



Maintaining Human Rights during Health Emergencies: Brief on Standards Regarding the Right to Information

Executive Summary

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The COVID-19 pandemic has brought unprecedented changes to life for much of the world's population and presented enormous challenges to governments, which are charged with both combating the disease and trying to minimise the negative economic fallout from it. In addition to placing heavy demands on at least some public authorities, the pandemic has imposed severe constraints on the operations of most public authorities.

Some governments have responded to the pandemic by placing limits on the right of individuals to access information held by public authorities, or the right to information. Government transparency, including via right to information laws, is more important during an emergency than ever, given both the incredibly important decisions being made, often very rapidly, by governments and the limited ability of traditional accountability institutions – such as parliament, the courts and horizontal oversight bodies – to hold public actors to account due to emergency operational constraints.

The right to information is recognised as a human right but it is not absolute. Instead, it may be restricted by law where this is necessary to protect the rights or reputations of others, or national security, public order, public health or public morals. During an emergency which “threatens the life of the nation”, the existence of which has been “officially proclaimed”, international law envisages the possibility of derogations from rights but only where they are “strictly required by the exigencies of the situation”.

In their responses to the COVID-19 pandemic, many States did not adopt legal measures to limit to the right to information, while other States did.¹ Authoritative international actors such as the UN Human Rights Committee, the Inter-American Commission on Human Rights and the special international mandates on freedom of expression at the UN, OSCE and OAS, have made it clear that freedom of expression and the right to information remain vitally important at this time and that any new limits which are justified by reference to the emergency should be very limited in nature.

Based on an analysis of international standards relating to both restrictions on the right to information and emergency derogations from rights, we propose the following key principles to govern State actions in the area of the right to information during public health emergencies:

- General public health emergency legislation should not allocate broad discretion to public authorities to limit the right to information through subordinate legal rules but should, instead, subject this to a requirement that any restriction is either “necessity” or “strictly required by the exigencies of the situation”, and is also quite clear regarding how the right to information is being limited.
- No blanket suspensions of the right to information, including blanket time limit extensions for responding to requests for information, should be imposed during emergencies. Instead, emergency provisions should establish the conditions for extending time limits on a case-by-case basis in response to individual requests.
- No limits should be imposed on requests for information related to the emergency and government responses to it, especially where the purpose of the request is to disseminate this information to the public. Better practice is to prioritise these requests, for example by responding more quickly than the law requires.
- Any limits on the right to information should be reviewed regularly and limited in duration to the period during which emergency conditions justify them.
- During a health emergency, necessary changes to the way in which information is recorded and stored should be introduced to ensure that there is no loss of continuity in the recording of government decisions and actions.
- Where an emergency continues for more than the short term, any limits to the right to information that were introduced early on should be lifted or downgraded as soon as possible.
- Governments and oversight bodies should communicate clearly about any changes to right to information rules and how individuals can make requests, and also how public authorities can continue to process requests efficiently taking into account emergency measures. Public authorities should also engage in extensive proactive disclosure relating to the emergency and allocate the necessary resources to respond robustly to requests for information related to it.

¹ These changes are being captured on the RTI Rating COVID-19 Tracker. Available at: <https://www.rti-rating.org/covid-19-tracker/>.