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Analysis of the Draft Law of the Republic of Kazakhstan on Information Access



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Right of Access - Strengths

- Information is recognized as a right (Article 1(1)(1)).
- Strong statement of principles (Article 4).
- Recognition of the rights of information users (Article 6).



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Right of Access - Weaknesses

- No presumption of access to all information.
- No statement calling for a broad interpretation of the rights enshrined in the law.
- Statement of obligations incumbent upon information users (Article 6(2)).



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Right of Access - Recommendations

- Create a presumption that all information held by public authorities should be subject to disclosure unless it falls narrowly within one of the exceptions.
- Include a statement calling for a broad interpretation of the right to information.
- Delete Article 6(2).



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Scope - Recommendations

- The ambiguities in Article 7 should be resolved by specifically listing all organs and branches of government, state-owned enterprises, statutory and constitutional bodies, and private bodies that perform a public function as subjects of the law.
- Article 26(2) should be deleted.
- The definition of “Information” under Article 1(1)(2) should be amended to make it clear that it covers all recorded forms of information, regardless of the form in which they are recorded
- The words “access to which is not restricted by laws of the Republic of Kazakhstan” should be deleted from Article 1(1)(2).



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Proactive Publication

Strengths:

- Broad proactive publication requirements that apply to all public bodies
- Requirement for applicable bodies to set up “access stations” for the public”

Weaknesses:

- These requirements might be too demanding for some authorities to fulfil.



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Proactive Publication - Recommendations

- Consideration should be given to building into the draft Law a system so that public authorities are given a period of time to meet their full proactive publication requirements.



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Requesting Procedures

Strengths:

- Requesters are protected from having to give reasons
- Procedural guide is generally in line with international standards
- Positive approach towards charging fees.
- Quick timeframe?

Weaknesses:

- The law allows for alternate procedural standard to be applied
- Duty to assist is incorrectly framed
- Quick timeframe?



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Requesting Procedures - Recommendations

- Article 3(2) should be deleted
- Article 24(5) should be rephrased so that it clear that public authorities have a duty to assist requesters, rather than a right to do so. Specific mention should be made here of the duty to assist requesters with special needs
- Consideration should be given to providing for longer maximum timeframes for responding to information requests, for example of ten days. It should be made clear that this is a maximum and that requests should be processed as soon as possible.
- Consideration should be given to requiring public authorities to notify requesters of their right to appeal when a request is refused



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Exceptions - Recommendations

- Serious consideration should be given to fundamentally revising the whole approach of the draft Law to the regime of exceptions, specifically by including a fully-developed regime of exceptions, which would override secrecy laws to the extent of any inconsistency, rather trying to modify existing secrecy laws
- The grounds for refusing requests based on protecting the constitutional structure, human rights and freedoms and public morals should be removed from Article 5(3)(1)
- Article 26(1)(6) should be revised to make it clear that it only applies to the idea of creating new information, and not to extracting information from databases
- A “sunset clause” should be added to the law, so that exempt information must be released after 15 or 20 years



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Appeals - Recommendations

- Clear procedures for internal appeals under Article 29(1) should be included in the law
- An independent administrative body should be created or designated with the power to hear appeals of claims that public authorities have not discharged their right to information obligations



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Promotion - Recommendations

- The draft Law should designate a central body to oversee implementation and promotion of the right to information, including through presenting a consolidated annual report to parliament on overall implementation of the law and through undertaking public awareness-raising efforts
- The draft Law should require public authorities to report annually on the actions they have taken to implement their disclosure obligations, along with statistics regarding their performance in response to information requests over the past year
- The draft Law should require public authorities to provide training for officials in their responsibilities under the right to information
- The draft Law should require public authorities to create and update registers of the information in their possession and to make these public
- Systems for improving record management should be built into the law



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Final Recommendation

- Pass a law!