



CENTRE FOR LAW
AND DEMOCRACY



TOWARDS
TRANSPARENCY

***Vietnam:
Handbook for Journalists on How to
Obtain Information Using the 2016
Law on Access to Information***

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Introduction

Journalists in Vietnam now have a powerful legal tool to use to try to obtain information from public authorities or government. This tool, which is available for all Vietnamese citizens, is the Law on Access to Information (LAI), No. 104/2016/QH13. The LAI was adopted in April 2016 and came into effect in July 2018.

The LAI is assessed as being of average strength among national access to information laws, earning 76 points out of a possible 150 on the RTI Rating (www.RTI-Rating.org) and ranking in 84th position out of the 128 countries currently assessed on the RTI Rating. Despite this, it holds out significant promise for Vietnamese journalists and other citizens who wish to use it to access information held by public authorities, its main aim.

According to local studies, the volume of requests for information, including from journalists and those working for civil society organisations, remains relatively low in Vietnam. Experience in other countries has demonstrated that without strong demand for information, successful implementation of a right to information law is unlikely. There is thus a need to increase demand for information under the LAI, which is one of the goals of this Handbook.

This Handbook for Journalists, developed by the Centre for Law and Democracy, a Canadian-based international human rights organisation (see www.law-democracy.org) and Towards Transparency, a Vietnam-based openness organisation (see <https://towardstransparency.vn/en/>), has been prepared to facilitate the use by journalists of the LAI to obtain information from public authorities. It can be used as a stand-alone resource for those interested in learning more about the right to information and how it works. As such, we plan to disseminate the Handbook widely to journalists in Vietnam. The Handbook can also be used as the basis for a training programme on access to information and we plan to provide such training for journalists.

Good journalists have many ways of accessing the information they use to report. These include sources who provide them directly with information, research techniques, including online investigations in the modern world, press releases and other sources of information designed specifically for them, and direct observation of events, such as parliament or the courts. In many countries, journalists also make extensive use of right to information laws to supplement these other sources. While these laws do not normally result in very rapid provision of information, they can help journalists probe more deeply into official information, resulting in the provision of often very important information that would not otherwise be available. As such, they are an invaluable tool for the modern, effective journalist.

This Handbook is divided into six chapters. Chapter 1 starts out by defining the right to information and outlining its main characteristics. It gives an overview of global trends on the right, including the massive growth in adoption of right to information laws over the last 30 years. The Chapter ends up by outlining why the right is important, not only to journalists but also in a broader social context.

Chapter 2 provides an overview of international standards regarding the right to information and the key principles underpinning better practice right to information laws. It then looks at the national legislation for this right in Vietnam, namely the LAI, outlining its strengths and weaknesses vis-à-vis international standards. It ends up by outlining the key obligations the law places on public authorities.

Chapter 3 focuses on the all-important issue of how to make a request for information and what requesters can expect in terms of the processing of their requests. As such, it outlines who can make a request, what can be requested and the authorities to which requests may be directed. It also explains issues such as how quickly requests should be responded to, what forms of access are provided for in the law and the system of fees or charges for accessing information.

Chapter 4 addresses the all-important question of restrictions on the right to information or exceptions to the right to access information. It describes international standards in this area, as well as the specific rules under the Vietnamese law. It ends up by providing guidance as to how exceptions should ideally be interpreted, with a view to assisting requesters to make arguments in favour of a narrower rather than a broader understanding of requests.

The next chapter focuses on how to lodge appeals against refusals to provide access and other actions by public authorities that do not conform to the rules in the law. Once again, insight into both international and national standards is provided, along with practical advice on how to use the system of appeals provided for in the Vietnamese law.

Chapter 6, the last chapter, looks at a number of problems that requesters may face, based on experience in countries around the world, such as refusals by public authorities to accept requests, silence from public authorities in the face of a request (mute refusals), and responses from public authorities that do not comply with the rules. It provides practical advice for trying to avoid these problems and for dealing with them when they do occur.

Chapter 1: What is the Right to Information and Why is it Important

1.1 *What is the Right to Information*

The core concept behind the right to information (RTI) is that public authorities do not hold information just for themselves. Instead, they hold it on behalf of the public as a whole, which has given them a mandate to do their work and to whom the funds which support public authorities (i.e. public funds) ultimately belong. As a result, the public has a right to access this information (subject to certain conditions and 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 or 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 be disclosed to just 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, in most cases 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 essence, these laws turn officials’ whole world upside down, from a situation where they could assume secrecy of ‘their’ information to a situation where they have to share information with anyone who happens to ask for it. As potential requesters, this may well be a situation that you face when you try to make requests for information.

Discussion Point

What do you think of this? Do you think this has been or will be a problem in Vietnam? 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 (since 1982), only five percent of all citizens has 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 a 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.

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).

1.2 Recent Global Trends

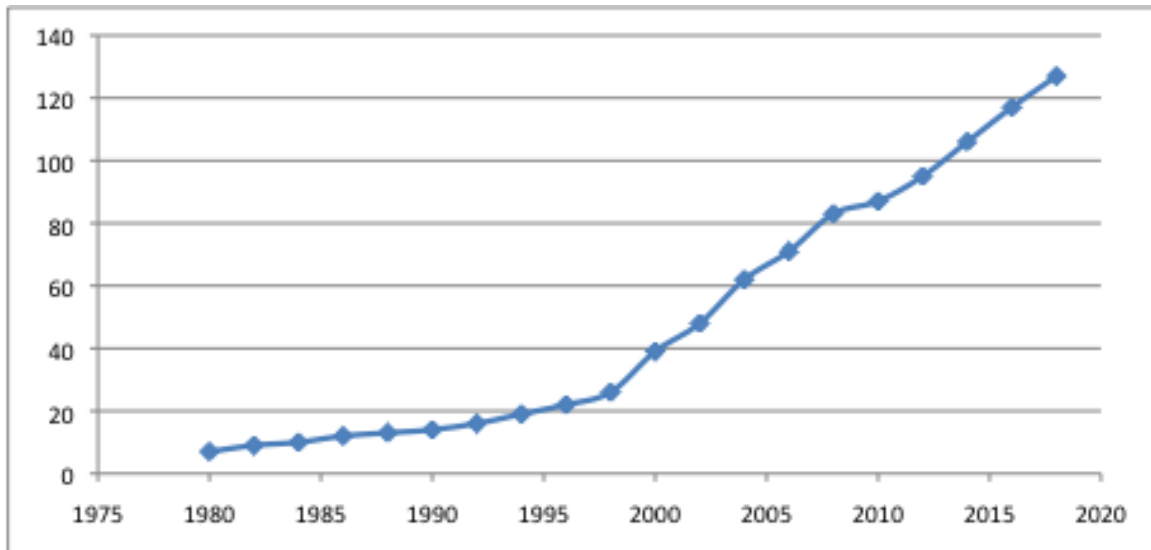
Today, about 130 countries around the world have adopted right to information laws. The rate of growth of these laws is shown graphically in Figure 1. That graph shows that the rate of adoption of these laws has increased sharply over the last 20 years. Until around 1997, the rate of adoption was only about one per year but that increased since then to around four per year as the graph illustrates.

Example

Sweden was the first country in the world to adopt an RTI law, which it did as far back as 1766 (so 2016 was the 250th anniversary of this). As of 1991, only 14

countries had adopted such laws and all but one of them was a Western democracy. Today, these laws have been adopted by countries in all regions of the world, including Asia, Africa, North and South America, Europe, the Pacific and the Middle East.

Figure 1. Chronological Development of RTI Laws



Source: [RTI Rating](#) by the [Centre for Law and Democracy](#) and [Access Info Europe](#)

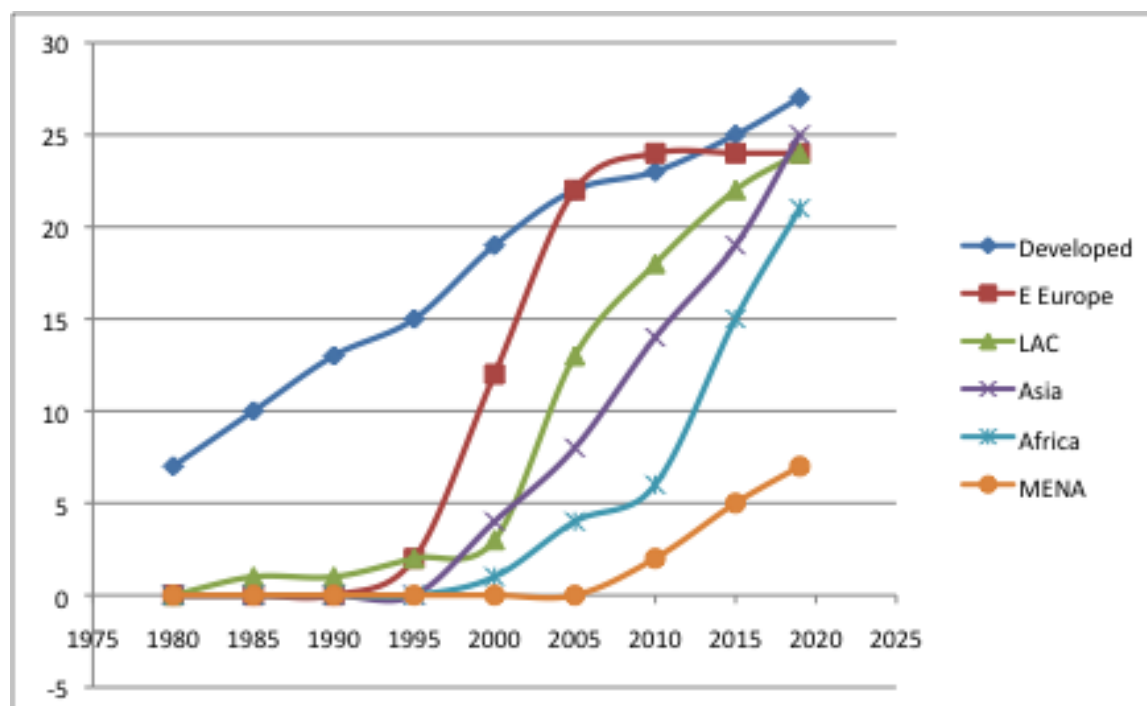
As Figure 2 shows, the first countries in the world to adopt right to information laws were western democracies, starting with Sweden. The next regions to engage heavily in this process, starting around 1995, were countries in Eastern and Central Europe and Asia. As of today, with a few exceptions such as Belarus, almost all of the countries in Europe have adopted such laws while the rate of penetration in Asia is around 50 percent. This was followed by laws being adopted in Latin America and the Caribbean (LAC), starting around 2000, and now around one-half of the countries in this region have adopted such laws. Countries in sub-Saharan Africa started adopting laws at around the same time but the rate of penetration in this region is much lower, at only about 30 percent. Finally, since 2007, led by Jordan, countries in the Arab World have started to adopt laws.

Discussion Point

Does this picture of the spread of RTI laws around the world surprise you? Would you have expected other regions to be ahead? If so, which ones?

A final global development which should be mentioned (and which is discussed in more detail below) is the fact that the right to information has, over the last 15 years, been recognised under international law as a fundamental human right. This is discussed in the next chapter.

Figure 2. Development of RTI Laws Broken Down by Region



Source: [RTI Rating](#) by the [Centre for Law and Democracy](#) and [Access Info Europe](#)

1.3 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 Vietnam?

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 and laws.

It is not possible to participate meaningfully in any of these mechanisms without having access to timely, accurate and good background information, and information held by government will be extremely important here. 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.

Example

Around the world, effective right to information systems are 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 highly controversial, 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. Ultimately, this information was used to cancel the decision to host the facility.

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 by fostering the involvement of beneficiaries. For the same reason, greater transparency can also help ensure that development efforts reach the intended targets.

Example

In South Africa, local groups 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 assert their claims for water.

3. 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.

Example

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.

4. 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 important individual goals. The right to be able to access information about oneself that is held by public authorities, for example, is 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 growing problem of individuals with the same names as actual suspects being put onto no fly lists. 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 licences 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 involved three groups applying for benefits to which they 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 then paid a bribe. 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 on the basis of political connections. 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.

5. 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 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 are published 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.

6. 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 right to information laws 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 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 provisions in the UN Convention Against Corruption calls on States to adopt right to information laws.

Example

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 started publishing data in local newspapers and at schools about the amount of the monthly capital transfers that had been made. This meant that both school officials 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.

Discussion Point

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

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/> (a link to individual group members is available at: <http://www.foiadvocates.net/en/members>)
2. Comparative legal survey on RTI laws in different countries:
http://portal.unesco.org/ci/en/ev.php-URL_ID=26159&URL_DO=DO_TOPIC&URL_SECTION=201.html
3. Website with news on RTI issues and developments: <http://freedominfo.org/>
4. Website with RTI laws and legal information: <http://right2info.org/>

Chapter 2: International and National Legal Overview

Discussion Point

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

2.1 International Guarantees for RTI

International guarantees of the right to information are based on guarantees of the right to freedom of expression, which includes the right to *seek and receive*, as well as to impart, information and ideas. RTI is protected by the right to seek and receive information. International law imposes both negative obligations on States not to interfere with freedom of expression and positive obligations on States to create an enabling environment which fosters a free flow of information and ideas in society. The right to information is one of these positive obligations.

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.

Prior to 1999, there was very little recognition of RTI in international law but authoritative bodies started to make some clear statements about the right starting at that time.

Quotations

In 1999, the three special international mandates 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 international mandates 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.

These are what are commonly referred to as soft law statements. The first binding international decision came in a very significant case decided in September 2006 by the Inter-American Court of Human Rights – *Claude Reyes et al. v. Chile* – which held very clearly that access to public information was a fundamental right. The Court stated:

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, like all aspects of the right to freedom of expression, may be restricted. However, any restriction must be set out clearly in law and serve one of the limited set of legitimate interests recognised in Article 13 of the Inter-American Convention (which are identical to those recognised under Article 19(3) of the *International Covenant on Civil and Political Rights* (ICCPR), cited below). Importantly, the Court also held the following in relation to any restrictions on the right to information:

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.

Quotation

Article 19(3) of the ICCPR

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Since that time, both the European Court of Human Rights and the UN Human Rights Committee have recognised the right. In General Comment No. 34 on Article 19 of the ICCPR, the Committee stated:

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.

2.2 Basic Principles Governing RTI

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

1. Right of Access

An RTI law should establish a broad presumption in favour of disclosure. This presumption should apply to public authorities, defined broadly to include all three branches of government, bodies which are owned, controlled or funded by government, including State owned enterprises, and bodies which undertake public functions. It should also apply to all of the information they hold, as long as it is held in recorded form. As an example of the breadth of the definition of information, a request for information about the ‘cookies’ on the Swedish Prime Minister’s computer was granted by the Swedish authorities on the basis that the information was recorded. Finally, the right should apply to everyone, not just citizens. This should also include legal persons (such as corporations).

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 an access to information law, automatic disclosure is also a very important means of ensuring that information is provided to the public. It helps ensure that all citizens, including the vast majority of citizens who will never make a request for information, can access a minimum platform of information about public authorities. Automatic disclosure has received ever greater attention in modern right to information laws and many include very extensive proactive publication obligations for public authorities.

3. Requesting Procedures

The law should set out clear procedures for the making and processing of requests for information. Although this may seem rather mundane, it is at the same time fundamental to the successful functioning of a right to information regime. The law should make it easy to file a request: it should be possible to file one electronically or orally; only limited information should be required to be provided, which should not include the requester’s reasons for making the request; and, where necessary, requesters should be given assistance in filing their requests. The law should also put in place user-friendly rules governing the processing of requests: requesters should be given receipts after filing their requests; where the request is lodged with the wrong authority, it should be required to transfer it to the authority which does hold the information; requesters should have the right to get the information in the format they prefer (such as electronically or in printed form); strict timelines should be established for responding to requests; and a clear and low-cost fee structure for providing information should be established.

4. Exceptions

It is very important for the law 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 that the law protect legitimate secrecy interests. On the other hand, if these are defined too broadly, this will unduly limit the right.

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, which fundamentally undermines the whole access regime.

As with all restrictions on freedom of expression, exceptions to the right to information must meet a strict three-part test. 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 national security rather than the armed forces, the latter being an entity but the former an interest which needs to be protected. Second, access should be denied only where disclosure would pose a risk of harm to a legitimate interest. In other words, not all information relating to national security should be secret; only information which, if it were disclosed, would undermine security. Finally, the law should provide for a public interest override so that, where the overall public interest in disclosure is greater than the harm this would cause to a legitimate interest, the information shall still be disclosed. This might be the case, for example, where a document relating to national security disclosed evidence of corruption.

The relationship of right to information legislation with secrecy legislation poses a special problem. If the right to information law contains a comprehensive statement of the grounds for secrecy, it should not be necessary for other laws to extend them. This, along with the fact that many secrecy laws do not conform to modern standards regarding transparency, and given the plethora of secrecy provisions that are often found scattered among various national laws, makes it important that the right to information law should, in case of conflict, override secrecy legislation. At the same time, there is no reason why other laws should not elaborate on the exceptions set out in the right to information law, for example by defining national security or privacy.

The law should provide for severability so that where only part of a document is sensitive that part should be redacted and the rest of the document disclosed. There should also be an overall time limit, for example of 20 or 30 years, for exceptions, given that the sensitivity of information declines significantly over time. Finally, when refusing to disclose information, public authorities should be required to give written notice of this, setting out the legal grounds for the refusal and the right of the requester to lodge an appeal against this.

5. Appeals

A fifth key element in a strong right to information regime is the right to appeal any refusal of access to an independent body. Ultimately, of course, one can normally appeal alleged breaches of the law to the courts but experience has shown that an independent administrative body is essential to providing 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 this exercise.

Independence from government is key for the oversight body, given that it will effectively act as an appellate body for government decisions. It must also have appropriate powers to investigate appeals – including to review classified documents,

to compel witnesses to appear and testify before it and to inspect the premises of public authorities – and to order effective and binding remedies, including to disclose information.

6. Promotional Measures

A number of promotional measures are needed if implementation of right to information laws is to succeed:

- a. Public authorities should be required to appoint dedicated officials (information officers) with a responsibility for ensuring that they comply with their obligations under the law.
- b. A central body, such as the oversight body, should be given overall responsibility for promoting the right to information.
- c. Public awareness-raising efforts should be required to be undertaken.
- d. A minimum records management system should be required to be put in place, including so that officials can find information which has been requested.
- e. Public authorities should be required to create, update and make public lists or registers of the documents they hold or at least lists of the categories of documents they hold.
- f. Public authorities should be required to train their staff on RTI.
- g. Public authorities should be required to report annually on what they have done to implement the RTI law while a central body, such as the oversight body, should be required to present a central (consolidated) report on implementation of the law to the legislature.
- h. Sanctions should be available for those who wilfully act to undermine the right to information.
- i. Officials should be granted immunity for acts undertaken in good faith to implement the RTI Law, including by disclosing information.

Exercise B

The Reasonable Scope of Promotional Measures

Working in Pairs

2.3 National Legislation on RTI: Key Strengths and Weaknesses

As noted above, the Vietnamese Law on Access to Information (LAI), including taking into account the January 2018 Decree under this Law, has been assessed on the RTI Rating and the scores it earns are listed in the table below.

The RTI Rating Scores for Vietnam

Section	Max Points	Vietnamese Score	Percentage
1. Right of Access	6	3	50%
2. Scope	30	17	57%

3. Requesting Procedures	30	16	53%
4. Exceptions and Refusals	30	14	47%
5. Appeals	30	9	30%
6. Sanctions and Protections	8	6	75%
7. Promotional Measures	16	11	69%
Total score	150	76	51%

The following section provides an assessment of the main strengths and weaknesses of the Vietnamese LAI.

Right of Access

Strengths:

- Statement of the right in the Constitution but too general in nature.
- Clear statement of the right in the Law

Weaknesses:

- No statement of the wider benefits created by the Law or a call to interpret the Law so as to give effect to those benefits.

Scope

Strengths:

- Covers most of the executive, legislative and judicial branches of government.

Weaknesses:

- Largely limited to citizens and no reference to legal entities.
- Limited to information created by public authorities in the course of their duties.
- Limited to information to the exclusion of documents.
- The definition of bodies covered is indirect and, as a result, not as clear as it could be.
- Does not cover State owned enterprises or private bodies which receive significant public funding or perform public functions.

Requesting Procedures

Strengths:

- Requests may be lodged in a variety of ways.
- There is a requirement for officials to provide requesters with assistance, including where they are disabled or illiterate.
- Public authorities are required to refer requesters to other authorities where they do not hold the information (but not to transfer the request).
- Information must be provided in the format preferred by requesters.
- Simple requests must be responded to within three working days and complex requests within 15 working days, which may be extended for another 15 days.
- It is free to file requests.

Weaknesses:

- Requesters must provide their reasons for making requests.
- Too much information is required to be provided on a request, including a physical address and formal ID number.
- There is no clear requirement to provide requesters with receipts acknowledging their requests.
- There are central rules on fees but these may be imposed for the costs of “copying” and “capturing” as well as of reproducing and sending information.
- There is no obligation to provide free pages of photocopies or fee waivers for poor requesters.
- There are a number of legal limits on the way information may be reused.

Exceptions

Strengths:

- Many exceptions protect interests that are recognised under international law although some are overly broad (see below).
- Most exceptions are subject to a harm test.
- Requesters must be given reasons if their requests are refused, but there is no requirement to notify them of their right to appeal against this.

Weaknesses:

- Exceptions in other laws override the right to information law.
- The following exceptions are too broad: information which would cause harm to social ethics; information classified as a work secret; information about internal meetings; and documents created for internal work.
- There is only a limited public interest override.
- There are no overall time limits for exceptions, for example of 20 or 30 years.
- There is no severability clause.

Appeals

Strengths:

- There are both internal and judicial appeals, and the latter are free of charge.
- The grounds for lodging an appeal appear to be broad but this could be further clarified.

Weaknesses:

- The main problem here is that there is no provision for an appeal to an independent administrative body, denying Vietnam many of the points in this category.
- The burden of proof is not clearly placed on public authorities in appeals.
- There is no system for imposing sanctions on public authorities which are systematically failing to implement the Law.

Sanctions and Protections

Strengths:

- The Law provides for sanctions for both individuals who wilfully obstruct access and for public authorities which systematically fail to implement it.

- The Law on Denunciations provides protection to whistleblowers.

Weaknesses:

- The Law fails to provide any protection to officials who disclose information pursuant to the Law in good faith.

Promotional Measures

Strengths:

- Public authorities must appoint information officers.
- The Ministry of Justice Information Council has general central authority for ensuing proper implementation of the Law.
- Individual public authorities are required to conduct public awareness-raising activities.
- There is a very general obligation to conduct training but it is not clear who is responsible for this.

Weaknesses:

- There is only a very basic obligation regarding records management rather than a proper system for this.
- Public authorities are only required to publish a list of information subject to proactive disclosure rather than a full list of the documents they hold.
- Public authorities are only required to report every three years on how they have implemented the Law and it is not clear that these reports should be made public.
- There is only a very general obligation to prepare a central report on implementation.

2.4 Main Obligations of Public Authorities

The precise obligations on public authorities depends on the specific provisions in the right to information law. Under the Vietnamese RTI law, public authorities need to do the following:

1. In a very general sense, provide accurate and sufficient information to citizens on a non-discriminatory basis and in a timely and convenient manner, including for persons with disabilities or who are disadvantaged, while keeping sensitive information confidential.
2. Appoint information officers with the responsibility of receiving and processing requests and publishing information proactively, and provide them with training.
3. Ensure that the required information is published proactively, including publishing lists of this information. This includes the development of their websites so as to facilitate such publication but also making it available in other ways. Where published information is found to be incorrect, the public authority must correct it.
4. Process requests in accordance with the LAI, including by providing forms for making requests, providing assistance to requesters who need it, providing a receipt when a requester makes a request, referring requesters to another

- public authority where they do not hold the information, providing access in the format indicated by the requester, providing access within the legal time limits and only charging the fees for access allowed by the Law.
5. Put in place basic records management systems.
 6. Handle complaints and denunciations relating to RTI in line with the relevant laws on this and punish officials who obstruct this right.
 7. Undertake public outreach efforts so that the public understands its rights under the law.
 8. Report every three years on the measures they have taken to implement the law, including in terms of processing requests.

Discussion Point

Do you think that this is realistic for public authorities in Vietnam? Which of the above do you think are more important or are particular priorities? Do you know if the public authorities that you interact with have appointed information officers or done the other things they are supposed to do under the LAI?

Further Resources

1. *The Public's Right to Know: Principles on Freedom of Information Legislation* (London: ARTICLE 19, 1999). Available at: <http://www.article19.org/pdfs/standards/righttoknow.pdf>
2. *RTI Legislation Rating Methodology* (Centre for Law and Democracy and Access Info Europe, 2010). Available at: [http://www.law-democracy.org/?page_id\(8\)](http://www.law-democracy.org/?page_id(8))
3. 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](http://www.coe.int/T/E/Human_rights/rec(2002)2_eng.pdf)
4. 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 at: <http://www.unhcr.ch/hurricane/hurricane.nsf/0/9A56F80984C8BD5EC1256F6B005C47F0?opendocument>

Chapter 3: Making Requests for Information

As noted above, the LAI provides for both proactive disclosure of information and for citizens to be able to make requests for information that is not disclosed proactively and yet is not secret. This chapter outlines the procedures for making requests for information.

3.1 *Who Can Make a Request*

As already noted, the LAI is a bit restrictive inasmuch as it largely applies only to citizens. It would appear that legal entities, even if they are entirely owned or controlled by Vietnamese citizens, cannot make requests. However, foreigners who are legally residing in Vietnam also have the right to request information which is directly related to their rights and obligations. The exact scope of this is not clear.

3.2 *How to Make a Request for Information*

Discussion Point

What you think should need to be provided in terms of information when you make a request? Do you think you should have to provide your formal identity card? Why or why not?

Requests must be made in writing on the form, in Vietnamese. The form should be available on a special section of the website dealing with information of each public authority covered by the Law. The same section should provide addresses of where to file the request. In case the form or address is not available, it should be accessible from the information officer or information unit that each public authority is required to appoint to act as a focal point for providing information. Otherwise, a form of some sort should also be available from the Ministry of Justice.

The request may be lodged in person, either by the requester or by his or her assistant, via the post, via fax or through the Internet. For the latter, the website should provide the details of how this is to be done, for example by emailing the form or by filling it out directly on the website of the public authority. Ideally, the form should be made available in an electronic version that may be filled out on a computer, such as in a Word document or a writeable .pdf. No fee is required to be paid merely for making a request.

The following information needs to be provided as part of the request (which should correspond to the information demanded on the form):

- The name, address, identification number or passport number of the requester or all of these where there is more than one requester.
- The fax number, telephone number, email (if any) of the requester or all of the requesters if there is more than one.

- A description of the requested information. The LAI asks for the names of the documents, records, files to be specified but where the requester is not sure of this, the information officer should provide the necessary assistance.
- The reasons the information is being requested and the purpose for which it will be used. This is not better practice and international standards suggest that requesters should not have to provide this sort of information. It is not clear whether requesters are expected to limit themselves to using the information, once it has been received, only for the purposes listed in the request.
- Any other information required by the form, which should be fully completed.

Where the requester wishes to receive the information in a particular format, this also needs to be stipulated in the request. The Law recognises a number of different formats for receiving information. In general, the format for provision of information shall be “suitable” based on the nature of the information and the public authority’s capacity. To this end, the heads of public authorities are required to:

- Arrange places for receiving and settling information requests. These places shall be suitable for reading, listening to, watching, recording, duplicating or copying information at the head office of the public authority.
- Provide the necessary technical means, equipment and other necessary physical foundations to facilitate access to information.
- Install at their head offices equipment which is suitable for accessing information. These should, as appropriate, take into account the types and levels of disability of requesters and their own practical conditions.
- Take measures to intensify information provision and facilitate citizens’ access to information in graphics, images, video clips and other audio-visual media.
- Allow requesters to use cell phones and other personal technical devices to duplicate or copy documents, dossiers and materials.

Where access to the information is conditional upon having the consent of a third party, for example because the information contains personal (private) or commercially sensitive information belonging to that third party, the request should be accompanied by a consent form from that third party.

Public authorities, and in particular information officers, are required to provide guidance and explanations to requesters. They should inform requesters about the “duration, location and forms of information provision, the actual cost for printing, copying, capturing, and sending information through postal services, faxes (if any) and methods of payment”. Where the requester needs help filling out the form, the required assistance should be provided. Then, if the form has not been filled out properly, the information officer should instruct the requester as to how to resolve this problem. Such assistance should in particular be provided so as to help requesters in “clearly identifying documents, dossiers and materials and titles of documents containing information which they need so that they can fully and accurately fill in written requests for information”.

When it comes to those living with disabilities or other disadvantages, public authorities are under a general obligation to “create favourable conditions for persons with disability, people living in mountainous areas, islands, areas with exceptional socio-economic difficulties to exercise the right to access to information”. Where a

requester cannot write due to illiteracy or disability, “the person in charge of receiving request shall fill out the Request Form”.

Where the public authority does not hold the information requested, it is required to refer the requester to another public authority which does hold that information, if it is aware of one.

Upon lodging a request, better practice is for the requester to be provided with a receipt. The LAI and its implementing Decree are not very clear on this matter although the latter does at least refer to the idea of a receipt. Requesters should insist on getting a receipt because, if this is not done, they will not have any official evidence that a request has been lodged. The public authority should also register the request and give it a tracking number. Ideally, the receipt should include:

- a. the registration number;
- b. the registration date;
- c. the name, address and contact number of the requester and of the official receiving the request; and
- d. the information requested.

Where requests are made via email or in person the information officer should provide the receipt directly or in a reply by email. For other requests, for example by mail or fax, the information officer should deliver the receipt to the requester in the same manner as the request was lodged.

3.3 *Responding to Requests*

The time limits for responding to requests depends on the nature of the request. Where the request is to provide information directly at the head office, this shall be done immediately for simple requests where the information is immediately available and within ten working days for more complex requests or where the information is not immediately available. This may be extended by another ten days where the public authority needs more time to “review, search, collect, copy, resolve the request”. For information to be provided electronically, this shall be done within three days for simple requests where the information is immediately available and within 15 working days for more complex requests or where the information is not immediately available, provided that in this case the requester shall be informed of the time limit within three days. Here again, the time limit may be extended, in this case for another 15 working days, under the same conditions described above for direct provision of information. Finally, for information to be provided via post or fax, this shall be done within five working days for simple requests where the information is immediately available and within 15 working days for more complex requests or where the information is not immediately available, once again extendible by another 15 working days. In each case the requester must be informed about the extension within the original time limit.

Discussion Point

Do these time limits make sense to you? Are they too long or short? Is it necessary to

have different time limits for different kinds of requests?

Once the public authority has come to a decision on a request, the requester shall be notified in writing. Where the information is to be provided, the notification should indicate:

- a. the format in which access to the information will be provided;
- b. any fee and the payment method;
- c. the time within which the information will be made available; and
- d. if only partial access is provided, the reason for redacting (obscuring) information.

Where a request is refused, the notice should include:

- a. the registration number of the request;
- b. the name, address and phone number/email of the official
- c. a description of the information requested;
- d. the decision to refuse to provide the information;
- e. the exception relied upon and the reason for applying it;
- f. information on the procedure to challenge (appeal against) the refusal and the application form for doing so; and
- g. the harm or consequence anticipated if access to the information were to be provided.

As noted above, it is free to lodge a request in Vietnam. In terms of responding to requests, the Ministry of Finance is supposed to adopt a set of regulations on this. According to the law, the only things that may be charged for are “the actual cost for printing, copying, capturing, and sending information”.

Discussion Point

Are these terms clear to you? What do you think “capturing” covers? Should the requester have to pay for this?

It is normal for requesters to be charged for the costs of copying (photocopying or copying onto a flash drive) and sending (postal charges) the information. However, taking into account the fact that access is a human right, requesters should not have to pay for the cost associated with the time officials spend searching for and assessing the information. It is not clear whether the reference to the idea of “capturing” in Vietnam covers this or refers to something else.

The LAI does not indicate how requesters are supposed to pay the fee. Different systems apply in different countries for this. In some cases, you can make a deposit in favour of the public authority or at the bank or post office and get a receipt and use this to pay for the information. In some cases, public authorities have ways to receive funds directly.

It is of course important that the requester receive a receipt upon payment of the fee, just as one gets a receipt for any other type of payment.

Exercise C

Assessment of the Procedures for Making Requests
Working in Small Groups

Chapter 4: Understanding Exceptions

4.1 *International Standards*

The matter of exceptions to the right of access to information is probably the most difficult issue relating to this right. On the one hand, it is very important that all legitimate secrecy interests are protected by the law while, on the other, it is important that the regime of exceptions is not too broad or it will seriously undermine the whole system of access. Striking the right balance here is the main objective of the regime of exceptions.

According to international law, as noted above, the right to access information held by public authorities (the right to information) is included within the general guarantee of freedom of expression, which protects the rights to seek and receive, as well as to impart, information and ideas.

As such, the right to information is subject to the three-part test for restrictions on freedom of expression under international law, which requires any restrictions to:

- a. be provided by law;
- b. protect one of the interests listed under international law; and
- c. be necessary to protect this interest.

For the first part of this test, it is not enough just to have a law. The law must also be sufficiently clear and precise to let people know more or less exactly what it means. Thus unduly vague provisions will not pass this part of the test. In addition, provisions which give too much discretion to officials to interpret what they mean will also fail this part of the test because people cannot know in advance how officials will exercise that discretion.

Any law restricting freedom of expression must have the purpose of protecting one of the interests listed in Article 19(3) of the ICCPR. This list, which is exclusive so that governments may not add to it, includes the following interests:

- a. the rights or reputations of others;
- b. national security;
- c. public order; and
- d. public health and morals.

A restriction which seeks to protect any other interest is not legitimate.

The necessity part of the test has a number of elements, as follows:

- Restrictions should be carefully designed: the government should choose the measures that are **most friendly** to freedom of expression to achieve its goals.

- Restrictions should not be **too broad**. They should not affect a wider range of expression than is necessary.
- Restrictions should not be **disproportionate** in the sense of causing more harm than good.

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

- The restriction must aim to protect one of a limited number of interests set out in the law which conform to the list of protected interests noted above.
- 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).
- 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.

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, the fact that 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 rule for non-disclosure.

The issue of the relationship of the right to information law with other laws is complex. Better practice is to protect all important confidentiality interests in the main right to information law and then 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 secrecy provisions in other laws which are to be preserved.

Discussion Point

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

A few other principles apply to the regime of exceptions. First, there should be an overall time limit on exceptions which protect public interests such as national security and the administration of justice, for example of 20 or 30 years. Where information really did remain confidential after that time, a special procedure could be put in place to extend the limit. Second, where information has been provided by a third party, an effort should be made to contact that person before deciding whether or not the information is exempt. However, that person's views on the matter should not be final. The test should always be whether disclosure of the information will harm

one of the exceptions, such as commercial interests. Third, where only part of a document is exempt, that part should be redacted (removed or obscured) and the rest of the document still disclosed. Better practice in this case is to indicate to the requester exactly what has been removed.

4.2 Underlying Principles for Exceptions in Vietnamese Legislation

The main principle under the LAI is that information is generally presumed to be open and accessible to the public and that exceptions to this are limited. Thus, Article 5 provides:

Citizens shall have the right to access to information held by state agencies, except for inaccessible information as regulated in Article 6 of this Law; or information accessible for citizens upon condition as regulated in Article 7 of this Law.

The exceptions to this are set out in Articles 6 and 7. Other laws are generally preserved and there is a specific exception which provides for this (Article 6(1)). 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.

Article 6(1) also refers to the idea of information being classified under other laws. This is supported by Article 34(1)(e), which establishes the responsibilities of public authorities to review, classify and check the secrecy of information before providing it to the public. It is not entirely clear, however, how the process of classification will take place or will be assessed. What if, for example, an official has wrongly classified a document? Will it still be protected against release under the LAI? This would not make sense since it would reward officials for over classifying. Also, the LAI provides that where information is declassified, citizens have a right to access that information (Article 6(1)).

Discussion Point

How do you understand the process of classification under the Vietnamese LAI? What happens if classification is not done properly?

Article 3 of the LAI sets out the general principles governing the law, of which sub-articles 3 and 4 are particularly relevant to exceptions and read as follows:

3. Information must be provided for citizens in timely, transparent and convenient methods, in compliance with orders and procedures regulated by the laws.

4. The right to access to information shall be restricted in compliance with the laws and if it is deemed necessary to protect the national defence, national security, social order and safety, social ethics, and public health.

This establishes both the principle that information must generally be provided and that there are restrictions in compliance with other laws to protect various interests.

Article 6(2) also sets out some general grounds for restricting access to information. For the most part, these exceptions are based on the idea that disclosing the information will cause harm to a protected interest, in line with international law. However, a number of these exceptions are either overbroad by their nature or defined in an unduly broad manner.

Article 34(1)(g) provides for a form of public interest override. Specifically, it states that public authorities shall review and consider the benefits of disclosing information, either proactively or in response to a request, “in order to protect public interests and community health”. It is not entirely clear, however, whether this is intended to serve to override exceptions or just to be taken generally into account when considering the disclosure of information. In addition, the scope of public interests to be considered is unclear. Community health is the only interest that is specifically listed. Otherwise, the reference is just to the general idea of “public interests”. This could be considered in a positive light, since anything could theoretically qualify as a public interest. Or it could be seen in a more negative light, since public officials are likely to interpret this narrowly.

Discussion Point

What do you think about the idea of a public interest override? Are Vietnamese 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 Ministry of Justice, for difficult cases?

Examples

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 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.

Article 28 also provides for additional reasons to refuse to disclose information, beyond the exceptions in Articles 6 and 7, as follows:

- Information which is subject to proactive publication according to Article 17 of the LAI, unless it has not in fact been published.
- Where the public authority concerned is not responsible for the information (although, as noted above, where this happens and in case the authority knows of another public authority which holds the information the first authority must refer the requester to that other authority).

- The information has already been provided twice to the same requesters, unless they have a reason for making an additional request for it.
- The requester does not pay the fee for the cost of “printing, copying, capturing and sending” the information.
- The amount of information that is requested “exceeds the ability of the requested agencies or affects the normal operation of the agencies”.

The last one is problematical because it is vaguely worded and so will allow public authorities some discretion to refuse requests which are for larger amounts of information, claiming this will “affect” their normal operations.

Finally, according to Article 28(2), when refusing to provide information, public authorities must send a written notice to this effect to the requester, indicating the reasons for refusing the request. This is positive although better practice in such cases is also to require the public authority to inform the requester about his or her right to lodge an appeal against the refusal.

4.3 *Exceptions in Vietnamese Legislation*

Article 6(1) lists the specific secrecy interests which may be protected by other laws. These are “important information” relating to:

- Politics
- National defence and national security
- Foreign affairs
- Economics
- Sciences and technology
- Other fields

Given the last one, this is essentially an open list and so it would seem than any information at all which is protected by another law would be covered. However, this is qualified by the reference to “important information” so theoretically unimportant information which was classified under another law would not be secret. It remains to be seen whether public authorities will apply the law in this way.

Article 6(2), for its part, establishes a free-standing list of exceptions based on the idea of information which, if published, would cause harm to one of the following interests:

- State interests
- National defence and national security
- International relations
- Social order and safety
- Social ethics
- Social health
- Lives, life and property of individuals
- Information classified as a work secret
- Information about internal meetings of State agencies and documents created by State agencies for internal work purposes

Of these, the following are problematical for the reasons given:

- State interests: This is far too vague and general to serve as a ground for refusing information. Essentially, anything could be deemed by someone to be a “State interest”. Put differently, there is no clear set of interests which would be covered by this.
- Social ethics: Once again, this is far too vague and subjective. As with State interests, it lacks any objective content.
- Information classified as a work secret: The idea of a work secret is not recognised under international law as a legitimate ground for secrecy. Put differently, what would be needed here would be a reference to an actual interest – something which needs to be protected against harm – and work secrets are instead a category of information.
- Information about internal meetings of State agencies and documents created by State agencies for internal work purposes: Here again, since no specific interest that would need to be protected, international law does not recognise this as a legitimate exception. If the exception focused on interests such as the free and frank provision of advice internally, it could pass the test.

4.4 Interpreting Exceptions

The interpretation or application of exceptions will always been done directly by public authorities, subject to the right of requesters to lodge appeals against this. However, it is also very useful for requesters to have some sense of when appeals should apply. The key consideration in most cases is whether making the information public would pose a risk of harm to one of the interests protected in the LAI. When considering this, rational reasoning based on the standards in the Law must be applied rather than relying on preconceptions and previous practices/assumptions/prejudices.

Ideally, three steps should be taken when assessing whether to refuse to disclose information. First, the official 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

The fact 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.

Second, the official should 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?

Exercise D

Role Play on Exceptions

Working in Small Groups of at Least Three Persons

Chapter 5: Appeals

5.1 *International Standards*

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.

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).

Examples

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.

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 Mexico, appointments are made by the executive branch, but are subject to veto by the Senate or Permanent Commission. This is somehow similar to the system in

Japan.

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).
- Better practice is to prohibit individuals with strong political connections from being members. Common exclusions in this regard include elected officials, civil servants and employees or officers of political parties, or anyone who has held such a post during the last couple of years.
- 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.
- 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. Ideally, the body should have its budget approved by parliament, instead of by a minister or other senior government official.

Under the Vietnamese LAI, Articles 13 and 35(1)(d) allocates very general oversight roles to various official bodies, such as the National Assembly, Peoples' Councils and Vietnam Fatherland Front. This is not, however, a system of appeals. For that purpose, Article 8(1)(b) provides that citizens have the right to file "complaints, lawsuits, and denunciations" against violations of the law. Complaints and denunciations are essentially forms of internal appeals while lawsuits go to the courts. As such, the LAI provides for the first and third types of appeals but lacks an appeal to an independent administrative oversight body.

5.2 Grounds for Lodging an Appeal

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. This should clearly include refusals to provide information (i.e. application of the exceptions) but also the provision of wrong or incomplete information and procedural breaches, such as a failure to respond to a request within the established time limits.

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 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 must 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.

In Vietnam, Article 8(1)(b) provides for complaints and so on “against violations of provisions of the law on access to information”. The precise scope of this is not clear, but it would appear to cover any failure to respect the provisions of the law. Thus, complaints might be lodged against at least:

- A refusal to provide access to information based on an exception
- A case where information is not made available on a proactive basis
- There was no response to the request for information
- The response does not answer the request
- The charges or fees are excessive
- The response exceeds the allowable time limit
- The information was not provided in the format preferred by the requester

5.3 *The Lodging and Processing of Appeals*

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.

Quotation

Article 18(3) of the Indian RTI law provides:

The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
- (b) requiring the discovery and inspection of documents;
- (c) receiving evidence on affidavit;
- (d) requisitioning any public record or copies thereof from any court or office;
- (e) issuing summons for examination of witnesses or documents; and
- (f) any other matter which may be prescribed.

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. Better practice is that the orders of the oversight body should be binding. This is necessary because if the

oversight body can only make recommendations, many public authorities will simply ignore them and the requester would need 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 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 record better, where poor information management results in it being unable to locate documents sufficiently quickly or perhaps at all.

Discussion Point

Does it make sense in the Vietnamese context for the oversight body to be able to impose structural remedies on public authorities or would there be significant resistance and/or possible legal obstacles to this? If it would not be possible, what could be done to try to ensure that all public authorities were meeting their obligations under the LAI?

Quotation

Article 19(8) of the Indian RTI law provides:

In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

- (a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—
 - i) by providing access to information, if so requested, in a particular form;
 - ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
 - iii) by publishing certain information or categories of information;
 - iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
 - v) by enhancing the provision of training on the right to information for its officials;
 - vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;
- (b) require the public authority to compensate the complainant for any loss or other detriment suffered;
- (c) impose any of the penalties provided under this Act;
- (d) reject the application.

In Vietnam, the way an appeal will be lodged and processed depends on whether it takes the form of a complaint, denunciation or lawsuit, with the latter being processed in accordance with the rules and procedures governing court actions.

It is beyond the scope of this Handbook to elaborate in detail the various different procedures for complaints and denunciations. However, to give a sense of this, some indication of the way denunciations are dealt with is provided. This is set out in further detail in the 2018 Law on Denunciation while complaints are addressed under the 2011 Law on Complaints. Generally, denunciations are dealt with by the head of the body responsible for the person against whom the denunciation is lodged and, for denunciations against the head, by the head of the supervisor organ or the body which the individual heads.

A denunciation shall be set out in the form and lodged with the competent authority and shall indicate the specify date of the denunciation, the full name and address of the person making the denunciation, along with methods of contacting him or her, the claimed violations of the law and the person responsible for them and any other relevant information.

Once the denunciation is received, the authority has seven working days to register it and check to see if it meets the eligibility conditions. If it does, and if the matter falls within the scope of responsibility of the authority, the denunciation will be accepted. Once that happens, the facts will be verified, the matter decided and the decision implemented. The authority must assign an “inspecting authority” at the same level as it to verify the denunciation. The decision must be made within five working days of the denunciation having been accepted and it must contain at least the following information: the date of the decision, the reasoning behind the decision, the denunciation which was accepted and the time limit for settling the denunciation. Normally, this latter will be 30 working days but this may be extended for complicated cases.

The process also involves issuing a denunciation conclusion which shall contain at least the following information: the results of the denunciation verification, the legal grounds for determining whether there has been a violation of the law, a conclusion as to whether the denunciation is upheld, partially upheld or rejected, the responsibilities of each organisation/individual in relation to the denunciation, the remedial measures to be taken and a request for measures to be taken against violators, whether organisations or individuals and any request for amendments to policies and laws and implementation of necessary general measures to protect State interests and the legitimate rights and interests of organisations and individuals.

Within seven working days of the denunciation conclusion, the responsible authority shall take the necessary measures to restore the rights of the person who made the denunciation. Where an individual or organisation has breached the law, the responsible authority shall either take direct remedial actions against that party or engage another competent authority to do so. Within another seven working days, the denunciation conclusion shall be published.

It is thus clear that fair and detailed procedures are in place regarding the handling of denunciations. The same is also true of complaints under the Law on complaints.

Chapter 6: Following up on Requests

Discussion Point

What do you think should be done if the public authority with which you lodge your request simply ignores it? What if they reject it without giving reasons?

6.1 General Points

In far too many instances, public authorities do not deal with requests in accordance with the accepted rules: they may pose obstacles to lodging requests, simply refuse to answer them (mute refusals), provide only partial information, charge too much money for providing information and so on.

A recent study by the Centre for Law and Democracy, along with the International Budget Partnership (IBP) and Access Info Europe, based on making 6 requests in 80 different countries revealed the following surprising results:

- Information, either complete or partial, was provided in only 45% of all cases.
- 38% of all requests were met with mute refusals, and this happened in 55 of the 80 countries.
- 42% of all responses were not compliant with the right to information (compliant responses were when information was provided or the public authority claimed it did not hold the information).
- In more than 50% of cases, requests had to be lodged more than once and information was provided after one attempt in only 22% of all cases.
- The average time for responding to requests was 60 days (out of a maximum of 90 days), and only 9 countries provided all 6 responses within an average time limit of 30 days.
- Countries with RTI laws did better on every indicator than countries without, and this increased the longer the RTI law had been in force.
- Newer democracies dominated in terms of greater openness, taking two-thirds of the top 15 spots.
- There were, however, very few cases where officials actually sought to raise an exception to refuse access.

These results demonstrate that requesters need to be persistent and not let initial refusals or failures to respond put them off too quickly.

This session looks at ways to ensure better response rates to requests, other than by submitting a formal appeal or complaint to the relevant information commission.

A balance needs to be struck here between being insistent about your right to information and not being rude or obstructive or excessively difficult; it does not help

to create bad relations with public authorities, especially if they are trying, even if they are failing; on the other hand, you should not tolerate obstructive behaviour.

6.2 Refusals to Accept Requests

In some cases, it may be impossible to submit a request, for example because the public authority has not appointed an information officer or because no one will accept the request. How best to respond to this will depend on what exactly has happened; some possible responses are listed below:

- It may be useful to note that even if a public authority has not appointed an information officer, it must still accept requests for information.
- It might be useful to show any official you can reach a copy of the LAI, pointing to the relevant provisions (or this might be included with the application).
- You can try writing to the head of the public authority; you might want to send a copy of that letter to the appeals body, to demonstrate that you know what you are doing and that you are serious about the request.
- Try asking to speak to a more senior official at the same public authority or going to another branch of the same public authority.
- Be persistent and keep noting that this is your right according to the law, without being rude or obstructive.

6.3 Mute Refusals

Experience suggests that the way you present your request can have a significant bearing on the likelihood of it being treated seriously. Some ways to improve responses:

- Officials tend to avoid requests which are difficult:
 - make clear, well-worded and precise requests
 - do not ask for different types of information in one request; lodge two requests instead
 - if your request is likely to generate a lot of information in response, try to make it easier to respond (e.g. by offering to search through files on the premises and)
- Officials are more likely to treat requests which seem serious, seriously:
 - when presenting a request in writing, use headed paper if possible or indicate the name of your organisation
 - when presenting requests in person, try to impress upon the person receiving the request that you are serious about it
- Remind officials about their obligations:
 - note in your request that it is being made under the LAI
 - remind officials of some of their key responsibilities: to register the request, to provide a response immediately, or within 3, 5, 10 or 15 days, to refuse the request only if the information falls within the

scope of the exceptions, to provide partial information in this case, to provide reasons for the withholding of any information

Follow-up any failure to provide a response soon after the time limit has passed; this shows you are serious and are following the request: in many cases, this will be enough to get it moving.

In your follow-up, indicate that public authorities are legally obliged to provide you with a response within a certain number of days according to Articles 29-31 of the LAI.

Keep following up; trying using the phone as well as letters; keep indicating that this is a legal right.

Indicate that you have a right to appeal this matter to the information commission, which will be embarrassing for them (or potentially worse: you might even mention that officials can be fined and even imprisoned for obstruction), but also time consuming for you (so you would prefer not to).

Discussion Point

Can you think of other ways that you might prevent or follow-up a mute refusal? Do you think these approaches will be successful in Vietnam?

6.4 Responses Which do not Answer the Request

In some cases, officials may provide responses to requests which do not actually answer the request. In these cases, follow-up is important; follow-up promptly to any response from the public authority, whether this is formal or informal; do not leave it hanging. In the follow-up, if you feel from the response of an official that they are being obstructive, remind them of their obligations.

Here are some of the excuses officials may try to make for not providing information, along with suggested responses:

Excuse: we do not have time to look for this information

Response: this is one of your duties under the LAI and you should treat this as a job priority

Excuse: this information is not important for you to have

Response: under the law, it is not for you to decide whether or not the information is important; only the exceptions can justify a refusal to provide the information

Excuse: this information was created by one of my colleagues; you will need to ask him or her about it

Response: the law places an obligation on the public authority as a whole; you are the one who needs to consult with your colleagues and to do so within the original time limit

Excuse: this is too much information to ask for and we do not have time to provide it

Response: the law requires you to provide the information even when it is a large amount

Excuse: we are working on this request and will get back to you; do not contact us, we will contact you

Response: the law only gives you a set number of days to respond, which may be extended only once by the same number of days; if you go beyond this, you are in breach of the law

Excuse: I do not know anything about this; I will have to talk to my superior

Response: it is your obligation to know about this law; consult with your superior if you need to but you still need to provide the information within the set number of days

Excuse: you have no right to ask for this information; it belongs to the public authority

Response: this new law says that all of the information you hold is public information, subject only to the limited regime of exceptions; your attitude towards the information is no longer correct even if that might have been the case in the past

Excuse: this is not our information, it was provided by another person or public authority

Response: you have to provide it anyway if you have a copy of it; if it was created by another public authority, you may transfer the request to that authority

Discussion Point

Do you think these responses would be likely in Vietnam? Have you experienced them?

If the official is not trying to be obstructive it may be useful to consult with them. This can help you:

- Understand the problems they are having in dealing with your request and perhaps help them by narrowing it or otherwise amending it to make it easier for them to deal with.
- Help them understand what information you are really looking for if this is not clear from the request; this may help them either respond to your request better or understand which other public authority can deal with it more effectively.

6.5 Providing Incomplete or Wrong Information

In other cases, public authorities may provide incomplete information or the wrong information; some possible ideas of how to respond to this:

- Indicate that the information is wrong or incomplete and reiterate the obligation of the public authority to provide full information.
- Ask which public authority holds more complete information.
- Present arguments as to why you believe they do, or should, hold more complete information.
- Indicate that if they are withholding part of the information, they need to inform you of this, and to provide you with reasons (they cannot just withhold part of the information without letting you know).
- If you believe your request may have been misunderstood, present it in a different way or try to get the official to understand what you are looking for.
- Try to impress upon the public authority the importance of its legal obligations in this area, as well as the right you have to appeal any failure to provide information.

6.6 Claims That the Information is Not Held

Sometimes, public authorities will claim they do not hold the information; in this case, you need to assess whether or not you believe this claim and how to react; some ideas:

- Consider the work that the public authority does and whether they should hold the information.
- Consider whether the public authority should hold at least part of the information (even if it does not hold all of it), in which case it cannot just answer that it does not hold it, but must provide you with the information it does have.
- Try asking for the information in another way, to see if that is successful.
- Highlight the reasons you think the public authority should hold the information and their obligation to provide it if they do hold all or part of it.
- If it is information that government as a whole must hold, ask them which public authority does hold it.

6.7 Charging too Much

Some ideas where public authorities try to charge too much:

- Indicate the rules relating to fees (Article 12 indicates that access shall be low-cost; see if there are any regulations which set out what fees may be charged).
- Compare with other public authorities (where you have been charged less for other requests).

- Present arguments as to why the charges should be low.

6.8 Refusals (Including Oral Refusals)

Oral refusals are not permitted under the LAI (see Article 28(2)) and should not be accepted; at a minimum, the requester should try to insist on getting a written refusal.

Some refusals are legitimate: as discussed above, the LAI includes a set of exceptions to the right of access; you need to try to determine whether or not an exception is legitimate; this can be difficult because you have not seen the actual information so cannot fully assess whether or not the exception might apply.

You can always appeal against refusals but it can be useful to try to argue against refusals before the public authority. Some of the points it might be useful to raise:

- The law has changed the way public authorities are supposed to operate; they can no longer assume that most or all information will be secret; instead, they need to justify any withholding of information.
- Any refusal must be based on a specific provision in the LAI (see Articles 6 and 7).
- Most of these exceptions require a showing of harm to a protected interest – the public authority needs to indicate the specific harm that would be caused.

6.9 Sanctions for Officials who Block Access

The LAI has strong provisions on sanctions for both officials who block access and public authorities which do so. Article 11 describes a number of “prohibited acts” which include, among others:

- Providing incorrect or insufficient information
- Delaying the provision of information
- Destroying information
- Falsifying information
- Obstructing, threatening or victimising a requester or information provider

Article 15 follows this up by providing, in sub-article (1), that those who violate the provisions of the law shall be disciplined, subjected to administrative sanctions or considered for penal sanctions depending on the nature of the violation. Article 15(2) specifically addresses Article 11 violations, when they cause damage, stating that the public authority shall be responsible for providing compensation for that damage, while the individuals who are ultimately responsible shall have to repay these costs. According to Article 34(2), the head of each public authority is responsible for “timely handling” information officers who obstruct the right to information.

Article 167(1) of the Penal Code provides that anyone who uses violence, threats of violence or “tricks” to obstruct a citizen from exercising his or her right to access information shall, notwithstanding the application of disciplinary or civil penalties, be subject to 2 years of community service or 2-4 months’ imprisonment.

These are, taken together, significant penalties. The presence of these penalties can be used, strategically, when requesting information. In particular, requesters can remind officials that, should they intentionally block access to information, they may be subject to disciplinary, civil or even criminal penalties.

Exercise E

Responding to Problematical Official Behaviour

Working in Small Groups

Further Resources

1. Commonwealth Human Rights Initiative, *Implementing Access to Information: A Practical Guide for Operationalising Access to Information Laws*. Available at: http://www.humanrightsinitiative.org/publications/rti/implementing_ati.pdf.
2. Victor Brobbey, Carole Excell, Kenneth Kakuru and Alison Tilley, *Active and Passive Resistance to Openness: The Transparency Model for Freedom of Information Acts in Africa – Three. Case Studies*. Available at: http://webcache.googleusercontent.com/search?q=cache:W6ZaMZQGvY0J:www.africafoicentre.org/index.php%3Foption%3Dcom_docman%26Itemid%3D0%26task%3Ddoc_download%26gid%3D63+Active+and+Passive+Resistance+to+Openness&cd=1&hl=en&ct=clnk&client=safari&source=www.google.com
3. Access Info Europe, *Toolkits to Promote Use of Access to Information Laws*. Available at: <http://www.access-info.org/en/toolkits>.