



**CENTRE FOR LAW  
AND DEMOCRACY**

**Measuring SDG 16.10.2: A Synthesis Report on  
the Freedom of Information Advocates Network  
(FOIANet) Methodology**

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## 1. Introduction

In 2015, the United Nations adopted the 2030 Agenda for Sustainable Development. This includes a list of 17 Sustainable Development Goals (SDGs) covering issues of social and economic development, as well as promoting the entrenchment of human rights, for all UN Member States. Goal 16 focuses on peace, justice and strong institutions:

Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.<sup>1</sup>

Targets for this goal include reduction of overall rates of violence, the promotion of the rule of law, and reduction of corruption and bribery. Under Target 10, the United Nations recognised the Right To Information (RTI).

Target 16.10: Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.<sup>2</sup>

For right to information advocates, this was a great victory. Access to information is necessary to enable democratic progress, and to keep public authorities accountable and transparent. It enables people to make informed choices and engages them with the institutions that have been created to represent them. Without the right to information, power holders are free to operate in the dark, with limited checks and balances on their actions.

There are two Indicators for Target 16.10, of which the second is particular relevant here:

Indicator 16.10.2: Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information

UNESCO is the UN entity that is in charge of the collection of data for this indicator, referred to as the “custodian agency”. This entails developing a comprehensive methodology to assess the progress of countries vis-à-vis the indicator. The development of the methodology should be a consultative process involving numerous steps. On 19 September 2016, a technical workshop, organised by UNESCO and the Global Forum for Media Development, was held in Jakarta. Members of the Freedom of Information Advocates Network (FOIANet) Steering Committee attended and provided feedback from the FOI community. This was followed up by a meeting in Paris on 3 September 2018, where once again representatives of the FOIANet Steering Committee were present.

According to UNESCO’s preliminary assessment, Indicator 16.10.2 seeks to establish the state of public access to information in terms of three key variables:

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<sup>1</sup> Sustainable Development Goal 16, UN Sustainable Development Platform, 2017. Available at: <https://sustainabledevelopment.un.org/sdg16>.

<sup>2</sup> *Ibid.*

1. Whether a country (or at the global level, the number of countries) has constitutional, statutory and/or policy guarantees for public access to information.
2. The extent to which such national guarantees reflect ‘international agreements’ (such as the Universal Declaration of Human Rights).
3. The implementation mechanisms in place for such guarantees, including the following variables:
  - Government efforts to publicly promote the right to information.
  - The capacity of public bodies to provide information upon request by the public.

As of today, UNESCO still has to develop the main State assessment tool for indicator 16.10.2. In 2017, FOIANet decided to develop a concrete methodology for parallel civil society reporting to assess States’ compliance with SDG Indicator 16.10.2. Reliable sources, such as the RTI Rating, already exist to assess the scope, robustness and overall quality of the legal framework for RTI.<sup>3</sup> The new FOIANet methodology seeks to assess *implementation* of right to information legislation, which requires a multifaceted and holistic approach. The methodology was intentionally developed to be qualitative, providing civil society partners with a basic tool to collect information about RTI implementation in their country.

Five civil society groups in five countries – namely Canada, Georgia, El Salvador, Spain and Ukraine – have applied the methodology to prepare an assessment of the state of implementation of the right to information nationally.<sup>4</sup> This Report is a synthesis of the findings of the five national assessments. It analyses the findings of the individual reports and compares them with each other, but also studies the internal features of these reports, by looking and assessing the quality of the data collection.

The next section of this Report presents general findings and highlights key points. This is followed by three sections (sections 3 to 5), which analyse the findings of the national reports according to the three themes in the FOIANet methodology. The next section discusses implementation across the different themes. Section 7 looks at the ways civil society organisations have used the results of the assessments to advocate for policy change. Section 8 outlines differences in use of the methodology and discusses how to standardise application. Finally, Section 9 makes recommendations for improving the methodology.

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<sup>3</sup> For more information on the RTI Rating visit its official website at: <http://www.rti-rating.org/>.

<sup>4</sup> The complete reports are available at: [http://foiadvocates.net/?page\\_id=11099](http://foiadvocates.net/?page_id=11099). The Centre for Law and Democracy prepared the report on Canada; FUSADES the one on El Salvador; the Institute for Development of Freedom of Information the one Georgia; Access Info Europe the one on Spain; and the Centre for Democracy and Rule of Law the one on Ukraine.

## 2. Key Findings

The FOIANet methodology requires CSOs to sample five to ten public authorities in their countries to evaluate the state of RTI implementation according to the requirements of their RTI legislation. The methodology is organised along three distinct areas of implementation or themes: proactive disclosure, institutional measures and request processing. For each area, the methodology asks precise questions and requires CSOs to assess each institution individually.

The methodology was originally built to help civil society groups gather information about RTI implementation and generally track compliance with SDG 16.10.2. It was not developed to score numerically the performance of authorities and compare them. As such, the indicators are qualitative ones and merely offer a means of systematising information collection. Because we were interested in comparing the performance of authorities across countries and sectors, we had to transform the qualitative scores into number values. This section begins with a cross-country comparative analysis and is followed by a cross-sectoral one.

Overall country performance is based on the average of performance based on the three areas of implementation in the FOIANet methodology: proactive disclosure; institutional measures; and processing requests. Chart 1 shows the overall performance of the five countries assessed by averaging their results (see Table 1 in the Appendix for full data).

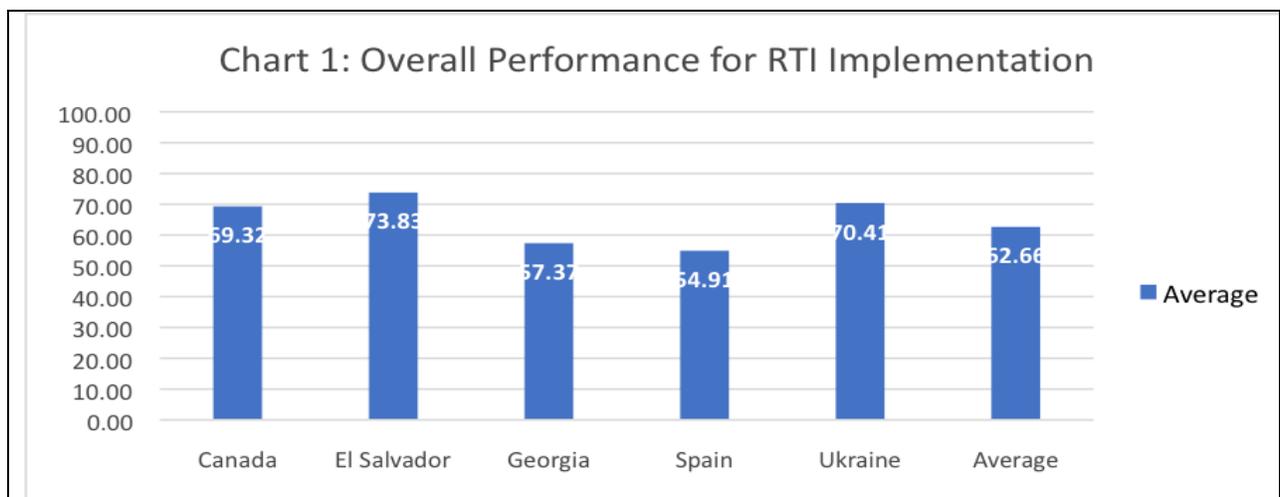


Chart 1 highlights the fact that the differences between countries are relatively small, with all results within 12 points of the 62-point average. El Salvador, Ukraine and Canada scored the highest, in descending order, while Georgia and Spain scored the worst, also in descending order. Spain scored significantly below average in two categories (see Charts 3, 5 and 7), but received an excellent score for processing of requests (see Chart 8). Canada was above average for the disclosure of information and institutional measures, but significantly below in the

processing of RTI requests (See respectively Charts 5, 7 and 8). Chart 1 also indicates that El Salvador, Ukraine and Canada all had similar overall scores. In the three scores calculated, Ukraine was below average only in the score for institutional measures (see Chart 7).

In addition to the cross-country comparison, we also performed a cross-sector comparison. When comparing areas of implementations, we found that public authorities performed the best in terms of processing of requests, followed by proactive disclosure and finally institutional measures. We also found that public authorities release some categories of information, such as more readily than others. For example, public authorities tended to disclose more readily information about their legislation and service delivery, and less readily registers and information about public transformation. Predictably, the categories of information that authorities disclose readily tend to be the less sensitive and contentious ones. Furthermore, authorities across contexts tend to implement institutional measures that suggest a symbolic commitment to access information, such as the appointment of information officers, rather than more concrete and fundamental ones, such as training of information officers and creating a long-term RTI implementation plan.

In our research on the application of the results of the methodology, we found that only two of the five CSOs that used the results to advocate for policy change. We believe that reports based on the methodology would be better advocacy tools if they included more visual and synthesis elements. It is to be noted that official systems to report the compliance of countries with the SDGs are still being developed. We believe that when such systems are in place, CSOs will be more likely to use this methodology to report their results to them.

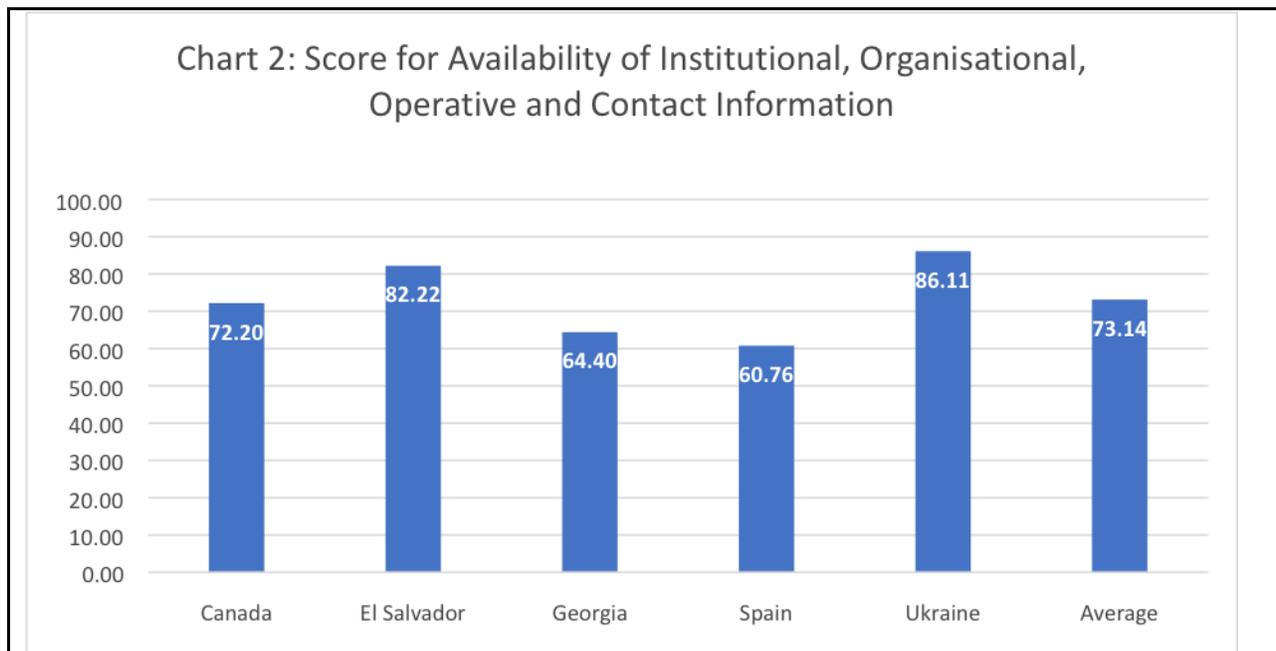
We also note that there were different understanding of some evaluation criteria, such as “Service Delivery” in terms of proactive disclosure or what constitutes a “Nodal RTI Agency.” This resulted in analogous authorities being scored differently. There were also inconsistencies in the scoring where authorities took initiatives that were not required by law. Indeed, it seemed to be unclear for many CSOs whether or not the scores should be awarded strictly considering the requirements of their national legislation or based directly on the FOIANet methodology. Finally, some reports used a five-point scale, while others used a three-point scale, resulting in varying degrees of nuance in the evaluation of public authorities.

### 3. Proactive Disclosure

#### 3.1 Availability of Institutional, Organisational, Operational and Contact Information

Proactive disclosure refers to information that is made available by public authorities without a request. The FOIANet methodology requires CSOs to assess whether the information which is required to be disclosed by law is available on the website (or potentially elsewhere) of the authorities. The methodology divides the information that should typically be available in 9 categories: institutional, organisational, operational, legislation, service delivery, budget, public procurement and contracts, registers and participation.

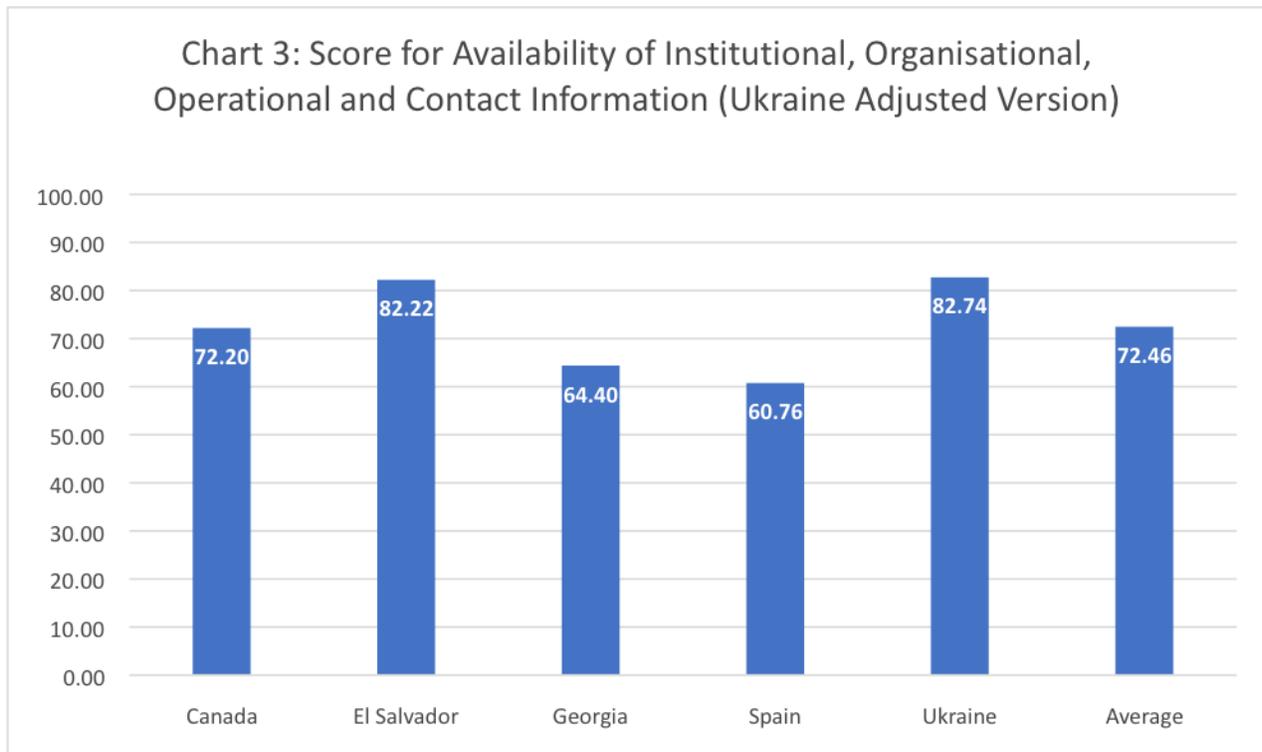
The assessment then looks at whether full, partial or no information is disclosed. We converted these results into a 0 to 2 scale (0 = none, 1 = some information, 2 = full information) and then averaged the results for the sample of public authorities. This gave us a maximum score of 18 or 16, depending on the number of categories of information required by the legislation. We then standardised these scores into a percentage (i.e. out of a 100) to be able to compare across different countries, as presented in Chart 2:<sup>5</sup>



Ukraine had the highest score for proactive disclosure. However, this can in part be explained the way that the local organisation applied the methodology. The methodology was not entirely clear as to whether this assessment was supposed to be based on the legislation or the list set

<sup>5</sup> See the Appendix for data behind the charts throughout the report.

out in the methodology. The disclosure of operational and service delivery is not required by Ukrainian legislation. When responsive information was found, a score of “2” was given, as if full implementation was achieved. However, when the information was not available, a score of “not applicable” was given. As a result, if even only one type of information was published, the authority got a perfect score of 2, which skewed the total score. For the sake of consistency, we re-calculated the Ukrainian score by marking the entire operational and service delivery categories as “not applicable” and these results are shown in Chart 3.



While this decreases the score of Ukraine (and so also the average score), Ukraine still gets the highest mark. Indeed, all of the Ukrainian authorities which were assessed proactively disclosed full information about their legislation and public procurements and contracts. El Salvador ranked a close second with 82.22%, less than one point behind Ukraine. The ten authorities tested in El Salvador disclosed full information about their legislation while nine out of the ten disclosed full information about the mechanisms and procedures for consultation and public participation.

Spain scored last in this category. Even though this is required by the Spanish RTI law,<sup>6</sup> only two out of the nine authorities assessed published full information about their operations. Similarly, while most authorities posted *some* information about their public procurement and contracts, not a single one posted full information in this category. However, the CSO evaluating Spanish authorities is an experienced right to information advocacy group that may have been applying a higher standard than other groups. Indeed, the precise standards for proactive disclosure are

<sup>6</sup> Ley 19/2013, de 9 de diciembre, de transparencia, acceso a la información pública y buen gobierno.

not that clear in the current methodology, and the Spanish evaluators may have used a stronger approach.

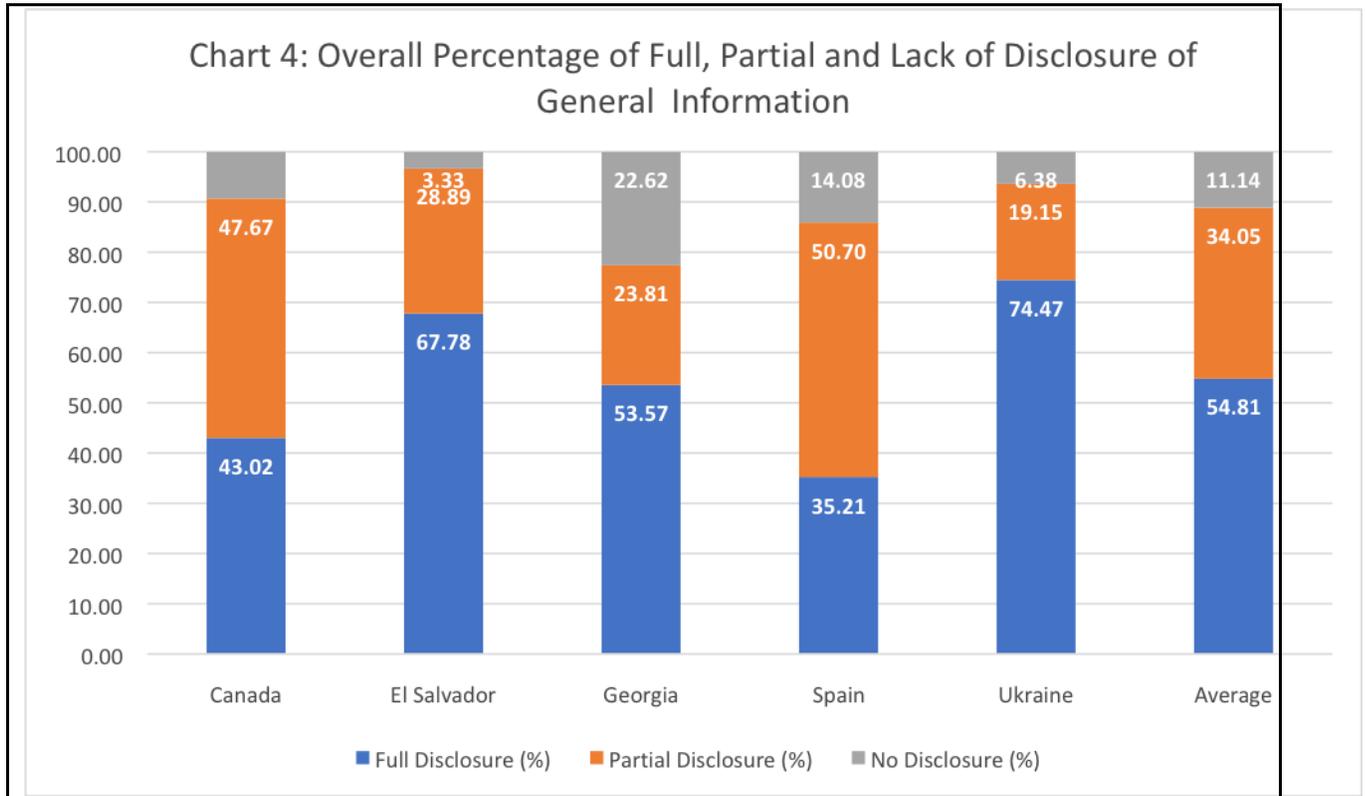


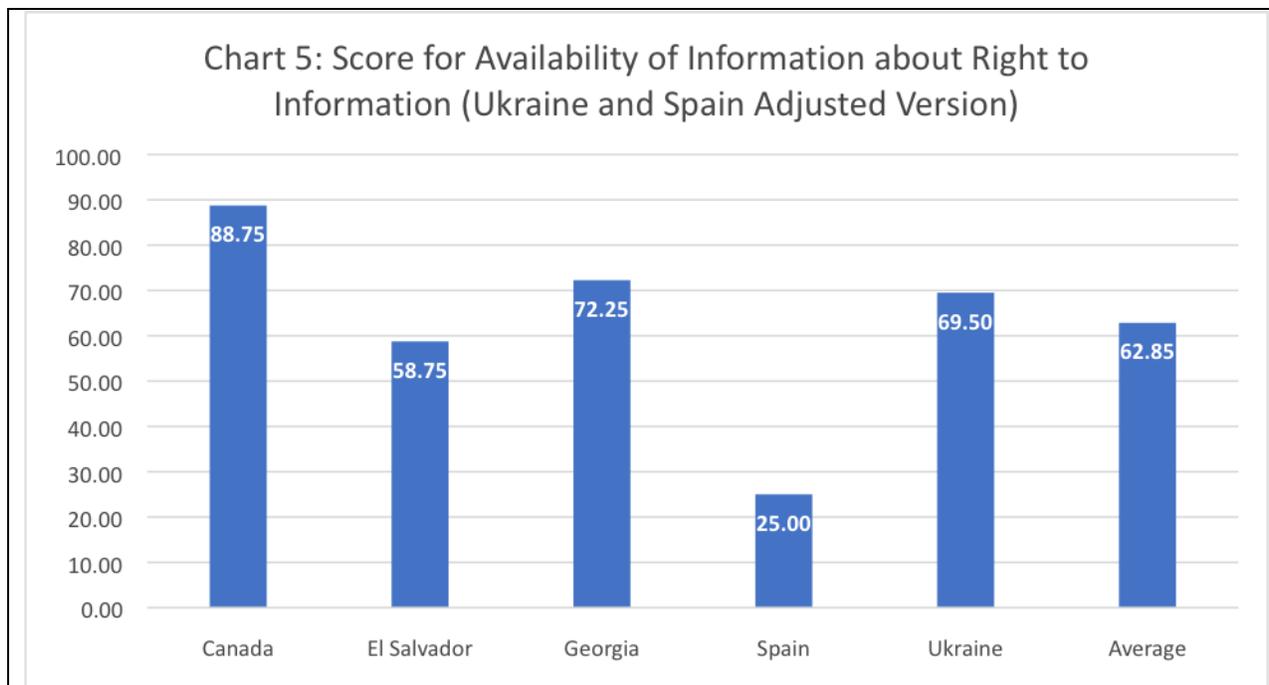
Chart 4 shows the scores broken down into full, partial or no information. This chart highlights the strong performance of Ukraine and El Salvador, with their public authorities disclosing full information, respectively, 74% and 68% of the time.

However, while Georgia got a better overall score than Spain, Georgian authorities disclosed no information at all more often than Spanish ones. Indeed, Spanish authorities disclosed no information only 14% of the time. In a majority of cases, Spanish authorities disclosed only partial information, again suggesting that perhaps higher standards were applied here. Similarly, even if Canada’s overall performance is better than that of Georgia, Canadian authorities disclosed full information less often than Georgia, but partial information more often (and, correspondingly, no information less often).

### 3.2 Availability of Information About the Right to Information

The FOIANet methodology includes a second sub-section on proactive disclosure, namely the availability of information specifically about the right to information. These results were calculated in the same way as the previous ones and are also presented as percentages.

Ukrainian legislation does not require authorities to disclose a list of information requested but, as in the previous case, evaluators gave a score here as either “N/A” when it was not present or as “2” when it was present, inflating their scores. Chart 5 shows the re-calculated scores with that whole category marked as “not applicable”. Similarly, Spanish legislation does not require authorities to publish an annual report on the status of RTI implementation or to indicate how to make an RTI request. The authorities were still scored on these areas and a number obtained a score of 0 or 1. Here, again, the re-calculated scores in Chart 5 are based on evaluating these two categories as “not applicable”.



It is interesting to note that while Canadian authorities performed close to the average in terms of the general disclosure of information, they performed substantially above average here. Canada is the only country where all of the authorities assessed disclosed the information about how to make an information request. Georgia, which was below average for the general disclosure of information, was in second place here, with eight of its ten authorities providing a complete list of information that had been previously requested. This gave them the best score for that particular category. El Salvador and Ukraine, which were above average for general disclosure, did less well, trading places with Canada and Georgia.

Spain scored very poorly here, with just 25%. As mentioned above, Spanish legislation does not require authorities to provide information on the state of RTI implementation or on how to make a request for information, but it does require public authorities to indicate the cost of making requests and to provide a list of the information requested. Not a single institution assessed provided full information about costs. Furthermore, no authorities disclosed any information about past information requests.

## 4. Institutional Measures

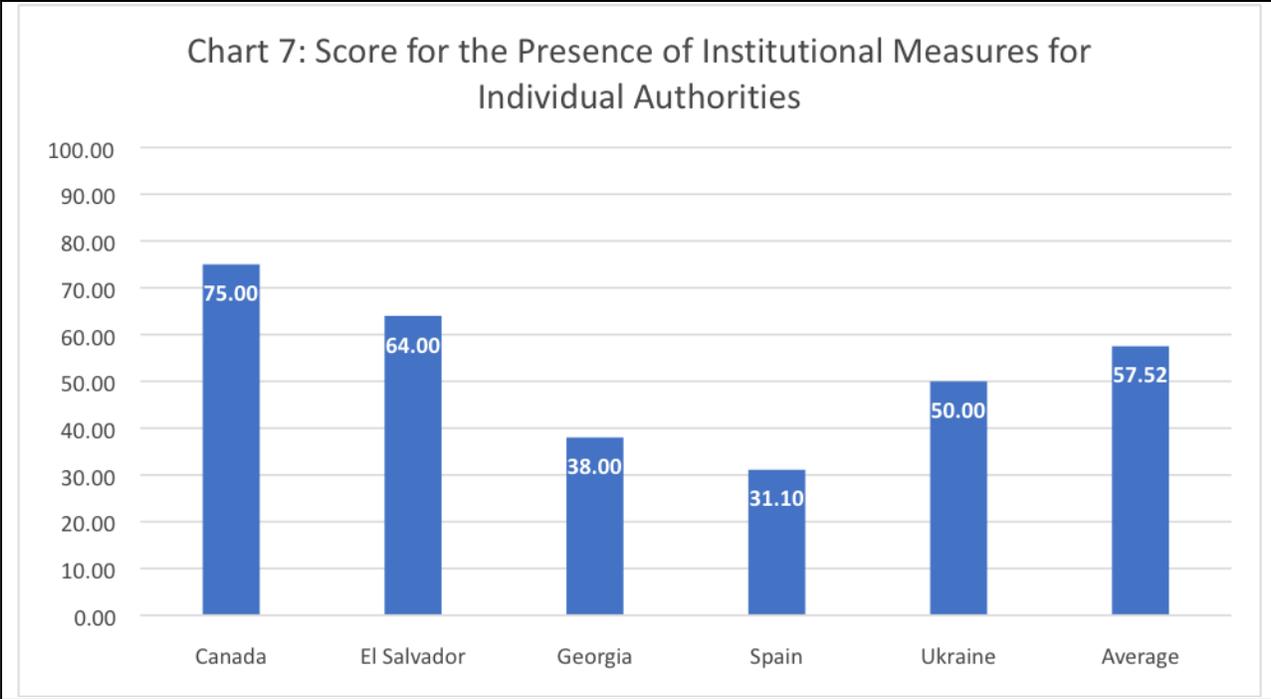
### 4.1 Overall Framework

The second theme covered by the FOIANet methodology is the presence of institutional measures to support RTI implementation. This is divided into two parts, with the first asking about the presence of central measures, specifically about the presence of an RTI Nodal Agency and the presence of an independent RTI oversight mechanism.

Canada, El Salvador and Spain all have both a Nodal RTI Agency and an independent oversight mechanism. Ukraine also has a nodal RTI agency, in the form of the “Ukrainian Parliament Commissioner for Human Rights”, whose tasks include monitoring all human rights and freedoms, including RTI. However, Ukraine does not have an independent oversight mechanism. The Commissioner is elected by the Parliament, with no independent civil society consultation. The assessment of Georgia indicated that it has neither a nodal agency nor an independent oversight mechanism. However, Georgia does have a “Public Defender of Georgia”, whose mandate is to oversee the protection of human rights and freedoms in the country. This seems analogous in many ways to the Human Rights Commissioner in Ukraine case, raising an issue about consistency since one was recorded as “present” and the other as “absent”.

### 4.2 Individual Authorities

The second part of this theme of the FOIANet methodology assesses the presence of five institutional measures that should typically be present within each public authority being assessed: the appointment of an RTI information officer, the development of an RTI implementation plan, guidelines for processing RTI requests, the publication of annual reports, with statistics on requests, and finally the training of information officers. For each of these categories, authorities received a score of between 0 to 2, which we again calculated as an average. This was based on 6, 8 or 10 individual scores, depending on the requirements of the legislation, and then standardised into a percentage.



In this area, Canada scored highest, followed by El Salvador. All of the public authorities assessed in Canada, El Salvador and Spain had appointed information officers to oversee RTI implementation. However, only 11%, 50% and 60% of Spanish, Canadian and Salvadorian authorities, respectively, had provided training to their officers. This discrepancy also applies to Ukraine and Georgia. This suggests that overall scores here may not tell the whole story, because more symbolic and more substantive criteria are weighted equally.

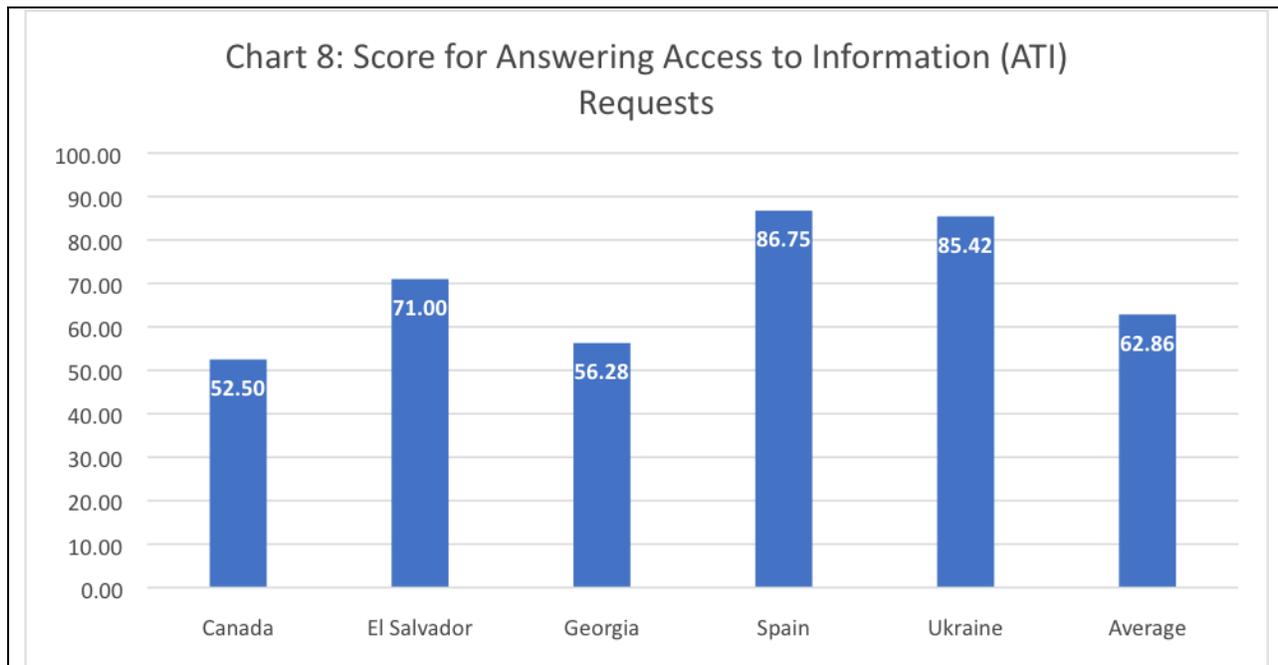
All ten Canadian authorities also had guidelines on receiving and responding to requests. Georgia did poorly in this area, with no authorities having developed guidelines to process requests. Furthermore, only one authority out of the ten had provided training to its information officers.

## 5. Processing Requests

The last area assessed in the FOIANet methodology looks at how public authorities process and response to requests for information. The methodology requires evaluators to fill out information about the requests and the answers, such as the date the request was submitted, the format of the request, the date of the response, and the format of the response. It is important to note that the content of the requests is not standardised in the methodology, so that there could be substantial variation in terms of how challenging requests were. This means that the results are less comparable here than in other areas of the methodology.

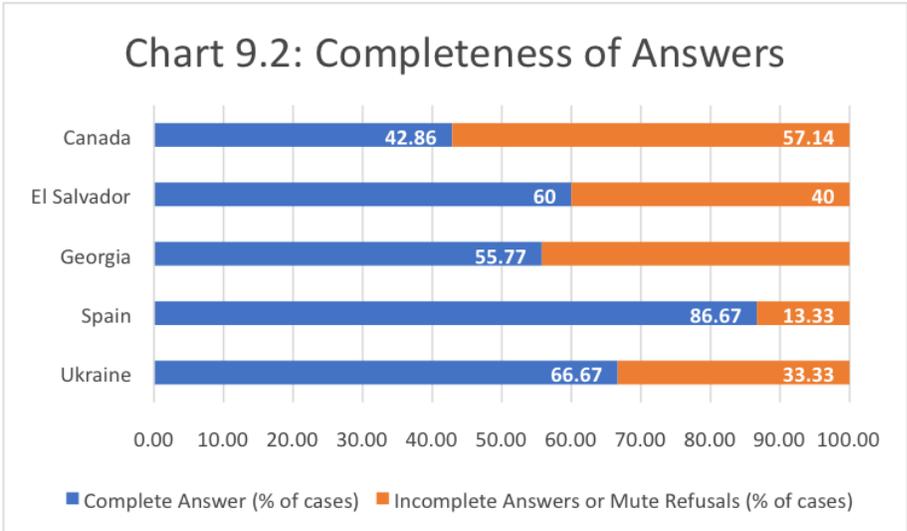
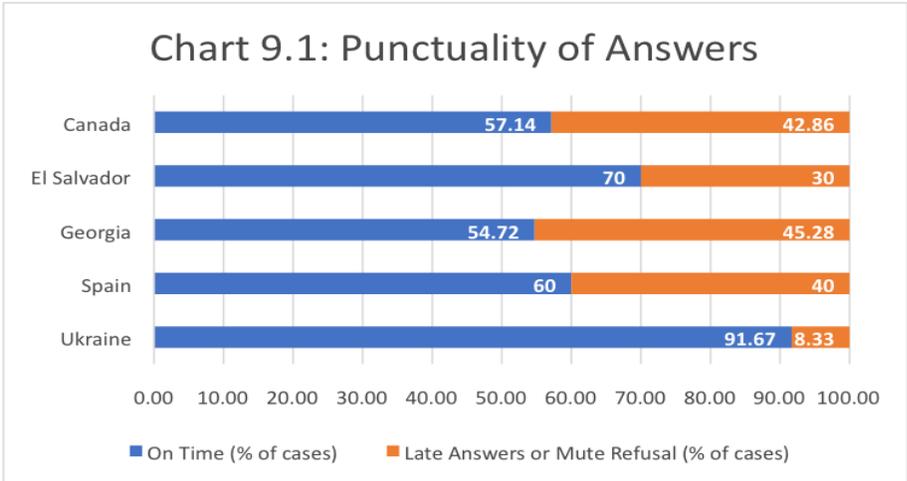
Although this part of the assessment generated a lot of information about requests, in this Report we analyse only the timeliness and the legitimacy of responses. The later is based on the completeness of the information provided as compared to the information requested. Both these requirements were scored out of 2, for a total of 4. Like the two previous areas of implementation, the totals were averaged, and then converted into percentages.

Another challenge here is that the legislation varies considerably in terms of time limits. For example, Canadian legislation allows 30 days to answer an access to information, so a response provided in 29 days is considered timely. Furthermore, Canadian legislation allows public authorities to impose long extensions of the initial deadlines. In contrast, Georgian legislation requires information to be released in no more than 10 days.



Spain and Ukraine did best in this assessment area. Indeed, out of the 15 ATI requests sent out in Spain, 13 were answered with full information. This may be explained by Spain’s centralised ATI requests system, where all requests are processed through one nodal administrative centre, the Transparency Portal. Spain was also the only country where no authority got a score of zero. Ukrainian authorities also performed well in this area, with 11 out of the 12 requests being answered within the legislative deadlines and only one mute refusal.

Canada’s poor performance here is noteworthy. Out of 21 requests, more than half (12) of the responses were either complete refusals or too incomplete to be considered legitimate, receiving a score of either 0 or 1. Eight of the requests received scores of zero for both completeness and timeliness, based on the extensive quantity of redacted information and/or excessive time limit extensions. This is a regrettably high proportion of illegitimate answers on the part of Canadian authorities.



Charts 9.1 and 9.2 illustrate the performance of the five countries in this area. Ukrainian authorities answered in a timely manner in 93% of the cases, but still had a relatively large

number (33%) of illegitimate answers. This seems to point to strong administrative processing but perhaps a reticence on the part of authorities to actually disclose information. That said, Ukraine still performs second best in this category.

In Spain, processing of request was relatively slow but the information was provided in full 87% of the time. The Spanish Transparency Portal seems to lack the administrative efficiency of the Ukrainian authorities but apparently Spanish authorities are committed to making information available.

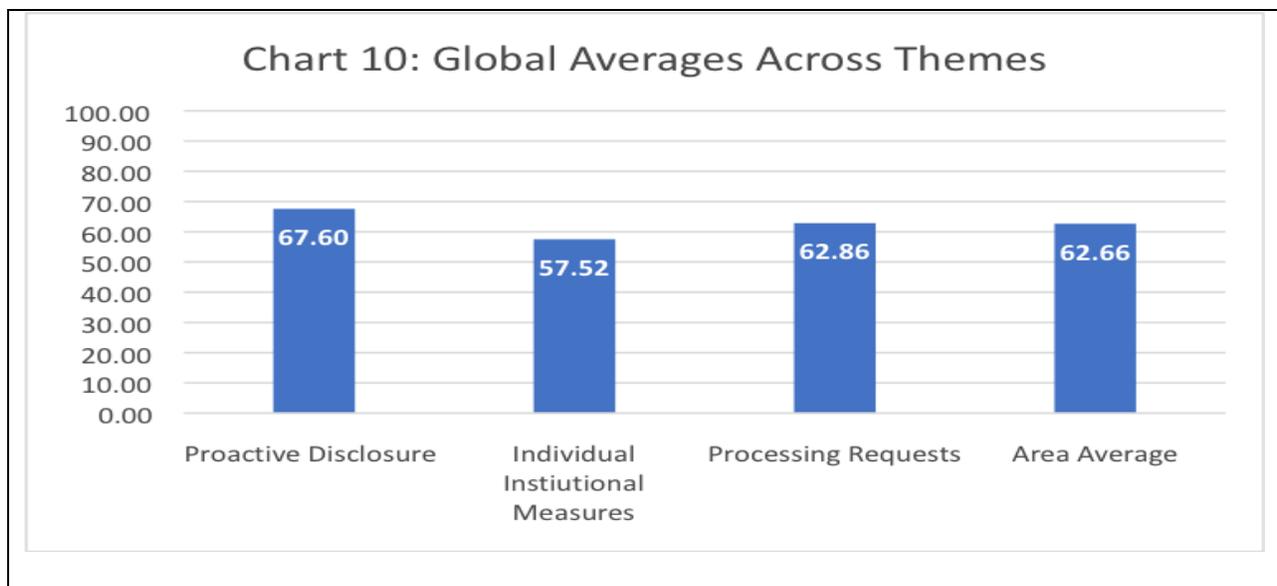
The FOIANet methodology currently provides no uniform criteria to evaluate the legitimacy or timeliness of answers, and this judgement is left up to the individual evaluators. This means that it may not be fair to compare the proportion of legitimate responses because this may reflect more the severity of the CSO than the actual performance of the authorities.

## 6. RTI Implementation by Theme

### 6.1 General Overview

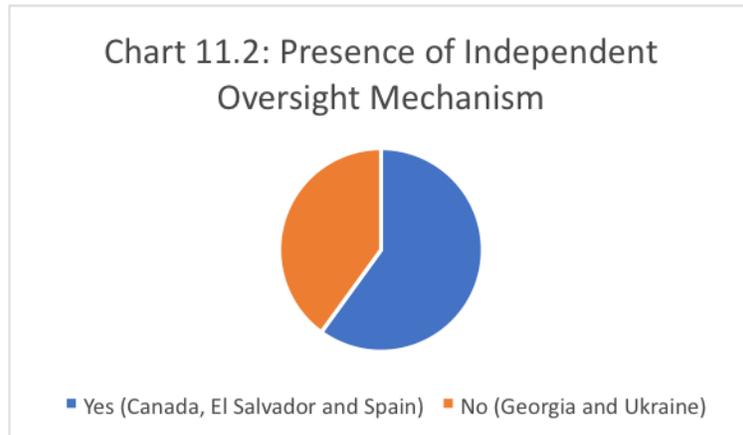
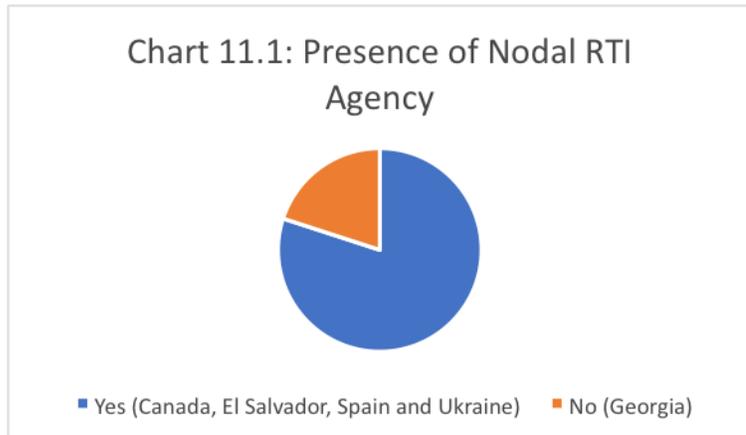
The previous sections of this Report provided an assessment of the results by country within each thematic area. Here, we compare the results across different thematic areas.

Chart 10 shows the global averages by theme, based on the three assessment areas in the methodology: proactive disclosure, institutional measures and processing requests.



The performance across thematic areas is relatively consistent. However, authorities generally perform worst on institutional measures. This may be because of the high administrative costs associated with these measures. The stronger performance of authorities in terms processing requests is positive because it is the most important area of assessment in the FOIANet methodology. However, the score is still modest and we suspect that part of this is attributable to the leniency of some evaluators in assessing the content of the answers they were provided with, and to the low number of factors that this Report considered to generate this score. If performance had been assessed for more features of the processing of requests – such as format of the answer provided, receipt acknowledgment and application of time extensions – the average performance might have been lower. However, it is in terms of proactive disclosure that countries to best, perhaps given the significant amount of attention that has been devoted to this issue in recent years.

In terms of central institutional framework, the results are encouraging from the five countries,

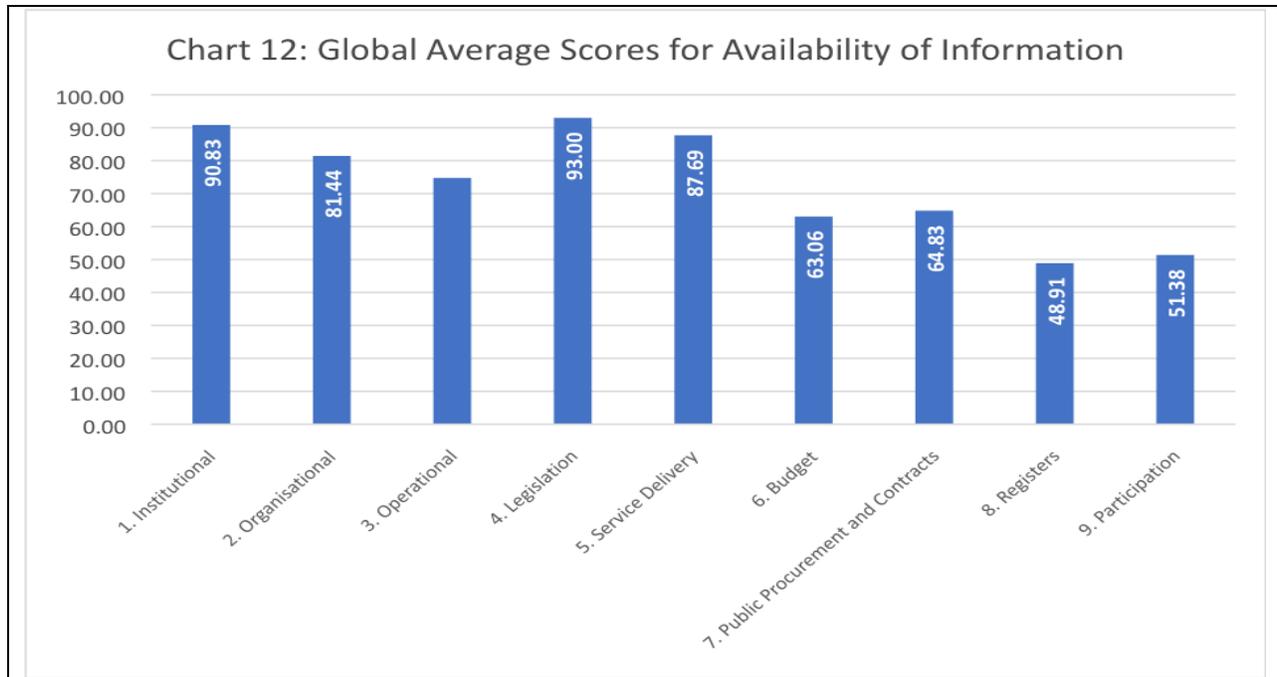


as shown in Charts 11.1 and 11.2:

Four of the five countries have a central RTI agency, and three of the five also have an independent oversight mechanism. While this is positive, more information is needed about the actual powers and independence of these agencies before firm conclusions can be drawn.

## 6.2 Proactive Disclosure

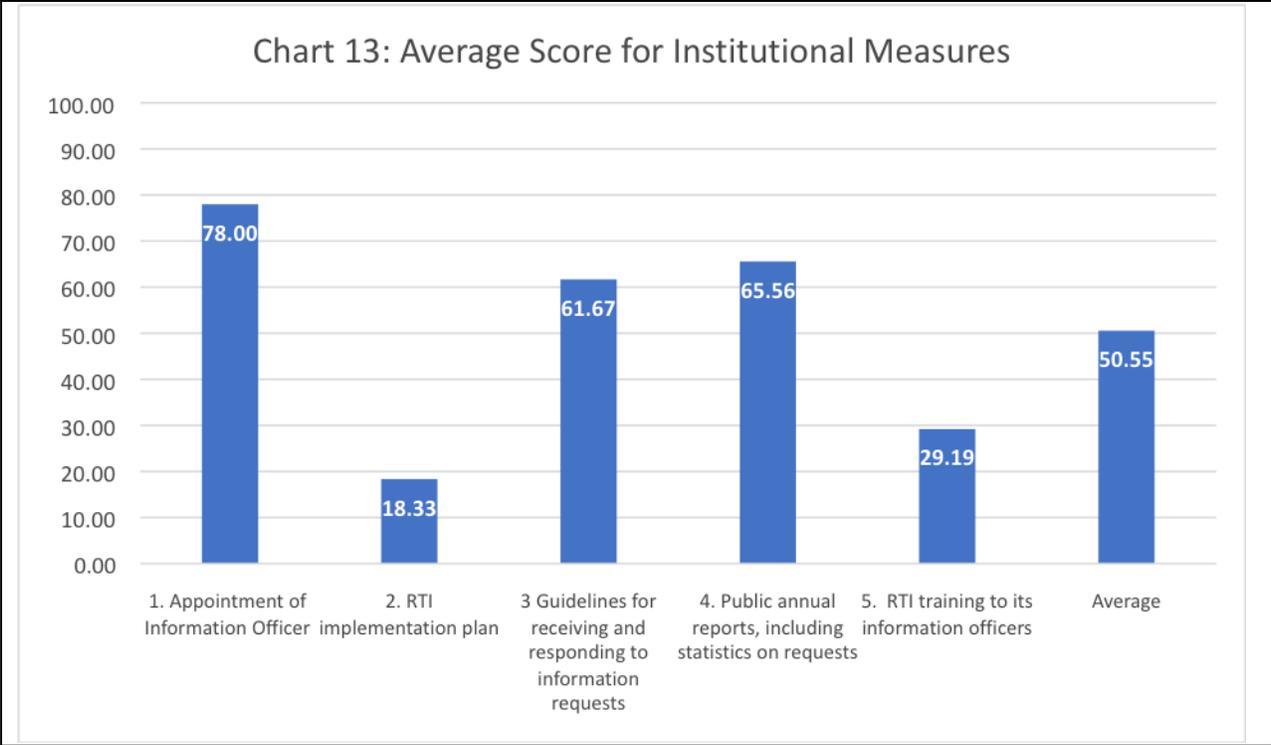
As discussed before, the FOIANet methodology assesses the proactive disclosure of information in nine categories: institutional, organisational, operational, legislation, service delivery, budget, public procurement and contracts, registers and participation. For purposes of this Report, we treat these categories as being of equal value. However, we acknowledge that some categories are easier to disclose than others. For example, there is not much at stake in the disclosure of routine institutional information, such as the authority's functions and powers, as compared to disclosures about public procurements and contracts, including detailed information about public procurement processes, criteria and outcomes of tenders, copies of contracts, and reports on completion of contracts. These differences are reflected in the rates of publication of different types of information, as illustrated in Chart 12:



For example, authorities generally perform very well in terms of the publication of their legislation and their institutional features, with a score of 91%. However, at least some of that information may already be available elsewhere, such as in general repository of laws. Regarding the publication of other types of information, such as registers and participation, authorities do significantly less well, with scores, respectively, of 49% and 51%. Registers require a systematic approach to the publication of information. This requires a certain level of commitment and organisational capacity to retain and systematise information for purposes of publication. The participation category requires an assessment of whether an authority discloses information about mechanisms for consultation and public participation. Considering that many authorities simply do not engage in consultation or do so in a very limited way, it is not surprising that they choose to not publish information about it. Overall, the statistics on proactive publication suggest that we need to push specifically to publish information that is more contentious.

### 6.3 Institutional Measures

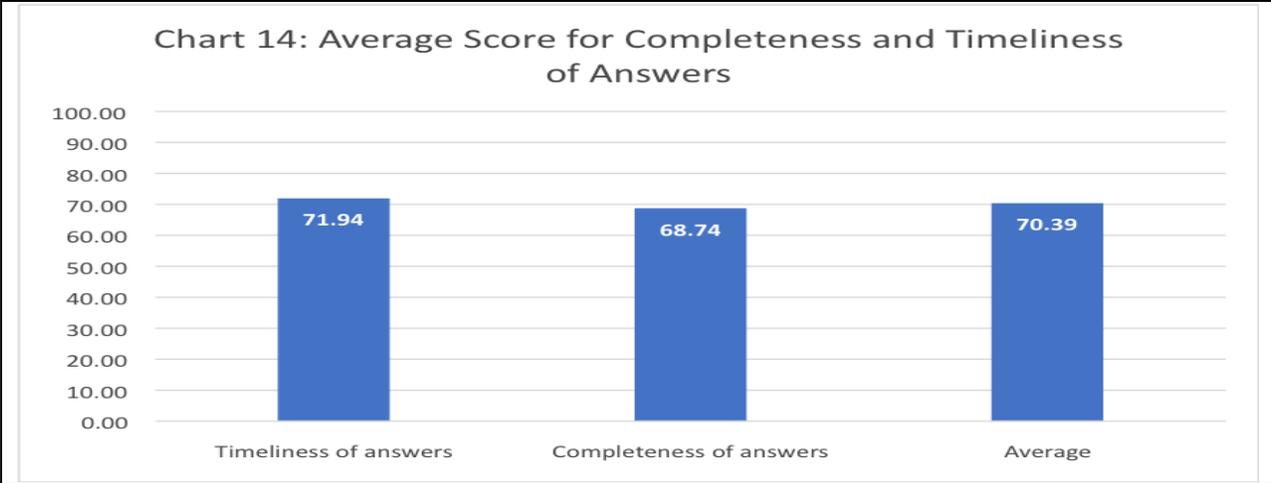
The FOIANet methodology requires evaluators to assess if public authorities have put in place five institutional measures: the appointment of an information officer, the presence of an RTI implementation plan, the development of guidelines for processing information requests, the publication of annual reports and the training of its information officers. Once again, the assessments show that some of these measures are more readily taken on by authorities, perhaps because they are less controversial and represent a symbolic rather than more profound commitment to transparency.



We see a great variation in performance here ranging from only 18% of authorities adopting RTI implementation plans to 78% appointing information officers. Both are important but, inasmuch as developing a RTI implementation plan shows a commitment to implementing RTI in the long term, this suggests weak underlying interest in delivering RTI. Providing RTI training to information officers is another institutional measure that takes a bit more effort but can improve implementation of RTI laws substantially, as compared to simply appointing an information officer. Once again, the score here is unacceptably low.

**6.4 Processing Requests**

Chart 14 shows the average performance of authorities for completeness and timeliness of answers, the two request processes metrics that are analysed in this Report.

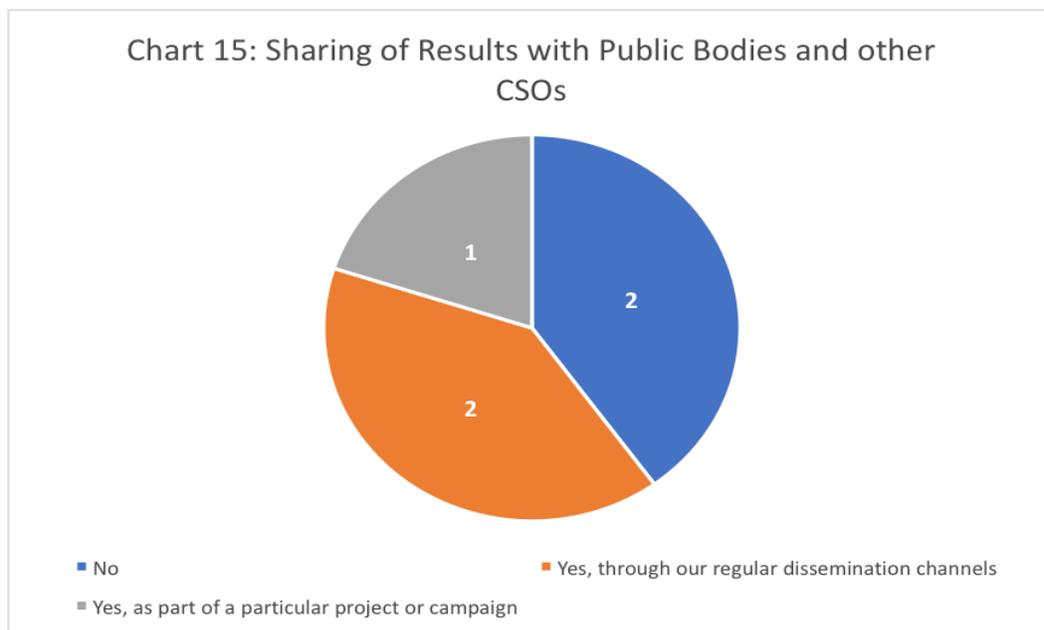


The results are quite similar and, overall, reasonably strong. Authorities perform slightly better in terms of timeliness as compared to completeness. That is unsurprising, given that it is easier for to answer promptly than to disclose full information. However, completeness of answers is ultimately a better indicator to assess implementation of RTI, because it actually measures whether or not information is released, which is the real goal of RTI legislation.

## 7. Using the Results to Advocate for Policy Change

This section of the Report looks at whether the CSOs who applied the assessment methodology in their own countries used it to advocate for policy change, which we view as an important potential benefit of the methodology. To assess this, we sent out a short survey to the five CSOs to see if they had used the results in their advocacy or other work.

Chart 15 shows the responses to the question of whether the CSOs had shared the results of their application of the methodology with other civil society groups and the public authorities assessed.



The CSOs from Spain and Canada shared the results through their regular channels. As a result, public authorities, including those assessed, might have seen it, but the CSOs did not get any specific response from them. However, in Spain, the *Instituto de Acceso a la Información Pública* (the Spanish RTI oversight body), did request information in general from the Spanish CSO as part of a five-year review they were conducting, and the report was provided as part of this. The Ukrainian and Salvadorian CSOs did not share the results at all with other civil society groups or with the public authorities they have assessed. On the other hand, the Georgian CSO did share the results with other civil society groups, as part of a particular campaign, specifically to advocate for the adoption of a new RTI law in Georgia.

Furthermore, while as noted the Salvadorian CSO did not share the results of the study *per se* with other groups, they did incorporate some of the results into a report they published on the state of RTI in El Salvador, describing the experience of accessing information from a user's

perspective. The publication comments on the experience of sending ATI requests to public authorities, highlighting positive and negative features of the process, as well as recurring problems. That report included four recommendations, including the need to raise awareness about the existence of the law among public officials and to reduce the abusive application of procedural and commercial clauses that slow down the process of information disclosure.

These two initiatives by the Georgian and Salvadorian CSOs are positive and illustrate an important goal of the FOIANet methodology, namely to enable efficient advocacy by providing a good tool to civil society partners to advance the implementation of RTI in their countries.

However, this happened with only two of the five organisations. The goal would be to increase the use of results in advocacy for policy change. The Spanish CSO suggested that to facilitate advocacy with stakeholders and donors, the FOIANet methodology should provide more intuitive scoring scales and indexes, as well infographics and visual materials. While the former would be appropriate for a methodology of this sort, visual materials seems something that would need to be developed locally.

Finally, this Report, while it will not be used to advocate for policy change, is itself an important outcome of the assessment exercise. By highlighting the strengths and weaknesses of the methodology, this Report will help to improve and refine it. This Report is also an important milestone to assess the state of compliance with SDG 16.10.2.

## 8. Standardising Interpretation and Application

The FOIANet methodology has been developed only very recently. The five reports cited above are the first applications of the methodology. This means that there is not yet a standard approach to application. Indeed, the results show that the five groups varied in the way that they interpreted and applied the methodology. In this section of the Report, we outline these differences. The identified inconsistencies provide the basis for the recommendations regarding directions for future improvement presented in the last section of the Report.

### 8.1 Proactive Disclosure

In the area of proactive disclosure, the FOIA methodology proposes three levels of compliance for a particular type of information: Full, Partial or None. The Georgian, Salvadorian, Spanish and Ukrainian assessments all rated the public authorities they evaluated using those three levels. The Spanish CSO suggested that this was a weakness in the methodology, since the “partial” rating varied a lot. The Canadian report, on the other hand, scored authorities’ performance here according to five different levels: Full, Partial to Full, Partial, None to Partial and None. This allowed for greater precision and nuance in the evaluation. Moving forward, we suggest that the methodology uses the five-point scale.

There were some inconsistencies amongst CSOS in the evaluation of authorities that failed to publish information. For example, some sections of the website of a number of Georgian authorities were out of order. The reviewers chose not to evaluate proactive disclosure in this case. These scores were counted as not applicable and were, as a result, excluded. This potentially overestimated overall performance and it is not consistent with the goal of proactive disclosure, because, as a matter of fact, this information was not available to the public. The methodology could be improved to provide guidelines for scoring in this kind of situation, so technical difficulties do not provide a loophole for authorities to avoid being assessed. The fact that a website is out of order should not relieve public authorities from their proactive publication obligations.

There were also inconsistencies regarding which categories of information applied to which public authorities. The Ukrainian assessment, for example, took the approach that the disclosure of information about service delivery was not applicable to a number of authorities, including the Office of the President and the National Parliament, on the basis that these public authorities do not provide services. However, analogous authorities were included in other reports, such as the Georgian and Spanish ones, service delivery was considered to be applicable to them, and they were scored accordingly. The methodology should be improved by defining more precisely what is included within each category of information, including service delivery, so similar public authorities across countries are evaluated consistently. This will allow for a fairer comparison of the performance of public authorities.

Finally, as discussed briefly in the analysis of results in the section on proactive disclosure, there were some inconsistencies regarding how proactive disclosure was scored when it was not required by law. The Spanish evaluators gave a score of 0 to all authorities that did not disclose the given information whereas the Ukrainian evaluators treated the category as “not applicable” when the information was not published but gave positive scores when it was. To have a more standard approach, the methodology should provide clear guidelines on how to score in this context.

While the Ukrainian approach can be ruled out as inherently biased and leading to inflated scores, either the Spanish approach, which treats proactive disclosure requirements as universal, or an approach which consistently treats categories of proactive disclosure that are not legally required as “not applicable”, would be legitimate. SGD 16.10.2 is about both RTI law adoption and implementation. However, because methodologies already exist to assess the quality of RTI laws, the FOIANet methodology focuses on *implementation*. Even taking that into account, however, there are pros and cons to both approaches. The Spanish approach treats the list of proactive information as a universal minimum standard, which is arguably is. Although it may seem to be excessive to ask public authorities to go beyond their legal obligations, in fact this is a growing practice for proactive disclosure around the world. And not assessing countries against the full list could lead to perverse results, because countries with much weaker laws could be assessed as performing better than countries with more stringent requirements. On the other hand, the overall thrust of the methodology is to focus on implementation, which needs to be measured against the law. Furthermore, limiting the scope here to legal obligations may lead to more consistent application of the methodology, and also maintain a separation between issues that properly fall into the category of law reform and those which are associated with implementation of the law a country happens to have. One way or another, the methodology needs to provide clear direction on this issue.

## 8.2 Institutional Measures

We found the least divergence in the application of the methodology in this thematic area. Ultimately, the five civil society groups were quite consistent in how they recorded the presence, absence or non-applicability of institutional measures. It may be noted that in this area, assessment was against the indicators in the methodology and not what the law provides for (note the discussion on this at the end of the section on proactive disclosure). Thus, countries that did not have independent oversight bodies were not awarded points here, even if the law did not provide for those bodies.

That said, two inconsistencies were found and could be rectified. For the central RTI framework, seemingly similar authorities in Ukraine and Georgia were assessed differently, with the former being accepted as a Nodal RTI Agency and the latter not. The methodology should thus clarify which features are necessary to be considered as a “Nodal RTI agency.” A list

of features could be included in the methodology, making it possible to assess agencies consistently.

Secondly, in the area of institutional measures for individual public authorities, the Spanish report effectively excluded from the assessment some cases where no information was found about an institutional measure for a public authority, on the basis that they did not know the answer. The methodology should guide evaluators in such a situation. On the basis that this information should always be reasonably easy to obtain, which is also part of the openness obligations of public authorities, it might be legitimate to allocate a zero score where, following a genuine effort to find information, it could still not be located.

### 8.3 Processing Requests

Our comments here are limited to the two issues addressed in this Report, namely the timeliness of response and the legitimacy of responses or the completeness of the information provided as compared to what was requested.

The timeliness of responses was evaluated differently by the five different organisations. The Canadian report used a three-degree scale for punctuality: under 30 days (which is the default rule in the national law), between 30 and 60 days (because the law also allows for extensions, which public authorities often take advantage of) and more than 60 days (even though the law does allow for extensions beyond 60 days). The Georgian report recorded whether or not the public authority notified them of the need for an extension and if, ultimately, the information was provided within ten days. The Salvadorian, Spanish and Ukrainian reports recorded the dates of the requests and the dates of answer, if any, as the FOIANet methodology required. However, they did not provide a systematic assessment of timeliness.

The methodology should be developed further so as to allow for timeliness to be scored consistently. Here, again, the issue of whether assessment should be based on the law or on 'universal' standards comes up. However, in this case the arguments in favour of basing the assessment on the law seem much stronger, since it seems reasonable for authorities to strive to meet the time limits in the law as opposed to more theoretical 'universal' time limits. The same applies to other request processing issues. At the same time, the legitimacy of extensions does need to be assessed, particularly in contexts like Canada where there is no upper limit on extensions. This, however, is consistent with assessing implementation against the law, because most laws only allow for extensions where certain conditions are met.

The CSOs also differed significantly in how they assessed the legitimacy of the answers provided by public authorities. When the information provided was incomplete, the Canadian report assessed the degree of legitimacy of the reason for redacted information. Based on that, it gave an overall assessment of the completeness of the information provided. For example, one Canadian authority provided a partial answer to a request, but the evaluators considered that the amount of information redacted was excessive and allocated a score of zero for this

response even though *some* information was provided. We believe this type of assessment, even if it involves a degree of subjectivity, is the right approach, because what matters is not the quantity of information *per se*, but the legitimacy of any redactions (i.e. whether the law has been applied properly).

Both the Spanish and Salvadorian report differentiated between an “incomplete answer” and a “partial” answer. This correctly distinguishes between an answer that is simply incomplete, and therefore illegitimate *per se*, and one that is partial, in the sense that sensitive information has legitimately been excluded, which is legitimate. Incorporating this system formally into the methodology would be useful.

Where the response was “information not held”, the Salvadorian assessment sometimes indicated that it was “not credible” that the authority did not possess the information, or that this information was required by law to be held, thereby reducing the score. This should also be incorporated into the methodology, since it critically evaluates the answers of public authorities against their legal obligations. In contrast, the Georgian report interpreted all answers of “information not held” as “not applicable” for purposes of scoring, thus automatically excluding them from the assessment.

The methodology currently includes a list of nine types of answers and classifies them as “always legitimate,” “might be legitimate” and “never legitimate”. The methodology should provide more guidance to help CSOs assess whether or not the answers which “might be legitimate” are in fact legitimate. That way, answers are more likely to be evaluated uniformly, and subjective evaluations by CSOs will be limited. With such rectification, the comparison of scores would actually reflect the legitimacy of the content of answers, and not the subjective standards of severity of individual evaluators.

## 9. Conclusion and Recommendations

The final part of this Report focuses on recommendations for the improvement of the methodology itself. Providing better guidelines will clarify what is better practice for civil society organisations (CSOs) using the methodology. As such, CSOs will apply the methodology in a more standardised manner. This will allow for better comparison between the performance on implementation of RTI across countries and regions.

### **General Issues:**

- The way the methodology is currently framed, it is more a guide to how to collect and organise information about implementation of RTI in a country, than a methodology to assess the performance of authorities. However, we suggest that the qualitative system currently in place should also incorporate a simple a point scale representing a broad assessment of how authorities/countries are doing. This should not be seen as a formal ranking, which will place authorities/countries on a scale. But it will allow for a simple green, yellow, red light overall scoring and also facilitate comparative assessments along the lines of what we have presented in this report. This is in line with the whole approach of the SDGs, which are, ultimately, supposed to represent minimum standards of achievement for States. Furthermore, we believe that this would make the methodology a more effective tool for advocating for policy change.
- The methodology is primarily designed as a tool to assess compliance with the second part of SDG Indicator 16.10.2, namely “implementation” of RTI laws. As such, the methodology primarily evaluates compliance with legal standards, which means quality of implementation vis-à-vis the particular legal requirements set out in national legislation. At the same time, there are arguments, as reviewed in the Report, for assessing compliance with universal minimum standards. Our recommendation is that the assessment exercise should evaluate performance against the lists provided in the first and second parts of the methodology – i.e. regarding proactive disclosure and institutional measures – while the third part, processing of requests, should be assessed against legal requirements. In this case, however, the legitimacy of certain claims – such as that the information is not held or that an extension is required to process a request – should be assessed, ideally against set criteria. Where a claim is not deemed to be legitimate, points should not be awarded (or only partial points should be awarded).

### **Proactive Disclosure:**

- The categories of information listed here should be expanded upon and defined more clearly so that evaluators have a better understanding of what exactly is covered. This is particularly important for certain categories, such as “Service Delivery” and “Participation”. This would avoid situations where similar practices in different countries were evaluated differently.

- The scoring system should move from a three-point scale (None, Partial, Full) to a five-point scale (None, None to Partial, Partial, Partial to Full, Full) to provide a more nuanced evaluation. Furthermore, the methodology should provide more guidance as to what constitutes None, None to Partial, Partial, Partial to Full and Full, so as to promote consistency among reviewers.

**Institutional Measures:**

- The characteristics of an RTI Nodal Agency should be defined more clearly so that evaluators assess similar bodies in the same way.

**Processing of Requests:**

- This part of the methodology is the one that would benefit the most from adding a scoring system. The scoring system should include a numerical scale that awards points based on features like the completeness of the responses, the timeliness of the responses, the acknowledgement of receipt of requests, the application of extensions and so on. The system should include a way of combining the part-scores so that an overall score is generated, which could then be translated into a three-point scale (red, yellow, green).
- The methodology should provide further guidance as to what constitutes a legitimate approach to responses that fall into the “might be legitimate” category to assist evaluators to determine whether these are in fact legitimate or not. Thus, guidance could be provided as to how to determine issues such as whether extensions are legitimate, whether refusals to provide information or redactions are legitimate and so on.

## Appendix: Full Results

**Table 1: Overall Country Performance for RTI Implementation**

Country	Average	Proactive Disclosure	Institutional Measures	Processing Requests
Canada	69.32	80.47	75.00	52.50
El Salvador	73.83	70.49	80.00	71.00
Georgia	57.37	68.32	47.50	56.28
Spain	54.91	42.88	35.10	86.75
Ukraine	70.41	76.12	50.00	85.42
Average	62.66	67.66	57.52	62.86

**Table 2: Availability of Institutional, Organisational, Operative and Contact Information for Public Authorities**

Type of Information	Canada	El Salvador	Georgia	Spain	Ukraine	Average
1. Institutional	1.75	1.70	1.80	2.00	1.83	1.82
2. Organisational	1.50	1.70	2.00	1.11	1.83	1.63
3. Operational	1.60	1.60	1.50	0.78	2.00	1.50
4. Legislation	1.80	2.00	2.00	1.50	2.00	1.86
5. Service Delivery	1.67	1.70	1.63	1.78	2.00	1.75
6. Budget	1.55	1.70	1.11	1.11	0.83	1.26
7. Public Procurement and Contracts	1.15	1.00	1.44	0.89	2.00	1.30
8. Registers	0.81	1.60	0.00	N/A	1.50	0.98
9. Participation	1.17	1.80	0.11	0.56	1.50	1.03
TOTAL	13/18	14.80/18	11.59/18	9.72/16	15.50/18	
Score (%)	72.20	82.22	64.40	60.76	86.11	73.14

**Table 3: Availability of Institutional, Organisational, Operative and Contact Information for Public Authorities (Ukraine Revised Version)**

Type of information	Canada	El Salvador	Georgia	Spain	Ukraine	Average
1. Institutional	1.75	1.70	1.80	2.00	1.83	1.82
2. Organisational	1.50	1.70	2.00	1.11	1.83	1.63
3. Operational	1.60	1.60	1.50	0.78	N/A	1.50
4. Legislation	1.80	2.00	2.00	1.50	2.00	1.86
5. Service Delivery	1.67	1.70	1.63	1.78	N/A	1.75
6. Budget	1.55	1.70	1.11	1.11	0.83	1.26
7. Public Procurement and Contracts	1.15	1.00	1.44	0.89	2.00	1.30
8. Registers	0.81	1.60	0.00	N/A	1.50	0.98
9. Participation	1.17	1.80	0.11	0.56	1.50	1.03
TOTAL	13/18	14.80/18	11.59/18	9.72/16	11.58/14	

Score (%)	72.20	82.22	64.40	60.76	82.74	73.14
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**Table 4: Overall Percentage of Full, Partial and Lack of Disclosure of Information**

Country	Full Disclosure (%)	Partial Disclosure (%)	No Disclosure (%)
Canada	43.02	47.67	9.30
El Salvador	67.78	28.89	3.33
Georgia	53.57	23.81	22.62
Spain	35.21	50.70	14.08
Ukraine	74.47	19.15	6.38
Average	54.81	34.05	11.14

**Table 5: Score for Availability of Information about Right to Information**

Type of information	Canada	El Salvador	Georgia	Spain	Ukraine	Average
1. RTI information	1.4	1	0.89	0.11	1.17	0.91
2. How to make an RTI request	2	1.6	1.56	1.33	1.67	1.63
3. Costs for publications	2	1.2	1.56	1	1.33	1.42
4. List of Information requested	1.7	0.9	1.78	0	1.5	1.18
TOTAL (/8)	7.1	4.7	5.78	2.44	5.67	5.14
Score (%)	88.75	58.75	72.25	30.5	70.875	64.23

**Table 6: Score for Availability of Information about Right to Information (Ukraine and Spain Adjusted)**

Type of information	Canada	El Salvador	Georgia	Spain	Ukraine	Average
1. RTI information	1.4	1	0.89	N/A	1.17	1.11
2. How to make an RTI request	2	1.6	1.56	N/A	1.67	1.71
3. Costs for publications	2	1.2	1.56	1	1.33	1.42
4. List of Information requested	1.7	0.9	1.78	0	N/A	1.10
TOTAL	7.1/8	4.7/8	5.78/8	1/4	4.17/6	
Score (%)	88.75	58.75	72.25	25.00	69.50	62.85

**Table 7: Presence of Overall Framework for RTI Implementation**

Country	Nodal RTI Agency	Independent Oversight Mechanism
Canada	Yes	Yes
El Salvador	Yes	Yes
Georgia	No	No
Spain	Yes	Yes
Ukraine	Yes	No

**Table 8: Score for the Presence of Institutional Measures for Individual Authorities**

Question/ Issue	Canada	El Salvador	Georgia	Spain	Ukraine	Avg.
1. Has the authority appointed an Information Officer who is responsible for RTI implementation? (If yes comment on how the mandate	2.00	2.00	1.80	2.00	0.00	1.56

<i>functions)</i>						
2. Does the authority have an RTI implementation plan? <i>(If yes, comment on the extent to which such a plan has been operationalised)</i>	0.60	N/A	N/A	0.50	0.00	0.37
3. Has the authority developed/ issued guidelines for receiving and responding to information requests? <i>(If yes, comment on their usage)</i>	2.00	2.00	0.00	0.50	1.67	1.23
4. Does the authority prepare and public annual reports, including statistics on requests? <i>(If yes probe for the availability of the latest report and the period it relates to, otherwise the any hindrances to that effect).</i>	1.80	1.40	1.80	0.22	1.33	1.31
5. Has the authority provided RTI training to its information officers? <i>(If yes, comment on when the most recent training programme was conducted).</i>	1.10	1.00	0.20	0.29	0.33	0.58
Total	7.50/10	6.40/8	3.80/8	3.51/10	5.00/10	
Score (%)	75.00	80.00	47.50	35.10	50.00	57.52

**Table 9: Score for Answering Access to Information Requests**

Question/ Issue	Canada	El Salvador	Georgia	Spain	Ukraine	Average
The public authority answered the requests within the deadline in the legislation	1.19	1.48	1.09	1.6	1.83	1.44
The Information was provided in full	0.9	1.36	1.16	1.87	1.58	1.37
TOTAL (/4)	2.1	2.84	2.25	3.47	3.42	2.82
Score (%)	52.50	71.00	56.28	86.75	85.42	70.39

**Table 10.1: Punctuality of Answers**

Country	On Time (%)	Late Answers or Mute Refusal (%)
Ukraine	91.67	8.33
Spain	60	40
Georgia	54.72	45.28
El Salvador	70	30
Canada	57.14	42.86

**Table 10.2: Completeness of Answers**

Country	Complete Answer (%)	Incomplete Answers or Mute Refusals (%)
Ukraine	66.67	33.33
Spain	86.67	13.33
Georgia	55.77	44.23
El Salvador	60	40
Canada	42.86	57.14

**Table 11: Global Average Scores across Areas**

Area of Implementation	Percentage
Proactive Disclosure	67.66
Individual Institutional Measures	57.52
Processing Requests	62.86
Average	62.66

**Table 12.1: Presence of a Nodal RTI Agency**

Present	Canada, El Salvador, Spain, Ukraine
Absent	Georgia

**Table 12.2: Presence of an Independent Oversight Mechanism**

Present	Canada, El Salvador, Spain
Absent	Georgia, Ukraine

**Table 13: Global Average Scores for Disclosure of General Information**

Type of information	Average (/2)	Percentage
1. Institutional	1.82	90.83
2. Organisational	1.63	81.44
3. Operational	1.50	74.78
4. Legislation	1.86	93.00
5. Service Delivery	1.75	87.69
6. Budget	1.26	63.06
7. Public Procurement and Contracts	1.30	64.83
8. Registers	0.98	48.91
9. Participation	1.03	51.38

**Table 14: Global Average Scores for Implementation of institutional Measures by Individual Public Authorities**

Institutional Measures	Average (/2)	Percentage
1. Appointment of Information Officer	1.56	78.00
2. RTI implementation plan	0.37	18.33
3 Guidelines for receiving and responding to information requests	1.23	61.67
4. Public annual reports, including statistics on requests	1.31	65.56
5. RTI training to its information officers	0.58	29.19
Average	1.01	50.55

**Table 15: Sharing of Results with Public Authorities and other CSOs**

Did you share your results with other civil society groups or with public authorities you assessed?	Number of Answers
No	2 (Ukraine and El Salvador)

Yes, through our regular dissemination channels	2 (Spain and Canada)
Yes, as part of a particular project or campaign	1 (Georgia)