CENTRE FOR LAW AND DEMOCRACY

Palestine

Comments on the draft Access to Information Law

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Introduction[1]

The Arab world has among the lowest penetration of right to information (RTI) laws anywhere in the world. Despite this, or perhaps because of it, a number of countries in the region – including Egypt, Morocco and Palestine – are currently witnessing relatively advanced campaigns in favour of the adoption of RTI legislation. In Palestine, an official draft Access to Information Law (draft Law) has been placed before the West Bank government and indications are that an RTI law may soon be formally adopted in one form or another.[2] These Comments are based on an informal translation of the draft Law received by the Centre for Law and Democracy (CLD), which we believe is the latest version.

The draft Law is weaker than the draft analysed by CLD in December,[3] which is clearly an unfortunate development. It does relatively well in terms of scope of application and is moderately strong in terms of the regime of exceptions and promotional measures, but it is rather weak in terms of the right of access, proactive disclosure, requesting procedures, appeals and sanctions and protections. The ways in which the draft Law fails to conform to better practice and could be strengthened are outlined in these Comments.

These Comments are based on international standards regarding the right to information, as reflected in the *RTI Legislation Rating Methodology* (RTI Rating), prepared by CLD and Access Info Europe,[4] as well as better legislative practice from other democracies around the world.[5] An assessment of the draft Law based on the RTI Rating has been prepared and the relevant sections of that assessment are pasted into the text of these Comments at the appropriate places. The overall score of the draft Act, based on the RTI Rating, is as follows:

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[2] Due to the division between the West Bank and Gaza territories of Palestine, there is no functioning national parliament, but there remain a number of other means of giving formal legal effect to rules.

[3] See CLD, *Recommendations for the Draft Law on the Right of Access to Information*, December 2013. Available at http://www.law-democracy.org/live/palestinian-right-to-information-law-would-rank-36th-globally/.

[4] The RTI Rating, first published in September 2010, reflects a comprehensive analysis of international standards adopted both by global human rights mechanisms, such as the UN Human Rights Committee and Special Rapporteur on Freedom of Opinion and Expression, and by regional courts and other regional mechanisms. The RTI Rating is available at: http://www.RTI-Rating.org.

[5] See, for example, Toby Mendel, *Freedom of Information: A Comparative Legal Survey, 2nd Edition* (2008, Paris, UNESCO), available in English, Arabic and several other languages at: http://portal.unesco.org/ci/en/ev.php-URL_ID=26159&URL_DO=DO_TOPIC&URL_SECTION=201.html.

Category	Max Points	Score
1. Right of Access	6	2
2. Scope	30	24
3. Requesting Procedures	30	14
4. Exceptions and Refusals	30	19
5. Appeals	30	13
6. Sanctions and Protections	8	3
7. Promotional Measures	16	10
Total score	**150**	**85**

This score would place the draft Act in a tie position for 48th place from among the 97 countries globally whose RTI laws are in force, along with Honduras and Belize. The relative weakness of this score is exacerbated by the fact that there has been a strong trend in recent years towards the adoption of stronger RTI laws in countries around the world, with the average score of laws adopted since 2010 being well over 90 points. Palestine should be aiming to support that positive trend rather than pulling it down.

1. Right of Access and Scope

The Palestinian Basic Law does not include an explicit guarantee of the right to information and no Palestinian court has so far held that such a right may be found within the other provisions of the Basic Law. A constitutional guarantee would not only emphasises the importance of the right, but it would also provides an important and authoritative interpretive backdrop to the legislation, which would need to be understood as giving effect to a constitutionally protected fundamental right.

The draft Law also fails to include a clear statement to the effect that it is vesting a right in everyone to make requests for information and to receive that information, subject only to its provisions. Article 3 does provide for a presumption in favour of access, while Article 2(1) refers to enabling persons to exercise their right of access as one of the aims of the law and Article 15(1) calls on dedicated officials to facilitate the right of access. A clear statement to the effect that everyone has a right to receive information in response to a request would help clarify the nature of the rights being established in the law.

The aims found in Article 2(1) are limited in nature and only refer to one general benefit of the right of access, namely strengthening accountability. Inasmuch as the aims serve as an interpretive tool, it would be useful to refer to other benefits, such as enhancing participation, controlling corruption, promoting good governance and sustainable development, and fostering a fair business environment. It would also be useful to accompany this broader statement of aims with an explicit instruction

that those tasked with interpreting the law – including public authorities, dedicated information officials, the Information Commission and the courts – must do so in a manner that best gives effect to its aims.

The provisions of the draft Law referring to requests only refer to 'persons' without defining what this means. A natural interpretation of this term would include non-citizens, but it would be preferable to make this quite clear in the legislation. It is unclear whether 'persons' would include corporate bodies, which should also have the right to make requests for information. Again, it would be preferable to make this clear in the legislation.

The draft Law defines information broadly. However, it does not make it clear that requesters have a right to ask for either a specific document or for a type of information, such as the amount of money spent on schools in a given year. While this may seem obvious, there have been serious problems with confusion between these types of requests in different countries and it is preferable to make this quite clear in the law.

The scope of the law in terms of public authorities covered is also broad. A positive feature here is that the Commissioner has the power to declare that authorities are covered by the law. At the same time, some of the references regarding the scope of bodies covered are less clear than they could be. It is, for example, not entirely clear whether the head of State is covered by the rules. It is also not clear whether all bodies created by ministries or by statute are covered. Finally, the draft Law fails to stipulate that private bodies which perform public functions or which receive significant public funding are covered.

Recommendations:

- The law should provide a clearer and more explicit statement about the right of everyone to receive information in response to a request.
- The law should include a more comprehensive statement of the wider benefits of the right to information, along with a call for it to be interpreted in a manner that best gives effect to those benefits.
- The law should make it clear that both citizens and non-citizens, as well as corporate bodies, have the right to make requests for information.
- The law should make it clear that requesters have a right to request either specific documents or types of information.
- The law should make it explicit that it covers the head of State, all bodies created or controlled by ministries, all bodies created by statute, and private bodies that perform public functions or which receive significant public funding.

Right of Access

Indicator		Max	Points	Article
1	The legal framework (including jurisprudence) recognises a fundamental right of access to information.	2	0	
2	The legal framework creates a specific presumption in favour of access to all information held by public authorities, subject only to limited exceptions.	2	1	2(1), 3, 15(1)
3	The legal framework contains a specific statement of principles calling for a broad interpretation of the RTI law. The legal framework emphasises the benefits of the right to information?	2	1	2
	TOTAL	**6**	**2**	

Scope

Indicator		Max	Points	Article
4	Everyone (including non-citizens and legal entities) has the right to file requests for information.	2	1	2(1), 15(1)
5	The right of access applies to all material held by or on behalf of public authorities which is recorded in any format, regardless of who produced it.	4	4	1
6	Requesters have a right to access both information and records/documents (i.e. a right both to ask for information and to apply for specific documents).	2	0	
7	The right of access applies to the executive branch with no bodies or classes of information excluded. This includes executive (cabinet) and administration including all ministries, departments, local government, public schools, public health care bodies, the police, the armed forces, security services, and bodies owned or controlled by the above.	8	6	1
8	The right of access applies to the legislature, including both administrative and other information, with no bodies excluded.	4	4	1
9	The right of access applies to the judicial branch, including both administrative and other information, with no bodies excluded.	4	4	1
10	The right of access applies to State-owned enterprises (commercial entities that are owned or controlled by the State).	2	2	1
11	The right of access applies to other public authorities, including constitutional, statutory and oversight bodies (such as an election commission or information commission/er).	2	2	1
12	The right of access applies to a) private bodies that perform a public function and b) private bodies that receive significant public funding.	2	1	1
	TOTAL	**30**	**24**	

2. Duty to Publish

Article 6 of the draft Law places an obligation on all public authorities to publish annual reports containing a number of categories of information, such as "administrative and financial information" about their functions, information about their "expenditure, the aims, the decisions, accomplishment" and so on. This is supplemented by Article 7, which places an obligation on "industrial institutions", whether public or private, to publish semi-annual reports containing information on such issues as toxic substances, emissions and waste disposal. Article 8 includes a very welcome obligation on public authorities to hold public meetings, with due notice.

These rules are useful but they fall short of better practice in this area in a number of respects. First, while the idea of publishing reports has its advantages, a more tailored approach of requiring electronic publication (i.e. over the Internet) and targeted publication in different ways (for example via local bulletin boards) is likely to be both far more suited to the actual needs of the public and more economically efficient. Second, the description of categories of information subject to proactive publication, while potentially broad, is too general to establish clear directions in this area. Third, experience in other countries clearly demonstrates the need for an approach towards this issue which allows for levering up of proactive publication obligations over time. There are a number of ways of doing this, including by allocating a role to the Information Commission to set annual targets.

Recommendations:

- Consideration should be given to moving from annual or semi-annual reports to a more tailored approach to proactive publication which relies on Internet publication as a main backbone while also requiring more direct approaches where relevant, for example in the context of development projects in a particular area.
- Consideration should also be given to providing a far more detailed list of categories of information which are subject to proactive publication.
- Finally, consideration should be given to putting in place a system which allows for the extent of proactive publication obligations to be increased over a period of time, which might be five to seven years, as public authorities gain capacity in this area.

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

3. Requesting Procedures

The draft Law contains generally positive rules on requesting procedures. However, these rules are too brief and overview and lack the specific detail that is needed to ensure positive implementation of the law. Requesting procedures, while perhaps less exciting than issues such as excluding bodies from the scope of the law or overbroad exceptions, are central, from a functional point of view, to the effectiveness of a right to information law.

The draft law fails entirely to address a number of important procedural matters, including the following:

- A prohibition on requiring requesters to provide reasons for their requests.
- Requirements to provide assistance to requesters either where they are disabled or illiterate (i.e. to transcribe oral requests into writing), or where they need help in formulating their requests sufficiently precisely.
- A requirement to respond to requests as soon as possible, in addition to within the maximum time limits which are provided for.
- Fee waivers for impecunious requesters.
- A provision making it clear that requesters are free to reuse information obtained via a request as they may wish.

There are a number of other ways in which the requesting procedures could be improved. The exact information that may be required of requesters on an application for information – which should be limited to a description of the information sought and an address for delivery of that information – should be stipulated in the law. Furthermore, it should be clear that requesters are not required to use a prescribed form for requests, although these may be provided to help requesters who are not experienced in making requests. The ways in which requests may be lodged should also be expanded upon, making it clear that this includes not only in person and electronic requests (as is provided for in Article 12 of the draft Law) but also mailed and faxed requests.

Article 17 makes it clear that requests may be transferred to another public authority, with the agreement of the requesting party, where the other authority "has the information in a more detailed way" or "has an alternative version of the information". It is useful to provide for transfer of requests, but this should be done only where the original public authority does not hold the information. In other cases, the original public authority may consult with other public authorities, including with a view to providing the requester with a more appropriate version of the information.

Article 16 provides that public authorities should provide information in line with the versions of that information that they hold and that further rules will address the situation of those with special needs. While this is a helpful rule, it falls short of a requirement for public authorities to provide information in the form sought by requesters, as long as this is realistic. For example, a requester might wish to consult

a large number of documents at the premises of the public authority, obtain electronic copies of documents or obtain physical copies of documents, depending on his or her situation.

Article 14 places a seven-day time limit on responding to requests for information, which may be extended for another seven days where the request involves large amounts of information or consultation with other parties. This is a welcome and short time limit. It is, however, not clear whether this refers to calendar or working days. It is also not entirely clear that the conditions noted above apply to all extensions (because extensions are referred to in both Article 14(1) and 14(2)). Finally, there is no requirement to notify requesters about an extension.

Article 38 provides that no fees may be charged for making requests and that requesters have to pay market rates for photocopying charges. These are progressive fee rules, but they could be improved by making it clear that only photocopying charges may be levied on requesters and by providing for the rates for this to be set centrally, to avoid a patchwork of different fees being charged by different public authorities.

Recommendations:

- The law should include rules prohibiting requesters from being required to provide reasons for their requests, requiring assistance to be provided to requesters and requests to be responded to as soon as possible, waiving fees for impecunious requesters, and making it clear that requesters are free to reuse the information they receive in response to a request as they may wish.
- Consideration should be given to further elaborating the rules on making requests to make it clear that only a description of the information and an address for delivery of that information may be required, that the form for making requests is optional and that requests may be lodged via mail and fax as well as in person and electronically.
- Transfer of requests should be envisaged only where the original public authority does not hold the information; otherwise, consultation with other authorities should be envisaged, for example to obtain a more appropriate version of the information.
- The law should place an obligation on public authorities to comply with requesters preferences regarding the form in which they wish to receive information, as long as this does not place an undue burden on the public authority.
- It should be clarified whether the seven-day time limit for responding to requests is calendar or working days, that the conditions set out in Article 14(2) apply to all extensions of this time limit and that requesters must be notified about any extension to the time limit.
- The law should make it clear that only the costs of photocopying may be charged to requesters and it should also provide that these fees shall be set

centrally.

	Indicator	Max	Points	Article
13	Requesters are not required to provide reasons for their requests.	2	0	
14	Requesters are only required to provide the details necessary for identifying and delivering the information (i.e. some form of address for delivery).	2	0	12
15	There are clear and relatively simple procedures for making requests. Requests may be submitted by any means of communication, with no requirement to use official forms or to state that the information is being requested under the access to information law.	2	1	12
16	Public officials are required provide assistance to help requesters formulate their requests, or to contact and assist requesters where requests that have been made are vague, unduly broad or otherwise need clarification.	2	0	
17	Public officials are required to provide assistance to requesters who require it because of special needs, for example because they are illiterate or disabled.	2	0	
18	Requesters are provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed 5 working days	2	2	13
19	Clear and appropriate procedures are in place for situations where the authority to which a request is directed does not have the requested information. This includes an obligation to inform the requester that the information is not held and to refer the requester to another institution or to transfer the request where the public authority knows where the information is held.	2	2	17
20	Public authorities are required to comply with requesters' preferences regarding how they access information, subject only to clear and limited overrides (e.g. to protect a record).	2	1	16
21	Public authorities are required to respond to requests as soon as possible.	2	0	
22	There are clear and reasonable maximum timelines (20 working days or less) for responding to requests, regardless of the manner of satisfying the request (including through publication).	2	2	14(1)
23	There are clear limits on timeline extensions (20 working days or less), including a requirement that requesters be notified and provided with the reasons for the extension.	2	1	14(1), (2)
24	It is free to file requests.	2	2	38(1)
25	There are clear rules relating to access fees, which are set centrally, rather than being determined by individual public authorities. These include a requirement that fees be limited to the cost of reproducing and sending the information (so that inspection of documents and electronic copies are free) and a certain initial number of pages (at least 20) are provided for free.	2	1	38(2)
26	There are fee waivers for impecunious requesters	2	0	

27	There are no limitations on or charges for reuse of information received from public bodies, except where a third party (which is not a public authority) holds a legally protected copyright over the information.	2	2	
	TOTAL	**30**	**14**	

4. Exceptions and Refusals

Article 41 of the draft Law makes it clear that the rules in the right to information law override other laws to the extent of any inconsistency. This is welcome, but experience in other countries has demonstrated that such provisions are not always effective. Better practice is to make it perfectly clear that secrecy provisions in other laws will be overridden to the extent that they extend or conflict with the regime of exceptions in the right to information law.

For the most part, the exceptions are in line with international standards, but a few exceptions are either too broad or lack a harm test, as follows:

- Article 19 establishes an exception in favour of national security, which is normal, but then defines the scope of national security unduly broadly to include all weapons and military forces, and even treaties relating to security matters.
- Article 20 protects foreign relations but includes all information covered by a confidentiality agreement, which are often very broad and untargeted, rather than information the disclosure of which would actually harm foreign relations.
- Article 22 provides for all information relating to judicial investigations to be exempt, rather than just information the disclosure of which would harm those investigations.
- Article 25 covers all information relating to the internal affairs of public authorities, which could be interpreted to include almost all of the information they hold. Better practice is to protect certain specific interests, such as the free and frank internal provision of advice.

The draft Law does not include a general public interest override, whereby information shall still be released where the overall public interest in disclosure outweighs the harm this would cause to the protected interest. There is only a limited public interest rule in Article 22(2) relating to judicial information.

The draft Act does not provide for information to be released as soon as an exception ceases to apply. Such a rule is important to take into account the fact that the sensitivity of most information declines over time. In recognition of this, better practice laws also place overall time limits on all exceptions protecting public interests, such as security and internal deliberations, for example of 15 or 20 years. Article 20 sets an overall time limit of 20 years, but only for the exceptions relating to security and international relations.

The draft Law fails to impose a requirement on public authorities to consult with third parties where requests are made for information supplied by them to the public authority. This is important both to allow them to provide their reasons as to why such information should not be disclosed and also to consent to disclosure of the information where they do not object to this.

Article 18(3) provides generally for written notice to be provided to requesters whose requests have been refused. Better practice in this area is to require not only written notice but also to specify that such notice should indicate the exact grounds in the law which have been relied upon to refuse disclosure, as well as the right of the requester to appeal against this decision.

Recommendations:

- The law should make it clear that secrecy provisions in other laws are of no force or effect to the extent that they go beyond the regime of exceptions in the right to information law.
- Articles 19, 20, 22 and 25 should be amended to cover only clear and narrow secrecy interests and to be subject to harm tests.
- The law should include a general public interest override so that information shall still be disclosed where this is in the overall public interest.
- The law should make it clear that exceptions apply only where the risk of harm exists at the time of the request, and the overall time limit of 20 years should be extended to cover all public grounds for refusing to disclose information.
- The law should provide for consultation with third parties regarding requests for information provided to public authorities by them.
- The notice provisions in Article 18(3) should be enhanced by requiring public authorities to indicate the exact reasons for any refusal to provide information, as well as the right of the requester to appeal against the refusal.

Indicator		Max	Points	Article
28	The standards in the RTI Law trump restrictions on information disclosure (secrecy provisions) in other legislation to the extent of any conflict.	4	4	3, 41, 18(2)
29	The exceptions to the right of access are consistent with international standards. Permissible exceptions are: national security; international relations; public health and safety; the prevention, investigation and prosecution of legal wrongs; privacy; legitimate commercial and other economic interests; management of the economy; fair administration of justice and legal advice privilege; conservation of the environment; and legitimate policy making and other operations of public authorities. It is also permissible to refer requesters to information which is already publicly available, for example	10	8	19-26

	online or in published form.			
30	A harm test applies to all exceptions, so that it is only where disclosure poses a risk of actual harm to a protected interest that it may be refused.	4	2	19-26
31	There is a mandatory public interest override so that information must be disclosed where this is in the overall public interest, even if this may harm a protected interest. There are 'hard' overrides (which apply absolutely), for example for information about human rights, corruption or crimes against humanity.	4	1	22(2)
32	Information must be released as soon as an exception ceases to apply (for example, for after a contract tender process decision has been taken). The law contains a clause stating that exceptions to protect public interests do not apply to information which is over 20 years old.	2	1	21
33	Clear and appropriate procedures are in place for consulting with third parties who provided information which is the subject of a request on a confidential basis. Public authorities shall take into account any objections by third parties when considering requests for information, but third parties do not have veto power over the release of information.	2	0	
34	There is a severability clause so that where only part of a record is covered by an exception the remainder must be disclosed.	2	2	15(2)
35	When refusing to provide access to information, public authorities must a) state the exact legal grounds and reason(s) for the refusal and b) inform the applicant of the relevant appeals procedures.	2	1	18(3)
	TOTAL	**30**	**19**	

5. Appeals

The draft Act does not provide for internal appeals. Internal appeals can be useful inasmuch as they provide public bodies with a quick and simple means to resolve disputes about access to information internally, before the matter goes to an external decision maker.

It is very welcome that the draft Law provides for an oversight body in the form of the Commission. At the same time, the provisions on this are unduly brief in nature and do not provide sufficient guarantees for the independence of the Commission. In terms of the appointment of the Commissioner, there are no prohibitions on individuals with strong political connections being appointed, although Article 32(2) does at least require the individual to be "qualified and competent", while Articles 33 and 34 protect his or her tenure. There are also no safeguards against political interference in the appointments process, which is done by the Council of Ministers. One way to better insulate this from politics is to allow for nominations to be made by civil society, and to require a shortlist of candidates to be published and the public to be given an opportunity to comment on them. Finally, while Article 27(1)

does provide for a "special budget" for the Commission, there are no specific safeguards for the independence of the budget process.

There are also weaknesses in terms of the powers of the Commission. Although it has the power to access records (see Article 36(1)), it does not have wider powers, for example to conduct investigations of public authorities or to compel witnesses to testify before it. Its decisions are binding (see Article 35(1)), but the draft Act fails to stipulate what order powers it has. These should include not only direct redress for the requester, for example by providing him or her with information or lowering fees, but also the power to order public authorities to put in place structural measures to improve their performance, for example by improving their record management or training their employees.

The current version of the draft Act fails to make it clear that one may appeal to the courts from decisions of the Commission. These are complex matters and it is important that the courts ultimately be allowed to decide on them, as is the case in the vast majority of countries. A right of appeal to the courts may be implicit in the Palestinian legal system but it is preferable to make this quite clear in the law.

Article 31 stipulates that appeals must be decided within 30 days, but otherwise fails to set out any procedures for the handling of appeals by the Commission, or to make it clear that appeals are free and do not require legal assistance. It is important for the law to provide at least a framework of procedures for appeals. The grounds for bringing an appeal, as set out in Article 29, include refusals to provide information, charging excessive fees and breaching the time limits. Better practice, however, is to provide for a right to appeal against any failure to respect the rules in the law relating to requests.

Finally, the draft Law fails to specify that the public authority against which an appeal has been brought bears the burden of showing that it acted in accordance with the law. This is appropriate given that the right to information is a fundamental human right, protected under international law.

Recommendations:

- Consideration should be given to requiring public authorities to provide requesters with an internal review of any refusals to provide information.
- The provisions establishing the Commission should provide greater protection for its independence in terms of its budget and the process for appointing the Commissioner.
- The Commission should have wider powers to investigate appeals, including to compel witnesses to testify and to inspect the premises of public authorities, and its powers to order remedies, both for individual requesters and to address more structural problems at public authorities, should be set out clearly in the law.

- Consideration should be given to making it clear in the law that there is a right to appeal to the courts from decisions of the Commission.
- The grounds for bringing appeals should include all failures to respect the rules relating to requests and more detailed procedural rules relating to the processing of appeals should be added to the law, including that appeals are free.
- The law should make it clear that, on appeal, public authorities bear the burden of showing that they acted in accordance with the law.

Indicator		Max	Points	Article
36	The law offers an internal appeal which is simple, free of charge and completed within clear timelines (20 working days or less).	2	0	
37	Requesters have the right to lodge an (external) appeal with an independent administrative oversight body (e.g. an information commission or ombudsman).	2	2	28(1)
38	The member(s) of the oversight body are appointed in a manner that is protected against political interference and have security of tenure so they are protected against arbitrary dismissal (procedurally/substantively) once appointed.	2	1	32-34
39	The oversight body reports to and has its budget approved by the parliament, or other effective mechanisms are in place to protect its financial independence.	2	1	27
40	There are prohibitions on individuals with strong political connections from being appointed to this body and requirements of professional expertise.	2	1	32
41	The independent oversight body has the necessary mandate and power to perform its functions, including to review classified documents and inspect the premises of public bodies.	2	1	36
42	The decisions of the independent oversight body are binding.	2	2	35(1)
43	In deciding an appeal, the independent oversight body has the power to order appropriate remedies for the requester, including the declassification of information.	2	0	
44	Requesters have a right to lodge a judicial appeal in addition to an appeal to an (independent) oversight body.	2	1	
45	Appeals (both internal and external) are free of charge and do not require legal assistance.	2	0	
46	The grounds for the external appeal are broad (including not only refusals to provide information but also refusals to provide information in the form requested, administrative silence and other breach of timelines, charging excessive fees, etc.).	4	3	29
47	Clear procedures, including timelines, are in place for dealing with external appeals.	2	1	31
48	In the appeal process, the government bears the burden of demonstrating that it did not operate in breach of the rules.	2	0	
49	The external appellate body has the power to impose appropriate structural measures on the public authority (e.g. to conduct more training or to engage in better record management)	2	0	

TOTAL	**30**	**13**	

6. Sanctions and Protections

The draft Act provides for sanctions for individuals who fail to respect the provisions of the law, but these also extend to wrongful disclosures of information. The latter is unnecessary given that Palestine already has sufficient rules penalising the wrongful disclosure of information, and it is likely to undermine the proper application of the law by making officials wary of disclosing information. Also, while Article 39(2)(c) allows for such sanctions only in the context of bad faith disclosures, Article 39(1) penalises all disclosures of private information, whether or not these are in bad faith.

The draft Law does not provide for sanctions to be imposed on public authorities which systematically fail to respect their obligations under the law. While it is appropriate to provide for sanctions for bad faith acts by individuals, in many cases the problem lies not with individual officers but with the public authority as a whole. Indeed, it can be unfair to penalise individuals when the whole environment in which they work is oriented towards obstructing the right to information, which may even include direct instructions from their superiors to block access.

A serious problem with the draft Law is that it fails to provide protection to those who disclose information pursuant to the law in good faith. Such protection is essential to give civil servants the confidence to disclose information, something which goes against all of their previous training and practice (i.e. to address the culture of secrecy).

Article 9 provides welcome protection for information officers (assigned employees) who disclose irregularities or breaches of the law to the Commissioner, a sort of mini-whistleblower rule. This should be extended to cover disclosures by anyone (i.e. not just information officers) and to cover a wider range of instances of wrongdoing (i.e. not just breach of the law but maladministration, corruption and threats to the environment or safety, among other things). The rules in Articles 10 and 11 of the draft Law, protecting the confidentiality of journalists' sources and third party disclosures of information are very welcome.

Recommendations:

- The provisions in Article 39 penalising disclosure of information should be removed and, instead, the law should provide protection to those who disclose information pursuant to the law in good faith.
- In addition to sanctions for individuals, the law should provide for sanctions to be imposed on public authorities which systematically fail to respect the law.

- The protection for disclosures of wrongdoing by information officers should be extended to everyone and to cover a wider range of cases of wrongdoing.

Indicator		Max	Points	Article
50	Sanctions may be imposed on those who wilfully act to undermine the right to information, including through the unauthorised destruction of information.	2	2	36, 39
51	There is a system for redressing the problem of public authorities which systematically fail to disclose information or underperform (either through imposing sanctions on them or requiring remedial actions of them).	2	0	
52	The independent oversight body and its staff are granted legal immunity for acts undertaken in good faith in the exercise or performance of any power, duty or function under the RTI Law. Others are granted similar immunity for the good faith release of information pursuant to the RTI Law.	2	0	
53	There are legal protections against imposing sanctions on those who, in good faith, release information which discloses wrongdoing (i.e. whistleblowers).	2	1	9
	TOTAL	**8**	**3**	

7. Promotional Measures

Article 5 of the draft Law provides generally that all public authorities shall maintain their records in an "orderly manner to facilitate information retrieval" and in electronic format as far as possible. This is welcome, but it does not constitute a full system for improving record management. Better practice in this area is to allocate the power and responsibility to a central body to set binding record management standards. The body could then set standards and give all public authorities a certain amount of time to bring themselves into conformity with those standards. At that time, the central body might establish new (higher) standards, thereby forcing record management quality upwards over time. This is a realistic approach to improving record management standards in practice. Normally, an internal government body would do this, based on: a) its familiarity with record management practices inside government; and b) its ability to enforce the rules in practice. But this role is also played by the oversight body (i.e. the Commission) in some countries.

The proactive publication rules do not require public authorities to publish lists of the records they hold, or even a list of the categories of records that they hold. Such lists are important to help requesters direct their requests to the proper public authority, saving everyone time and making the system work more effectively in practice.

Article 28(4) provides for the Commission to contribute to training, but it does not impose an obligation on all public authorities to ensure that their staff, and in

particular information officers, receive adequate training on the new law with a view to promoting its proper implementation.

Finally, Article 37 places an obligation on the Commission to provide yearly reports on its activities and overall implementation of the law. This is welcome, but better practice is to place a similar obligation on all public authorities to report annually on what they have done to implement the law, including detailed information about the processing of any requests for information they may have received. This is an important means of monitoring implementation successes and challenges, and of tracking the use being made of the law.

Recommendations:

- Consideration should be given to putting in place a proper records management system with centrally set and binding standards.
- Public authorities should be required to publish lists of the information they hold, to ensure that their employees receive adequate training on the right to information and to publish annual reports on what they have done to implement the law.

Indicator		Max	Points	Article
54	Public authorities are required to appoint dedicated officials (information officers) or units with a responsibility for ensuring that they comply with their information disclosure obligations.	2	2	4
55	A central body, such as an information commission(er) or government department, is given overall responsibility for promoting the right to information.	2	2	28(2)
56	Public awareness-raising efforts (e.g. producing a guide for the public or introducing RTI awareness into schools) are required to be undertaken by law.	2	2	28(3)
57	A system is in place whereby minimum standards regarding the management of records are set and applied.	2	1	5
58	Public authorities are required to create and update lists or registers of the documents in their possession, and to make these public.	2	0	
59	Training programmes for officials are required to be put in place.	2	1	28(4)
60	Public authorities are required to report annually on the actions they have taken to implement their disclosure obligations. This includes statistics on requests received and how they were dealt with.	2	0	
61	A central body, such as an information commission(er) or government department, has an obligation to present a consolidated report to the legislature on implementation of the law.	2	2	28(6), 37
	TOTAL	**16**	**10**	