disaster such as social unrest, inter-group or inter-community social conflict and terror;

(d) type, prevalence and area of potentially infectious illness;

(e) toxic food consumed by the public; and

(f) plans to disturb a public utility.

➤ Information to be made available immediately should include the following:

(a) the potential danger and/or magnitude of impact of any disaster;

(b) direct notification to parties potentially impacted by such an event, which may include the general public and officers authorized or contractually bound by public authority;

(c) procedure and site for any emergency evacuation;

- (d) how to avoid danger and/or impact;
- (e) how to access assistance from the authority;
- (f) any parties that are obliged to make information which discloses a potential threat to public safety and public order immediately available;
- (g) the procedures for making such information immediately available in times of emergency; and
- (h) the efforts undertaken by the public authority and/or the authority in dealing with the danger and/or impact caused.

➤ Public authorities are obliged to comply with these standards and ensure the compliance of any other parties which are licensed and/or contractually bound to it.

6. Information to be Made Available at All Times

➤ Public authorities are obliged to make the following information available at all times:

- (1) A list of public information they hold which includes
 - (a) number of documents or records;
 - (b) summary of the content of the record;
 - (c) the officer or unit/task force responsible for the record;
 - (d) the person-in-charge of making the record available;
 - (e) the time and place of the production of the record;
 - (f) the format in which the record is available; and
 - (g) the length of time the record is to be maintained.

- (2) Information on the regulations, decisions and/or policies of the public authority which includes:
 - (a) supporting documents used as the basis of the issuance of such regulations, decisions or policies such as academic papers, studies or analysis;
 - (b) feedback on these regulations, decisions or policies from other parties;
 - (c) minutes of meetings documenting the production of these regulations, decisions or policies;
 - (d) drafts of such regulations, decisions or policies;
 - (e) the stage of drafting of such regulations, decisions or policies;
 - (f) the final regulations, decisions or policies when they are issued.

- (3) Information on their organisation, administration, personnel and finance matters, which includes:
 - (a) organisational, administrative, personnel and finance management guidelines;

- (b) a profile of the organisation's managers and employees which includes their name, career history, education background, awards and heavy sanctions received;
 - (c) the overall budget of the public authority and specific budget information relating to each technical implementation unit, along with its financial reports; and
 - (d) statistical data produced by the public authority.
- (4) Letters of agreement with third parties and supporting documentation.
 - (5) Correspondence of the head or officers of a public authority relating to the implementation of its main tasks and functions.
 - (6) License requirements, licenses issued, license supporting documents and compliance reports on licenses granted.
 - (7) Treasury or inventory data.
 - (8) Strategic plan and work plan.
 - (9) The work agenda of head of work units.
 - (10) Information relating to public information services including means and facilities relating to these services, their current condition, human resources in this area and their qualifications, budget allocations and any financial reports;
 - (11) Number, type and general description of any violations found in internal monitoring, and follow-up reports.
 - (12) The number, type and general description of any violations reported by the public, and follow-up reports.
 - (13) A list and results of research undertaken.
 - (14) Any other information made accessible to the public in relation to the mechanism for the settlement of complaints and/or disputes.
 - (15) The standards used by public authorities and those they authorise to issue permits to and/or contractually bind other parties which implement activities and/or have information which potentially threatens public safety and public order.
 - (16) Information and policies issued by public officials in meetings which are open to the public.

➤ The law also places specific proactive publication obligations on a number of bodies including State-owned corporations, political parties and NGOs (see Articles 14-16 of the Law).

Key Points:

1. Public authorities in Indonesia are under stringent obligations to publish information on a proactive basis.
2. This obligation is well established both in the Public Information Disclosure Act and under international law.
3. Information Management and Documentation Officers play a key role in ensuring that these obligations are met.
4. There are three key sets of proactive publication obligations for public authorities in Indonesia: information which must be published periodically; information which must be published as soon as it becomes available; and information which must be available at all times.
5. Taken together, the rules require public authorities to disclose a significant amount of information.

Session 4: Making Requests for Information

- The Access to Public Information Law requires all information held by public authorities to be made accessible to the public, apart from exempt information.
- This chapter outlines the procedures for making requests for information.

1. Who Can Request

- Any Indonesian citizen and/or Indonesian legal entity can make a request. This includes the right to
 - access public information and attend meetings which are open to the public;
 - obtain a copy of public information or have access to it in other ways, according to the established procedures; and
 - disseminate public information, as long as this does not breach another law.

2. How to Request Information

- Requests may be made in writing or orally.
- To make a written request, an individual must:
 - a. fill in an application form; and
 - b. pay the fee for copy and/or delivery of information if necessary.
- For oral requests, the Information Management and Documentation Officer fills in the application form.
- The application form should include the following information
 - a. name;
 - b. address;
 - c. phone number or e-mail;
 - d. a description of the information requested;
 - e. the reason the information is being requested; and
 - f. how the requester would like to receive the information.
- The Information Management and Documentation Officer should register the request, return a copy of the registered application form to the requester and provide the requester with a receipt.

- For electronic requests via email or where requests are provided in person (in a direct visit), the Information Management and Documentation Officer provides the receipt directly or in a reply by email.
- For requests via mail or fax or any other way in which a registration number cannot be given directly, the Information Management and Documentation Officer should deliver the receipt to the requester in the same manner as the request was lodged.
- The Information Management and Documentation Officer is obliged to keep a copy of registered applications for information.
- The receipt for a request should include:
 - a. the registration number;
 - b. the registration date;
 - c. the name, address and contact number of the requester; and
 - d. the information requested.
- Where an individual is having problems making a request for information, the Information Management and Documentation Officer is obliged to provide assistance, for example to fill out the application form. Such assistance should be provided, at the latest, within three working days of the filing of the request.

3. Response to Requests

- The Information Management and Documentation Officer is obliged to respond to requests in writing within 10 days of receiving them, which response should include:
 - a. an indication of whether the information is available;
 - b. the public authority where the information is available, if it is not available at that public authority; and
 - c. the decision whether or not to provide access to the information.
- The Information Management and Documentation Officer may need extra time to decide on a request for information and/or to make decision on whether the information is exempt or accessible. In this case, the Information Management and Documentation Officer should indicate, within the original time period, the reasons for the proposed delay and how long it will be. The maximum extension is seven working days, which may not be renewed.
- If the information is to be provided, the response should also indicate:
 - a. the format in which access to the information will be provided;
 - b. any fee and the payment method;
 - c. the time within which the information will be made available; and

- d. if only partial access is provided, the reason for redacting (obscuring) information.
- Where a request is refused, the Information Management and Documentation Officer is obliged to provide a Decision Letter on Refusal of Request. Such decision letter includes:
 - a. the registration number of the request;
 - b. the name, address and phone number/email of the requester;
 - c. a description of the information requested;
 - d. the decision to refuse to provide the information;
 - e. the exception relied upon and the reason for applying it;
 - f. information on the procedure to challenge the refusal and the application form for doing so; and
 - g. the harm or consequence anticipated if access to the information were to be provided.

4. Forms of Access to Public Information

- Requesters may specify the form in which they would like to access information.
- Where a requester asks to inspect documents, the Information Management and Documentation Officer is obliged to provide a place to read and/or examine the requested information.
- Where the requester asks for a copy of the information, the Information Management and Documentation Officer is obliged to provide a copy.

5. Fees

- Public authorities may charge a fee for copying information but this should be affordable.
- The fee may only include:
 - a. the cost of copying the information;
 - b. the cost of delivering the information to the requester; and
 - c. any fee to access information available from a third party.
- The fee shall be set out in the decision letter issued by the head of the public authority according to the law, and after obtaining feedback from the public.
- Public authorities shall determine the method of payment of these fees according to the law; this may include:
 - a. a direct payment to public authority; or

- b. a payment to the official bank account of the public authority.
- Upon payment, the public authority is obliged to deliver a receipt to the requester.
- Public authorities are obliged to announce fees and the procedure to obtain copies in advance.

Key Points:

1. Any Indonesian citizen and Indonesian legal entity can make a request for information.
2. Requests may be made in writing or orally and are required to include only limited information about the requester and the information sought. Requests should be registered and the requester should be provided with the registration number.
3. The Information Management and Documentation Officer should respond to requests within 10 days indicating either how access to the information will be provided or giving reasons for any refusal to provide access.
4. Requesters may stipulate different ways of accessing information, such as inspecting documents or getting copies of them.
5. Fees should be limited mainly to the cost of copying and sending the information to the requester.

Session 5: Dealing with Exceptions

1. International Standards

- The matter of exceptions to the right of access to information is probably the most difficult issue relating to this right.
- The right to access information held by public authorities (the right to information) is part of the general guarantee of freedom of expression under international law (this protects the rights to seek and receive, as well as to impart, information and ideas).
- As such, this is subject to the three-part test for such restrictions, which requires any restrictions to:
 - a. be provided by law;
 - b. protect one of the interests listed under international law; and
 - c. be necessary to protect this interest.
- Any law restricting freedom of expression must have the purpose of protecting one of the aims listed in Article 19(3) of the ICCPR. This list, which is exclusive so that governments may not add to it, lists the following interests:
 - a. the rights or reputations of others;
 - b. national security;
 - c. public order; and
 - d. public health and morals.
- The necessity part of the test has a number of elements:
 - Restrictions should be carefully designed: the government should choose the measures that are most friendly to freedom of expression to achieve its goals.
 - Restrictions should not be **too broad**. They should not affect a wider range of expression than is necessary.
 - Restrictions should not be **disproportionate** in the sense of causing more harm than good.
- In the context of the right to information, this is generally understood as requiring restrictions to meet an analogous three-part test:
 - The restriction must aim to protect one of a limited number of interests set out in the law which conform to the list of protected interests noted above.
 - Information may be withheld only where disclosure would cause harm to one of the protected interests (as opposed to information which merely relates to the interest).

- Information must be disclosed unless the harm to the protected interest outweighs the overall benefits of disclosure (the public interest override). It may be noted that, under international law, the public interest override only works one way: to mandate the disclosure of information where this is in the overall public interest. Under the Indonesian law, the public interest may also serve to render information secret, where this is deemed to be in the overall public interest. This is one area where the Indonesian law fails to meet international standards.
- Principle IV of the Council of Europe's (COE) Recommendation of the Committee of Ministers to Member States on access to official documents, titled "*Possible limitations to access to official documents*", reflects this test and also provides an indication of what sorts of interests might need to be protected by secrecy. It provides as follows:
 1. Member states may limit the right of access to official documents. Limitations should be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:
 - i. national security, defence and international relations;
 - ii. public safety;
 - iii. the prevention, investigation and prosecution of criminal activities;
 - iv. privacy and other legitimate private interests;
 - v. commercial and other economic interests, be they private or public;
 - vi. the equality of parties concerning court proceedings;
 - vii. nature;
 - viii. inspection, control and supervision by public authorities;
 - ix. the economic, monetary and exchange rate policies of the state;
 - x. the confidentiality of deliberations within or between public authorities during the internal preparation of a matter.

2. Underlying Principles for Exceptions in the Indonesian Law

- Public information is open and accessible to the public and exceptions to this are restrictive and limited (Article 2 of the Public Information Disclosure Act).
- Exceptions must be clearly and narrowly defined based on information which is categorised as a secret by law to protect a limited list of interests.
- Exceptions depend on the application of a consequential harm test to assess whether substantial harm will result if the information is made accessible to the public.
- In addition to the consequential harm test, careful consideration must be given to whether the benefit of disclosing the information outweighs the harm (in which case it should be disclosed) or vice versa (in which case it should not be disclosed).
- Public authorities may refuse to provide access to information where it is classified in accordance with the law (exception by procedure).

- They also have the right to refuse access to information as provided for in a law, including the exceptions set out in the Public Information Disclosure Act (exception by substance).
- The general grounds for refusing to provide access to information are listed in Article 6 of the Law as follows:
 - a. information which potentially causes substantial harm to defence or national security;
 - b. information which potentially causes substantial harm to legitimate commercial interests;
 - c. information which potentially causes substantial harm to privacy;
 - d. information which potentially breaches professional secrecy; or
 - e. information which is not yet available or documented.

3. Test for Applying Exceptions

- When considering the applicability of exceptions, rational reasons must be used before access to information is refused.
- The key consideration is whether making the information public poses a risk of substantial harm to an interest which is protected in accordance with Article 17 of the Public Information Disclosure Act.
- The Information Management and Documentation Officer of the public authority is obliged to perform a strict consequential harm test prior to refusing to provide access to information (Article 19 of the Act).
- The Officer must also conduct a public interest assessment to see whether the larger public interest warrants disclosure or withholding of the information.
- Exceptions are temporary and the overall time limit for non-disclosure is to be regulated by a Government Regulation (Article 20).
- The procedure for assessing whether information is exempt is as follows:
 - a. the nature of the request should be clarified;
 - b. information meeting the request should be identified;
 - c. the question of whether there is a ground for refusing to disclose the information (based on either the Public Information Disclosure Act or another law) should be assessed;
 - d. the potential consequence (harm) of disclosing the information should be assessed;
 - e. the implications of disclosing the information should be assessed by reference to consequences including:
 - i. what immediate and direct consequences would appear to be likely;

- ii. expert views;
- f. any corrective regulation (exceptions to exceptions – see Article 18 of the Public Information Disclosure Act, detailed below) should be assessed;
- g. the question of whether the benefit of disclosing the information outweighs the harm or vice-versa should be assessed by:
 - i. identifying relevant factors; and
 - ii. weighing the various factors in each direction.

4. The Exceptions

➤ Only information which falls within the scope of one of the exceptions listed in Article 17 of the Public Information Disclosure Act may be withheld from public access. The grounds listed there are as follows:

- a. Disclosure of information relating to law enforcement poses a risk of substantial harm to:
 - i. the investigation and examination of crime;
 - ii. the protection of the anonymity of informants, reporters, witnesses, and/or victims of crime;
 - iii. the collection of criminal intelligence and/or plans for the prevention and handling of transnational crime;
 - iv. the safety and welfare of law enforcement officers and their families; and/or
 - v. the security of law enforcement equipment, means and/or facilities.
- b. Disclosure of the information poses a risk of substantial harm to the protection of intellectual property or other legitimate commercial interests.
- c. Disclosure of the information poses a risk of substantial harm to defence or national security, defined to include information about:
 - i. State defence and security systems in the areas of strategy, intelligence, operations, techniques and tactics, and planning, implementation and termination or evaluation in relation to threat from inside and outside the State;
 - ii. the number, composition, disposition or location of weapons, or the strength and capacity to organise State defence and security, as well as development plans relating thereto;
 - iii. information including visual data on the situation and condition of military posts and/or installations;
 - iv. the defence and security capacity of another State the disclosure of which potentially causes substantial harm to the sovereignty of Indonesia and/or secret or top secret information obtained through a military cooperation agreement with another State;
 - v. the State encryption system; and/or
 - vi. the State intelligence system.

- d. Disclosure of information that could reveal the natural wealth of Indonesia.
- e. Disclosure of the information poses a risk of substantial harm to the national economy, including:
 - i. purchase and sales plans for national or foreign currencies, shares and vital assets of the State;
 - ii. plans to alter the exchange rate, interest rate, or operating capital of financial institutions;
 - iii. plans to alter the interest rates of banks or government loans, or alterations to the taxes, tariffs, or revenues of the State or regions;
 - iv. sales or purchase plans for land or property;
 - v. foreign investment plans;
 - vi. the process and result of supervision over banks, or insurance or other financial institutions; and/or
 - vii. matters pertaining to the printing of money.
- f. Disclosure of the information poses a risk of substantial harm to international relations, including information relating to:
 - i. the State's position, bargaining position and strategy in international negotiations;
 - ii. diplomatic correspondence;
 - iii. communication and encryption systems used in international relations; and/or
 - iv. protection of the State's strategic infrastructure abroad.
- g. Disclosure of the information may reveal the contents of an authentic personal deed or a last will and testament.
- h. Disclosure of the information may reveal personal information, including:
 - i. family history or conditions;
 - ii. physical and mental health history, condition, treatment or medication;
 - iii. financial condition, assets, income or bank accounts;
 - iv. results of evaluation of capacity, intellectual capacity or recommendations on capacity; and/or
 - v. documentation about formal and informal education.
- i. Memorandums or letters between public agencies or internal to public agencies that, based on their nature are confidential, except decisions of the Information Committee or the courts.
- j. Information rendered secret by any other law.

5. Non-Exempt Information

- The following information may not be considered to be exempt:

- a. court decisions;
- b. a binding or non-binding provision, decision, regulation, circular or any other form of policy internally or externally as well as the consideration of a law enforcement institute;
- c. an order to stop an investigation or prosecution;
- d. the annual expenditure plan of a law enforcement institute;
- e. the annual financial report of a law enforcement institute;
- f. reports on money repayment scheme from corrupt acts;
- g. information that has been declared open pursuant to a court decision;
- h. the party to whom the information relates gives his/her approval in writing for the disclosure; and/or
- i. the disclosure pertains to the functions of an individual in his/her public position.

➤ In the context of criminal investigations, the court, Head of Police, Attorney General, Head of the Supreme Court, Head of the Anti-Corruption Commission and/or head of any law enforcement agencies may access exempt information upon approval of the President.

➤ Certain parties may also access information relating to civil court cases, through a request directed to the President via the Attorney President.

Key Points:

1. International law includes a three-part test for assessing whether restrictions on the right to information are legitimate as follows:
 - a. Does the information relate to one of the protected interests listed?
 - b. Would disclosure of the information harm that interest?
 - c. Does the overall public interest still call for disclosure of the information?
2. The Indonesian Public Information Disclosure Act includes a very similar test, with a consequential harm test and public interest override.
3. The law also includes a clear list of interests which may justify a refusal to disclose information.
4. There are also ‘exceptions to exceptions’: types of information which may not be withheld.

Session 6: Complaints and Dispute Settlement

1. International Standards

- In many countries, the law provides for an internal appeal; this can be useful in terms of helping public authorities to resolve matters internally; it can also be useful because more junior civil servants are often nervous to disclose information, whereas senior officers are less so.
- It is clear under international law that one must have a remedy outside of the public authority where access to information is refused or other breaches of the law remain unresolved.
- In most countries, one can ultimately appeal to the courts but experience has shown that an independent administrative body is essential to providing requesters with an accessible, rapid and low-cost appeal; the courts are simply too expensive and complicated, and take too long, for most requesters.
- The role of this body is particularly important in terms of interpreting exceptions to the right of access, given the complexity and sensitivity of this aspect of the system.

Examples:

- India: Information commissioners are appointed by the President upon the recommendation of a committee consisting of the Prime Minister, Leader of the Opposition and a Cabinet Minister appointed by the Prime Minister.
 - Japan: The Prime Minister appoints the Commissioners upon the approval of both houses of parliament.
 - Mexico: Appointments are made by the executive branch, but are subject to veto by the Senate or Permanent Commission.
- In Indonesia, pursuant to Article 31 of the law, members of the Central Information Commission are nominated by the Parliament and appointed by the President.

2. Internal Complaints

- A requester can file a written complain to a superior officer of the Information Management and Documentation Officer based on the following:
- a. refusal to provide access to information based on an exception;
 - b. information is not made available on a periodic basis (proactive disclosure);
 - c. there was no response to the request for information;
 - d. the response does not answer the request;
 - e. the charges or fees are excessive; and/or

- f. the response exceeds the allowable time limit.
- A complaint of this sort can be settled through negotiation between the parties.
- Processing of complaints:
 - a. A complaint must be filed within 30 (thirty) working days after the request for information is refused or the problem arises.
 - b. The superior officer must respond to the complaint within 30 (thirty) further working days.
 - c. If the superior officer confirms the refusal to provide information, he or she must provide reasons for this along with a written confirmation of the refusal.

3. Dispute Settlement through Information Commission

- If the superior officer rejects the complaint, the requester can ask the Central Information Commission (or Provincial Information Commission or District/City Information Commission, depending on the nature of the request) to start a dispute settlement process.
- The relevant Information Commission can process the dispute settlement through mediation and/or a non-judicial adjudication process.
- Timelines:
 - a. The request for dispute settlement must be filed within 14 (fourteen) working days after the complaint to the superior officer is rejected.
 - b. The relevant Information Commission starts the settlement through mediation and/or non-judicial adjudication at the latest 14 (fourteen) working days after request for settlement is received.
 - c. Disputes are settled in 100 (one hundred) working days at the latest.
- A decision issued by the Information Commission based on mediation and/or non-judicial adjudication is final and binding.
- Mediation
 - a. Mediation is a voluntary option chosen by the individuals in the dispute.
 - b. Settlement made through mediation is done through the Information Commission issuing a Mediation Decision.
 - c. In mediation, a member of the Information Commission functions as mediator.
- Adjudication
 - a. Non-judicial adjudication dispute settlement is used when one or both of the parties to the dispute file a written notice declaring that the dispute is not able to be settled by mediation, or when one or both of the parties to the dispute withdraws from the mediation.

- b. In order to examine and decide a case through adjudication, at least 3 (three) members of the Information Commission must be involved.
 - c. The adjudication meetings of the Information Commission are open to the public, but the Commission may close a meeting to examine exempt information.
 - d. When reviewing exempt information, members of the Information Commission are obliged to uphold the secrecy of the documents.
- Process of Dispute Settlement
 - a. Upon receipt of a request for dispute settlement, the Information Commission delivers a copy of the request to the head of the relevant public authority.
 - b. The head of the public authority, or someone delegated by him or her, may then make a statement responding to the claim, either orally or in writing, depending on the decision of the Information Commission.
 - c. Both the requester and the public authority can appoint people to represent them for purposes of the examination.
- Proof of Evidence
 - a. The onus or burden of proof is on the public authority to provide evidence that the information falls within the scope of an exception set out in the law.
 - b. The public authority is obliged to provide reasons and justification where the claim is that information was not made available on a periodic basis, that it did not respond to a request for information, that the response provided did not answer the request, that excessive fees were charged, or that the response exceeded the time limits set out in the law.
- The decision of the Information Commission on an appeal against a refusal to provide access to information can be either:
 - a. To revoke the decision of the superior officer and order full or partial access to the requester; or
 - b. To affirm the decision of the superior officer and reject the request for settlement.
- For claims that information was not made available on a periodic basis, that it did not respond to a request for information, that the response provided did not answer the request, that excessive fees were charged, or that the response exceeded the time limits set out in the law, the decision of the Information Commission may be as follows:
 - a. instructing the Information Management and Documentation Officer to carry out his/her obligations as prescribed by the law;
 - b. instructing the public authority to carry out its obligations according to the time limits prescribed by the law; or
 - c. affirming the decision of superior officer.
- The verdict of the Information Commission is delivered in an open public meeting.

- The Information Commission is obliged to deliver copy of its verdict to the parties to the dispute.
- If applicable, any dissenting opinion of a member of the Information Commission shall be included as attachment to the verdict.

4. Court Proceedings

- Lodging court appeals:
 - a. A lawsuit against a State public authority is filed in the State Administrative Court.
 - b. A lawsuit against a non-State public authority is filed in the State Court.
 - c. A lawsuit may be filed only when one or both parties to the dispute reject the written adjudication verdict of the Information Commission, and within 14 (fourteen) working day from the receipt of such verdict.
- The decision of a court regarding a claim that information was not made available can take the following forms:
 - a. revoking the decision of Information Commission and/or instructing the public authority to:
 - (1) allow full or partial access to the requester; or
 - (2) refuse full or partial access to the requester.
 - b. affirming the decision Information Commission and/or instructing the public authority to:
 - (1) allow full or partial access to the requester; or
 - (2) refuse full or partial access to the requester.
- For claims that information was not made available on a periodic basis, that it did not respond to a request for information, that the response provided did not answer the request, that excessive fees were charged, or that the response exceeded the time limits set out in the law, the decision of the Court may be as follows:
 - a. instructing the Information Management and Documentation Officer to carry out his/her obligations as prescribed by the law and/or instructing him/her to comply with a time limit prescribed by the law; or
 - b. refusing the claim of the requester; or
 - c. deciding what fee should be charged.
- The Court is obliged to deliver a copy of its verdict to the parties to the dispute.
- A final appeal (cessation) is filed with the Supreme Court when one or both parties to a dispute reject the verdict of the first instance court within 14 (fourteen) working days from the receipt of its verdict.
- The law establishes the following crimes relating to information:

- a. Anyone deliberately using information in an unlawful way faces a maximum sentence of 1 (one) year imprisonment and/or a maximum fine of Rp 5.000.000,00 (five million rupiah).
- b. Any public authority deliberately refusing to disclose information that should be made available on a periodic basis, at all times and/or upon request and, as a result, causing damage to other parties faces a maximum of 1 (one) year imprisonment and/or a maximum fine of Rp 5.000.000,00 (five million rupiah).
- c. Anyone deliberately and unlawfully damaging State protected information and/or information relating to the public interest faces a maximum of 2 (two) years imprisonment and/or a maximum fine of Rp 10.000.000,00 (ten million rupiah).
- d. Anyone deliberately and without authorisation accessing and/or obtaining and/or delivering exempt information faces a maximum of 2 (two) years imprisonment and/or a maximum fine of Rp 10.000.000,00 (ten million rupiah).
- e. Anyone deliberately and without authorisation accessing and/or obtaining and/or delivering exempt information potentially causing substantial damage to national security, defence or the national economy faces a maximum of 3 (three) years imprisonment and/or a maximum fine of Rp 20.000.000,00 (twenty million rupiah).
- f. Anyone deliberately altering information so that it is misleading and damaging to other parties faces a maximum of 1 (one) year imprisonment and/or a maximum fine of Rp 5.000.000,00 (five million rupiah).

➤ A criminal lawsuit can be brought to the court based on the Access to Public Information Law.

➤ Any criminal sanction according to the Access to Public Information Law is without prejudice to further specific criminal sanctions based on relevant provisions in other laws.

Key Points:

1. Under international law, requesters should have the right to appeal against claimed breaches of the law to an independent body.
2. There are three different levels of appeals in Indonesia: an internal one to a superior officer within the public authority; one to the relevant Information Commission; and one to the courts.
3. There are clear timelines and procedural fairness rules for the processing of appeals at all levels.
4. The Information Commission can resolve disputes both through mediation and through a non-judicial adjudication procedure.

5. The Access to Public Information Law establishes a number of criminal offences for both misuse of information and for obstruction of access to information.

Session 7: Following up on Requests

Open Discussion: What do you think should be done if the public authority with which you lodge your request simply ignores it? What if they reject it without giving reasons?

1. General Points

- In far too many instances, public authorities do not deal with requests in accordance with the accepted rules: they may pose obstacles to lodging requests, simply refuse to answer them (mute refusals), provide only partial information, charge too much money for providing information and so on.
- A recent study by the Centre for Law and Democracy, along with the International Budget Partnership (IBP) and Access Info Europe, based on making 6 requests in 80 different countries revealed the following surprising results:
 - Information, either complete or partial, was provided in only 45% of all cases.
 - 38% of all requests were met with mute refusals, and this happened in 55 of the 80 countries.
 - 42% of all responses were not compliant with the right to information (compliant responses were when information was provided or the public authority claimed it did not hold the information).
 - In more than 50% of cases, requests had to be lodged more than once and information was provided after one attempt in only 22% of all cases.
 - The average time for responding to requests was 60 days (out of a maximum of 90 days), and only 9 countries provided all 6 responses within an average time limit of 30 days.
 - Countries with RTI laws did better on every indicator than countries without, and this increased the longer the RTI law had been in force.
 - Newer democracies dominated in terms of greater openness, taking two-thirds of the top 15 spots.
 - There were, however, very few cases where officials actually sought to raise an exception to refuse access.
- These results demonstrate that requesters need to be persistent and not let initial refusals or failures to respond put them off too quickly.
- This session looks at ways to ensure better response rates to requests, other than by submitting a formal appeal or complaint to the relevant information commission.

- A balance needs to be struck here between being insistent about your right to information and not being rude or obstructive or excessively difficult; it does not help to create bad relations with public authorities, especially if they are trying, even if they are failing; on the other hand, you should not tolerate obstructive behaviour.

Open Discussion: Can you compare this to your experience if you have made requests for information? How do you think Indonesia compares to these results?

2. Refusals to Accept Requests

- In some cases, it may be impossible to submit a request, for example because the public authority has not appointed an information officer or because no one will accept the request.
- How best to respond to this will depend on what exactly has happened; some possible responses are listed below:
 - It may be useful to note that even if a public authority has not appointed an information officer, it must still accept requests for information.
 - It might be useful to show any official you can reach a copy of the Public Information Disclosure Act, pointing to the relevant provisions (or this might be included with the application).
 - You can try writing to the head of the public authority; you might want to send a copy of that letter to the relevant information commission (State or Central), to demonstrate that you know what you are doing and that you are serious about the request.
 - Try asking to speak to a more senior official at the same public authority or going to another branch of the same public authority.
 - Be persistent and keep noting that this is your right according to the law, without being rude or obstructive.

3. Mute Refusals

- Experience suggests that the way you present your request can have a significant bearing on the likelihood of it being treated seriously. Some ways to improve responses:
 - Officials tend to avoid requests which are difficult:
 - make clear, well-worded and precise requests
 - do not ask for different types of information in one request; lodge two requests instead
 - if your request is likely to generate a lot of information in response, try to make it easier to respond (e.g. by offering to search through files on the premises and)
 - Officials are more likely to treat requests which seem serious, seriously:

- when presenting a request in writing, use headed paper if possible or indicate the name of your organisation
 - when presenting requests in person, try to impress upon the person receiving the request that you are serious about it
- Remind officials about their obligations:
 - note in your request that it is being made under the Public Information Disclosure Act
 - remind officials of some of their key responsibilities: to register the request, to provide a response within 10 days, to refuse the request only if the information falls within the scope of the exceptions, to provide partial information in this case, to provide reasons for the withholding of any information
- Follow-up any failure to provide a response soon after the 10-day limit has passed; this shows you are serious and are following the request: in many cases, this will be enough to get it moving.
- In your follow-up, indicate that public authorities are legally obliged to provide you with a response within 10 days according to Articles 4 and 22(7) of the law.
- Keep following up; trying using the phone as well as letters; keep indicating that this is a legal right.
- Indicate that you have a right to appeal this matter to the information commission, which will be embarrassing for them (or potentially worse: you might even mention that officials can be fined and even imprisoned for obstruction), but also time consuming for you (so you would prefer not to).

Open Discussion: Can you think of other ways that you might prevent or follow-up a mute refusal? Do you think these approaches will be successful in Indonesia?

4. Responses Which do not Answer the Request

- In some cases, officials may provide responses to requests which do not actually answer the request.
- In these cases, follow-up is important; follow-up promptly to any response from the public authority, whether this is formal or informal; do not leave it hanging.
 - In the follow-up, if you feel from the response of an official that they are being obstructive, remind them of their obligations.
- Here are some of the excuses officials may try to make for not providing information, along with suggested responses:

Excuse: we do not have time to look for this information

Response: this is one of your duties under the Public Information Disclosure Act and you should treat this as a job priority

Excuse: this information is not important for you to have

Response: under the law, it is not for you to decide whether or not the information is important; only the exceptions can justify a refusal to provide the information

Excuse: this information was created by one of my colleagues; you will need to ask him or her about it

Response: the law places an obligation on the public authority as a whole; you are the one who needs to consult with your colleagues and to do so within the original time limit

Excuse: this is too much information to ask for and we do not have time to provide it

Response: the law requires you to provide the information even when it is a large amount

Excuse: we are working on this request and will get back to you; do not contact us, we will contact you

Response: the law only gives you 10 days to respond, which may be extended by 7 more days; if you go beyond this, you are in breach of the law

Excuse: I do not know anything about this; I will have to talk to my superior

Response: it is your obligation to know about this law; consult with your superior if you need to but you still need to provide the information within 10 days

Excuse: you have no right to ask for this information; it belongs to the public authority

Response: this new law says that all of the information you hold is public information, subject only to the limited regime of exceptions; your attitude towards the information is no longer correct even if that might have been the case in the past

Excuse: this is not our information, it was provided by another person or public authority

Response: you have to provide it anyway if you have a copy of it; if it was created by another public authority, you may transfer the request to that authority

Open Discussion: Do you think these responses would be likely in Indonesia? Have you experienced them?

- If the official is not trying to be obstructive it may be useful to consult with them. This can help you:
 - Understand the problems they are having in dealing with your request and perhaps help them by narrowing it or otherwise amending it to make it easier for them to deal with.
 - Help them understand what information you are really looking for if this is not clear from the request; this may help them either respond to your request better or understand which other public authority can deal with it more effectively.

5. Providing incomplete or wrong information, or claiming they do not hold it

- Sometimes, public authorities will claim they do not hold the information; in this case, you need to assess whether or not you believe this claim and how to react; some ideas:
 - Consider the work that the public authority does and whether they should hold the information.
 - Consider whether the public authority should hold at least part of the information (even if it does not hold all of it), in which case it cannot just answer that it does not hold it, but must provide you with the information it does have.
 - Try asking for the information in another way, to see if that is successful.
 - Highlight the reasons you think the public authority should hold the information and their obligation to provide it if they do hold all or part of it.
 - If it is information that government as a whole must hold, ask them which public authority does hold it.
- In other cases, public authorities may provide incomplete information or the wrong information; some possible ideas of how to respond to this:
 - Indicate that the information is wrong or incomplete and reiterate the obligation of the public authority to provide full information.
 - Ask which public authority holds more complete information.
 - Present arguments as to why you believe they do, or should, hold more complete information.
 - Indicate that if they are withholding part of the information, they need to inform you of this, and to provide you with reasons (they cannot just withhold part of the information without letting you know).
 - If you believe your request may have been misunderstood, present it in a different way or try to get the official to understand what you are looking for.
 - Try to impress upon the public authority the importance of its legal obligations in this area, as well as the right you have to appeal any failure to the information commission.

6. Other obstructions (charging too much)

- Some ideas where public authorities try to charge too much:
 - Indicate the rules relating to fees (Article 21 indicates that access shall be low-cost; see if there are any regulations which set out what fees may be charged).
 - Compare with other public authorities (where you have been charged less for other requests).
 - Present arguments as to why the charges should be low.

7. Refusals (Including Oral Refusals)

- Oral refusals are not permitted under the Indonesian law (see Article 22(7)) and should not be accepted; at a minimum, the requester should try to insist on getting a written refusal.
- Some refusals are legitimate: the law includes a set of exceptions to the right of access; you need to try to determine whether or not an exception is legitimate; this can be difficult because you have not seen the actual information so cannot fully assess whether or not the exception might apply.
- You can always appeal refusals to the information commission but it can be useful to try to argue against refusals before the public authority.
- Some of the points it might be useful to raise:
 - The law has changed the way public authorities are supposed to operate; they can no longer assume that most or all information will be secret; instead, they need to justify any withholding of information.
 - Any refusal must be based on a specific provision in the Public Information Disclosure Act (see Articles 17-20 of the law).
 - Most of these exceptions require a showing of harm to a protected interest – the public authority needs to indicate the specific harm that would be caused.
 - Article 19 of the law requires public authorities to apply the exceptions narrowly and with good reasons.

Exercise H: Either in Groups or as a Discussion

Key Points:

1. There are many ways public authorities may illegitimately attempt to obstruct the right of access, including by refusing to accept requests, by failing to respond to them (mute refusals), by giving illegitimate excuses for not providing information and by providing only partial or wrong information.

2. You should be firm and professional and insist on your rights, but do not be rude or obstructive.
3. It is always best to try to resolve any problem at the level of the public authority. However, you do have a right to appeal to the information commission and you should make this clear when dealing with the public authority.
4. Try to be as clear and precise and authoritative as possible when making requests.
5. Be professional when responding to comments from public authorities; keep referring to the law and your right to appeal to the information commission.
6. Follow-up any responses from public authorities promptly, responding to the points they raise firmly and clearly.

Further Resources

1. Commonwealth Human Rights Initiative, *Implementing Access to Information: A Practical Guide for Operationalising Access to Information Laws*. Available at: http://www.humanrightsinitiative.org/publications/rti/implementing_ati.pdf.
2. Victor Brobbey, Carole Excell, Kenneth Kakuru and Alison Tilley, *Active and Passive Resistance to Openness: The Transparency Model for Freedom of Information Acts in Africa – Three. Case Studies*. Available at: http://webcache.googleusercontent.com/search?q=cache:W6ZaMZQGvYoJ:www.africafoicentre.org/index.php%3Foption%3Dcom_docman%26Itemid%3D0%26task%3Ddoc_download%26gid%3D63+Active+and+Passive+Resistance+to+Openness&cd=1&hl=en&ct=clk&client=safari&source=www.google.com
3. Access Info Europe, *Toolkits to Promote Use of Access to Information Laws*. Available at: <http://www.access-info.org/en/toolkits>.

Session 8: Partnering with the Media

- In modern societies, the media has established a very strong position of influence. The main function of the media is to disseminate information to the public. Besides distributing information, or actually through it, the media also exerts control against those in power. The media exercises the function of oversight against the powerful.
- Another important role of the media is to educate the public, while also entertaining them. The media has to fulfil the public's right to know, to uphold the basic principles of democracy, and to push for the rule of law and for respect for human rights.
- The media also serves as the medium where public discourses take place based on accurate and confirmed information provided by the media. In this way, the media facilitates oversight, criticism, correction and debate on matters of public interest.
- The roles of the media are varied and open to be explored by civil society organisations and activists. In their attempts to access information, civil society organisations should develop their capacities to partner with the media.
- When considering partnerships with the media, civil society should consider the following:
 - i. The importance of building networks with all types of media: print, television, radio and online.
 - ii. The aim of partnering with the media is to build common ground and understanding on the importance of access to information for the public.
 - iii. Providing the media with reasons showing that while your organisation is accessing the information, public information belongs to the public.
 - iv. Opening access to public information is for the sake of the public.

1. Understanding the Media

- Civil society activists should try to understand the media as their partners. Never judge the book by its cover. Once you understand the media, the possibility of good relationships with them increases. Good relations with the media can contribute to the success of your activities.
- Good relations with the media and their personnel can help ensure that your invitations and press releases are noticed and treated on a priority basis. Without such a good relationship with the media as partners, it will be more difficult to ensure that your invitations will become a priority for them.

- Know the nooks and crannies of the media. Undertaking a media road show or visits to the board of editors of media outlets can be important ways to build good and lasting relationships that go beyond phone calls.
- Never “pressure” your media partners to publish, print or broadcast your information. Nevertheless, getting to know journalists on a personal level can be helpful.
- It is useful for those working in civil society organisations to understand the characteristics of the mass media. This can help, for example, to identify the right partner in delivering information to the public.
- Be familiar with the editorial policies of the media to find out whether the media focus on public interest issues or they are more political vehicles of the owners. Identify their editorial styles, such as straightforward, academic or double standard.
- For television and radio, find out their frequencies and broadcasting schedules. For the print media, find out whether they appear daily, weekly or biweekly. Online media have their own characteristics, including speed and continuous updating. Activists of civil society organisations should know whether a company they wish to approach is a media group comprising television, radio, newspapers and online, or a one-channel media, such as an online media or newspaper.
- It is important to understand how the board of editors works, including their printing and broadcasting process. Information on numbers of readers, viewers or listeners and who they are, are also important since these details help in identifying the right audience for your activities.

2. Basic Skills in Journalism

- Civil society organisations should consider making use of public relations officers. These officers can focus on getting the attention of the media. Good public relations officers supply information in a forum which can be published by the media. It is, therefore, useful for civil society activists to have news writing skills.
- If activists have basic journalism skills, such as types of news, news values and news writing techniques, you can make sure that it is relatively easy for the media to publish your materials.

Organising Media Events

- Supplying information to the mass media is not limited to press releases. Skills in organising media events such as press conferences, press receptions, media visits or road shows and press upgrading are very useful.

Press Release

- Below is a sample press release to be used as reference on how civil society can create a press release using the journalistic standard of 5W-1H (What, Who, Where, When, Why, and How).

ICW Wins Information Dispute on School Grants

ICW Press Release

The Central Information Commission supports ICW in its dispute against the Head of Jakarta Education Office and 5 Headmasters of TKBM State Junior High Schools of SMPN 67 Jakarta, SMPN 28 Jakarta, SMPN 84 Jakarta, SMPN 95 Jakarta and SMPN 190 Jakarta in an information dispute regarding the management of a school grant from 2007-2009. This decision by the Commissioners of the Central Information Commission on Monday (15/10/2010) was released in the common room of the Ministry of Information and Communication.

In its verdict, the Central Information Commission decided that reports and other supporting documents, including receipts, are public documents accessible to the public and ICW as a requester. The Commissioners instructed the Head of Education Office and 5 Headmasters to submit these documents to ICW.

The Commissioners Decision includes the following points. First, the request for copies of documents made by ICW as a requester is in line with Access to Public Information Law no 14/2008 and Central Information Commission Regulation no 1/2010 on Public Information Standard Service on Public Body. Second, because there is no law describing the report as classified information, it is accessible to the requester and it is not a violation of technical guidelines regulating school grants as the information is not used for a school audit purpose. Third, according to article 17 of the Access to Public Information Law, the report is not exempt information.

Opening access to the report is believed to create no substantial harm to the protection of legal process, intellectual property rights, healthy commercial competition, State security and defence, natural resources, national economic interests, international relations or privacy.

Important and Historical Decision

This decision by the Central Information Commission is important and historical because it is key to the transparency of the management of public funds. This decision applies to hundred of thousands of schools in Indonesia and to all public bodies from government agencies to private organisations.

In the past, transparency took the form of the submission of this finance-related document to authorised bodies such as the State Audit Agency (BPK), State Financial Audit and Monitoring Agency (BPKP), Inspectorate and so on. Public officials were seen as being transparent once they submitted such documents to these agencies. Public access to these documents was not seen as part of transparency.

Now, this decision serves as the basis for the public of Indonesia to monitor the management of public funds by public bodies, particularly State and government agencies. Public access to financial documents is believed to significantly reduce financial leakages and to increase public reporting on corruption. This decision is a

landmark one to improve transparency, to prevent corruption and to improve monitoring of crimes of corruption.

This decision is historical because this is the third one made by the Central Information Commission since the coming into force of the Access to Public Information Law on 20 April 2010. This decision pushes the country one step further to become a transparent and accountable nation in managing its public funds.

Regarding this decision, we call on all citizens of Indonesia to use this verdict as the basis to request information in documents of a financial nature from State or government agencies.

Jakarta, 15 November 2010

Media Interviews

- Media interviews can take place spontaneously or on a planned basis. Spontaneous interviews can happen anywhere from seminars, launching events, wedding receptions and even to visits to burial or memorial ceremonies.
- The decision to publish an interview, whether spontaneous or planned, remains in the hands of the media outlet, rather than the source. Therefore, activists of civil society organisation should be prepared for interviews – anytime, anywhere.
- When conducting an interview:
 - i. Give straightforward answers to the journalists.
 - ii. Explain whether the information is off the record (not to be published) or background information (may be published as coming from an anonymous source).
 - iii. Give a complete explanation of the information to be used as the basis of the publication or broadcast.
 - iv. Be ready to receive visits and calls from journalists anytime.

Press Conference

- A press conference is an event organised to invite journalists for a dialog on materials which have been prepared in advance. The target of the press conference is to create news for the mass media. Things to be prepared for regarding press conferences are:
 - i. Send the invitation to the board of editors at least three days before the press conference. An invitation can be in the form of printed invitations, emails or SMSs.
 - ii. In case of emergency, a press conference can be done immediately without thorough preparation. If activists of the civil society organisation have cultivated a good relationship with the media, this should pose no problem.

- iii. Check to make sure whether or not the invitation has been received by the board of editors. Make sure that journalists are assigned to come to the press conference and press release materials are delivered.
- iv. Write a press release on the issues to be disseminated to the press.
- v. Appoint knowledgeable person(s) to support the press conference.
- vi. Set up a venue that accommodates the invited journalists and the host.
- vii. Press conferences should be equipped with media aids such as slides, OHP and videos.
- viii. Prepare an attendance list for journalists.
- ix. Press conferences should be concise, clear and organised to avoid wasting time.
- x. Never give money to journalists to attend a press conference or for other purposes as it violates the code of ethics.