



Note on the Sindh Transparency and Right to Information Bill, 2016

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Centre for Law and Democracy
info@law-democracy.org
+1 902 431-3688
www.law-democracy.org

This Note provides recommendations to bring the draft Sindh Transparency and Right to Information Act, 2016 (draft Act), prepared by the government of Sindh, more fully into line with international standards. A quick assessment of the draft Act, based on the RTI Rating,¹ has been prepared and the relevant sections of the RTI Rating assessment are pasted into the text of this Note. The overall score of the draft Act is 96 out of a possible 150 points, broken down as follows:

Section	Max Points	Score
1. Right of Access	6	6
2. Scope	30	26
3. Requesting Procedures	30	13
4. Exceptions and Refusals	30	17
5. Appeals	30	18
6. Sanctions and Protections	8	4
7. Promotional Measures	16	12
Total score	150	96

¹ Available at www.RTI-Rating.org.

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This is a decent score which would put the draft Act in 37th position from among the legal frameworks of 111 countries currently assessed on the RTI Rating.²

There are a number of ways in which the draft Act could be improved, both to earn more points on the RTI Rating and more generally to render it as robust a draft piece of legislation as possible. This Note sets out the Centre for Law and Democracy's (CLD's) main recommendations for reform of the draft Act.

Right of Access and Scope

The RTI Bill scores full points on the Right of Access category of the RTI Rating and our comments on this are limited. Consideration might be given to clarifying, in section 20, that the purposes to which that section refers are those found in the preamble, which is otherwise not entirely clear.

In terms of scope, the draft Act earns 26 out of a possible 30 points. Points are lost for the following issues:

- The right is restricted to citizens, contrary to international standard, which call for everyone to benefit from this human right.
- Information is defined broadly as all information held by a public body but section 8(1) limits the right of access to information “about the working” of a public body, opening up the possibility of this provision being abused to deny access.
- According to section 2(h)(iii), the Secretariat of the Governor is included, but not the actual public activities of the Governor him- or herself.
- Section 2(h)(vii) covers NGOs which receive substantial public funding but not other private bodies receiving public funding or private bodies which undertake a public function.

Recommendations:

- Section 20 should make it clear that the purposes to which it refers are those found in the preamble.
- The right should apply to everyone, not just citizens.
- The reference to information to “about the working” of a public body in section 8(1) should be removed.
- The Governor should be brought within the scope of the law.
- Section 2(h)(vii) should be broadened to cover all private bodies which receive substantial public funding, and private bodies which undertake public functions should also be brought within the scope of the law.

² Note that, as a province and not a country, Sindh would not be included in the main RTI Rating table.

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Right of Access

Indicator	Max	Points	Article
1	2	2	Const. Art. 19A
2	2	2	4
3	2	2	Preamble, 20
TOTAL		6	6

Scope

Indicator	Max	Points	Article
4	2	1	2(a)
5	4	3	2(f), 8(1)
6	2	2	4
7	8	7	2(h)
8	4	4	2(h)(v)
9	4	4	2(h)(iv)
10	2	2	2(h)(i)
11	2	2	2(h)

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12	The right of access applies to a) private bodies that perform a public function and b) private bodies that receive significant public funding.	2	1	2(h)(vii)
TOTAL		30	26	

Duty to Publish

The duty to publish or proactive obligations of public bodies are set out in section 6 of the draft Act. The list of categories of information which are subject to proactive publication, as set out in section 6(1), is fairly comprehensive. However, no timeframe is given for meeting these obligations. Experience in other countries suggests that it is often quite a challenge for public bodies to meet their proactive publication obligations. It would be preferable to put in place some system, perhaps under the oversight of the Information Commission, which gives public bodies a period of time, perhaps up to five years, to meet these obligations.

Recommendation:

- A timeframe should be established within which public bodies are required to meet their section 6 proactive publication obligations.

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

Requesting Procedures

The following problems have been identified with the procedures in the draft Act relating to the lodging and processing of requests:

- Section 8(2) explicitly requires requesters to provide reasons for their requests, contrary to established international standards.
- Section 8(1) provides very broadly that requests may be made in “any form and manner” but it would be preferable to list the key ways that requests may be made, including electronically, to avoid any doubt as to this.
- Section 2(j) refers to a number of forms of access – such as inspection, taking samples and getting copies – but the draft Act does not make it clear that public bodies are required to provide information in the form preferred by a requester, subject to limited exceptions such as preserving records.
- Pursuant to section 8(3), public bodies are required to respond to requests within 30 days. This is unduly long. At a minimum, this should be limited to 20 working days but better practice is to impose time limits of 10 working days.

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In addition to these problems, a number of procedural matters are simply not referred to in the draft Act, including the following:

- There is no mention of providing assistance to requesters, either because they generally need help in identifying the information they are seeking or because they are having difficulty completing a request, for example due to illiteracy or disability.
- Public bodies are not required to provide requesters with receipts acknowledging their requests.
- There is no requirement for public bodies to transfer requests to other public bodies where they do not hold the information or even to inform requesters about other public bodies which may hold the information.
- There is no requirement for public bodies to provide a certain number of pages of photocopies – for example 20 pages – for free.
- There are no fee waivers for impecunious requesters.
- There are no rules relating to the reuse of information.

Recommendations:

- Section 8(2) should be amended to provide that requesters do not need to provide reasons for their requests.
- Consideration should be given to adding into section 8(1) a reference to the specific ways in which requests may be made, including electronically whenever the public body has the capacity to receive such requests.
- The law should make it clear that public bodies are normally required to provide information in the form indicated as a preference by a requester.
- The time limits for responding to requests should be reduced to at least 20 working days and preferably only ten working days.
- Public bodies should be required to provide assistance to requesters who need it for whatever reason.
- Public bodies should be required to provide acknowledgement receipts whenever they receive a request.
- Where public bodies do not hold the information requested, they should be required to transfer the request to another public body which holds the information, if they are aware of such a body.
- Consideration should be given to requiring public bodies to provide requesters with an initial number of pages of photocopies for free and to introducing fee waivers for impecunious requesters.
- Consideration should be given to requiring a relevant State actor to develop an open use licence for information where a public body holds the copyright for that information.

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Indicator		Max	Points	Article
13	Requesters are not required to provide reasons for their requests.	2	0	8(2)
14	Requesters are only required to provide the details necessary for identifying and delivering the information (i.e. some form of address for delivery).	2	2	8(2)
15	There are clear and relatively simple procedures for making requests. Requests may be submitted by any means of communication, with no requirement to use official forms or to state that the information is being requested under the access to information law.	2	2	8(1)
16	Public officials are required provide assistance to help requesters formulate their requests, or to contact and assist requesters where requests that have been made are vague, unduly broad or otherwise need clarification.	2	0	
17	Public officials are required to provide assistance to requesters who require it because of special needs, for example because they are illiterate or disabled.	2	0	
18	Requesters are provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed 5 working days	2	0	
19	Clear and appropriate procedures are in place for situations where the authority to which a request is directed does not have the requested information. This includes an obligation to inform the requester that the information is not held and to refer the requester to another institution or to transfer the request where the public authority knows where the information is held.	2	0	
20	Public authorities are required to comply with requesters' preferences regarding how they access information, subject only to clear and limited overrides (e.g. to protect a record).	2	1	2(j)
21	Public authorities are required to respond to requests as soon as possible.	2	2	8(3)
22	There are clear and reasonable maximum timelines (20 working days or less) for responding to requests, regardless of the manner of satisfying the request (including through publication).	2	0	8(3)
23	There are clear limits on timeline extensions (20 working days or less), including a requirement that requesters be notified and provided with the reasons for the extension.	2	2	8(3)
24	It is free to file requests.	2	2	8(6)
25	There are clear rules relating to access fees, which are set centrally, rather than being determined by individual public authorities. These include a requirement that fees be limited to the cost of reproducing and sending the information (so that inspection of documents and electronic copies are free) and a certain initial number of pages (at least 20) are provided for free.	2	2	8(6)
26	There are fee waivers for impecunious requesters	2	0	

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27	There are no limitations on or charges for reuse of information received from public bodies, except where a third party (which is not a public authority) holds a legally protected copyright over the information.	2	0	
TOTAL		30	13	

Exceptions

Section 22 of the draft Act provides very generally that the Act takes precedence over inconsistent provisions in other laws. This is useful but it would be preferable if it were made clear that this applies specifically to secrecy rules in other laws.

Six points were deducted for exceptions that are either illegitimate, unacceptably broad or lack a harm test, as follows:

- Section 10(1)(a) protects “national interests” against harm but this is an impossibly vague and potentially broad notion.
- Section 10(1)(e) refers to the disclosure of information “affecting” the commercial interests of a public body or third party, but does not specify that the effect must be harmful in nature.
- Section 10(1)(g) refers to the disclosure of information “affecting” law and order and section 10(1)(i) refers to the disclosure of information “affecting” the prevention or detection of crime but, once again, these provisions do not specify that the effect must be harmful in nature.
- Section 10(1)(j) refers to the idea of the disclosure of information causing harm to the property of any citizen. It is not clear how the disclosure of information held by a public body would do that, except by disclosing commercially confidential information, which is addressed in another exception, and this could easily be interpreted in an unduly broad fashion.
- Section 10(1)(k) refers to the disclosure of information “affecting” the dignity of a citizen but, if publicly held information is defamatory (which is already a much narrower notion than “affecting dignity”) it should be made publicly available rather than being kept secret where it might be used against the person without their even knowing about it.
- Section 10(1)(l) refers, among other things, to the disclosure of information affecting the economy, which is an almost impossibly wide concept.

Section 10(2) contains a good public interest override but it suffers from not being mandatory in nature and only being applied by the Commission, rather than at the first stage of decision-making (i.e. by the information officer). Better practice is to require public information officers to apply the public interest override during the initial assessment of whether information should be disclosed. Otherwise, requesters would need to appeal to the Commission before this may be taken into account.

The draft Act also fails to mention a couple of issues relating to exceptions, as follows:

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- There is no mention of overall time limits – for example of 15 or 20 years – for exceptions relating to public interests, such as national security or decision-making processes, or any mention of the idea that an exception ceases to apply as soon as the risk of harm from disclosure disappears.
- There are no provisions for consulting with third parties.

Recommendations:

- Section 22 should be expanded to make it clear that the exceptions in the right to information law may not be extended by rules in other laws.
- The problematical exceptions noted above should be removed or amended to bring them into line with international standards.
- The public interest override set out in section 10(2) should be mandatory in nature and apply at every stage of decision-making about whether or not information is exempt, including the original decision on this by the information officer.
- Overall time limits for exceptions protecting public interests should be introduced and the law should make it clear that exceptions apply only for as long as the risk of harm to the protected interest is applicable.
- Rules on consulting with third parties should be added to the law

Indicator	Max	Points	Article
28	4	3	22
29	10	6	10(1)(a), (j), (k), (l)
30	4	2	10(1)(e), (g), (i)
31	4	2	10(2)

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32	Information must be released as soon as an exception ceases to apply (for example, for after a contract tender process decision has been taken). The law contains a clause stating that exceptions to protect public interests do not apply to information which is over 20 years old.	2	0	
33	Clear and appropriate procedures are in place for consulting with third parties who provided information which is the subject of a request on a confidential basis. Public authorities shall take into account any objections by third parties when considering requests for information, but third parties do not have veto power over the release of information.	2	0	
34	There is a severability clause so that where only part of a record is covered by an exception the remainder must be disclosed.	2	2	10(3)
35	When refusing to provide access to information, public authorities must a) state the exact legal grounds and reason(s) for the refusal and b) inform the applicant of the relevant appeals procedures.	2	2	8(4)
TOTAL		30	17	

Appeals

A number of measures could be introduced to enhance the independence of the commission, including the following:

- A more robust appointments process which limits the power of the government to appoint people who may be sympathetic and which imposes requirements of expertise on all three members.
- A process for approving the budget which is overseen by the legislature rather than the government.
- Clearer rules prohibiting individuals with strong political connections from being appointed to the body.

A number of measures could also be introduced to enhance the powers of the commission, including the following:

- Giving the Commission the power to conduct inspections of the premises of public bodies.
- Clear rules on the binding nature of the decisions of the Commission.
- Granting the Commission the power to order public bodies to put in place general measures to improve compliance with the law where they are failing structurally to do so.

In addition, instead of attempting to bar the jurisdiction of the courts, as section 17 does, they should be granted explicit powers to review the decisions of the Commission. It is essential that, ultimately, decisions in this area can be reviewed by the courts, given the complexity of the decision-making process and the fact that important issues are at stake.

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It would also be preferable to make it explicit that appeals before the Commission do not require a lawyer and to put in place clearer procedures for appeals before the Commission (noting that this could also be done by the Commission, once it was appointed).

Better practice is to indicate that, on appeal, the public body bears the burden of proof. At a minimum, the parties should be equal in this respect. However, section 11(4), rather uniquely among right to information laws, places the burden on the requester.

Recommendations:

- The measures noted above to enhance the independence of the Commission should be introduced into the law.
- The measures noted above to enhance the powers of the Commission should also be introduced into the law.
- The law should explicitly provide for court review of the decisions of the Commission.
- Consideration should be given to making it clear that appeals before the Commission do not require a lawyer.
- Section 11(4) should be reversed to place the burden of proof on the public body in an appeal. At a minimum, the burden should not be placed on the requester.

Indicator	Max	Points	Article	
36	The law offers an internal appeal which is simple, free of charge and completed within clear timelines (20 working days or less).	2	2	9
37	Requesters have the right to lodge an (external) appeal with an independent administrative oversight body (e.g. an information commission or ombudsman).	2	2	11(1)
38	The member(s) of the oversight body are appointed in a manner that is protected against political interference and have security of tenure so they are protected against arbitrary dismissal (procedurally/substantively) once appointed.	2	1	12(3), (4), (5), (6), (9)-(12)
39	The oversight body reports to and has its budget approved by the parliament, or other effective mechanisms are in place to protect its financial independence.	2	1	14
40	There are prohibitions on individuals with strong political connections from being appointed to this body and requirements of professional expertise.	2	1	12(4), (5)
41	The independent oversight body has the necessary mandate and power to perform its functions, including to review classified documents and inspect the premises of public bodies.	2	1	13(1), (3), (4)
42	The decisions of the independent oversight body are binding.	2	1	13(1)(a)
43	In deciding an appeal, the independent oversight body has the power to order appropriate remedies for the requester,	2	2	13(1)(a)

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	including the declassification of information.			
44	Requesters have a right to lodge a judicial appeal in addition to an appeal to an (independent) oversight body.	2	0	17
45	Appeals (both internal and external) are free of charge and do not require legal assistance.	2	2	10(2)
46	The grounds for the external appeal are broad (including not only refusals to provide information but also refusals to provide information in the form requested, administrative silence and other breach of timelines, charging excessive fees, etc.).	4	4	2(g)
47	Clear procedures, including timelines, are in place for dealing with external appeals.	2	1	11(3)
48	In the appeal process, the government bears the burden of demonstrating that it did not operate in breach of the rules.	2	0	11(4)
49	The external appellate body has the power to impose appropriate structural measures on the public authority (e.g. to conduct more training or to engage in better record management)	2	0	
TOTAL		30	18	

Sanctions and Protections

The draft Act does not give the Commission the power to order public bodies to take remedial action where they are systematically failing to meet their obligations, which represents better practice. There are protections for good faith disclosures under the law (in section 21), but no protection for whistleblowers.

Recommendations:

- Consideration should be given to providing for sanctions to be imposed on public bodies for systematic failures to respect their obligations under the law.
- Consideration should also be given to providing for at least a framework of protection for whistleblowers.

Indicator		Max	Points	Article
50	Sanctions may be imposed on those who wilfully act to undermine the right to information, including through the unauthorised destruction of information.	2	2	9(3)(c), 9(2), 15, 16
51	There is a system for redressing the problem of public authorities which systematically fail to disclose information or underperform (either through imposing sanctions on them or requiring remedial actions of them).	2	0	

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52	The independent oversight body and its staff are granted legal immunity for acts undertaken in good faith in the exercise or performance of any power, duty or function under the RTI Law. Others are granted similar immunity for the good faith release of information pursuant to the RTI Law.	2	2	21
53	There are legal protections against imposing sanctions on those who, in good faith, release information which discloses wrongdoing (i.e. whistleblowers).	2	0	
TOTAL		8	4	

Promotional Measures

The draft Act does reasonably well in terms of promotional measures but could be improved in the following areas:

- In addition to publishing a list of the categories of information held, as required by section 6(1)(e), consideration should be given to requiring public bodies to publish a list of the actual documents they hold.
- While it is welcome that section 13(5)(e) gives the Commission a mandate to provide training to public officials, better practice is to require public bodies to provide adequate training to their staff.
- Sections 13(6) and (7) place an obligation on the Commission to provide a central report on what is being done to implement the law, but there is no corresponding obligation on individual public bodies to provide reports on what they have done, which is essentially a precondition for the central, Commission, report.

Recommendations:

- Consideration should be given to requiring public bodies to publish full lists of the information they hold.
- Public bodies should be required to provide adequate training on the right to information to their staff.
- Public bodies should be required to report annually on what they have done to implement the law.

Indicator	Max	Points	Article
54	2	2	7
55	2	2	13(5)
56	2	2	13(5)(f), (g), (h)

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	be undertaken by law.			
57	A system is in place whereby minimum standards regarding the management of records are set and applied.	2	2	5, 13(5)(a)
58	Public authorities are required to create and update lists or registers of the documents in their possession, and to make these public.	2	1	6(1)(e)
59	Training programmes for officials are required to be put in place.	2	1	13(5)(3)
60	Public authorities are required to report annually on the actions they have taken to implement their disclosure obligations. This includes statistics on requests received and how they were dealt with.	2	0	
61	A central body, such as an information commission(er) or government department, has an obligation to present a consolidated report to the legislature on implementation of the law.	2	2	13(6), (7)
TOTAL		16	12	

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