Training Programme on the Right to Information for Maldivian Information Officers and Senior Management

Participants' Manual

Centre for Law and Democracy

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ACKNOWLEDGEMENTS

The Participant's Manual for the *Training Programme on the Right to Information for Maldivian Information Officers* has been developed by the Centre for Law and Democracy for the Information Commissioner's Office of the Maldives and Transparency Maldives. The authors of the manual were Toby Mendel, Executive Director, and Raphael Vagliano, Legal Officer, Centre for Law and Democracy. The manual was prepared as part of the project "Improving the Implementation of Access to Information Laws" funded by the Government of Canada.

INTRODUCTION

The Maldives first adopted its Right to Information Act (RTI Act) in 2014. It is quite a strong law and is currently ranked in 20th position from among the 140 countries with national right to information laws on CLD's RTI Rating (rti-rating.org). However, the RTI Rating only assesses the strength of a legislative framework on paper and does not assess implementation in practice (i.e. actual performance). While the Maldives has taken important steps to improve implementation in the decade following the adoption of the RTI Act, several challenges still remain, as has been noted in multiple reports, including the 2024 RTI Implementation Assessment undertaken by the Transparency Maldives and the Information Commission's Office using CLD's Comprehensive Methodology. That assessment, which ranked performance on a red (poor), yellow (needs improvement) and green (strong) bases, assigned an overall "yellow" score to the Maldives, indicating a need for improvement in many areas.

This Manual is part of the broader effort to address implementation needs in the Maldives, in particular through enhancing training capacity. It is primarily designed to be used as a resource for training courses for information officers and senior management. It should, for this purpose, be used in conjunction with the accompanying exercises and the presentation slide deck. However, it might also be used to inform a self-study course and as a reference tool.

The Manual is divided into seven sessions, each one corresponding to a session in the training course, as reflected in the agenda, which is included in the Manual. Before session one, the Manual starts with a very brief introductory session, where participants get to know each other, and the goals and expectations of the course, as well as the style, are introduced.

The first session presents a number of key benefits associated with the right to information and then provides an overview of international trends relating to this right, looking at the adoption of laws globally as well as other key developments. This session also outlines the key drivers for these trends and, in particular, the growth in the number of RTI laws globally. Finally, it provides an overview of the RTI Rating, a tool to assess the strength of right to information laws.

The second session provides a closer look at the legal foundations for the right to information. This includes an overview of developments leading to the recognition of the right as a human right under international law, as well as the key legal features a strong legal regime should have. This is followed by an overview of the Maldivian Act, including a description of the extent to which it conforms to international standards and its main strengths and weaknesses.

The third session is the first one to address a specific implementation issue, namely proactive disclosure. These sessions are designed to raise participants' understanding

about what they need to do and to present them with various general options, rather than to provide specific instructions. The latter would be impossible not only due to the brevity of the course, but also due to the wide range of different types of public authorities involved. Session Three outlines the importance and challenges of proactive disclosure, and also gives participants a sense of what they need to think about to ensure that their own public authorities are able to meet their proactive publication obligations.

The fourth session addresses a key issue for information officers, namely how to process requests for information. This session takes participants through the stages of receiving and responding to requests for information, highlighting challenges they can expect to face on the way, as information officers, including resistance from their colleagues and difficulties responding consistently within the time limits established by the law.

The fifth session addresses the important question of restrictions on the right to information or exceptions. It starts by outlining general principles relating to exceptions, including the three-part test for restrictions under international law. It then takes participants through a step-by-step procedure for analysing whether or not specific, requested information falls within the scope of the regime of exceptions, including an analysis of the harm test and public interest override.

The sixth session focuses on the issue of appeals against refusals to disclose information and other actions by public authorities which may breach the rules. It again provides practical advice to information officers about how these systems should work, albeit in a somewhat overview fashion given that it is not information officers themselves who will be responsible for this process.

The seventh and final session provides an opportunity to review a number of outstanding issues which are relevant to information officers, including preparing annual reports on implementation, reviewing promotional measures and the importance of adopting plans of action for implementation, training, awareness raising and developing a system for monitoring and evaluation.

Overall, the course aims to provide participants with a robust overview of what the tasks of an information officer involve. Participants should come out of the course feeling challenged, as they start to realise, perhaps for the first time, the real scope of their roles. At the same time, they should at least have a positive understanding of the scope of their duties, so that they can start to move forward to deliver them. And, very importantly, they should also have a number of useful tools and ideas about how to do that.

Agenda

Training Programme on the Right to Information for Maldivian Information Officers and Senior Management

DAY 1

09:00 – 09:30	Welcome, Introductions and Expectations
09:30 – 11:00	Session 1: Importance of the Right to Information and Recent Global Trends in This Area *Presentation* *Questions and Plenary Discussion*
11:00 – 11:30	Tea/Coffee Break
11:30 – 12:30	Exercise A: The Benefits of RTI *Work in Breakout Groups* *Report Back to Plenary*
12:30 – 13:30	Lunch
13:30 – 15:00	Session 2: Legal Foundations for the Right to Information: International Law and the Maldivian Legal Framework *Presentation* *Questions and Plenary Discussion*
15:00 – 15:30	Tea/Coffee Break
15:30 – 16:30	Exercise B: Constitutional Interpretation *Work in Breakout Groups* *Report Back to Plenary*
16:30 – 17:00	Closing

DAY 2

09:00 – 10:00	Session 3: Proactive Disclosure of Information by Public Authorities *Presentation* *Questions and Plenary Discussion*
10:00 – 11:00	Session 4: How to Process Requests for Information

Presentation
Questions and Plenary Discussion

11:00 – 11:30	Tea/Coffee Break
11:30 – 12:30	Exercise C: The Form for Requests for Information *Work in Breakout Groups* *Report Back to Plenary*
12:30 – 13:30	Lunch
13:30 – 15:00	Session 5: How to Interpret Exceptions *Presentation* *Questions and Plenary Discussion*
15:00 – 15:30	Tea/Coffee Break
15:30 – 16:45	Exercise D: Role Play on Exceptions *Work in Breakout Groups* *Report Back to Plenary*
16:45 – 17:00	Closing

DAY 3

09:00 – 10:00	Session 6: How to Process Appeals *Presentation* *Questions and Plenary Discussion*
10:00 – 11:00	Exercise E: Appeals *Work in Breakout Groups* *Report Back to Plenary*
11:00 – 11:30	Tea/Coffee Break
11:30 – 12:30	Session 7: Reporting, Promotional Activities, and Monitoring and Evaluation *Presentation* *Questions and Plenary Discussion*
12:30 – 13:00	Conclusion and Presentation of the Certificates
13:00 – 14:00	Lunch

Opening, Introductions and Welcome

This is an informal introductory part of the course which allows participants to introduce themselves to each other and for a brief discussion about the purpose of the course, participants' expectations and the agenda.

It will start with a round of introductions, starting with the course facilitator and then going around the room and having participants introduce themselves briefly. Participants should indicate which organisation they work for and what they do there, especially in relation to information. They should also indicate one expectation they have for the course (only one so that space is left for others to indicate their expectations). We will return to these expectations at the end of the course for a review of the extent to which they were in fact met.

Following this, the facilitator will introduce the purposes of the course. These are, broadly:

- To raise awareness about international standards and developments regarding the right to information (RTI).
- To raise awareness about the Maldivian legal framework for the right to information.
- To help participants – who should mostly be information officers and senior management from public authorities – to understand better their responsibilities under the RTI Act (i.e. all of the activities that the Act requires them to do in terms of implementation).
- To help participants think about how they will discharge those responsibilities, including in terms of what their priorities are.

Discussion Point

Are there any other purposes that you feel are important and that should be added? Does this largely conform to your expectations?

The facilitator will then provide an overview of the way in which the course will be conducted. Key points here include:

- That the course will be **interactive** in nature. Participants should always feel free to interject queries, comments or observations, regardless of what is happening at that particular point in the training. While the facilitator is leading the course, the idea is that everyone should participate. Among other things, this will help ensure that the course is as responsive as possible to participants' needs and that participants understand the material being covered.

- That the course will employ various **methodological approaches**. These will include: presentations, open discussions and different sorts of exercises.
- That the course will include a number of **exercises**. The purpose of exercises is to allow participants to work together in smaller groups to discuss the material and thereby to obtain a greater understanding of it. In most cases, the exercises will ask participants to work in groups of two or three people to work out a response to the question posed in the exercise. In most cases, there will be a plenary discussion about these responses, so each group should appoint someone who will be ready to provide feedback on their discussions to the whole group. One exercise – on exceptions – is more involved and consists of a role play, with different members of the group playing different roles.

The facilitator will then introduce the agenda briefly and participants will be given an opportunity to provide feedback and comments on it.

Session 1: Importance of the Right to Information and Recent Global Trends in this Area

Discussion Point

When you hear the term 'right to information', what do you think of? What are its main characteristics and features (its essence)?

1. What is the Right to Information (RTI)

The core concept behind the right to information is that public authorities do not hold information just for themselves. Instead, they hold it on behalf of the public as a whole, which, at least in democracies, has given them a mandate and funding to do their work. As a result, the public has a right to access public information (of course subject to certain exceptions). In other words, everyone has a right to access information held by public bodies or authorities.

As a matter of practice under most RTI laws, there are two main ways of exercising this right:

- Reactive (i.e. responsive) provision of information: Anyone can make a request to a public authority for information that he or she wants, and that authority should provide the information to the requester within a set timeframe.
- Proactive provision of information: Public authorities should publish key types of information even without a specific request for that information, so that everyone can access it.

It is universally recognised that the right to information is not absolute and that certain types of information should not just be disclosed to anyone who asks for it. This includes, for example, sensitive information relating to the security of the nation and private information about individuals. The core idea behind the right to information is that access is the default or presumed position, and that any refusal to provide information is exceptional in nature (so that we call the rules on withholding of information 'exceptions'). One of the important consequences of the creation of a presumption in favour of access is that public authorities must justify any refusal to make information public.

It is easy to talk about this idea in theoretical terms but as a matter of reality it is important to recognise that creating a presumption in favour of openness is a radical change in most countries. Indeed, it represents an almost complete reversal from the historical situation, which was that governments and public authorities operated for

the most part in secret, and that they treated the information they held as belonging to them, and not something they needed to share with the public.

It is often difficult for officials to implement right to information laws, due to the radical nature of the changes these laws bring in. In essence, these laws turn officials' whole world upside down, from a situation where they could assume secrecy of 'their' information to a situation where now they have to share information with anyone who happens to ask for it. Even you, as information officers or specialists, may find this a difficult adjustment. And you can certainly expect some resistance from your colleagues when you are pressing them to provide information to the public.

Example

Imagine someone makes a request for a document that you have in your possession and which is not covered by an exception (which is the case for most of the documents you hold). Previously, you would have treated the information as confidential, perhaps as a professional secret. Now you have to give that information to the requester. This clearly takes some getting used to.

Discussion Point

What do you think of this? Do you think this has been or will be a problem in the Maldives? Do you think that this depends on the underlying culture of the country, or do you think that in most countries officials have a similar culture of secrecy?

Another aspect of the right to information is the idea of proactive disclosure of information. Although people often do not even see this as part of the right, in fact it is a very important means of providing information held by public authorities to the public. The number of individuals who actually make requests for information will in most countries be relatively low. Even in a developed country like Canada with a long-standing right to information law (in place since 1982), only five percent of all citizens have ever made a request for information. For the rest of the public, the main means of accessing information held by public authorities is via proactive disclosure.

There is also a very close relationship between the two types of disclosure: proactive and reactive. The more information that is made available on a proactive basis, the less need there is for citizens to make requests to get this information. So, as the amount of information made available proactively increases, the number of requests for information naturally decreases. In practice, it is far quicker and easier to make information available proactively than to process a request for the same information, due to the fact that the latter must be registered, a receipt must be sent to the requester, the information must be found and then assessed for exceptions and so on. As a result, most countries are moving forward very strongly in terms of making information available on a proactive basis.

Another idea has emerged in recent years which is very closely related to the right to information, namely the idea of open data, sometimes referred to more generally as open government. At its heart, this is really a form of proactive disclosure, since it involves public authorities making information available on a proactive basis. However, it has a few added features, as follows:

1. Information, especially numerical or statistical data, should be made available in machine-readable formats such as Word for text and Excel for spreadsheets, rather than as scans or .pdf files. Because these can be processed by computers and other digital devices, users can manipulate the information electronically, combine it with other information or databases to create new products, or reveal broader statistical trends.

Example

The website https://data.gov.uk showcases a number of innovative ways in which information released by the United Kingdom government is being used. These include an interactive map developed by a university researcher showing traffic accident statistics, which allows people to locate danger spots. Another application, developed by a private sector company, tracks crime statistics street by street, allowing people to see what offences have been committed in their neighbourhood, as well as the resolution of every incident (i.e. whether the offender was apprehended).

2. Information and data are made available for free instead of on payment of a fee. While governments once used to sell most higher value data, the trend now is simply to give it away for free. This means that even high value data becomes accessible to everyone, and this has resulted in very innovative and commercially beneficial products being developed.

Example

In the United Kingdom, the government used to sell very detailed maps, known as ordinance survey maps. These maps are now available in electronic formats for free and they have been used by numerous 'app' developers to create useful products for the public.

3. Finally, information produced or owned by public authorities is provided without being subject to any copyright restrictions (i.e. free of any intellectual property constraints). Usually, this is done by attaching an open licence to the information, allowing individuals to use the information for whatever purpose they may wish. This is also key to the commercial reuses noted above.

Example

There are various initiatives in place around the world which use mapping and survey information to help people with disabilities get around. Governments naturally

produce highly accurate maps. Releasing these maps to the public, in an open electronic format and under open licence, has allowed developers to build applications that let users report on accessibility features or obstacles they encounter. These modified maps now allow users to search for routes that are accessible for persons with a particular disability, such as requiring a wheelchair. For more information, see: https://wheelmap.org.

2. The Importance of the Right to Information

Discussion Point

What are the general benefits associated with the right to information? Can you think of reasons why it might be important in a democracy? What about the specific reasons why it might be important in the Maldives?

A number of benefits are normally associated with putting in place an effective regime governing the right to information. Some of the more important of these are discussed below.

1. Democracy and Participation

A free flow of information about matters of public interest is essential to a healthy democracy. A core characteristic of democracy is that individuals have the ability to participate effectively in decision-making about issues that affect them. Democracies put in place a range of different participatory mechanisms, including direct elections for their leaders but also citizen oversight bodies for public services such as education and health, and mechanisms for commenting on proposed government programmes, activities, policies or laws.

It is not possible to participate meaningfully in any of these mechanisms without having access to timely, accurate and complete background information, and information held by government will be extremely important here. Indeed, where democratic societies depend on popular opinion to craft public policy, there is a strong collective interest in keeping the electorate as informed as possible, to ensure that their votes are based on an accurate understanding of the issues. Voting is not simply a technical function but is, under international law, described as ensuing that "[t]he will of the people shall be the basis of the authority of government". For this to be possible, members of the electorate must have access to information, for example to assess the performance of the current government and to assess the validity of the proposals of all of the competing candidates and parties. The same is essentially true of participation at all levels. For example, if a citizen wishes to provide feedback on a proposed policy or development project, he or she will need access to the proposal, as well as the background information policy-makers have relied upon to develop the policy.

Examples

Around the world, an effective right to information is critical for shaping debates around matters of public interest. For example, in 2015 the Mayor of the Spanish town of Villar de Canas volunteered to host a nuclear waste storage facility. The decision was a highly controversial one, with proponents of the project arguing that it would bring jobs and economic security, while opponents worried about the potential environmental and health dangers. In the midst of this debate, activists from Transparency International-Spain successfully appealed for the release of the Nuclear Safety Council's full assessment of the site, including a dissenting opinion which cited significant concerns.

Right to information requests can also lead to reassessments of previous policy decisions, in order to better shape decision-making going forward. In 2016, the Council for the Borough of Lambeth, in the United Kingdom, announced that it would be temporarily closing two libraries as a cost saving measure. However, freedom of information requests later revealed that the cost of closing the sites was actually more than it would have been to keep them open.

2. Sound Development

The participation promoted by right to information laws also extends to development initiatives, which can lead to greater local ownership over these initiatives. This, in turn, can help improve decision-making processes around development projects and also improve implementation of those projects fostering the involvement of beneficiaries. For the same reason, greater transparency can also help ensure that development efforts reach the intended targets.

Examples

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.

3. Relations with Citizens

When governments become more open and share information on a formal basis (i.e. under the right to information law rather than just informally through personal contacts), this can help control rumours and build a more solid basis for the information that circulates in society. This, in turn, helps build better overall relations

between citizens and the government, which are based more on trust than on the rumours which can circulate in the absence of solid information.

Example

In order to foster public understanding of their mission and activities, as well as to promote participation, it is common for public agencies, particularly legislative bodies, to publish their calendars or schedules of events. In 2015, Rwanda's Parliament responded to a right to information request for their schedule by not only delivering the information but also shifting to a system where the schedule would be automatically published online.

4. Accountability

Accountability and good governance are also core values of democracies. The essence of accountability is that members of the public have a right to scrutinise and debate the actions of their leaders and to assess the performance of the government. This is possible only if they can access information about matters of important public concern, such as the economy, social systems, unemployment, environmental performance and so on. Once again, the right to information is key to ensuring this.

Examples

In Jamaica, right to information requests revealed that a hotel which collapsed in 2015 had repeatedly been found to be in violation of its building permits. Despite repeated warnings, authorities never shut the project down. While it may be embarrassing in the short term to bring such failures to light, this type of accountability is essential to identifying breakdowns in the system, in order to ensure that such dangerous cases do not repeat themselves. After evidence of the hotel's non-compliance came to light, there were calls to reassess the safety of other construction projects.

In 2010 in Canada, the then Defence Minister called the search and rescue service to provide him with a helicopter to transport him back from an ice fishing holiday, even though these helicopters are supposed to be used only for emergency situations (and not as taxis for senior officials). The initial response by the search and rescue service to this request was telling. "If we are tasked to do this, we of course will comply," the official said. But he added that, "given the potential for negative press though, I would likely recommend against it, especially in view of the fact the air force receives regular access-to-information requests specifically targeting travel on Canadian Forces aircraft by ministers." In other words, the right to information law led to the official taking a more responsible attitude to wasteful or improper uses of public resources. Although he was overruled by the Minister, the official's warning was prescient. Shortly after, the office indeed received a media request for the information, and the Minister's wrongdoing was the subject of extensive public debate.

In 2014, residents of Flint in the United States were warned against drinking their tap water, after corrosion of the city's pipes resulted in dangerous levels of lead and other contaminants. Using the Freedom of Information Act, the American Civil Liberties Union was able to obtain documentation which showed that cost saving measures by the state and city governments had caused the corrosion, and that when the problem first emerged authorities had sought to suppress information about it, rather than warning people.

5. Improving Administrative and Organisational Efficiency

Although it requires some resources to implement an effective right to information system, there is evidence to suggest that these systems can also help to create efficiencies, by fostering public oversight. Having a set of "fresh eyes" look over processes can lead to useful inputs for how they may be improved. Although not always pleasant to receive, constructive criticism is, nonetheless, important to fostering positive changes. Moreover, the public accountability fostered by a functioning right to information system can impact staff attitudes towards efficiency and resource management. Just as an employee is likely to work harder if their supervisor is standing nearby, the knowledge that an official's actions are subject to public scrutiny will lead them to be more careful and judicious in their decision-making, and to take greater care over how public resources are expended.

6. Dignity and Personal Goals

Although issues such as corruption and accountability tend to attract more attention, the right to information also serves a number of other important individual goals. The right to be able to access information about oneself that is held by public authorities, for example, part of one's basic human dignity. It can also be useful to help individuals make personal decisions. For example, individuals may not be able to make decisions about medical treatment, financial planning and so on if they cannot access their medical records. It may also be necessary to access information to correct mistakes, which can lead to serious problems. There has, for example, been a problem of individuals with the same names as actual suspects being put on no-fly lists. Indeed, like many RTI laws, the Maldives' Right to Information Act provides for a right to request that personal information which is inaccurate, incomplete or misleading be corrected. Right to information requests can also reveal information that directly impacts one's health or livelihood, such as environmental information related to a person's community.

Examples

In India, individuals have made very effective use of the right to information law to obtain information of personal value. There is more robust implementation of the right to information law than of other rules, including rules relating to benefits or entitlements owed to individuals (for example regarding the processing of

applications for licenses or permissions, or the provision of social benefits). This has led to a situation where individuals often resort to requests for information where they are facing problems such as delay, obstruction or failure to apply the rules in relation to service delivery. A study on this by students at Yale University in the United States involved three groups applying for benefits to which there were entitled, such as a passport or food rations. The first group simply applied for the benefits and did nothing else. The second group applied for the benefits and paid a bribe to get the benefit. The third group applied for the benefit and then followed up with an application under the right to information law for information about their claim. While the second group had the highest success rate, the third group was not far behind. This is significant, among other things, because the cost of a right to information application is just about US$0.15 whereas the average cost of the bribe was about US$25. This dynamic played out in practice for Rezia Khatun, a Bangladeshi widow. Left destitute when her husband died, she repeatedly applied for a benefit card, but was denied each time, since the cards were being distributed only to politically connected people. With the help of a local activist, she filed a request to know how many cards had been allotted to her district that year, whether she was eligible for one and how the cards were distributed. Shortly thereafter, Ms. Khatun received her benefit card.

There are also many examples of right to information requests revealing information about threats to public health or the environment. For years, villagers in Koradi and Khaparkheda in India complained that local power plants were making them sick. Right to information requests finally revealed that, indeed, the region had a high level of lung and skin diseases.

7. Economic and Business Benefits

The right to information also generates a number of business benefits, something that is often overlooked. In many countries, commercial businesses are a significant user group. Public authorities collect and hold vast amounts of information on a wide range of issues, much of which is relevant to economic matters or social trends, which businesses can put to good use. This is an important benefit, which also helps respond to the concerns which are often voiced about the high cost of implementing right to information legislation. The economic value of the information released under right to information requests has been assessed at many billions of dollars.

Another economic benefit to openness comes in the form of more efficient and competitive contracting. Open contracting, whereby material about bids received in response to a call for tenders is published online, has become increasingly popular, particularly among municipal governments. This is due to its tendency to drive down costs over time, by ensuring that contracts are awarded fairly to the most competitive bid. Another aspect of this is that bidders that were unsuccessful in a tender can see the scoring and where they did poorly compared to competitors. This not only helps expose any biases or wrongdoing, but it also helps the business improve their bidding for next time.

Example

The World Bank has put in place strict requirements regarding the openness of tender processes, which is done on a proactive basis. All successful bidders must provide information about the points they were awarded under each category of the tender assessment process and the overall value of their tender award on their websites.

8. Combating Corruption

One of the most high-profile benefits associated with the right to information is its power to combat corruption and other forms of wrongdoing in government. Different social actors – including investigative journalists, watchdog NGOs and opposition politicians – can use the right to information law to obtain information which would not otherwise be available to them and to use it to expose wrongdoing. Once wrongdoing is exposed, this normally helps root it out. As the former U.S. Supreme Court Justice Louis Brandeis famously noted: "A little sunlight is the best disinfectant." This benefit is so clearly recognised that one of the measures in the UN Convention Against Corruption is to call on States to adopt right to information laws.

Examples

There are many examples of right to information legislation being used successfully to combat corruption. In the 1990s, the Ugandan education system used to provide significant direct capital transfers to schools via local public authorities. A public expenditure tracking survey (PETS) in the mid-1990s revealed that 80 percent of these funds never reached the schools because they were being siphoned off on the way. To address this problem, the central government starting publishing data in local newspapers and at schools about the amount of the monthly capital transfers that had been made. This meant that both officials at the schools and parents of students could access this information and therefore know if it was getting 'lost' along the way. A few years after the programme was first implemented, the rate of capture had dropped to 20 percent.

In the United Kingdom, after a long fight, the records relating to the way Members of Parliament had spent the funds they are allocated for different purposes such as housing were released under the right to information law. They revealed extensive corruption and wrongdoing in relation to those expenses, in many cases relating to the housing allowances given to MPs for housing if their primary residence was not in London. As a result of the revelations, the Speaker of the House of Commons was forced to resign, the only time this has ever happened in the 300 years since that institution was first created. In addition, several MPs were charged with criminal offences and dozens were unable to run at the next election.

9. Respect for Human Rights

In the same way as corruption, human rights violations can remain hidden and therefore flourish in a climate of secrecy. Many of the worst human rights violations, such as torture, are almost by definition things that take place in secret. Openness rules can lead to the indirect exposure of problems, for example, by requiring bodies which have conducted investigations into human rights violations to publish their reports. They have also, in some instances, directly exposed serious human rights abuses by authorities.

Examples

In the United States, information requests filed by Muckrock, a website, helped to track a range of abuses taking place in the country's privately run prisons, including charging prisoners extortionate prices for basic necessities, staffing shortcuts and insufficient access to medical care. Documents made available as a result of information requests have also helped to shed light on human rights abuses committed by the Central Intelligence Agency on suspects captured as part of the "War on Terror", as well as allegations of torture by detainees held at Guantanamo Bay.

Right to information requests can often be instrumental in unmasking discrimination. In Halifax, Canada, there was outrage in 2017 when information requests revealed that black residents were three times more likely to be stopped on the street by police than white residents.

In a number of countries, including Tunisia and Mexico, information relating to human rights violations or war crimes is given special treatment in the sense that none of the exceptions apply when information relating to these issues is requested.

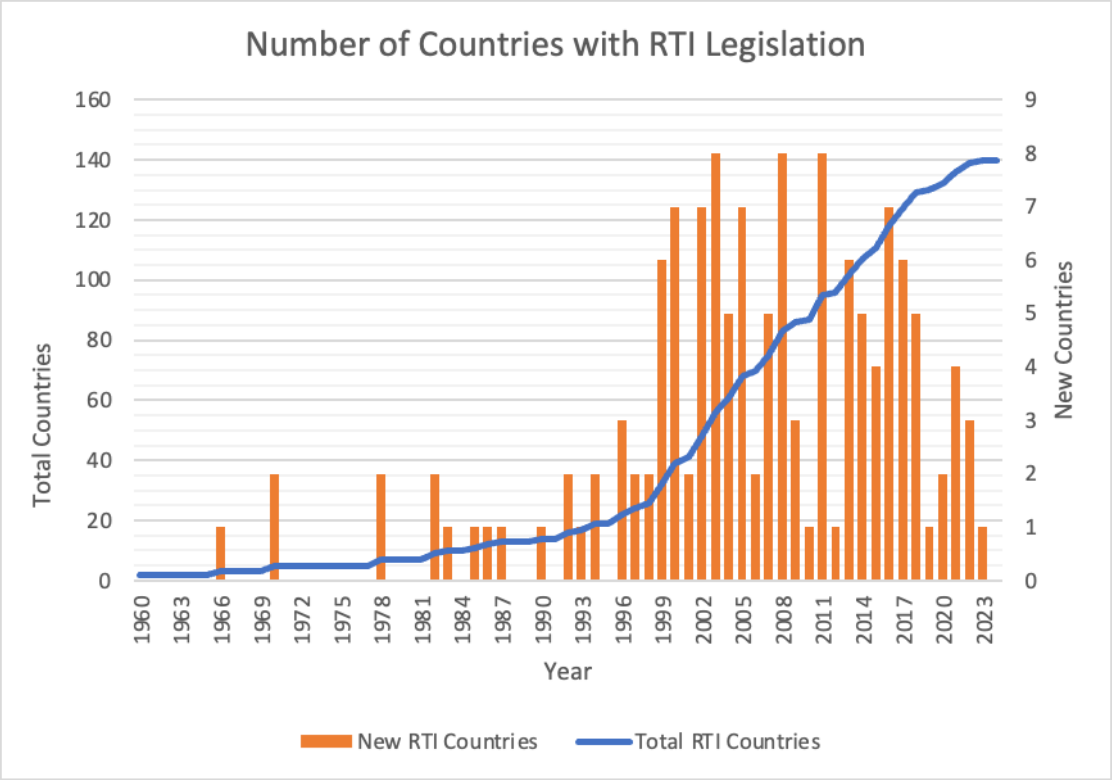
Discussion Point

Are there examples in the Maldives where access to information, either under the Right to Information Act or obtained in other ways, has provided some of these benefits? Do you feel that these benefits are applicable to the Maldives and, if so, how? Have other benefits been obtained as a result of openness around information?

3. Recent Global Trends and Key Drivers for Them

There are now 140 countries around the world which have adopted right to information laws, up from just 14 in 1991. As the graph below illustrates, rapid progress has been made since Sweden first adopted an RTI law, in 1766. By 1990, 14 countries had adopted such laws, all established democracies except one. Today, more than 135 countries across all regions of the world – Asia, Africa, North and South America, Europe, the Pacific and the Middle East – have adopted RTI laws. Until around 1997, the rate of adoption was about one per year, after which it increased to around four per year (hence the sharp rise in the gradient of the graph).

Figure 1. Chronological Development of RTI Laws



Source: RTI Rating, run by the Centre for Law and Democracy

Discussion Point

Does the spread of RTI laws around the world surprise you? What do you think are some of the drivers behind the growth of RTI laws?

The rapid pace of adoption of right to information laws since the 1990s is without a doubt a remarkable phenomenon. There are a number of possible explanations for it, including the following:

1. More people are beginning to feel that public authorities hold information not for themselves but on behalf of the people. Through elections, the people give the government a mandate, and the funding that is available to government comes from public sources. It thus follows that information held by government in fact belongs to the people.

2. The formal recognition of the right to information as a human right has had a powerful promotional effect. In terms of advocacy messaging, it is more

compelling and insistent to ask for a government to recognise a human right than it is simply to call for a governance reform.

3. People are also changing their expectations around information. In previous generations, people were largely content to vote every four or five years, feeling that this was sufficient in terms of participation. Now, however, we have much greater expectations and even demands around participation. We expect to be consulted on every development which affects us and to have a right to be involved in the governance of key social institutions, such as schools and hospitals, including through oversight boards, while digital communications provide a platform for such consultation.

Example

In Canada, when public authorities undertake an activity such as building a road in a city, everyone living in the area which will be affected by the road is given a chance to participate in public discussions about the proposed road. Town hall meetings are held and everyone affected receives an invitation to them through their private mailbox. Importantly, all of the information the government has used to plan the development of the road – such as its expected environmental impact or the way it will affect traffic in the area – is made available publicly online. This means that when ordinary citizens go to these meetings, they are often as well informed about the proposals as the government is.

4. The digital revolution has engendered a revolution in humanity's relationship with information. A smartphone often contains more information than someone might have in physical form at home. The Internet and powerful search engines have allowed people to access virtually unlimited amounts of information in seconds. This has triggered an increased hunger for information, including from government. Globalisation, has also driven interest in RTI as a right, because more people have become aware of how people around the world enjoy different rights and benefits. When people in one country see people in other countries benefiting from RTI legislation, they want it too.
5. The international community has applied pressure and provided support, thereby contributing to the growth of RTI legislation in many countries. For instance, international actors such as the World Bank offered support to the post-revolutionary Tunisian government for the adoption of RTI legislation.
6. Support from the international community is often supplemented by support from civil society, including both international and local groups, which can play a very important role in mobilising support for the adoption and implementation of RTI legislation. Growing from a small base in the early days, there is today a very large global community of civil society

organisations and experts working on the right to information at the both the international level and nationally.

Example

FOIAnet (http://www.foiadvocates.net) is the largest global network of right to information experts and organisations and has over 270 member organisations and over 850 individual members. There are also regional networks focusing on this issue in many parts of the world.

7. Many inter-governmental organisations, such as the World Bank and African Development Bank, have also adopted RTI policies, and there is now a huge global community of civil society organisations and experts working on the right to information. There are a number of parallel movements to the right to information of which the most famous is the Open Government Partnership (OGP)[1], which the Maldives joined in 2024. Facilitating access to information is one of the four main pillars of the OGP.

Example

The OGP (https://www.opengovpartnership.org) was founded to support member countries to make commitments in three areas, namely openness, participation and government accountability. Each member is required to adopt an Action Plan every two years, which is supposed to be done in consultation with civil society. There is then a process for assessing whether or not members have implemented the commitments in their Action Plans, including through an independent reporting mechanism.

8. The inclusion of indicators on the adoption and implementation of RTI laws in Sustainable Development Goal Indicator 16.10.2, for which UNESCO is the custodian agency, has clearly cemented the importance of RTI as part of the framework for sustainable development.

In addition to these global factors behind the proliferation of RTI laws, there have also been a number of national or regional political developments which have contributed to this trend:

- Revolutions across the world, such as in South Africa, Eastern Europe, Indonesia, East Timor and across the MENA region, have thrown off repressive regimes, launching a process of rapid democratisation. Adoption of RTI legislation has been a key demand in many of these processes.
- In some other cases, rapid processes of democratisation have taken place even in the absence of revolutions, and adoption of RTI legislation has normally been a priority as part of those processes.

[1] See https://www.opengovpartnership.org.

- Important political shifts can sometimes occur after long periods without major political changes**.** In Mexico, the end of 65 years of rule by one party saw the immediate introduction of ATI legislation. In 1997, the UK's Labour Party promised to adopt RTI legislation after 17 years out of power. Similar processes led to the adoption of RTI legislation in Thailand in 1997.

Discussion Point

Do you think any of these factors contributed to the adoption of the RTI Act in the Maldives? Or were there other factors at play?

4. Measuring the Quality of RTI Laws

Two civil society organisations with very established track records in working on the right to information – the Centre for Law and Democracy and Access Info Europe – developed a methodology for assessing the strength of legal frameworks for the right to information, known as the RTI Rating (www.RTI-Rating.org). The RTI Rating, which the Centre for Law and Democracy continues to oversee, has now become accepted as the gold standard methodology in this area and is relied on regularly by organisations like the World Bank and UNESCO.

The core standards in the RTI Rating are drawn from two sources, namely international standards on the right to information and established better national practice as reflected in national right to information laws. As Figure 2 shows, the RTI Rating looks at the quality of RTI laws broken down into seven main categories: the Right of Access, Scope, Requesting Procedures, Exceptions and Refusals, Appeals, Sanctions and Protections and Promotional Measures.

Figure 2. The RTI Rating Categories

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

The four main categories – Scope, Requesting Procedures, Exceptions and Refusals and Appeals – are each allocated 30 points while other categories are worth less

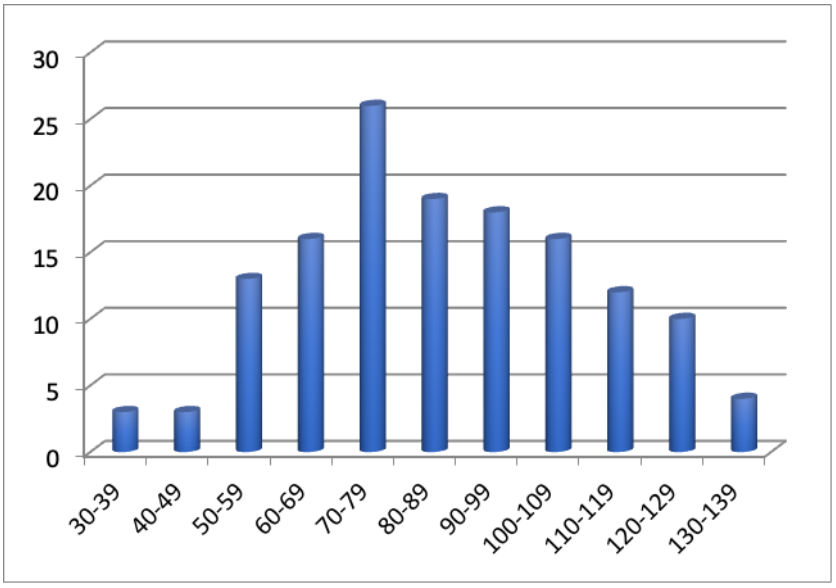
points, based on the idea that they are not as important. In turn, each category is broken down into a total of 61 separate indicators. Each indicator assesses whether or not a key feature of a strong right to information framework is present in the legal system. A large majority of the indicators have a maximum score of two points, although some have higher values. The maximum score possible in the Rating is 150 points.

Discussion Point

Does this seem to capture the main issues and give them appropriate weight? Can you think of issues that do not seem to fit into this framework?

In addition to preparing the methodology, the two organisations have assessed every national legal framework for the right to information (because the Rating looks for features which are or are not present in the legal system as a whole, not just whether they are present in the right to information law).

Figure 4. Number of RTI Laws per 10-point Score Ranges



Source: RTI Rating, run by the Centre for Law and Democracy

Figure 4 shows the distribution of the scores of all of the national legal frameworks which have been assessed. Perhaps unsurprisingly, this falls into a Bell Curve, or normal distribution, which suggests that the Rating methodology is sound, since this is the most natural distribution for this sort of phenomenon (hence the use of the term 'normal' in relation to it). The distribution also shows that some countries have managed to achieve very high scores. Indeed the quality of the laws has increased in recent years, with a number of the top scoring countries having adopted their laws relatively recently. The top scoring country is Afghanistan, with a score of 139 points out of 150, followed by Mexico and then Serbia, with 136 and 135 points,

respectively – suggesting that the indicators are reasonable in the sense of not being impossibly strict. The same is true at the other end of the scale and some countries have only managed to achieve very low scores. The lowest scoring country is Palau, which scores only 33 points, followed by Liechtenstein with 37 points.

With a score of 114 points, the Maldives is currently ranked 20th place globally. This indicates that the Maldives has a very strong RTI law.

Discussion Point

Are you surprised the Maldives scores well on the RTI Rating? Are you surprised at some of the other top scoring countries?

Key Points:

1. The right to information refers to the right of everyone to access the information which is held by public authorities or government, which is realised in practice both through proactive disclosure and by processing requests for information.

2. The right is important for a number of reasons, including to facilitate democratic participation, to control corruption, to hold governments to account, and to foster sound development.

3. 140 countries worldwide, in all regions of the world, including the Maldives, have adopted laws to give effect to the right to information.

4. There are a number of reasons for the rapid growth in the number of right to information laws, of which a key one is that the idea behind it is a very natural one which most people can easily understand.

5. The quality of these laws, as measured by the RTI Rating, has been increasing strongly over time.

Exercise A

The Benefits of the Right to Information

Working in Small Groups

Further Resources

1. FOIAnet, a global network of groups working on RTI: http://www.foiadvocates.net/

2. UNESCO's *Freedom of Information: A Comparative Legal Survey* (on RTI laws in different countries): https://unesdoc.unesco.org/ark:/48223/pf0000134191

3. *RTI Legislation Rating Methodology* (Centre for Law and Democracy and Access Info Europe, 2010), https://www.rti-rating.org/methodology

4. Some websites:

    a. with news on RTI issues and developments: http://freedominfo.org/;
    b. blogpost on transparency among inter-governmental organisations: https://eyeonglobaltransparency.net; and
    c. about the OGP: https://www.opengovpartnership.org.

Session 2: Legal Foundations for the Right to Information: International Law and the Maldivian Legal Framework

1. International Guarantees of RTI

Perhaps to the surprise of some, it is only over the last 20 years that the right to information has become recognised under international law as being a fundamental human right. Although there are several potential sources for this right, the core basis for its recognition is as part of the wider right to freedom of expression. The *Universal Declaration of Human Rights* guarantees the right to freedom of expression in Article 19, which reads as follows:

Quotation

Article 19 of the UDHR

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Recognition of the right to information is, from a jurisprudential perspective, based on the words bolded in red above, namely the rights to seek and receive information and ideas, which complement the right to impart them. These words reflect the fact that the right to freedom of expression under international law not only protects speakers but also listeners and, in a more general sense, those who wish to receive information. This provides a grounding for the right to information.

Perhaps surprisingly, prior to 1999 there was very little recognition of the right to information in international law. Authoritative bodies started to make some clear statements about the right starting around that time.

Quotations

Special Rapporteurs on Freedom Expression

In 1999, the (then) 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.

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.

There have also been regional statements about this right.

Quotations

Regional Statements

The 2000 Inter-American Declaration of Principles on Freedom of Expression:

> 3. Every person has the right to access information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.
>
> 4. Access to information held by the state is a fundamental right of every individual. States have obligations to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.

The 2019 Declaration of Principles on Freedom of Expression in Africa states, in Principle 26(1):

> a. Every person has the right to access information held by public bodies and relevant private bodies expeditiously and inexpensively. b. Every person has the right to access information of private bodies that may assist in the exercise or protection of any right expeditiously and inexpensively.

The Council of Europe's Recommendation No. R(2002)2 on access to official documents states, in Principle III:

> Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including national origin.

Despite the fact that Western countries led the way in adopting right to information laws, and the fact that the European Court of Human Rights is often at the forefront of

recognising and expanding human rights, significantly that did not happen for the right to information. Indeed, the Inter-American Court of Human Rights was the first international court to hold in a clear decision that access to information held by public authorities was a human right.

A key reason for this is that, in Western Europe, access to information is often seen more as a matter of governance reform than as a human right. It is useful in a functional sort of way to improve governance, to bolster accountability and to facilitate good relations between citizens and their government. In many other parts of the world – and especially in countries where citizens have had recent experience of the harms that flow from excessive government secrecy – the idea of access as a human right is far more natural and accessible. For people in these countries, access to information is a foundational requirement for democracy, not just a governance reform.

Example

In Egypt, there was no question but that the right to information would be included in the constitution following the 2011 revolution and this was something that was insisted on by civil society and the wider public from the beginning. As a result, the right was included in both the 2012 'Morsi' Constitution and then again in the more recent 2014 Constitution.

RTI was first raised before the European Court of Human Rights in a case in 1985. While the Court did not totally rule out the idea of a right to information, it refused to recognise it in that case, saying that the right to receive information and ideas primarily protected the exchange of information between private parties rather than the right to access information held by public authorities. It continued to hold this position in a number of other cases where a right to information was claimed.

In a case in 2006 – *Claude Reyes et al. v. Chile* – the Inter-American Court of Human Rights clearly recognised the right to information as part of the right to freedom of expression, as is clear from the quote below:

Quotation

Inter-American Court of Human Rights

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, as an element of the right to freedom of expression, was not an absolute right and could be restricted. However, any such restriction would need to meet the same three-part test as any restriction on freedom of expression. It would need to be set out clearly in law and serve one of the legitimate interests 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). Importantly, the Court also held the following in relation to any restrictions on the right to information:

Quotation

Inter-American Court of Human Rights

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.

Pushed by the Inter-American Court of Human Rights, the European Court of Human Rights finally recognised the right in a case decided in 2009, *Társaság A Szabadságjogokért v. Hungary*. The UN Human Rights Committee also recognised the right in 2011 in its General Comment No. 34 on Article 19 of the ICCPR, as indicated in the quote below.

Quotation

UN Human Rights Committee

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.

Discussion Point

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

2. Basic Principles Governing RTI

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

1. Presumption in Favour of Access

The key principle underpinning a right to information law is that it establishes a broad presumption in favour of disclosure. Better practice is for this presumption to be a rights-based notion ("… everyone has a right to…") but in many cases it is set out more as a procedural right ("… everyone may make a request for information …"). Ideally, this should be supported by a set of purposes or objectives in the law. These should not only emphasise aspects of the right of access – for example that it should be rapid and low cost – but also point to the wider benefits of the right to information that were discussed above – such as fostering greater accountability, encouraging participation and combating corruption. This can provide an important basis for interpreting complex parts of the law, such as the exceptions.

Quotations

The Maldives' Right to Information Act states:

> Access to information from a State Institute in accordance with this Act shall be a legally enforceable right available to every person who requests for such information

This is a rights-based statement.

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.

Both the Maldivian and South African laws include clear statements of purposes/objectives.

This presumption should apply to all public authorities, defined broadly. This should include all three branches of government (executive, legislative and judicial), all levels of government (central but also regional and local governments and so on), all bodies which are owned or controlled by public authorities, including State owned enterprises, bodies which are created by law or by the constitution, such as an information commission, and to any other bodies, including companies and other private entities, which are funded by the State or which undertake public functions, to the extent of that funding or function.

The law should also apply to all of the information held by public authorities. Better practice is to make it clear that the law applies not only to documents but also to information (which may be contained in a document).

Example

As an example of the breadth of the definition of information, a Swedish request for information was for the 'cookies' on the Swedish Prime Minister's computer. The authorities decided that 'cookies' indeed counted as 'information' under the law and the request was granted. As it happened, the response revealed that there were in fact no cookies on his computer because, 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) as well as individuals.

Quotation

Section 4(a) of the Maldives' Right to Information Act states: "Access to information from a State Institute in accordance with this Act shall be a legally enforceable right available to every person who requests for such information." Article 76 defines "person" as including "natural and legal personalities".

Discussion Point

Can you think of any reasons why the law should not apply to foreigners? Do you think these are realistic?

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 a right to information law, automatic disclosure is also very important. 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.

Example

Section 37 of the Maldives' Right to Information Act sets out 13 categories of information that public authorities (State Institutes) must at a minimum publish proactively, including details of the functions, responsibilities, structure and duties of the State Institute; details of direct services provided or being provided to the public; and details of decisions taken that would affect the public and the reasons for those decisions, their implications and details of their background.

3. Requesting Procedures

The law should set out clear procedures for how requests for information may be made and processed. This is fundamental to the successful functioning of the system. As part of this, the law should make it easy to make a request for information. The other part is that strict rules should be established for responding to requests.

The following are the key procedural rules that should be included in a right to information law:

- Requesters should not be required to provide reasons for their requests.
- It should be simple to make a request, which should be permitted to be submitted by any means of communication (including electronically). A request should only be required to contain a clear description of the information sought and some form of address to deliver it to the requester.
- Public officials should be required to provide assistance to help requesters where they need it either to formulate their requests or to submit a request in writing due to special needs, for example because they living with illiteracy or a disability.
- Requesters should be provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed five working days.
- There should be clear rules for cases where the public authority does not have the requested information, including a requirement to inform the requester that the information is not held and to transfer the request to another public authority where the first public authority knows of another one which has the information.
- Public authorities should be required to comply with requesters' preferences regarding how they access information (for example getting a paper or electronic copy, inspecting documents, etc.), subject only to clear and limited overrides (for example to protect the record).
- Public authorities should be required to respond to requests as soon as possible and in any case within clear and reasonable maximum timelines (i.e. of 20 working days or less). There should also be clear limits on timeline extensions (also of 20 working days or less).
- It should be free to file requests and there should be clear and centrally set rules relating to fees, with these being limited to the cost of reproducing and sending the information (i.e. inspection of documents and electronic copies should be free). Fee waivers should be established for impecunious requesters.
- There should be no limitations on or charges for reuse of information received from public authorities, except where a third party (which is not a public authority) holds a legally protected copyright over the information.

Discussion Point

Do these rules seem reasonable or rather excessive? If the latter, what would you suggest cutting? Can you think of additional rules that may be useful to clarify?

The implementation of RTI laws in smaller jurisdictions can pose some practical challenges in terms of the resources needed for each public authority to make the necessary institutional arrangements to process requests. One approach which can lead to some efficiencies is to have a central information access service which receives requests on behalf of all public authorities and which takes charge of processing those requests in discussion with the public authority which has custody over the information which has been requested. For this to work properly, such a central service needs to have the power to compel all public authorities (or at least those which opt into this system in case it is made non-mandatory) to provide them with records which are responsive to a request, as well as the power to process and disclose those records, where appropriate. Such a system is not currently in place in the Maldives.

Example

An example of a jurisdiction which has a centralised information processing unit is the province of Nova Scotia in Canada. With a population of just over one million people, Nova Scotia has a dedicated Information and Privacy Commissioner, the oversight body, but the processing of requests for information which are made to the executive is done by what is called Information Access and Privacy Services (IAP Services). The latter operates under a ministry known as Service Nova Scotia, which looks after a number of services provided to residents, as well as central issues like technology. Because this system was put in place only in 2015, long after the province's RTI law was adopted, the legal framework for it was layered on top of the law.

This system works well in Nova Scotia and has led to significant efficiencies in the running of the system both for the government (such as less staff time, including training, being needed to process requests for information) and requesters (such as a reduction in the average time taken to respond to requests)

4. Exceptions

A key goal of right to information laws is to 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 for the law to protect legitimate secrecy interests. On the other hand, this has proven to be the Achilles heel of many access to information laws.

Example

The UK Freedom of Information Act 2000 is in many ways a very progressive piece of

legislation. At the same time, it has a vastly overbroad regime of exceptions, with 22 different exceptions and exclusions, which fundamentally undermines the whole access regime.

The relationship between right to information legislation and 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 for other laws to go beyond this (i.e. to extend these exceptions). In this case, the right to information law should, in case of conflict (i.e. where a secrecy law goes beyond the right to information law), override secrecy legislation. This is particularly important given that secrecy laws are in most cases not drafted with openness in mind and that a plethora of secrecy provisions are often found scattered among various national laws. It is, however, fine for secrecy laws to elaborate upon exceptions that are set out in the right to information law (such as national security or privacy, which is often elaborated upon in more detail in a data protection law).

Examples

Section 3(a) of the Maldives' Right to Information Act provides for it to take precedence over other laws in case of conflict. However, section 22(a) of the law includes as an exception "[i]nformation, disclosure of which is an offence under any law of Maldives". This amounts to a broad preservation of the exceptions or secrecy provisions found in other laws, contrary to international standards and best practices. In view of this, it is particularly important for a central body to review other legislation to propose amendments to secrecy provisions in other laws which conflict with the RTI law.

It is also very important for the legal system to make it clear that mere administrative classification of documents cannot defeat the access law (unless a particular classification is deemed by oversight bodies, including the courts, to be correct). 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. At the same time, classification can provide useful guidance to civil servants as to whether or not a document may be sensitive (which is very different from saying that it should represent a final decision about this in light of a request for information).

As with all restrictions on freedom of expression, exceptions to the right to information must meet the strict three-part test. This has been 'translated' into a similar but slightly different three-part test in the context of the right to information. 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 is that the law should refer to national security rather than the armed forces.

Second, access should be denied only where disclosure of the information poses 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 much clearer standard of harm.

Example

The RTI law of El Salvador requires that all exceptions be justified on the grounds that the harm that would result from disclosure would outweigh the public benefit of access.

Finally, the law should provide for a public interest override in cases where the overall public interest would be served by disclosure, even where releasing the information would cause harm to 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 outweigh any short-term harm to national security. Under international law, the public interest override should only work one way – to facilitate greater openness and not as a ground for secrecy.

Quotation

Section 12(2) of the RTI law of Sierra Leone provides: "Notwithstanding subsection (1), information shall not be exempt where the public interest in accessing the information outweighs the harm which the exemption in subsection (1) seeks to prevent."

In the Maldives' RTI Act the concept of a harm test is incorporated into most exceptions, expressly or implicitly.

Better practice right to information laws include a number of other important measures in their regimes of exceptions so as to protect all legitimate interests while ensuring that the exceptions are not unduly large. The law should include a severability clause so that where only part of a document is confidential, that part should be removed and the rest of the document disclosed. There should also be presumptive overall time limits on confidentiality, for example of 20 or 30 years, after which documents become public absent a special and overriding need for secrecy (which should be decided through a special procedure). Finally, right to information laws should provide for consultation with third parties where information is requested which was provided by them. In this case, they may either consent to the disclosure of the information or put forward reasons why it should not be disclosed, which should be taken into account by the information officer.

5. Appeals

A fifth key element of a strong system for the right to information is the right to appeal any refusal of access to an independent body. If this is not available, then the decision about whether or not to disclose information is essentially at the discretion of public officials, which means that it is not really a right. At the same time, an internal appeal (i.e. within the same public authority) can be useful as it provides the authority with a chance to reconsider its original position and experience in many countries has shown that this can often lead to the disclosure of information.

Ultimately, in most countries, one can appeal to the courts in relation to matters regarding the application of a law, but experience has shown that courts take too long and cost too much for all but the very most determined requesters to bother making an appeal to them. As a result, it is very important to have an independent administrative body to provide 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.

It is essential that any oversight body be robustly independent of government and public authorities, since its main job is to review the decisions of those public authorities to refuse to disclose information. It also needs to have sufficient powers, in terms both of investigating complaints and of ordering appropriate remedies in cases where it finds a breach of the law. The grounds for appeal to this body should be broad: not just refusals to provide access but any failure to respect the rules relating to requests, including delays, charging too much or refusing to provide information in the format requested. Finally, the burden should always be on the public authority to show that it acted in conformity with the law, given that its decision represents a restriction on a human right (i.e. the right to information).

The right to appeal the decisions of the administrative oversight body to the courts should be also available.

Examples

It can be difficult in practice to guarantee the independence of the administrative oversight body. In India, the President appoints the members who are nominated by a committee consisting of the Prime Minister, the Leader of Opposition and a Minister.

In Mexico, the President appoints the members but this is subject to veto by the Senate or the Permanent Commission, a body that reviews senior appointments in the civil service.

In Indonesia, members are nominated by parliament and appointed by the President.

In the Maldives, the President is responsible for proposing at least three candidates to the People's Majlis and subsequently for appointing the person selected by the

members of the People's Majlis.

6. Sanctions and Protections

It is very important that sanctions are available which can be imposed on those who act wilfully to undermine the right to information, including through the unauthorised destruction of information. Experience suggests that administrative sanctions (i.e. fines or disciplinary measures) are far more likely to be used (and hence to be effective) than criminal sanctions, which are very hard to apply. Sanctions should also be available at the institutional level, i.e. to be imposed on public authorities which systematically fail to respect the right to information.

In addition to sanctions, there need to be protections, for example for officials who disclose information in good faith pursuant to the law. Otherwise, officials will always be worried about making mistakes and attracting the sanctions in secrecy laws, leading to access being undermined in practice. It is also good practice to provide protection to those who, again in good faith, release information to expose wrongdoing (whistleblowers).

Quotations

Article 48(1) of the Antiguan RTI law provides:

> A person shall not wilfully – (a) obstruct access to any record contrary to Part III of this Act; (b) obstruct the performance by a public authority of a duty pursuant to Part III of this Act; (c) interfere with the work of the Commissioner; or (d) destroy records without lawful authority.

Section 67of the Maldives' Right to Information Act provides:

> (a) Where the Information Officer commits any of the following, the Information Commissioner must impose a fine on him, of not more than 5000 (five thousand) Rufiyaa.
>
> (1) Refusal to accept a request for access to information without justifiable reason;
>
> (2) Refusal to provide access to information, without justifiable reason, within the time limits prescribed in this Act;
>
> (3) Refusal to provide information with bad intent; (4) providing incomplete or misleading or incorrect information.
>
> (b) The Information Commissioner must order a State Institute to take disciplinary measures against an Information Officer as having repeatedly breached provisions prescribed in this Act. (c) Where any person commits any of the following, the Information Commissioner has the power to charge a fine of not more than MFR 25,000 (twenty-five thousand).
>
> (1) Where the State Institute or the Information Officer obstructs duties to be carried out under this Act;

(2) Obstruction of the duties to be carried out by the Information Commissioner under this Act;

(3) Destroying information subject to a request of access under this Act, with bad intention;

(4) Misappropriation or tempering with information held at a State Institute contrary to the decided procedure.

Article 31 of the Bangladeshi RTI law provides:

No, suit, prosecution or other legal proceedings shall lie against the Information Commission, the Chief Information Commissioner, the Information Commissioners or any officers or employee of the Information Commission, or officer-in-charge of any authority or any other officer or employee thereof if any body is affected by any information made public or deemed to be made public in good faith under this Act, or rules or regulations made there under.

Section 66 of the Maldives' Right to Information Act provides, in part:

(b) A person, having gained information of a wrongdoing, may not be subject to any disciplinary measures or punishment, regardless of any breach of a legal, administrative or employment obligation on his part, for releasing information on the wrongdoing. This is subject to him having acted in good faith to disclose the wrongdoing, and without having any other interest in the matter. (c) A person may not be subject to any civil or criminal measure or subject to punishment, for releasing information on an illegal act or an offense, or an act of corruption, or information regarding the potential to commit such an act, or place of such an act by a party.

Discussion Point

Do you think these sorts of protections and sanctions work well in the Maldives? If not, what are the main challenges in applying them?

7. Promotional Measures

For implementation of a right to information law to be a success, it needs some support, in the form of promotional measures. Some of the key measures are as follows:

a. Public authorities should be required to appoint officials (information officers) or units with dedicated responsibilities 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 (for example producing a guide for the public or introducing RTI awareness into schools) should be required to be undertaken.

d. A system should be put in place whereby minimum standards regarding records management (how public authorities manage their documents and other records) are set and enforced (this is important both so that officials are able to respond to requests but also so that they can do their jobs in general).

e. Public authorities should be required to create and update lists or registers of the documents in their possession, and to make these public, to facilitate the making of requests.

f. Officials should be required to be provided with appropriate training on the right to information.

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 the law. 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.

Quotation

The following provisions from the Serbian RTI law refer to promotional measures:

Article 35: The Commissioner shall:

(4) Undertake necessary measures to train employees of state bodies and to inform the employees of their obligations regarding the rights to access information of public importance with the aim of their effective implementation of this Law;

(6) Inform the public of the content of this Law and the rights regulated by this Law;

Article 36: The Commissioner shall lay with the National Assembly an annual report on the activities undertaken by the public authorities in the implementation of this Law and his/her own activities and expenses within three months from the end of the fiscal year.

Article 37: The Commissioner shall without delay publish and update a manual with practical instructions on the effective exercise of rights regulated by this Law in the Serbian language, and in languages that are defined as official languages by law.

Article 38: A public authority shall appoint one or more official persons (hereinafter: authorized person) to respond to request for free access to information of public importance.

(2) Take measures to promote the practice of administering, maintaining,

storing and safeguarding information mediums.

Article 39: A state body shall at least once a year publish a directory with the main data about its work, notably:

(6) Data on the manner and place of storing information mediums, type of information it holds, type of information it allows insight in and the description of the procedure for submitting a request;

Article 42: With the aim of effectively implementing this Law, a state body shall train its staff and instruct its employees on their obligations regarding the rights regulated by this Law.

Article 43: A state body authorized person shall submit an annual report to the Commissioner on the activities of the body undertaken with the aim of implementing this Law, which shall contain the following data:

Discussion Point

Do you recognise any of the implementation measures on the list as having been carried out by your institution? Do you see any that may be easy to implement, or any which may be particularly difficult?

3. The Strengths and Weaknesses of The Maldivian Legal Framework for the Right to Information

The main element of the Maldivian legal framework for the right to information is of course the Right to Information Act. The framework also includes secrecy provisions in other laws, as well as legal rulings by the courts on the right to information.

The scores of the Maldivian Act according to the seven categories of the RTI Rating are set out below. The law as a whole scores quite well, with particularly strong scores in the Scope, Appeals, and Sanctions and Protections categories. Nevertheless, in each area, there is room for improvement. This part of the Manual focuses on the main strengths and weaknesses of the Maldivian Act. Note that while the Act uses the term "State Institute", the below description refers to "public authorities", which is the general term which is used more commonly internationally.

The RTI Rating Scores for the Maldives

Section	Max Points	Maldivian Score	Percentage
1. Right of Access	6	4	66%

2. Scope	30	26	87%
3. Requesting Procedures	30	21	70%
4. Exceptions and Refusals	30	15	50%
5. Appeals	30	29	97%
6. Sanctions and Protections	8	7	88%
7. Promotional Measures	16	12	75%
Total score	**150**	**114**	**76%**

Right of Access

Strengths:

- The Maldivian law establishes a presumption in favour of access to information held by public authorities.

Weaknesses:

- The constitutional guarantee for RTI applies to only government decisions and actions and is subject to a broad exception for anything declared to be a state secret by a law enacted by the People's Majlis.
- There is no statement of the wider benefits created by the law and only a very general statement about interpretation.

Scope

Strengths:

- All persons, natural and legal, have a right to information.
- The legislative, judicial and most of the executive branch fall under its scope.

Weaknesses:

- There is not a clear right to access information, as opposed to just written documents, although there is some obligation to convert information into a written document.
- The law does not explicitly extend to all bodies owned or controlled by the government and all State-owned enterprises.

Requesting Procedures

Strengths:

- The law does not require requesters to justify their requests and it is free to make requests.
- Public officials may only reject requests after giving requesters a chance to complete all information and offering them assistance, and public officials must help transcribe requests for individuals unable to submit a request due to a disability or illiteracy.

- Receipts must be provided for requests and within 3 days.
- Officials are generally required to comply with requesters' preferences as to the format in which information shall be provided.
- Public authorities are required to respond to requests as soon as possible.
- Access fees are centrally set, limited to the costs of production and delivery of the information, and subject to waivers in the case of public interest requests or requests for personal information.

Weaknesses:

- The law requires requesters to provide unnecessary information (their name, address, phone number), whereas normally it should be necessary only to specify the information requested and a means of delivering the information, such as an email address.
- Requesters are required to state that a request for information is being made under the law and, where public authorities have introduced a form, are required to use it, although there are exceptions to this.
- The timeline for providing receipts against requests is not specified.
- The grounds for transferring requests to other public authorities are overbroad.
- The timeline for responding to requests is 21 days, which is longer than better practice, which is 10 working days.
- While the law provides that fees imposed should "not amount to an obstruction in gaining information that is entitled to a financially disadvantaged person", there is not a clear fee waiver for those who lack the ability to pay.
- There is no explicit provision ruling out limitations on or charges for reuse of information, which should be the case except where a third party (which is not a public authority) holds a legally protected copyright over the information.

Exceptions

Strengths:

- The exceptions are subject to a public interest override.
- The law has a severability clause.
- Reasons must be provided when refusing a request.

Weaknesses:

- A number of exceptions are too broad or vague including information which "if prematurely disclosed could adversely affect a person or group of persons" and information "related to a trial the proceeding of which were, according to judicial proceedings, not open to the public".
- Some exceptions, such as the one for documents prepared for submission to Cabinet, are not harm-tested.

- As noted previously, the law preserves exceptions in other laws, via an exception for information which is "an offence under any law of Maldives".
- Sunset clauses do not apply to policy documents.
- In cases involving third-party personal information, these parties can delay the release of information until appeal provisions are exhausted.

Appeals

Strengths:

- There are options for internal, administrative and judicial appeals.
- There are legal guarantees for the independence of the Information Commissioner.
- The Information Commissioner has robust powers to perform his or her functions, to order appropriate remedies for requesters and to require public authorities to implement appropriate structural reforms, and his or her decisions are binding.
- There are broad grounds for appeals, along with clear procedures for processing them, and the government bears the burden of proof in demonstrating it did not operate in breach of the rules.

Weaknesses:

- The law does not explicitly state that the appeals are free of charge and do not require a lawyer.

Sanctions and Protections

Strengths:

- The law provides for sanctions for those who intentionally undermine RTI.
- The law provides for legal protections for staff of the Information Commission, for officials and for whistleblowers.

Weaknesses:

- The provisions on sanctioning public authorities for systematically breaching the law lack sufficient clarity.

Promotional Measures

Strengths:

- Public authorities are required to appoint information officers.
- The Information Commissioner has been given a mandate to promote RTI.
- The Information Commissioner is given public awareness-raising responsibilities.

- Public authorities are required to report annually on their implementation of RTI obligations.
- The Information Commissioner is required to publish an annual report.

Weaknesses:

- While the Information Commissioner is responsible for publishing norms on records management, it is unclear if these are binding and public authorities are not required to receive training on records management.
- Although there is a proactive disclosure obligation to publish information "held or maintained by the State Institute", this is a bit vague and better practice would be to explicitly require a register of documents in their possession to be published.
- There is no obligation by public authorities to provide training for their officials. Instead, the Commissioner is responsible for providing such training.
- The Information Commissioner's annual report is focussed on the Commissioner's own activities, instead of explicitly requiring him or her to prepare a consolidated report on overall RTI implementation across the Maldives.

Key Points:

1. The right to access information held by public authorities is a fundamental human right, protected as part of the right to seek and receive information and ideas which is part of the right to freedom of expression under international law.

2. The right has seven 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 there should be clear and simple procedures for making and processing requests, 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, that there should be a system of protections and sanctions for behaviour relating to information, and that public authorities should undertake a number of promotional measures to implement the law.

3. In general, the Maldivian legal framework for the right to information is quite strong, although there are areas where it could be improved to better align with international standards and best practices.

Exercise B

Constitutional Interpretation

Working in Small Groups

Further Resources

1. *The Public's Right to Know: Principles on Freedom of Information Legislation* (ARTICLE 19, 1999), https://www.article19.org/resources/publics-right-know/#:~:text=Information%20is%20the%20oxygen%20of,the%20affairs%20of%20that%20society

2. Model Law on Access to Information for Africa, http://www.achpr.org/files/news/2013/04/d84/model_law.pdf

3. Model Inter-American Law on Access to Information, http://www.oas.org/en/sla/dil/access_to_information_model_law.asp

4. 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

5. 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 (along with their other Joint Declarations) at: http://www.osce.org/fom/66176

6. *Transparency Charter for International Financial Institutions: Claiming our Right to Know* (Cape Town: Global Transparency Initiative, 2006), http://www.ifitransparency.org/doc/charter_en.pdf

7. UNESCO Massive Open Online Course: Access to Information Laws and Policies and their Implementation, https://unesco-ati-mooc.thinkific.com/courses/unesco-massive-open-online-course-access-to-information-laws-and-policies-and-their-implementation

8. Principles on Right to Information for Small Island Developing States: The Case of the Pacific (Centre for Law and Democracy, 2024), https://www.law-democracy.org/wp-content/uploads/2024/09/ATI-Principles-for-the-Pacific.final_.pdf

Session 3: Proactive Disclosure of Information by Public Authorities

Discussion Point

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

1. International Standards

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

Quotations

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.

Principle 29 of the 2019 Declaration of Principles on Freedom of Expression in Africa supports this, stating:

> 1. Public bodies and relevant private bodies shall be required, even in the absence of a specific request, to proactively publish information of public interest, including information about their functions, powers, structure, officials, decisions, budgets, expenditure and other information relating to their activities.
>
> 2. Proactive disclosure by relevant private bodies shall apply to activities for which public funds are utilised or public functions or services are performed.
>
> 3. Information required to be proactively disclosed shall be disseminated through all available mediums, including digital technologies. In particular, States shall proactively publish information in accordance with internationally accepted open data principles.

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, regularly updated and easily accessible.
- To ensure that this information reaches those who need it (for example, 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 the most important types of information are provided in forms that local people can understand (for example, so that financial information is not presented in excessively technical terms).
- To increase the scope of information subject to proactive disclosure over time.

2. Key Proactive Disclosure Obligations

Section 37 of Maldives' Right to Information Act contains a list of 13 categories of information which must be published by public authorities. The specific categories as listed in that section are as follows:

(a) Details of the functions, responsibilities, structure and duties of the State Institute;
(b) Details of direct services provided or being provided to the public.
(c) Details of the mechanism of lodging a complaint at the State Institute in connection to a matter undertaken by that office, and details of the number of complaints received thus far;
(d) Easily comprehensible details of how documents are managed;
(e) Information held or maintained by the State Institute, and the nature of its general publications, together with information on the procedure to follow to request for information;
(f) The responsibilities and duties of high-ranking officials of the State Institute, their powers and scope of discretion, and procedure followed in decision making within that scope;
(g) The rules, regulations, policies, principles and norms used by the State Institute for discharging its responsibilities;
(h) Details of decisions taken that would affect the public and the reasons for those decisions, their implications and details of their background;

(i) The manner in which suggestions and criticisms on decision-making can be exercised by the public and influenced in relation to the policies of those functions carried out by the State Institute;
(j) The budget allocated to the State Institute, indicating the particulars of all plans, proposed expenditures and details of disbursements made;
(k) The individual remuneration and benefits received by all the employees of the State Institute;
(l) The norms followed by the State Institute for the discharge of its functions;
(m) The stages and procedure followed in the decision-making process of the State Institute, and the mechanisms for supervision and accountability.

In addition, Section 36(a) requires the names, designations and contact details of information officers at public authorities to be made publicly available and disseminated as widely as possible.

Sections 36(a) and 37 establish a fairly lengthy list, although it could be further expanded. For example, it is a good practice for public authorities to be required to proactively publish detailed information on public procurement processes and criteria, outcomes of tenders, copies of contracts and reports on completion of contracts, as well as information about the grant of licences, permits and other formal authorisations which have been issued. In addition, it is good practice for public authorities to be required to publish information on any applicable access fees, as well as on RTI appeal procedures, both internal and to the Information Commissioner (or at least to provide the contact information for the latter).

It should be emphasised that the information which public authorities may proactively disclose can go beyond what is explicitly listed in the law. Indeed, section 37 makes this explicit by providing that the information to be proactively disclosed on an annual basis is "not limited to" the enumerated matters. There is good reason for public authorities to strive to publish even more information. Where information has been published proactively, barring situations where individuals are in need of information in a different format, there is no need for them to make requests for this information. It may be noted that it takes far longer to respond to a request for information – which requires providing the requester with a receipt, registering and tracking the request, and providing a formal response in line with the requirements of the law – than to publish information on a proactive basis – which simply requires uploading it to a website. It thus makes sense to extend proactive publication to any information which may be the subject of general public interest rather than waiting for a request for this information. Some jurisdictions have adopted the good practice of publishing, with the personal information on the original requester omitted, responses which have been provided to requests for information or at least responses which are likely to be of interest to others/subject to a future request.

Example

In India, the law requires public authorities, in addition to meeting the minimum proactive publication requirements, to publish as much information as possible on a

proactive basis so as to minimise requests (since there is no need to make a request if the information is already available).

In practical terms, some of the key considerations to keep in mind are as follows:

- For certain types of information, especially information that changes over time, it is important to make sure that the information remains up to date. This can be a challenge in relation to proactive publication.
- For the most part, it is sufficient to make sure that the information is published electronically (i.e. via the website). In addition, public authorities should proactively disclose information on bulletin boards at their own offices/service points. However, in certain cases, more effort is needed to make sure that people who are especially concerned with certain information can access that information. For example, if a development project is being undertaken in a certain area, it may be important to make sure that people in that area know about it. In this case, in addition to posting information online, it may be necessary to post information on local bulletin boards or in public offices in the area. In addition, public authorities should be mindful of the levels of Internet use within any communities to which the information most directly relates, and should be prepared to make extra efforts to reach targeted populations where warranted.
- Public authorities should consider adopting strategies for using social media to draw attention to their proactively disclosed information, for example by linking to the relevant webpage, and to directly disseminate certain, particularly important information.

Examples

African Model Law:

1. [P]ublish means to make available in a form and manner which is easily accessible to the public and includes providing copies or making information available through broadcast and electronic means of communication.

Inter-American Model Law:

14. Public authorities shall release public information which affects a specific population in a manner and form that is accessible to that population, unless there is a good legal, policy, administrative or public interest reason not to.

- Again, for the most part it is enough simply to provide access to the information in the way in which it was originally produced. However, it is essential that the public can understand certain key types of information, such

as the budget, and yet this is often too technically complicated for ordinary citizens, or even relatively educated citizens, to understand. In some cases, then, it will be necessary to provide the information in a style that people can understand. In the case of the budget, for example, it has become common practice in many countries to present a citizens' budget, a simplified version of the budget that ordinary citizens can understand. Such simplified versions may also be appropriate to explain the nature of a development project taking place in a certain part of the country, or a programme to extend benefits to people.

Discussion Point

What do you think about proactive publication via other means than online? Do you think the cost-benefit calculations work for this or is it just too time consuming?

Experience in many countries has shown that where right to information laws are very ambitious in terms of proactive publication, it can be difficult for public authorities to meet these obligations quickly. This can lead to a policy-practice gap (i.e. a situation where the legal or policy requirements are regularly not being met). As a result, there may be a gap between the aspirations of public authorities in terms of proactive publication and what they can achieve in the short term.

Example

In India, a major study conducted five years after the law came into force showed that only 5 percent of all information subject to proactive disclosure obligations was actually being published. The Indian law has very strong proactive disclosure obligations and public authorities simply could not meet them.

In 2024, an assessment of RTI implementation undertaken by Transparency Maldives and the Information Commissioner's Office using the Centre for Law and Democracy's Comprehensive Methodology for assessing RTI implementation assigned a middling 'yellow' overall score to the Maldives on proactive disclosure. Part of the assessment of proactive disclosure involved scoring how 30 selected public authorities were disclosing the different categories of information required under the law where full credit was given only where information was easy to find, complete and up to date. Only five authorities received green (good) scores, nine received middling yellow scores and 16 public received red (poor) scores. Of the poor performers, six public authorities automatically received a red score due to the lack of a functional website.

The overall scores for proactive disclosure, which also took into account other general qualitative factors like how the public authorities were doing on disseminating information other than through their websites, gave only five authorities a green score, while 11 received a yellow and 14 a red score. This suggests that, when it comes to proactive disclosure, for most public authorities in the Maldives there remains a significant gap between legal obligations and practice.

One solution to the policy-practice gap on proactive disclosure is to allocate a longer time to meet proactive publication obligations than the periods, usually of less than one year, commonly found in right to information laws. This is a reasonable strategy for public authorities to think about if they are having trouble meeting their full proactive disclosure aspirations in the short term.

Example

In the UK, a different approach was taken to this issue. There, instead of setting out a long list of categories of information subject to proactive publication, the law requires every public authority to develop and implement a publication scheme, setting out the classes of information which it will publish. Importantly, the scheme must be approved by the Information Commissioner. The Commissioner may put a time limit on his or her approval or, with six months' notice, withdraw the approval. This system builds a degree of flexibility into the obligation of proactive publication, so that public authorities may adapt implementation in this area to their specific needs. It also provides for oversight by the Commissioner without placing too great a burden on him or her, taking into account the very numerous public authorities. Importantly, it allows for the levering up of proactive publication obligations over time, as public authorities gain capacity in this area. Basically, this system ensures that, over time, the amount of information that needs to be published will increase. The UK is not the only country with this approach. For example, Sierra Leone followed a similar approach when they adopted an RTI law in 2013.

Discussion Point

Proactive publication will not happen by itself. Do you have systems for this in place? Do you think that there is an efficient flow of information that is published on a proactive basis?

3. The Main Types of Proactive Disclosure

The information that is subject to proactive disclosure obligations can be divided into two main categories.

The first category is information that is provided or updated periodically. An example of this is the budget, which is normally updated annually. A key challenge with this type of information is to make sure that it is updated on a periodic basis on the website. In many cases, public authorities make an effort to get information online once but then forget to keep it updated. This requires some sort of system, as well as the active support of those officials who are responsible for producing these categories of information, since they are the ones who need to make sure that it is updated. Ideally, the system would involve the producers of this information communicating directly with the individuals who are responsible for the website without necessarily involving the information officer. There is no need to involve him

or her and doing so simply places a greater burden on him or her and can lead to further delays.

The second category is information that is produced on an ongoing basis, which needs to be uploaded as it is produced.

Example

Examples of information that is produced on an ongoing basis are contracts, policy decisions, licences, statistical information and programme documents. These are produced from time-to-time and should be uploaded soon after they are finalised.

It may be noted that it is far more difficult to keep this sort of information flowing to the website because it is *ad hoc* in nature and is not produced at regular intervals. Also, the number of officials within the public authority who are responsible for producing these categories of information is normally quite large, and so the risk that some of them will forget to present the information for proactive publication is higher.

Systems are needed for this that will work in the context of each particular public authority, taking into account the number of people involved in producing this sort of information, the way that final approvals of these types of documents are obtained and so on.

4. Dissemination of Information Disclosed Proactively

By far the easiest and cheapest way to publish information proactively is to disseminate it electronically, via a website, and for most information this is sufficient. However, as noted above, at least in some cases other means of distribution of information will be needed.

Discussion Point

Can you think of some other practical ways to disseminate information on a proactive basis? Do you think this will be different for different public authorities? Do you already have some systems for this in place? What types of information is it particularly important to disseminate offline?

5. Minimum Requirements and Best Practices for the Website

By now, most public authorities in the Maldives have a website to disseminate information publicly. The website should have a link to a dedicated right to information page containing information about the right to information. This is both a practical way for individuals to figure out how to make requests for information and a useful way of raising public awareness about this right.

Better practice is to make the following information available on the right to information page:

- Information about the legal framework for the right to information. This includes the law and any internal policies or binding rules relating to the right to information. For example, it would be better practice to include here the Terms of Reference for the information officer.
- The annual and other reports which should be produced on a regular basis by public authorities should ideally also be provided here.
- This part of the website should also provide electronic access to the form for making requests for information, as well as information on any applicable fees.
- Ideally, a link to a guide for the public on the right to information should also be made available on this page.
- Consideration can be given to including information on appeal options (both internal and external) or at least the contact information of the Information Commissioner.
- Finally, it is better practice to include some other key information here. An example would be the action plan of the public authority for implementing the right to information. An organigram of the structure of the organisation, perhaps annotated to give a sense of what types of information the authority holds, would also be useful to include here.

For online content, best practice is to ensure compliance with Web Content Accessibility Guidelines (WCAG), which is a series of periodically updated guidelines (currently on version 2.2) which outline best practices for enhancing the accessibility of websites for persons with disabilities. There are several ways that this can be done, such as providing text alternatives for non-text content (for example where the search feature is represented by a symbol), providing captions and other alternatives for multimedia content, and presenting content in ways that either are or can be rendered easier to see or hear (for example by being magnified).

Key Points:

1. Proactive disclosure is a very important means of delivering the right to information to the public and indeed, for most citizens, it will represent the only way that they access information from public authorities because they will never make a request for information.

2. International law establishes key minimum standards for proactive disclosure, including that key categories of information should be disclosed in this manner.

3. It also makes sense to publish any information that may be of general interest on a proactive basis, since it is much easier and quicker to do this than to process even one request for that information.

4. It can be a challenge to get all of the information which public authorities should be making available via proactive publication online, and an even greater challenge to make sure that this information remains up-to-date both in the sense of updating information that changes over time and in the sense of making sure that categories of information that are produced on an *ad hoc* basis get uploaded regularly and consistently.

5. Providing information electronically via a website is very efficient and important, but certain key categories of information also need to be made available in other ways, so as to ensure that they reach the people who need to access them.

6. A number of types of information should be available via the right to information page on the websites of public authorities, to which there should be a link on the front page of the website.

Session 4: How to Process Requests for Information

The RTI Act requires all information held by public authorities to be made accessible to the public in response to a request, apart from exempt information. This session outlines the procedures for receiving and processing requests for information.

1. Receiving Requests

Under the Maldivian Act, requests for information are, by default, to be submitted in writing, although if a person is incapable of doing so due to physical incapability or illiteracy, the information officer must, before a third-party witness, transcribe and sign the request, have the requester fingerprint it and provide him or her with a copy of it. Under the law, public authorities may introduce a specific form for requesting information, although this "shall not be a cause for inconvenience or unreasonable delay for access to information or the reason for unreasonable hindrance to access" and, where the form has not been introduced or is not available, it is possible to request the information without using the form. Forms should be available in physical format at all public offices of the public authority and, ideally, they should be made available electronically via the access to information page of the website (with a link to this from the front page). Allowing requests to be submitted electronically is a good practice.

The Right to Information Regulation also allow requesters to make requests using a form prepared by the Information Commissioner or using an online system introduced by the Commissioner. The Information Commissioner has developed such a central portal, the Mahoali Portal, through which individuals can lodge requests with the public authorities which have registered with the portal. Establishing such central portals is good practice and can facilitate both the making and processing of requests. The public authority should have in place a system to ensure that requests do not get lost or misplaced or ignored.

Anyone, including both citizens and non-citizens and both natural and legal entities, such as companies, may make an RTI request.

Discussion Point

Do you think public authorities should provide information to legal entities? What about foreigners? Why or why not?

An initial question is where requests can be received. For electronic requests, this simply entails establish a dedicated email address for this purpose, but it is ideal for public authorities also to accept requests through the central Mahoali Portal.

Receiving physical requests is more difficult. Public authorities should have a dedicated address for mailing requests. But better practice is also to receive requests delivered in person, ideally via any of the public offices of a public authority throughout the country. If this is the case, the public authority will need some system for ensuring that requests lodged in various places are somehow transmitted to the centre for processing by the information officer. An alternative is to enable the processing of requests where they are received, but this depends on having staff at that location who know how to do this, as well as the availability of the information there.

According to international standards, only limited information needs to be provided when lodging a request, namely a description of the information being sought and an address for delivery of that information. Under the Maldivian law, however, requesters need to provide their name, address and phone number. The law does not require requesters to provide a reason for their requests and, under the Regulation, as under section 6(e) of the Act, public authorities may not introduce additional requirements for information requests than those specified under the RTI Act.

The information officer should check requests to make sure they are not missing certain required information and, where they are, he or she should go back to the requester for clarification (providing assistance where needed). Indeed, under the RTI Act a request may be declined only after notifying the requester and providing him or her with an opportunity to provide all of the information required under the Act and offering assistance.

Assistance will be necessary in the following cases:

- The requester needs assistance to complete the written form due to disability or illiteracy.
- The requester needs assistance to complete the form due to an inability to identify with sufficient precision the information he or she is seeking. This may seem like an odd situation but in practice it often happens.
- The first type of assistance would normally need to be provided in person.
- The second type could also be provided by mail or electronically.

Discussion Point

Do you think it is reasonable to expect public authorities to provide these sorts of assistance to requesters? Do you think this would be a big burden or not too large?

The request may also include certain other information, such as the preferred format for receipt of the information (for example, electronically or a physical copy).

Better practice is to register requests at the public authority so as to keep track of them. There are different options for this:

- The most efficient way of registering requests is through an electronic system since this can be done from different locations and allows for simple updating and entering further information (for example the date of responding to the request, any fee charged, etc.).
- If an electronic database for requests is designed properly, it can also be used to generate the information that is required for the annual report (how many requests were received, how long it took to process them, etc.).
- Best practice is to have a central electronic register of requests, rather than requiring each public authority to design their own system. But each public authority could also design its own database for this.

Example

The importance of central portals was underscored by the Supreme Court of India in a 2023 case, Pravasi Legal Cell vs Union of India, in which case, the Court gave the country's High Courts a period of three months to begin accepting RTI requests through India's central portal.

Mexico was a relatively early adopter of a strong central portal system when in 2016 its oversight body adopted its National Transparency Platform. This platform has allowed individuals to make and track requests for information. This has been hugely efficient for both requesters and public authorities and generates a significant part of the annual report almost automatically. Mexico's portal also has allowed individuals to lodge appeals with Mexico's oversight body and to access proactive disclosure. Unfortunately, Mexico's oversight body has recently been dissolved, although the platform is for now still operational.

The Maldives' Mahoali Portal was introduced in 2022 and allows users to make requests as well as to file appeals through the portal, although not all public authorities accept requests through the portal. The 2024 assessment of RTI implementation conducted by Transparency Maldives and the Information Commissioner's Office found that the requests lodged via the portal had a higher response rate than for requests lodged in other ways (physical letters and emails), suggesting that some public authorities may erroneously believe that they only need to respond to requests submitted using the portal. While the portal can help facilitate making and processing requests, public authorities must continue to process requests which are submitted without use of the portal.

- Even if there is no electronic system, it is still just as important to register requests.
- Registration requires each request to be given a unique file number.
- Part of the system of registration should also involve providing requesters with a receipt, which should indicate the unique file number of their requests. Normally, this would be provided to the requester in the same way the request

was lodged (i.e. electronically, via mail or directly in person). Public authorities are required to issue receipts and, although a timeline is not provided for in the law, best practice is to issue these promptly after the request was received (at the latest withing five working days).

2. Responding to Requests

Discussion Point

Responding to requests for information is complex and public authorities need clear protocols or guidelines on how to do this to make sure they respond within the strict deadlines and to ensure proper coordination and cooperation within the public authority. Has your public authority adopted a protocol for responding to requests yet? If not, do you have plans to do so shortly? Do you have any system for verifying if requests have been dealt with in time?

The process of responding to requests must start with an understanding of the timelines for responding, which are as follows:

- Requests need to be responded to as soon as possible and within 21 days, with a shorter time limit of 48 hours where a request involves information which is needed to save the life or liberty of a person.
- The law provides for a possibility of extending the 21-day deadline by 14 days in the following circumstances:
    - where the request will require undertaking extensive research;
    - where the information requested is voluminous; or
    - where the time to complete the request would "impede significantly the general functions of the State Institute".
- Public authorities must notify requesters in writing of any extension and inform them of the reasons for the delay.

Although 21 days may seem relatively relaxed, in practice it is a fairly tight deadline and public authorities need good systems if they are going to be able to respect it. There are a number of ways in which the deadlines can come under pressure:

- It may be necessary to search through a number of documents to find the information.
- The official at the public authority who is responsible for the information may not provide the information to the information officer for some time.
- The information may need to be compiled from various different sources.
- Time may be needed to consult with third parties.
- Time may be needed to sever confidential information.

Example

The Six Question Campaign asked six questions about budget information in 80 different countries. One of the questions was how much money had been spent on midwives during the previous five years. At a minimum, this required compiling the information over the five-year period. But in many cases, this information was not held centrally but was held in documents at the regional or sometimes even the hospital level and it took some time to bring all of this information together.

The first step in responding to a request for information is determining whether or not the public authority even has the information. While this sounds obvious, it may not be as easy as it seems. It is easier if the information officer knows exactly where to find the information, but this is often not the case. Where the information officer does not know where the information is, he or she needs some way of sending out a request to others to help him or her find it. An approach needs to be developed for this.

Where the information officer knows approximately where within the public authority the information should be, he or she can simply approach the relevant unit. Where this is not known, one approach would simply be to email everyone at the public authority, but this could be annoying and time-consuming, especially if there are a lot of requests. Another approach would be to develop an email distribution list of more senior staff through which requests of this sort could be circulated. If the information is held by another public authority, the public authority should transfer the request and this must be completed within seven days of the receipt of the request for information.

It should be noted that under the Right to Information Regulation, the Information Officer should withdraw from deciding on a request for information in situations of conflict of interest, such as if the requester has a first-degree family relationship with him or her. In such circumstances the head of the public authority should assign the Information Officer's duties in respect of the given request to another employee.

In addition to the technicalities of the system, other officers at the public authority need to know and understand that they have an obligation to cooperate with the information officer. Under the RTI Act, where an information officer seeks assistance, employees of the public authority are required to provide such assistance and, moreover, employees can be subject to personal fines levied by the Information Commissioner for certain offences which undermine the right to information. Ensuring that cooperation with the information officer takes place requires adequate training for all staff on employee obligations. It also requires having in place a clear set of rules about cooperating with the information officer

Even if the information officer is a senior official within the public authority, he or she will not be the direct supervisor of other officers (or most other officers). While, under the RTI Act, employees are already under a legal obligation to cooperate with

the information officer, it may be helpful for the head of the public authority to issue a binding instruction (for example a directive or order) calling on all officers to cooperate with the information officer or to remind employees formally of their obligations under the law.

Even if all of these systems are in place, there can still be major challenges in terms of getting the information. Some of the more common challenges are:

- Other officers say they do not have the information, but the information officer knows or suspects that they should have it. In this case, it might be useful to remind other officers of their obligations under the law and also the potential consequences (and sanctions) for non-compliance.
- In many cases, other officers delay in responding to the information officer, putting pressure on the time limits. They sometimes do not see this as part of their core work and often do not see it as a priority. Awareness raising among staff about the legal requirements of the right to information and about how this is a core part of the work of a public authority can help here.

Discussion Point

Have any of you faced these problems in implementing the RTI Act? If so, what strategies did you employ to overcome them?

Once the information is located, there needs to be an assessment of the applicability of any exceptions/deferment provisions. This is the subject of detailed consideration in the next session.

There also needs to be a system for severing exempt information if only part of a document is exempt (i.e. so that the rest of the document can still be provided). It is relatively simple for electronic documents, but even here it at least requires some thought (for example is the system to black out the exempt text or simply to cut it out of the document, which can have unintended effects, such as altering the formatting).

Better practice when severing information is to indicate how much information has been removed. Here, the situation is reversed. It is normally pretty easy to do this with physical documents (through a combination of physical blacking out and page numbers where whole pages are removed) but less obvious for electronic documents, at least where the exempt text is cut out of the document (this would require leaving a marker indicating the extent of the material which has been cut out).

When access is being provided and the requester has requested access in a particular format, such as an electronic or physical copy or an opportunity to inspect the document, information officers are required to provide the information in that requested format. The RTI Act provides for limited exceptions to this in cases where providing the information in the requested format "would delay the general functions of the State Institute" or where it would be detrimental to the preservation of the

information in its original form or at all, or where it would infringe copyright. In those cases, the information officer may provide the information in a different format than the one indicated by the requester. The need generally give effect to requesters' preferences can raise a number of issues:

- If the requester wants to inspect the documents, does the public authority have a location (i.e. a room) where this can happen and the facilities for this (for example a chair and desk)? If not, this will need to be arranged.
- Providing a physical or electronic copy is normally simple enough but what if the requester asks for an electronic copy of a physical document. The public authority needs to determine whether it will go to the effort of scanning a document for a requester.
- In some cases, a requester may want to receive a transcript from an audio or audiovisual record (for example a tape recording). This can be quite difficult and time consuming and, once again, systems and rules need to be developed for this. For example, how long of a tape will the public authority transcribe? Can artificial intelligence-assisted transcription services be used and, if so, what measures (i.e. human review) are in place to ensure the final product is accurate? If the format is one which is commonly available (for example an electronic audio file that can be read by commonly owned devices, such as a mobile phone), will the public authority insist on providing it in that format to the requester or will it still transcribe the content?
- Requesters may request searchable versions of certain document formats, such as PDFs. Does the public authority have the technical wherewithal to do this?

Notice needs to be provided in writing to the requester once decisions about exceptions and format of access have been made. Notice is normally communicated to the requester in the same way as the request was made (for example, by mail or electronically). If the information or part of the information is being disclosed, the notice needs to specify any fees that will be charged, the format of access and, where this entails inspecting the documents, when and where this will take place. If the information or part of the information is being withheld, the notice needs to specify the exact reasons for this (which should include the provision in the law which is being relied upon to justify the refusal), as well as the right of the requester to lodge an appeal against this, first internally and then to the Information Commissioner.

Systems are also needed to assess and collect fees. International standards suggest that fees should only be levied for the reasonable cost of reproducing and sending the information to the requester, and this is reflected in the RTI Act, with the maximum fees set in the Regulation. Furthermore, no fee should be charged for: access to personal information about the requester; searching, examining or collecting information; provision of information electronically (which does not cost anything); and where the fee would amount to a barrier to accessing information for a financially disadvantaged person. In addition, under the RTI Act, information is to be provided for free where the public authority does not comply with the law's timelines.

The public authority will also need some sort of system for actually collecting fees, preferably in different ways (cash, cheques, credit cards). Receipts will need to be issued and there will need to be some system for entering the fee into the books and making sure that it is processed in accordance with the general rules relating to collection of fees. Some public authorities will already have systems for this in place while others, which do not normally collect fees from the public, may not. Where the request is likely to cost a lot, the public authority may wish to consult with the requester in advance to make sure he or she is willing to pay that fee, before it actually goes ahead with copying the documents.

Discussion Point

Do you have a system in place for collecting fees? Do you think this is likely to be a problem?

3. Challenges

Even with the best systems in place, there are almost certain to be various challenges in terms of processing requests in accordance with the rules, including the time limits, on a regular basis. While some 'slippage' is almost inevitable, the goal should be to process a large majority of requests in a timely and appropriate manner.

One of the most common problems is processing requests within the time limits.

Example

In the Six Question campaign where six questions were lodged in 80 countries, the average time taken to respond to requests was 62 calendar days, significantly longer than the 10-20 working days (30 calendar days) period established as a maximum in most right to information laws. Only nine countries responded to all six questions in, on average, 30 days or less, and only three managed to meet this timeline for each of the six requests.

In the Transparency Maldives and the Information Commissioner's Office 2024 assessment of right to information implementation, the Maldives received an overall, middling score of 'yellow' on reactive disclosure, suggesting a broad need for improved implementation. Seven public authorities received a red score (poor performance), 14 received a middling yellow score and only nine received a green (good performance) score.

This assessment revealed difficulties in responding to requests on time. Part of the assessment that fed into the scoring involved sending to the 30 public authorities assessed under that study two requests for information each. Only 23 of the requests (38%) were responded to in full within the deadline with partial information provided in response to a further seven requests (12%).

There are a number of reasons why it can be difficult to meet the time limits:

- Other work priorities take precedence over responding to requests.
- Other officials upon whom the information officer depends do not cooperate or delay. These may be the officials who are responsible for the information or more senior officials who need to make final decisions about release of information.
- It can take some time to find the information (either because of poor records management or because this simply is difficult) or it can take time to compile the information from different documents.
- It can be difficult to decide whether or not an exception applies. In more complicated cases, this may require referring the matter to a more senior official and inquiries may need to be made.
- It may be necessary to consult either with private third parties who provided the information or with other public authorities which have some interest in the information. Where these third parties do not see this as a priority, it can take some time.

Discussion Point

Do you think meeting the timelines for responding to requests is challenging? Why or why not?

An extreme variety of the issue of delay is a mute refusal, which is a complete failure of the public authority to respond to the request. Although this should never happen, in practice it is all too common.

Example

In the Six Question campaign, the level of mute refusals (a complete lack of response from the authorities) was very high, representing 38 percent of all requests, even after up to three attempts to get a response. Fully 55 of the 80 countries covered by the exercise provided at least one mute refusal, and 15 responded to five or six requests with administrative silence.

Of the 60 test requests lodged in the Information Commissioner's Office and Transparency Maldives's 2024 assessment of RTI implementation in the Maldives, the 14 instances of complete refusals were all mute refusals.

Another common problem is providing wrong or incomplete information. Once again, this can happen for a number of reasons:

- The official responsible for the information does not do a good job in identifying the information.

- The request is not as clear as it could be, or the officials processing the request do not read it carefully.
- There is bad faith, and some information is deliberately hidden or withheld.
- It is complicated to find all the information requested, so shortcuts are taken and only part of the information is provided.

Where it really is difficult to respond fully to a request, it is legitimate to discuss this with the requester and ask if they would be satisfied with only parts of the information or whether there are certain parts which are more important for them to receive more urgently.

Attempting to charge excessive fees is a problem in many countries, although hopefully this is not a serious problem in the Maldives. Tracking requests is often done poorly, in most cases because no system is in place, although this can also happen where care is not taken to enter each request into the system or where requests are processed in different locations by different people and the tracking systems are not properly integrated. Having a sophisticated, central tracking system can really make a huge difference here.

Key Points:

1. Any person, including legal entities and foreigners, can make a request for information.

2. Requests should generally be made in writing (except in the case where disability or illiteracy makes an oral request necessary), delivered in person or by mail or electronically (through email or the central portal). Assistance should be provided where necessary to this end and requests should be registered and the requester should be provided with a receipt.

3. The information officer is required to respond to requests in 21 days, except in the following narrow circumstances where this timeline can be extended by 14 days:

    - where the request will require undergoing extensive research;
    - where the information requested is voluminous; or
    - where the time to complete the request would "impede significantly the general functions of the State Institute".

4. Public authorities should put in place systems or protocols to ensure that requests are processed in time, and also ensure that officials are aware of their duties to cooperate with the information officer, along with systems for finding information where its location is not obvious.

5. Requesters may indicate a preference for different ways of accessing information, such as inspecting documents or getting copies of them. Public authorities should respect these preferences except in narrow circumstances where doing so would "delay the general functions of the State Institute", be detrimental to the preservation of the information or would infringe copyright. Public authorities will need to have in place appropriate facilities for this (especially providing a place to inspect documents).

6. Fees should be limited to the cost of copying and sending the information, in accordance with a fee schedule for this, and public authorities need systems for assessing and collecting fees. No fees should be charged where requesters are requesting their personal information, where the processing of the request does not meet the statutory timelines or where it would amount to a barrier to accessing information for a financially disadvantaged person.

7. Meeting the time limits is a particular challenge in many countries, including the Maldives, as well as avoiding mute refusals. Other challenges include avoiding providing incomplete or wrong information and poor tracking of requests.

Exercise C

The Form for Requests for Information

Working in Pairs

Session 5: How to Interpret the Exceptions

1. International Standards

Interpreting the exceptions to the right to information is probably the most difficult issue facing information officers. The right to information is part of the general right to freedom of expression under international law which, as noted above, protects the rights to seek and receive, as well as to impart, information and ideas. As such, exceptions to the right to information are subject to certain restrictions, as is also the case for freedom of expression.

In the context of the right to information, this is generally understood as requiring exceptions to the right to information to meet the following three-part test:

a. The restriction must aim to protect one of a limited number of well-defined and important interests set out in the law.

b. 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).

c. 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, and not to allow additional secrecy beyond the specific exceptions spelled out in the law.

Discussion Point

What are some of the types of exceptions that you invoke most frequently? Do you think it is fair to disclose private information where this is in the overall public interest?

Quotation

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 the test outlined above and also provides an indication of what sorts of interests might need to be protected by secrecy. It reads 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.

Under international law, whether information has been classified is not relevant to whether or not it is exempt. Otherwise, administrative action could defeat the law (i.e. anyone could put a classification mark on a document which would render it secret and the right to information would have no meaning). Even where information has been marked classified, it is important to carefully consider whether its disclosure would cause harm to a protected interest. It is possible, for example, that circumstances have changed since the classification mark was applied, and the information's release is no longer sensitive at all.

Example

In some countries – for example Mexico – there are procedures that help to ensure that classification is correct; these include oversight of initial classification, including by the oversight body, as well as regular review of classification to make sure it is still current. At the same time, this is still not better practice, and, in most countries, classification is used as an internal procedure for indicating that information is sensitive but not as a strict tool for preventing disclosure.

The issue of the relationship of the right to information law with other laws is complex. As noted above, while the Maldives' RTI Act indicates that it prevails over other laws in case of conflict, it also preserves exceptions where disclosure is an offence in any other Maldivian law. In contrast, better practice is to protect all important confidentiality interests in the main right to information law, such that there is no need for other laws to extend these exceptions. This means that, in case of a conflict, the right to information law should prevail. At the same time, there is no reason why exceptions recognised in the right to information law may not be elaborated on or clarified by other laws. In many countries, for example, the right to information law protects private information but the details about what is included within the scope of privacy are set out in another law (such as a privacy law or a data protection law).

At a minimum, only laws which conform to the standards set out above (i.e. the three-part test) should be preserved. In some countries only specific secrecy laws are preserved. For example, in Sweden, all secrets must be contained in one law, the

secrecy law. In Canada, the right to information law contains a list of the secrecy provisions in other laws which are preserved.

Discussion Point

What impact do secrecy laws have on the right to information system in the Maldives? Does it make the processing of requests more complicated to have to consider other legislation. Have you developed any strategies for coping with this?

2. Underlying Principles for Exceptions in the Maldivian Act

The main principle under Maldivian RTI Act is that information is generally presumed to be open and accessible to the public and that exceptions to this are limited. However, under RTI Act, existing exceptions in other laws are preserved, via the exceptions to disclosure in Article 22(a), which lists "[i]nformation, disclosure of which is an offence under any law of Maldives" as an exception. This is problematical because many other laws have secrecy provisions which do not meet the standards contained in the three-part test for exceptions under international law, noted above.

The main list of exceptions is found in sections 8 and 22-32 of the RTI Act. For the most part, these exceptions conform to international standards (in the sense that the aims listed are mainly legitimate). At the same time there are some exceptions which are overbroad:

- The ability of public authorities to decline requests "where sufficient time had not elapsed" since a previous request (section 8(b)) is overly vague and superfluous considering that the same subsection allows requests to be declined where the information "had not notably changed" since a previous request.
- Section 22(d)(2) contains an overly broad exception for information which "if prematurely disclosed could adversely affect a person or group of persons". The formulation "adversely impact" is not tied to any specific kind harm, so this leaves open the possibility that a potentially quite vast amount of information might be deemed to fall under this exception.
- The exceptions for privileges of court and the People's Majlis (section 22(d)(3)) do not refer to a specific interest they are protecting.
- The exception for information "related to a trial" which is not public (section 22(d)(4)) is overbroad. While some information from a trial which is not open to the public may be legitimately withheld, some information related to such trials would normally still be legitimately disclosable under international standards.
- The exception for personal, legal or judicial information related to minors refers to information which "may harm the child's person or dignity" (section

22(d)(5)). This is a somewhat broad formulation whereas normally just privacy, security of persons and health interests would be referenced.

- Some of the exceptions for trade secrets (specifically sections 25(a)(2) and (c)) go beyond protecting sensitive commercial information.

Discussion Point

Do you agree that these exceptions are problematical? Are there other exceptions that you feel are problematical?

In addition, section 14 allows for deferring the release of information in limited circumstances, including where a document has been prepared for a planned presentation to an authority, and the presentation has not yet occurred. The requester must be notified of the deferment and the possibility of appealing it. There is no time limit to this and delaying a presentation may effectively defeat a request.

Several, but not all, of the exceptions in the Act are harm tested. Specifically, the section on legal privilege (section 24(a)) is not worded sufficiently clearly to ensure that the information covered is limited to privileged information. In addition, the exceptions for cabinet records (section 32) are not harm-tested. If they were, they would be limited to information which would undermine Cabinet's deliberative process.

The law contains a general public interest override whereby disclosure is mandated in situations where "the interest protected by nondisclosure is outweighed by the interests of the larger public upon disclosure" (section 20(b)). Some other laws explicitly provide for categories of information which must automatically be disclosed for public interest reasons so that a balancing does not need to be done in such cases. Examples of such information include information which is needed to expose human rights abuses or war crimes, and sometimes also corruption. Such kinds of abuses are not listed under the RTI Act, but section 119(b)(4) of the RTI Regulation states that the public interest includes any act which protects or promotes a fundamental right mentioned in the Bill of Rights section of the Constitution. In any case, these interests would still normally be takend into account under a proper balancing under section 20(b).

Section 20(c) of the Right to Information Act also specifies that the following are *not* legitimate grounds for eroding the public interest:

- The information contains details which "may make it difficult for the concerned State Institute to be answerable".
- "The information contains such details that may undermine public confidence in the concerned State Institute".
- "The information contains such deletions, which may adversely impact the comprehension of the remaining details".

Example

In the United Kingdom, the Information Commissioner and courts have held on several occasions that the interest of people being able to engage in policy dialogue with government, and to hold government to account, even in a fairly general way, are public interests that may override exceptions in the access to information law.

In Tunisia, there are absolute exceptions in favour of disclosing information on human rights and war crimes, and then a balancing approach is used when the information is needed to provide evidence of a serious risk to health, security or the environment, or of a criminal act, corruption or poor management in the public sector.

Discussion Point

What do you think about the idea of a public interest override? Are Maldivian officials qualified to apply such a test or is this too complicated for them? What if they were given some support in this, for example from the Human Rights Commission or the Office for Civil Rights under the Attorney General's Office, for difficult cases?

The Maldivian Act also includes a severability rule. This means that if only part of a document is exempt, that part should be removed from the document and the rest of the document should be provided to the requester. This is a very important tool because it is almost always possible, by removing certain information, to render a document non-sensitive.

The Act also requires notice to be provided to requesters when refusing a request, specifically setting out the reasons for the refusal, as well as informing the requester of the right to appeal under the law. At the same time, this still does not conform to best practice inasmuch as there is no requirement to list the specific provision in the Act being relied upon to refuse access, but of course there is nothing to prevent public authorities from engaging in this better practice.

There are a couple of better practices which are not reflected in the Act, as follows:

- While the Act establishes an overall time limit for exceptions of 10 years, which is positive, contrary to better practices, this does not apply to policy documents withheld under section 31.
- Where a third party has objected to the disclosure of information, disclosure is blocked until the appeal and review stages are completed, which can lead to delays in releasing information.

3. Procedural Issues in Appling Exceptions

Applying exceptions is a sensitive matter and public authorities need to agree on how this will be done. It should be clear who decides on whether exceptions are applicable and the way this is done should be designed in such a way as to ensure that it can be done within the timelines.

This can be tricky because the person who is responsible for the information will normally be in the best position to determine whether or not an exception is applicable, but this person may also have conflicting incentives regarding whether or not to release the information. For example, the author of a document may have a sense of ownership over the document and not necessarily want to release it publicly. If the document exposes weaknesses or inefficiencies or worse within the public authority, these may reflect badly on the author or person responsible.

Ideally, the official responsible for the information would work with the information officer to determine whether or not an exception applies. Where these two officials cannot resolve the matter between themselves, there needs to be a way to resolve the matter (for example by giving the information officer final say or by providing for the matter to be considered by a superior officer).

There may also be cases where, due to the sensitivity or difficulty or implications of making a decision about disclosure, the matter needs to be referred to a more senior officer. At the same time, it should be noted that as the seniority of the person who makes this decision increases, so does the complexity of the decision-making process and this takes time. More senior officers tend to be very busy and are also often more concerned about political implications than less senior officers. It is of fundamental importance that the decision be made on an objective basis (i.e. an objective consideration of whether or not the exceptions apply) rather than a political basis.

Discussion Point

Where should responsibility for making decisions relating to the applicability of exceptions lie in the Maldives? Is it realistic to expect the author of a document and the information officer to work together on this? If not, how else could this be done?

Where a request for information about a third party is covered by the exceptions in sections 23-26 (covering personal information, legal privilege, information on business affairs, health and protection), the third party must be notified within five days following the receipt of the request for information. The third party then has seven days to object to the disclosure after which the information officer is to decide whether or not to disclose the information. If the information officer decides to disclose the information, he or she must inform the third party of this and the reasons for the disclosure, as well as the possibility of appealing the decision. The information may not be disclosed during the review and appeal process.

4. Substantive Issues in Applying Exceptions

In assessing the applicability of an exception, the burden always rests with the public authority seeking to justify the refusal to disclose information, both as to the harm that would be caused by this and the non-applicability of the public interest override. This is based on the fact that access to information is a human right, and it is always for the State to justify limitations on rights.

The key initial consideration is whether making the information public poses a risk of harm to one of the interests protected in the Act. When considering this, rational reasoning based on the standards in the Act must be applied rather than relying on preconceptions and previous practices/assumptions/prejudices.

This involves three key elements. First, the officials should identify the specific interests protected by the exception that would be affected by the release of the information, beyond a general sense that the exception applies.

Example

That information relates to a business or even to the competitive activities of a business is not of itself determinative; the issue is what specific harm would result from the disclosure of the information. Would the business lose clients? Would a competitor be able to steal the business secrets of the business?

This is perhaps particularly important in relation to national security, where there is often a very high public interest in open and honest debate, which in turn requires that people be able to obtain accurate information about the threats a country faces. For example, the United States government responded to a freedom of information request by confirming that the Federal Reserve had detected more than 50 cyber breaches between 2011 and 2015. Although key information about security procedures and details of how successful each attack was had been redacted from the response, it is important for people to understand that breaches are occurring in order to promote a public debate on whether more needs to be done to boost the security of the country's digital infrastructure. This information also helps to raise broader public awareness of the need to stay vigilant against online threats, promoting a more secure online space for all.

Second, the official must establish that there is a causal relationship or a direct link between the disclosure of the information and the risk of harm and that the risk is not based on other factors.

Example

If a country has a weak army, it will be insecure. This risk does not come from being open about the army but from the fact that that army is weak. The same applies to a business that is failing. Secrecy should not be used to prop up weak institutions or businesses.

In assessing the causal relationship, the imminence of the risk upon disclosing the information is an important consideration. If the risk would only materialise a long time after the information had been disclosed, it is likely that the causal relationship between the disclosure of the information and the realisation of the risk is low. As part of this, the official should consider whether or not the risk can be limited by removing/severing information. Put differently, the official should consider what, specifically, within a document is sensitive and remove only that part of the document. In most cases, refusals to disclose the whole of longer documents cannot be justified because it is very unlikely that the whole document is sensitive.

The third element is that the risk should be real, and not just speculative. It is not appropriate to deny a fundamental human right on the basis that something might result, if this is very unlikely. Otherwise, it would almost always be possible to refuse to disclose information. Once again, one way of ensuring this is to look at the imminence of the risk. If the harm would only materialise a long time after the information had been disclosed, then the risk probably not only depends on other factors (so that the second element is not met) but is also rather speculative in nature (the third element).

Discussion Point

Does this seem reasonable? If not, how has your own process differed from this?

Example

In Canada, police in the city of Hamilton fought for nearly a year against an information request for details about the cell phone surveillance technologies which they had at their disposal. They claimed that revealing details of the programmes would allow criminals to piece together investigative techniques and ultimately learn how to evade them. This argument was undermined when, ultimately, they admitted that they had no cell phone surveillance technologies at their disposal.

After determining whether or not disclosure would pose a real risk of harming a legitimate interest, according to international standards the official must conduct a public interest assessment to see whether the larger public interest warrants disclosure or withholding of the information. The first step here is to identify the various public interests that may be served by disclosing the information. It is useful to make a list of them to make sure that all of them are captured.

The potential public interest benefits should then be compared with the harm posed to the protected interest, to see which is weightier. Note that this can be difficult because it often involves comparing very different types of considerations. In particular, the harm is often a specific harm to a specific individual (such as the exposure of their privacy or a risk to their business). In contrast, the benefit is often much more general, and public, in nature, and may also involve longer-term considerations (such as the exposure of corruption). In most countries, more weight is given to a general public

benefit than to a private harm, especially taking into account that the right of access to information is a human right.

In general, as noted above, it is not legitimate to ask requesters for the reasons for their requests. However, their reasons may be quite important in the context of assessing the public interest override. For example, where a media outlet is requesting information which may disclose corruption with a view to publishing it, this may have a very important positive impact in terms of exposing and hence addressing the problem of corruption, whereas if the request is from a private business which simply wants the information for commercial purposes, this balancing would be very different. As a result, where this seems likely to be relevant to the assessment of the public interest override, it is appropriate to ask requesters what they want the information for, but only if it is made quite clear to them that they are under no obligation to provide this information (i.e. that providing it may help them get the information but that they do not need to do this).

Key Points:

1. International law establishes a three-part test for assessing whether exceptions to the right to information are legitimate as follows:
    a. Does the information relate to a legitimate protected interest?
    b. Would disclosure of the information cause harm to that interest?
    c. Does the overall public interest still mandate disclosure of the information?

2. Administrative classification of information should be irrelevant to the applicability of an exception.

3. Ideally, the right to information law should override secrecy laws in case of conflict, but this is not the case under the Maldivian Act.

4. Under international law, the test for applying exceptions involves assessing whether disclosing the information would harm a protected interest and, if it would, undertaking a public interest balancing. Most, but not all, of the exceptions in the Maldivian Act include a harm test, and the exceptions are subject to a public interest override, but a number of the exceptions do not protect legitimate interests.

5. Clear procedures need to be agreed for how to apply exceptions (i.e. who makes the decision and how this is done).

6. The assessment of the risk of harm should not be based on assumptions or prejudices but on clear evidence of a specific risk to a legitimate interest which is not speculative. The risk also needs to be directly causally related to the disclosure of the information.

Exercise D

This is the most involved and lengthy exercise in the course and it involves a role play. The participants should break into groups and each group should be broken into three sub-groups (which could be just one or two people), with one sub-group representing the requester, one the public authority and one the judge who has to decide on the matter. Participants should be prepared to act out their roles in front of all of the other participants, in a sort of mini-play.

Exercise D
Role Play on Exceptions
Working in Small Groups to Prepare a Role Play

Session 6: How to Process Appeals

1. The Three Levels of Appeals

It is clear under international law that one must have access to a decision-maker outside of the public authority when access to information is refused or other breaches of the law may have occurred. Better practice is to provide for three levels of appeal: internally, to an independent administrative body and to the courts.

In many countries, the law provides for an internal appeal to the same public authority which originally refused the request. This can be useful in terms of helping public authorities to resolve matters internally and quickly. It can also be useful because more junior officials are often nervous to disclose information, whereas senior officers are sometimes less so. However, in small bureaucracies, such as exist in the Maldives, the utility of an internal appeal may be questioned because at least more controversial requests are likely to be discussed with more senior officers, leaving little scope for a genuine internal appeal (i.e. to someone who has not been involved in any way in the original decision).

In most countries, one can ultimately appeal to the courts. This is an important level of appeal because, in the end, one does need the courts to decide on more complicated and difficult questions, especially relating to exceptions. The more involved and probing examination of issues that takes place before the courts is necessary to resolve these issues in ways that are broadly acceptable within society.

Experience has shown that an independent administrative level of appeal, before an administrative body (i.e. an information commission) 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, to be accessible to or useful 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. But it is also important to resolve the often far too common procedural failures to apply the law properly (such as delays or refusing to provide information in the format requested).

Under the Maldivian Act, there are three levels of appeal, consistent with international standards:

- The first appeal is an internal appeal (i.e. a review of a complaint) sent to the Public Authority's Review Committee within 30 days from the day the decision was or should have been made (in case a decision was not in fact made, i.e. a 'mute refusal'), although appeals submitted after this period may be accepted if there is a reasonable justification for the delay. The Review Committee must complete its review within 30 days, except in a special circumstance where this may be extended for an additional 15 days. It is not

clear why such a long time is needed for the review, given that the public authority has already had the chance to study the request fully.

- The second appeal is to the Information Commissioner. These appeals are to be submitted within 90 days of the date the Review Committee made a decision (or should have made a decision). These appeals are to be decided within 30 days, although this may be extended by 15 days.
- The third appeal is to the courts and must be filed within 30 days of the time a decision was made or should have been made by the Information Commissioner. The courts then process appeals in accordance with their own rules.

Under the RTI Act, it is the responsibility of each public authority to set up its own review committee, which is to be staffed by a minimum of three officials at a higher rank than the information officer. Under the Right to Information Regulation, employees who do not hold a political office are to be preferred for appointment, and committee members with must withdraw from consideration of matters in respect of which they have a conflict of interest. It is of course important that these individuals receive adequate training on RTI (more in-depth than normal employees) so that they can fulfil their review responsibilities.

Under the Right to Information Regulation, to submit a complaint to the Review Committee, the complainant should include his or her name and contact information (telephone number), the decision of the information officer, the reasons for dissatisfaction with the decision and any supporting documentation. Decisions are to be taken by a majority vote of the Review Committee members present at their meeting and the complainant and any other involved parties are to be notified of the decision within three days. The Information Officer is required to implement the decision within a maximum of seven days following the Review Committee's decision.

Discussion Point

Do any of the participants have an example of where an initial decision was changed following a review by the Review Committee? If so, what were the reasons the decision changed?

2. Various Considerations

Under international standards, the law should provide for broad grounds for appeals, basically for any violation of the rules in the law relating to the processing of requests. The Maldives' Right to Information Act does this by explicitly allowing appeals for any breach of the law by the public authority or information officer, in addition to specifying certain specific grounds, such as failing to respond to an information request within the time limits or not providing a receipt.

In practice, appeals can broadly be divided into two groups: those that involve procedural issues and those that involve the application of the regime of exceptions. In most cases, procedural issues are relatively easy to resolve. These cases are often the result of an administrative error rather than a specific decision (for example, a failure to respond at all or to respond within the time limits). These cases can also involve contentious issues such as the levying of excessive fees or a refusal to provide information in the format sought. At the same time, these sorts of cases rarely involve the sometimes very difficult issues that come up in relation to exceptions.

Disputes about exceptions, on the other hand, can be very difficult indeed to resolve. Furthermore, substantive issues relating to exceptions can be expected to keep coming up basically on an ongoing basis, even decades after the law has been adopted. These are complex issues and new claims regarding exceptions keep coming up.

One can also talk about a third type of appeal, which essentially involves complaints to the effect that the wrong information has been provided (or incomplete information). These tend to be more akin to procedural complaints (i.e. based on administrative error as opposed to a really contentious matter), but they can also be based on the interpretation of exceptions.

Mediation can be a very good way to resolve issues, especially for the first category of appeals. There is no need to go into a formal process of adjudication, with both sides presenting their views and involving a hearing, if the problem is simply that a public authority has failed to process a request or has taken too long to do so. The resolution of this is simple, at least in theory: the public authority should move forward and process the request in a timely manner. There is no need for legal authorisation to conduct mediation, at least of an informal nature, and many oversight bodies around the world do this without any specific legal mandate. To do this, oversight bodies normally contact both parties unofficially and provide them with an informal sense of how the matter should move forward. If the parties accept that and agree on a resolution of the case, then it will be dropped. Otherwise, it may need to move forward to a formal adjudication process.

Discussion Point

What do you think about the idea of mediation? Do any of the participants have any experience with mediation processes? Do you feel that these processes could be effective for resolving RTI complaints, or would most cases need to go to a more adjudicatory system of resolution?

3. Guaranteeing the Independence of the Oversight Body (Information Commission)

Under international law, the oversight body or information commission should be independent of the government. The reasons for this are fairly obvious. Its role is to

review the decisions of the government (i.e. of public authorities). If it is not independent, it cannot adjudicate cases in a fair, unbiased, manner, and so would be a waste of time for requesters (and ultimately a waste of money for the public). At the same time, protecting the independence of such a body is not necessarily an easy task, especially in countries where there is not a strong tradition of establishing such independent bodies. In terms of independence, the manner in which members of the body are appointed is key.

Examples

In the Maldives, the Information Commissioner is ultimately appointed by the president, but the president must first propose candidates to the People's Majlis for approval.

In 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. While this is weighted towards the government, it at least ensures that the opposition has a seat at the table and can protest against any non-independent appointments. In practice, very independent individuals have, for the most part, been appointed to these positions. However, in recent years concerns have been raised that the government delayed appointing commissioners, which can be an indirect way to undermine the commission's effective functioning.

In Japan, the Prime Minister appoints the Commissioners upon the approval of both houses of parliament. Once again, there is some weighting towards government, but the process is open and there is plenty of opportunity for the opposition, not to mention civil society and the media, to make a fuss if there are problems.

In the United Kingdom, appointments to the post of Information Commissioner, like all senior appointments within government, are made on a competitive basis. Anyone interested in holding the post can apply, and will go through a selection process, ultimately overseen by an independent civil service body and then ratified by parliament.

In addition to the appointments process, there are a number of other important ways to protect the independence of the body, as follows:

- Members, once appointed, should enjoy security of tenure so that they are guaranteed a fixed time in the post and it is difficult to remove them once appointed. Better practice in terms of the latter is to allow members to be removed only where they fall foul of certain basic rules (failing to attend meetings without reason, incapacity, criminal behaviour) and with certain protections (i.e. that they can appeal any removal to the courts). In the

Maldives, the relevant parliamentary committee must approve removals, which are limited to situations where the Commissioner "carried out an act unsuitable to the position of Information Commissioner", or if he is unable to discharge his responsibilities is incompetent to do so.

- Consistent with better practice, the Maldives' Act prohibits individuals with strong political connections from being members. In particular, they must not have been appointed to a political position, be a member of a political party no be engaged in political party activities.
- As the corollary of the prohibitions, there should also be some positive requirements, namely of relevant expertise for the position, for example in areas such as law, information management, journalism, and so on. In the case of the Maldives' RTI Act, the experience requirements are somewhat general, as the law simply requires seven years of professional experience and a first degree.
- If the government controls the budget, it also controls the body, so an independent budget process is key to the independence of the oversight body. This is usually accomplished by having its budget approved by the legislature, as is the case in the Maldives.

Discussion Point

Do you agree that it is necessary to ensure the Information Commissioner's independence? How successful do you think this has been in the Maldives?

4. The Powers of the Oversight Body

If it is to be effective, the oversight body needs to have certain powers. These can be roughly divided into two categories: powers to investigate and decide on appeals, and powers to award remedies in cases where it decides that there was a breach of the rules. The following powers are necessary if an oversight body is to be able to investigate complaints properly:

- The body must have the power to review the information which is the subject of the complaint, whether or not it is classified or claimed to be exempt. Absent this power, the body cannot properly discharge its responsibility to decide complaints. Knowing what is actually in the documents is essential to being able to determine how sensitive they are.
- Better practice is thus to give the oversight body access to all information and documents it may request. At the same time, while it should have the power to order disclosure of the information, it should itself also respect the confidentiality of that information (i.e. not disclose the information on its own).

- It is not enough for the oversight body simply to be able to access the information. It must also be able to hear witnesses and, for this purpose, to compel witnesses to appear before it. It may need to hear witnesses, for example, to gain an understanding of the sensitivity of a certain issue (whether this is a security issue a business competition issue or a privacy issue) or to understand better the claims made by the public authority or the requester.
- Finally, better practice is to give the oversight body the power to inspect the premises of public authorities. While this is a more extensive power, which would not often need to be used, in some cases inspections are needed to find out whether or not public authorities really do hold information which they claim they do not. Inspections may also help the oversight body to understand, and thus resolve, more structural problems at public authorities in terms of complying with the law.

Fortunately, consistent with international standards, the powers of the Information Commissioner are quite robust under the Maldives' RTI Act.

Quotation

Article 60 of the Maldives' Right to Information Act provides:

> The Information Commissioner shall have the following powers in relation to an appeal or complaint lodged before him:
>
> (a) To summon the concerned persons;
> (b) To obtain statements from those summoned;
> (c) To collect testimony from those willing;
> (d) To request for information;
> (e) To request for documents;
> (f) To order to provide documents;
> (g) To order to provide information;
> (h) To order to provide a specific document or specific information to the Information Commissioner;
> (i) To investigate and review a specific piece of information;
> (j) To obtain evidence;
> (k) To obtain evidence in writing;
> (l) To obtain testimonies in writing;
> (m) To order a specific State Institute to provide information held in its office.
> (n) To summon a specific person, who having being identified as a witness;
> (o) Having specified a given document, to order to submit that document;
> (p) To enter a State Institute;
> (q) To examine and search a given State Institute for the purpose of obtaining a relevant piece of information, and where that information is found, to withhold the document or the source in which the said information is found;
> (r) To enforce other powers vested in the Information Commissioner

under the regulations formulated under this Act.

Once the oversight body has considered an appeal, and if it decides that the complaint is justified, it needs to have adequate powers to order remedies. Consistent with better practice, in the Maldives the orders of the oversight body are legally binding. This is important because if the oversight body can only make recommendations, many public authorities may simply ignore them, following which the requester needs to go to court to enforce them, thereby undermining the whole point of having an oversight body.

Better practice is for the oversight body to have the following specific remedial powers:

- For the requester, to order release of the information but also other remedies, such as access in a certain format, a reduction in the fee and perhaps even compensation where a delay in the release of the information has caused the requester hardship or loss of funds.
- The oversight body should ideally also have the power to order the public authority to undertake structural reforms in certain cases, namely where it is experiencing systemic problems in meeting its obligations under the law. An example of this might be to order the body to provide training to its officials where they are failing to meet their obligations due to a lack of understanding of the rules, or to order it to manage its records better, where poor information management results in it being unable to locate documents sufficiently quickly or perhaps at all.

In the Maldives, the Information Commissioner has robust powers with respect to ordering redress in individual cases, including the ability to order information to be disclosed and to fine information officers or order that a public authority take disciplinary actions against him or her. In terms of structural measures, the law grants the Information Commissioner the power to order the public authority to strengthen its records management practices and also, more generally, a broad power to order public authorities to take measures to correct failures to discharge their duties.

Discussion Point

What are your opinions on the ability of the Information Commissioner to impose structural remedies on public authorities? Do you think this is a helpful power for the Information Commissioner to have?

Quotation

Section 61(a) of the Maldives' Right to Information Act provides:

Having examined a lodged appeal or complaint under this Act, the Information Commissioner, can settled the matter in the following ways:

(1) That the complaint or appeal is of no substantial basis;
(2) To order a specific State Institute to disclose a specific piece of information;
(3) To order a specific State Institute to release a specific piece of information;
(4) To order to release a specific piece of information in the format requested by the person who made the request;
(5) To order the release of a specific piece of information requested by a specific person, in a reasonable format other than that requested by the applicant;
(6) To determine that the decision reached by a specific State Institute in relation to a complaint submitted is correct;
(7) To order the dissemination of a specific piece of information or a specific class of information;
(8) To order to strengthen the document management system of a specific State Institute, or to order to reform relevant procedure;
(9) To fine any Information Officer who has breached provisions of this Act;
(10) To fine any party who breached a lawful order given by the Information Commissioner;
(11) To order a State Institute to take disciplinary measures against an Information Officer, of that State Institute, repeatedly breaching provisions prescribed in this Act.
(12) To order the police to investigate any case of any person alleged to have committed an offence prescribed under this Act, and where, after the police investigation, the Information Commissioner finds legal action should be brought against the person, to send the case to the Prosecutor General.

Section 62(a) of the Law reads:

In circumstances where the Information Commissioner identifies that a specific State Institute does not carry out its functions in accordance with this Act, the Information Commissioner, has the power to initiate his own investigations and reach a decision regarding the matter, even in the absence of a specific appeal or complaint by any aggrieved party.

Section 62(c) of the Law reads:

Where, after having investigated a case as according to subsection (a) of this section, a specific State Institute is found to have discharged its functions contrary to this Act, the Information Commissioner must order that State Institute to correct them. The Information Commissioner must also order the said State Institute, the measures to be taken in order to correct them.

Key Points:

1. Under international law, requesters should have the right to appeal against claimed breaches of the law to an independent body.

2. The Maldives' appeal system conforms to better practice in that it provides for three different levels of appeals: an internal one to a review committee within the public authority; to an independent oversight body (information commission); and to the courts.

3. The information commission should resolve disputes both through mediation and through an adjudication procedure.

4. It is very important that the information commission be as independent from government as possible and that it have the power both to investigate complaints and to order appropriate remedies where it finds that the law has been breached. Fortunately, the Maldives' law contains provisions to help guarantee its independence and to give it broad investigative and remedial powers.

Exercise E

Exercise on Appeals

Working in Small Groups

Session 7: Reporting, Promotional Activities and Monitoring and Evaluation

1. Annual Reports

Under the Maldivian RTI Act, public authorities are responsible for compiling and sending an annual report on RTI implementation to the Information Commissioner, and the information officer is responsible for spearheading this. While there is no requirement under the Act for the public authorities to publish these reports, in many jurisdictions there is such a requirement, and public authorities should consider publishing these on their websites as a better practice.

These reports serve a number of important purposes. They provide invaluable information about what is happening under the right to information law, absent which even simple questions like how many requests are being made cannot be answered. They also provide a picture of the variances in terms of implementation between different public authorities, including such things as which ones are getting more requests, which have taken more steps to implement the law, which are relying more heavily on certain types of exceptions. They thus provide a basis for assessing how well the system is working and whether certain types of adjustments need to be made to improve implementation.

Public authorities will have difficulties in producing decent reports if they wait until the end of the year to start collecting the information. So if they want to produce an annual report, they should think in advance about what is needed and try, as far as possible, to put in place systems to collect it on an ongoing basis. The most important part of these reports is the detail on the requests that have been received. The following considerations should be taken into account in the way this should be treated:

- If the number of requests is very low – say only one or two per year – then it may not make sense to put in place a sophisticated system for reporting. But as the number of requests increases, which can be expected over time, then it makes sense to have a more sophisticated, i.e. automated, system.
- Section 42 of the RTI Act lists the following categories of information which must be included in the annual reports (at a minimum):
    - The number of applications received, the number of applications answered, the number of applications for which access to the requested information was provided and the number of applications for which access was refused.
    - The section or provisions of this Act most often invoked in order to refuse a request for information.

- The number of appeals made following refusal to access to information.
- The amount of fees and their total.
- Activities and tasks carried out proactively in order to comply with the duty of information disclosure.
- Activities and tasks done relating to records management.
- Activities and tasks carried out for the purpose of training employees.

➢ It is clear that this is a large amount of information and that having a simple automated system for tracking requests and how they are being dealt with is a great asset in terms of producing the report. A central tracking system is also very useful in terms of managing requests internally (for example to notify the information officer when the time limit for responding is approaching and so on).

➢ In terms of the information on activities and tasks to comply with proactive disclosure publications, ideally this should include a description of the steps taken to make sure the website includes the required information, a list of the types of information made available on a proactive basis, any systems that have been put in place to ensure that proactive publication continues to take place over time and that information is maintained in an up-to-date form, and other means of disseminating information (i.e. in addition to on the website; this would include both offline means of disseminating information and using social media).

Discussion Point

Do you think the requirements for public authorities in the Maldives to produce annual reports on implementation of the right to information law are reasonable or does this take too much effort? Do you see their importance for assessing the implementation of RTI in the Maldives?

Example

In some countries – such as Mexico and Canada – there are central tracking systems for all requests within the national public service. Having such a central tracking system requires some set-up costs (for example developing the software and making sure information officers know how to use it) but once such a system is in place, it is a very powerful tool for tracking requests not only within each public authority but also over the whole of the civil service.

It should also be noted that the above list of required information does not prevent public authorities from going above these requirements by providing additional information. Some kinds of information which public authorities should also provide as better practice are:

- Data on the timeliness of responding to requests for information, including the numbers of requests replied to on time, the numbers of requests where responses exceeded the statutory deadlines, the frequency of extensions to the initial processing deadline and main reasons for these extensions.
- The steps that have been taken to develop a protocol for processing requests (it was noted earlier in the course that this is a necessary step to ensure that public authorities can process requests properly and in a timely fashion).
- The plan of action: this is another step that should be taken by each public authority to make sure they are implementing all of their obligations under the law. The plan of action could even incorporate the protocol on processing requests (although the latter should eventually take the form of an instruction from a senior official).
- Steps taken to prepare a guide for requesters. This is another measure that all public authorities should put in place. However, it is not necessary to prepare a guide from scratch. It is perfectly possible for each public authority to use a guide which has been prepared by another public authority and just adapt it. The guide should be quite simple and does not need to be more than a few pages. This should be made available on the website and also in physical format at each public office of the public authority.
- A description of the main problems the public authority, or the information officer, has encountered in terms of implementing the law. This is important to help ensure that attention is brought to bear on these problems and that measures are taken to address them.
- Finally, a list of any recommendations for reform that the public authority wishes to make. These might be of a legal or of a practical nature. Public authorities are a key stakeholder in the right to information system and, collectively, they are likely to have an enormous amount of information about how the system works and so on. It is very important for the information commission and the government to receive their recommendations about how to improve the system.

Under the RTI Act, the Information Commissioner also is required to publish an annual report, although contrary to best practice, under the law these reports focus only on the Information Commissioner's activities instead of also including a consolidated report on overall right to information implementation in the Maldives.

2. Promotional Measures and the Importance of Action Plans

Right to information laws are not self-executing in the sense that they can be implemented without some promotional measures being taken. The public needs to be informed about their new rights, officials need to be trained, and so on. The annual

reports just discussed are one such promotional measure, which as noted provides invaluable information about overall implementation efforts.

Appointing an information officer is an important first step. In the Maldives, the highest ranking official in a public authority is responsible for appointing from among its employees the information officer, whose name, designations and contact information must be "disseminated as widely as possible".

It may be noted that, in most countries, the information officer is central to the whole delivery of public authorities' obligations under the law. Indeed, the Maldives' RTI Act assigns this officer broad duties to organise policies for maintaining and disclosing information, assisting requesters and making decisions on information requests. Although this officer does not do all of the work of implementation, he or she does organise almost all of that work and bears responsibility for making sure it happens. Unless and until the information officer is appointed, it is almost impossible for a public authority to have a good record in terms of implementation of the law.

It is not enough simply to appoint an information officer. The person needs to be allocated enough time to do the work that this entails. This implies that this officer is relieved of some of his or her other duties so as to be able to fulfil the information officer duties.

The appointment of the information officer should be formal in nature, and he or she should have a clear set of responsibilities or terms of reference, based on the duties in the law. Furthermore, for the information officer to be successful, he or she will need the cooperation of other officials working at the public authority. This should be made clear to the other staff through a formal statement along these lines (for example an instruction from the head of the public authority informing or reminding staff of their duty to cooperate under the law).

In many countries, information officers are linked together through a formal network. Such networks can serve a number of important purposes, including as a place to share information, discuss problems and solutions, exchange experiences and share tools. Networks can also organise formal events from time-to-time, such as workshops or conferences to discuss issues and concerns. And they can even serve a support function for information officers within the civil service more generally.

Discussion Point

What do you think about the idea of a network for information officers in the Maldives? Do you think it would be useful or just another formal body to join?

The RTI Act establishes a system of sanctions for undermining RTI which the Information Commissioner can impose. In addition to this, respecting laws should always be considered part of the job duties of staff and an intentional failure to do so might be the subject of disciplinary proceedings. For this to happen, the rules relating

to discipline would need to make it clear that obstruction of access will be considered a disciplinary matter and those responsible for applying disciplinary procedures also need to be made aware of this. There will also be a need to raise awareness among those responsible for applying disciplinary rules of what exactly might attract a disciplinary sanction in this area (i.e. what is an intentional breach of the right and what is simply unprofessionalism or ignorance).

Consideration also should be given to providing incentives for good performance in implementing the law. This can include incorporating performance in this area into the regular evaluations that take place (or should take place) for officials. There are other potential ways to do this, including informal ways, such as awards for good performance.

It may be necessary to review internal rules to ensure that they are consistent with RTI obligations. In many cases, internal rules establish various types of secrecy or place obstacles in the way of disclosing information. Even the contracts which are concluded with employees (i.e. contracts of employment or personal rules of service) may need to be amended to ensure that they do not impose personal obligations of secrecy on officials, in breach of the right to information law.

It is important to adopt a communications strategy for internal communications (through in-person meetings or email communications) on RTI. It is important to inform staff about the right and to make it clear that senior management view this as a matter of some importance. These messages can also be used to inform staff about changes that are being or have been introduced, such as the adoption of new legal rules or the establishment of new systems, for example for creating lists of documents or undertaking proactive publication.

The RTI Act foresees that the Information Commissioner assists with implementation by entrusting the Commissioner with responsibility for determining standards for disclosure and for providing, upon request by public authorities, advice on disseminating information. Another important central institutional arrangement is the identification or establishment of a central internal nodal point to deal with right to information issues. Unlike the Information Commissioner, this should be a body which operates inside of government, such as a ministry or department. It is not necessary for every single public authority to reinvent the wheel each time it designs an implementation system, and such a central body can help create efficiencies by, for example, creating templates or models for public authorities to follow on various aspects key to implementation, such as records management or website design.

The right to information needs to be integrated into central planning systems, just as this would be needed for any other type of activity. A public authority cannot deliver any major project without budgetary and staffing allocations, and the same is true of the right to information. At a very minimum, time and resources need to be allocated to this work.

Best practice is for each public authority to adopt an action plan setting out what it will do to implement the right to information law over the following years, say over the coming two or three years. This should be the main template or map for the organisation as to what it will do over the stipulated time period to implement the Act. The action plan should, in particular, address the following key issues:

- Set out the key priorities for the public authority over the time period. In other words, it should indicate clearly what activities the public authority will undertake during the time period, based on what it has prioritised. As this course has made clear, public authorities have quite a few obligations under the Act and it is necessary to set priorities regarding what will be done first.
- Provide a clear timeline for the achievement of each of the activities that have been identified as priorities. In some cases, these may be expressed as percentages. For example, a public authority may indicate that it will provide training to 50 percent of its staff during the first two years. Such timelines are very important as a yardstick against which progress in implementing the action plan should be measured.
- Make it clear who will be responsible for undertaking each priority action. In many cases, the information officer will be the lead person, but in most cases he or she will also need the support and cooperation of other officials. This should be listed clearly in the plan, which should also serve as a means of defining responsibilities. In allocating tasks, especially to the information officer, it is important for there to be a realistic assessment of the amount of time that each task will take, and to make sure that the person responsible actually has the time available to accomplish the task (otherwise, it will not get done and the action plan becomes merely aspirational as opposed to a proper planning document).

Discussion Point

Do you think it is reasonable to expect public authorities in the Maldives to prepare action plans? What if these are just expected to be quite simple in nature?

Some of the key priorities which should be included in the initial action plan include the following:

- The measures to be taken to meet the proactive publication obligations. This should include what will be done to develop the website as the key tool for proactive disclosure, what information will be made available proactively and what will be done to create a list of documents that are published and that are available electronically.
- The measures to be taken to ensure that requests are dealt with in accordance with the rules, including the time limits. This should include any protocols and systems that will be put in place to ensure the proper processing of requests.
- Any measures to be taken to improve records management.

- The training plan.
- Any other measures to be taken (for example regarding public education, internal communications, systems for tracking requests and so on).

3. Training

Training for implementation of the right to information law is a huge task since, over time, all public officials should receive some training. Absent at least some awareness raising or training, officials will not understand their responsibilities, even if this only extends to an obligation to cooperate with information officers. And absent this cooperation, there will always be challenges in terms of implementing the law.

Given the magnitude of this task, there is clearly a need to prioritise. It makes obvious sense to start by providing training to information officers, given that they are tasked with leading on most implementation efforts. Furthermore, these officers need to receive far more intensive and detailed training than other officers. Once they have been trained, information officers can then play a role in providing less detailed training to other staff for whom a relatively modest training (of perhaps around two hours) is likely sufficient.

In most cases, it makes obvious sense to start with a training of trainers approach to training, especially during the early phases of implementation. External expertise may need to be brought in for this training of trainers, given that there is unlikely to be a lot of expertise inside the country. These trainers can then provide specialised training to information officers, which should at the very least consist of a dedicated two or three day training programme on the right to information.

Some considerations to keep in mind regarding training are the following:

1. In principle, all officials need to receive some training/sensitisation on the right to information. The goal should be to move forward with this training in an efficient manner.
2. The action plan needs to include a section detailing how the public authority intends to provide training to all of its staff and especially how it will train its information officer(s).
3. While generally the responsibility for training staff ultimately lies with each public authority, it is obvious that different public authorities need to cooperate with each other, and with central training bodies, to ensure the provision of training (i.e. this is not something that can be done internally by each public authority on its own). The RTI Act envisions that the Information Commissioner will play a key role here lists the provision of training to public authorities among the Commissioner's duties.

4. There is a need to prioritise training aimed at information officers, given that they bear a significant part of the burden of implementation. This training also needs to be significantly more in-depth than the training provided to 'ordinary' officials. Indeed, information officers can help provide the second type of training one they have been trained themselves. For information officers, dedicated training courses of two or more days, will be needed.
5. There are a number of ways that training can be expanded to cover all staff. One way is to integrated modules on the right to information into any ongoing training programmes that are being provided to officials. Depending on what is offered, this could be the initial training provided to new staff, in which case the right to information part of the training might be delivered over a couple of days as part of a much longer course. It could also include modules in upgrade training for existing staff (including ongoing training provided to senior staff), in which case the modules might be a couple of hours.
6. Information officers can also offer less formal training for staff at the premises of the public authority. This could range from very informal information sharing sessions (for example over lunch) to more formal presentations and training workshops.
7. Consideration should also be given to incorporating modules on the right to information into university courses, such as general courses on human rights for law students, or courses for students of public administration, journalism and so on.

4. Awareness Raising

In many countries, public authorities also have a general responsibility to educate the public or raise general public awareness about the new right to information law. While the Maldives' RTI Act assigns responsibility to the Information Commissioner for these promotional efforts, there is nothing to prevent public authorities from engaging in such activities. Some of the key ways to engage in public education are as follows:

- In many countries, public authorities are required to prepare a guide for the public on how to use the law and how to make requests from that authority. This can be quite simple – two or three pages – but it should be clear and be made available on the website and in physical format at the public authority.
- The other measures that should be taken will depend on the nature of the public authority and the extent of its interaction with the public. Some public authorities – like the ministries and health and education and the police – interact extensively with the public while others, like finance, may have less direct interaction.
- One simple measure is to place posters advertising the right to information in every public office or waiting room at each public authority. If this were done

by all public authorities, it would not be long before everyone had at least some idea about the right to information.

- There is no limit to other possibilities here, except for limits based on the imagination of information officers. Some common activities include holding public workshops and other events, hosting some activity annually on International Right to Know Day (28 September), and holding events to inform the private companies that interact with the public authority about the right to information and the possible implications for them.
- In due course, modules on the right to information should be included in school curricula, for example for children in the 14-16-year age range. This way, over time, all citizens will become aware of this right.

Discussion Point

Has your public authority undertaken any activities to raise awareness among the general public about the right to information? Do you think this is a reasonable activity to expect public authorities to undertake?

5. Records Management

Another very important promotional measure is to improve the records management practices at public authorities. This is important to give effect to the right to information; if you cannot find a document, you cannot provide it to the public in response to a request. But it is also important simply as a management tool. If you cannot find documents, then you cannot do your work properly. Put differently, good records management is an important tool for delivery of all work in the public sector (as well as in the private sector).

A key element of good records management is to develop clear standards for managing records and then to put those standards into place. Ideally, standards should be developed at the central level and all public authorities should be required to comply with those standards. This has several advantages:

1. It ensures that all public authorities are held to the same records management standards.
2. It is efficient inasmuch as each individual public authority does not need to make the effort and build the expertise required to develop standards.
3. It avoids a situation where smaller public authorities have less developed and less sophisticated or practical records management standards.

Records management is a HUGE task which will undoubtedly be quite taxing for public authorities. It might make sense mainly to look forward on this issue. In other words, it might make sense to set strong standards for the new documents and records

which are being created rather than spending too much time trying to reorganise the large volume of past records which most public authorities hold.

There can also be challenges around whether digital media or paper is used as the primary medium of storage. In many respects, such as filing and organising, digital tools are much more powerful and efficient than paper. But there are also costs associated with going digital, as well as challenges where a system is partly digital, and partly still reliant on paper. However, given that digital is clearly the way of the future, it makes sense to bite the bullet and introduce a digital records management system, if one is not already in place.

Discussion Point

Are the official records of your public authority paper or digital? Do you have any plans to move to digital? What do you see as some of the challenges?

Another obligation on all public authorities is to create and maintain an up-to-date list of all of the documents they hold, most particularly in digital format but ideally more broadly than that.

1. This list should be made available on the website.
2. For purposes of this list, public authorities need to define what they consider to be a 'document', which will clearly be a more limited idea than 'information' under the right to information law (which would even include emails).
3. An initial effort will be required to create this list, which will need the participation of almost all staff (all of whom might be aware of different documents held by the public authority).
4. And an ongoing effort will be required to maintain this list in an up-to-date fashion. Ideally, an online tool would be available for entering a document into the list as soon as it was created.

6. Monitoring and Evaluation

It is very important to monitor and evaluate progress towards achieving the action plan, because otherwise it can become simply a statement of aspirations as opposed to a real planning tool. If progress is good, the action plan may need to be amended and a more ambitious programme adopted, while if progress is weak, it may be necessary to adjust the goals so that they respond more closely to what can realistically be achieved. Note that the monitoring and evaluation should, therefore, take place as against the action plan.

It is important to think carefully about how to measure progress against commitments, as it is not always obvious how to do this. While it is easy enough to assess whether training has been provided to 50 percent of the staff, other types of assessments may

be more difficult. For example, it may not be obvious how far along preparation of a protocol for processing requests is or how significant steps vis-à-vis proactive publication which fall short of the initial commitments in the action plan are.

The approach towards monitoring and evaluation should be action-oriented rather than theoretical. It should contain recommendations which can be acted on, and not a report about what happened (or this part should be limited to what is needed to support the recommendations). Put differently, this is about looking forward, not looking backward (except as needed to plan forward).

When thinking about recommendations flowing from a monitoring and evaluation exercise, it is important to be aware of cases where senior management support may be needed to implement the recommendations (and, in this case, support from that quarter should probably be sought before the recommendations are made).

Thought also needs to go into what support and systems are needed to monitor progress. For example, the IT team may need to monitor progress on development of the website and the training team may need to monitor training activities. This should not be done at the end of the process, as it will be much harder to collect information afterwards than on an ongoing basis as tasks are being done.

Discussion Point

Does your public authority undertake monitoring and evaluation in relation to many of its other activities? Do you think it would be possible to do this in relation to the right to information? What are the drawbacks, if any?

Key Points:

1. Right to information legislation needs active steps to be taken to support implementation if this is to be successful.

2. A key measure is the preparation of the annual report, for which lead responsibility normally falls on the information officer, but he or she will need support from other officials as well.

3. A number of other promotional measures are needed including: public education and outreach; records management systems; preparation and publication of a list of documents held; an internal communications strategy; and training.

4. To set priorities and time limits for completing actions, each public authority should develop an action plan setting out what it will do to implement the Act, for example over a two year- or three-year period.

5. The action plan should include a monitoring and evaluation plan, which will indicate whether and to what extent the commitments it includes are being met.

Conclusions and Presentation of the Certificates

During this part of the training, the facilitator should bring back the sheet where the expectations were recorded at the beginning and foster a discussion among participants about whether and the extent to which they were met. Ideally, this should feed into a process of improvement of the training course, whether that involves revision of the Manual or simply a change in the way the material is presented by the facilitator.

At this point, participants should also be given an opportunity to make any other observations they might wish to. And the facilitator might present some concluding remarks on the course.

Finally, this session allows for the presentation of certificates, if these are being awarded to participants.