



CENTRE FOR LAW  
AND DEMOCRACY

*UN Office of the High Commissioner for  
Human Rights*

**Submission on Normative Frameworks for the  
Right to Information**

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## ***Introduction***<sup>1</sup>

In a letter of 20 November 2020, the United Nations Office of the High Commissioner for Human Rights (OHCHR) issued an open letter to national human rights institutions and non-governmental organisations asking them for inputs to a “report on good practices for establishing national normative frameworks that foster access to information held by public entities”. Paragraph 12 of UN Human Rights Council resolution 44/12, “Freedom of opinion and expression”, adopted in July 2020, calls on the OHCHR to prepare this report. In its November 2020 letter, the OHCHR indicates that it plans to submit the report to the forty-seventh session of the Human Rights Council, to be held in June 2021. This Submission contains the Centre for Law and Democracy’s (CLD’s) views on normative frameworks for access to information.

CLD’s mandate is to foster foundational rights for democracy, explicitly including the right to information or the right to access information held by public authorities or entities. CLD uses the term “right to information” to describe this right, which has been widely recognised by leading international and regional human rights bodies as a human right, including by the UN Human Rights Committee under Article 19 of the International Covenant on Civil and Political Rights.<sup>2</sup>

CLD has been very active in promoting the right to information. Among other things, it has, in collaboration with Access Info Europe,<sup>3</sup> developed the RTI Rating,<sup>4</sup> the leading global methodology for assessing the strength of legal frameworks for the right to information, which is essentially same as the topic of the OHCHR report to which this Submission relates. The RTI Rating and the standards it describes are set out in more detail in the first substantive section of this Submission. CLD has also analysed many dozen draft and existing right to information laws for compliance with international standards, published extensively in this area, worked closely with both governments and civil society organisations to develop right to information legislation and provided support to right to information oversight bodies (information commissions) around the world. To accompany the RTI Rating, CLD has developed the RTI Evaluation,<sup>5</sup> a parallel methodology which assesses the extent to which RTI laws are being implemented properly.

### ***1. The RTI Rating***

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<sup>2</sup> Adopted by UN General Assembly Resolution 2200A (XXI), 16 December 1966, in force 23 March 1976. See UN HRC General Comment No. 34, Article 19: Freedoms of opinion and expression, 12 September 2011, para. 18. Available in all six UN languages at: <http://undocs.org/ccpr/c/gc/34>.

<sup>3</sup> See <http://www.access-info.org>.

<sup>4</sup> See <https://www.rti-rating.org/>.

<sup>5</sup> See <http://www.rti-evaluation.org>.

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As noted above, the RTI Rating assesses the strength of the legal framework for the right to information, with a focus on specific or dedicated right to information legislation but also covering constitutional provisions, subordinate legislation (such as regulations or rules under the primary legislation), other legislation which impacts on the exercise of this right, decisions by courts and oversight bodies which interpret these various rules, and even formally binding policies or other rules. It covers all countries which have adopted national right to information laws and is updated continuously as new laws are adopted, so that it currently features 128 countries. The RTI Rating has been recognised by a wide range of actors, whether explicitly or implicitly, as not only the leading tool for assessing the strength of the legal framework but also as a highly authoritative and sophisticated tool for doing so.

While the national normative framework for this right will normally go beyond just the legal framework to include, for example, policy instruments and perhaps even entrenched practices, the legal framework lies at the heart of the normative framework. As such, the standards set out in the RTI Rating are extremely relevant to the report being developed by the OHCHR.

The RTI Rating assesses the legal framework by looking at specific standards which are reflected in 61 separate indicators grouped into seven main categories. Points are awarded based on how well the legal framework reflects the standards in each indicator, which are mostly scored on a 0-2 point range, although some indicators are weighted more heavily, for a possible total of 150 points. The standards found in the 61 indicators are mainly drawn from international law, whether global or regional in nature, although in a few cases indicators also draw on better national practice, for example in very pragmatic areas such as how long it should take to respond to a request for information, where international law has not established precise rules.

The seven categories, and their respective weighting, are indicated in the table below.

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

The Right of Access looks at whether and how well the constitution and right to information legislation provide for a right of access to information held by public authorities. Categories 2-5, each weighted equally at 30 points, lie at the heart of a strong right to information law. Scope

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assesses the breadth of application of the right, in terms of information, public authorities and who may make a request for information. Requesting Procedures, as the name implies, assesses how user-friendly the rules relating to the making and processing of requests for information are. Exceptions and Refusals measures the extent to which the regime of exceptions to the right of access, whether in the right to information law or other legal instruments, complies with international standards in this area. Appeals focuses on the robustness of the system for lodging complaints where an applicant believes that his or her request for information has not been dealt with in accordance with the rules set out in the law. Sanctions and Protections assesses whether there are legal sanctions for individuals and public authorities which intentionally fail to implement the law properly, and protections for individuals who release information in good faith pursuant to the law or to expose wrongdoing. Finally, Promotional Measures reviews the presence or otherwise of various support measures which help ensure proper implementation of a right to information law, such as raising public awareness.

In a sense, the list of indicators<sup>6</sup> provides a direct reference for what a strong normative framework for the right to information should look like, since it refers to most of the qualities that a strong legal framework should have. Each indicator represents a specific part of the normative framework. For example, Indicator 4 states: “Everyone (including non-citizens and legal entities) has the right to file requests for information.” As another example, Indicator 18 provides: “Requesters are provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed 5 working days.” Together, the indicators provide a pretty robust sense of the entire normative framework for the right to information.

One very useful functionality of the RTI Rating is that it provides not only the score of each country for each indicator but also comments, where relevant, on why points were deducted and also, in most cases, the full text of the actual legal provision upon which the score is based. Thus, to continue the examples above, for Indicator 4 the Rating will provide the legal provision which defines who may make a request for information and, for Indicator 18, any legal rule that requires public authorities to provide a receipt.

The detailed country information in the RTI Rating can be displayed in different ways under the main “Country data” tab, including “By Country”,<sup>7</sup> “By Category”<sup>8</sup> and “By Indicator”.<sup>9</sup> The former presents a table of all 128 countries whose legal frameworks have been assessed, which can be displayed in different orders (the default is from highest to lowest scoring country or RTI Ranking but alphabetically and date of first adoption of such a law are other options). Links to downloadable excel sheets providing the full dataset for each country, the primary right to information law for each country and a country page with the full rating information for each country are also provided.

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<sup>6</sup> See [https://www.rti-rating.org/wp-content/uploads/2021/01/Indicators.final\\_.pdf](https://www.rti-rating.org/wp-content/uploads/2021/01/Indicators.final_.pdf).

<sup>7</sup> See <https://www.rti-rating.org/country-data/scoring/>.

<sup>8</sup> See <https://www.rti-rating.org/country-data/by-section/>.

<sup>9</sup> See <https://www.rti-rating.org/country-data/by-indicator/>.

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The “By Indicator” page allows for the viewing of country performance by each individual indicator. Here, countries’ performance on just one indicator is shown, with countries ordered by score on that indicator and, within that, alphabetically (i.e. starting with the alphabetically leading country getting a perfect score on the indicator, followed by other countries with a perfect score, and then moving on to countries which lost one point on that indicator). Here, again, the full text of the relevant legal provision is shown. Thus, it is possible to browse, on these pages, the way different countries have provided in law for any particular indicator, which is a powerful comparative research tool.

## **2. Guarantees for the Right**

Ideally, the right to information should receive clear protection in the national constitution as a human right, whether this is through explicit language to this effect or clear judicial interpretation of other guarantees, most commonly the right to freedom of expression, to the effect that they include this right. According to Indicator 1 of the RTI Rating, which assesses this, 61 countries have clear constitutional guarantees for this right (thereby earning two points on this indicator), 17 have partial guarantees (earning one point) and 50 do not have any constitutional guarantee.

It is also important for the right to information law to provide a clear guarantee for the right. Broadly speaking, these take two forms. The stronger approach is to state clearly in the law that access to information held by public authorities is a right, perhaps subject to the regime of exceptions. Some other laws present this more in procedural terms, which is not as strong, indicating that individuals shall be given access if they make a request which complies with the procedural rules in the law (again perhaps subject to the regime of exceptions). To strengthen a rights-based approach here, better practice laws also refer, either in a preamble or in a substantive provision, to the wider benefits that flow from the right to information – such as enhancing participation, promoting accountability and combating corruption – and then call on those tasked with interpreting the law to do so in the (reasonable) manner that best gives effect to those benefits.

## **3. Institutional Framework**

For the right to information, as with many rights, putting in place a strong institutional framework is key to ensuing respect for the right in practice. This is perhaps particularly true of the right to information given that it is a positive right in the sense that it places an obligation on States to take positive action to ensure its protection, as opposed to a negative right which would require States to refrain from acting in certain ways.

A strong institutional framework for this right comprises three main elements. First, each individual public authority – such as a ministry, national human rights institution or State owned enterprise – should be required to appoint an official or set of officials, often referred to as

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“information officers”, with dedicated responsibilities for leading the work of the authority in the area of the right to information. A key role of these individuals is to be responsible for receiving and ensuring the proper processing of requests for information. The contact details of these individuals can be made public, providing members of the public with an address to forward their requests for information. Experience shows that it is crucially important to have an identifiable locus of responsibility for processing requests, failing which they often languish unanswered.

It is also good practice to require these individuals to lead on ensuring delivery of other obligations of the public authority under the right to information law, such as disclosing information proactively (i.e. in the absence of a request), preparing an annual report on what the authority has done under the law (such as the number of requests and how they were dealt with), promoting strong records management practices, providing training to other officials and contributing to raising public awareness about the right.

A large majority of all national right to information laws do require public authorities to appoint information officers although practice varies in terms of how detailed the description of their responsibilities is.

Second, individuals who believe that their requests for information have not been dealt with in accordance with the legal rules should have the right to lodge a complaint or appeal with an independent administrative body, such as an information commission. In almost every country, applicants can approach the courts in such circumstances. However, this is simply too expensive, time-consuming and difficult to be effective for the vast majority of information applicants. As a result, to ensure practical access to information, a large majority of countries with national right to information laws provide for independent administrative complaints (87 of the 128 countries on the RTI Rating earned the full two points on Indicator 37, which assesses this).

Better practice here is to establish a dedicated administrative body for this purpose, although a growing number of countries allocate dual responsibility for access to information and protection of privacy or personal data protection to the same body. The experience of countries which have allocated the information oversight function to a pre-existing body, normally an ombudsman or national human rights institution, has shown that this is in most cases seriously sub-optimal and that the right to information function is often treated very much as a second-class citizen to the core work of the body.<sup>10</sup> At the same time, this can be a practical solution for countries with smaller populations. There is also some evidence that countries which have multi-member national human rights institutions and which identify one member to lead on the right to information may be experiencing more success in this area.

It is very important that these bodies are independent of government since their main task is to review, in a quasi-judicial manner, decisions by the government (for example to refuse to

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<sup>10</sup> As a result, countries like Pakistan and South Africa, which originally allocated oversight responsibility to a pre-existing body, respectively the ombudsman and national human rights institution, have revised their rules to create dedicated information oversight bodies.

disclose information). As such, independence is key to the effective discharge of their responsibilities, just as it is for courts. Their independence should be reflected in the manner of appointment of members of the body, the way the budget is allocated to the body and in the management and running of the office of the body.

These bodies also need to have appropriate powers both to investigate and to resolve information complaints. They should be able to compel witnesses to testify and produce documents, to have access to all records, regardless of whether they are deemed to be confidential, and to inspect the premises of public authorities where necessary, for example where an authority denies it holds information but it should in fact hold it. They should also have broad powers both to order appropriate remedies for applicants – including, most obviously, to be given access to the information but also perhaps compensation or lower fees – and to order public authorities to put in place structural measures to improve their compliance with the law, where necessary – such as to appoint and/or train an information officer or manage their records better.

It is also very important for the decisions of oversight bodies, for example to disclose information to an applicant, to be binding. Experience shows that, absent binding order powers, public authorities in many countries simply ignore the recommendations of the oversight body quite a lot of the time. These bodies do have binding order powers in most countries. However, it is not uncommon for them to lack any practical means of enforcing their orders, leading to a situation where the binding nature of their orders is simply theoretical as opposed to real. The way to address this will depend on the legal system. For example, in Common Law systems, it is possible for these sorts of decisions to be registered with a court so that a failure to respect them becomes contempt of court, leading to the same sorts of penalties that flow from a failure to respect a court judgment.

In most countries, although not in all, these bodies also play an important promotional role vis-à-vis the right to information, for example by providing training to officials, raising public awareness, generally monitoring and reporting on compliance (beyond just deciding complaints), reporting on overall progress in implementing the law and potentially in other ways (sometimes, for example, even having a standard setting role such as in relation to fees for accessing information or expanding on proactive publication obligations).

Third, it is very useful to have a central body inside of government which is responsible for leading on efforts to implement the right to information. While the independent administrative body can be given a wide remit, an internal body can wield more effective power over public authorities and may also have a more profound sense of their operating realities. Such a body can provide training, develop support tools (given that each public authority has to undertake very similar actions under the law and so it is often far more efficient to have one central body develop model tools or approaches which others can follow or adapt) and provide advice and support. In most cases, this role is not established by law but as a matter of policy or simply internal government arrangements.

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## 4. Proactive Disclosure

Although enabling and satisfying requests for information lies at the heart of right to information legislation, rules on proactive disclosure of information are also very important to ensure a good flow of information held by public authorities to members of the public.<sup>11</sup> Put simply, in most countries, the vast majority of citizens will never make a request for information. As such, proactive disclosure of information, along with the third party disclosure of requested information, for example by media outlets or civil society organisations, represents the full extent of the access they have to information held by public authorities. Proactive disclosure of information is also useful for public authorities. It is far less time-consuming to place a document on a website than to process even a single request for it (which involves a lot of procedural steps) and yet the former gives access to everyone who has Internet access.

Better practice in this area is for the law to include a list of categories of information that each public authority is required to disclose, such as its functions and structure, a list of its employees, the policies and other rules which govern its functioning and so on.<sup>12</sup> One form of proactive disclosure which directly supports the right to information is the disclosure of a list of the documents, or at least the categories or types of documents, held by each public authority.

Because this is a rapidly developing area, including in terms of the capacity of public authorities to make information available proactively, it is useful for the law to grant the oversight body, or some other central body, the power to extend the list of categories from time-to-time. An innovative rule found in a growing number of right to information laws is a requirement for public authorities to publish proactively any information which is disclosed in response to a request where there is likely to be wider public interest in that information. This can also be an efficiency given the relative ease of proactive disclosure as compared to responding to requests, noted above.

While the Internet is today the overwhelmingly dominant means of disclosing information proactively, it is good practice for public authorities to be required to go beyond this and use other means of communication both because not everyone has access to the Internet and to ensure that those who are likely to be particularly affected by certain information can access it in practice. This might be the case, for example, for information about a development project taking place in a rural community. Other areas where efforts may be needed to enhance the accessibility of proactively disclosed information include providing it in languages which are spoken locally, making it available in ways so that persons with disabilities can access it, including by ensuring that websites are Web Content Accessibility Guidelines (WCAG) 2.0 compliant, and ‘translating’ important but technically complex documents, such as the budget, into more accessible language.

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<sup>11</sup> The RTI Rating does not address proactive disclosure. However, this is not because it was not deemed to be important but because the nature of the legal frameworks for proactive disclosure meant that it was not a good fit with the rest of the Rating.

<sup>12</sup> A good example of an expansive list of categories of information subject to proactive disclosure may be found in section 4(1)(b) of the Indian Right to Information Law, 2005, <https://rti.gov.in/rti-act.pdf>.

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Although it is not always recognised as such, the open data movement is in essence an offshoot of proactive disclosure, albeit with some important characteristics. The more important of these are that information, and especially data, should be disclosed in formats that are machine readable, as opposed to fixed formats such as pictures, in as granular a fashion as is possible, as opposed to more in an aggregated form, in open formats, as opposed to being stored in proprietary software, and for free. To the extent possible, better practice is to apply these characteristics to all information that is disclosed proactively.

## **5. Scope of Application**

Given that the right to information is a human right, it is important for the right to apply broadly. Like its parent right, the right to freedom of expression, it should apply to everyone, not just citizens or residents. It is also better practice to allow legal entities to make requests for information. Again based on its parent right, it should apply to information “of all kinds”.<sup>13</sup> For practical reasons, this is in almost every law limited to information which has been recorded, as opposed, for example, to oral information, which is transitory and to which access cannot easily be provided in practice. However, the right should apply regardless of the manner in which the information has been recorded, such as in a document, an email or a video.

Human rights bind all State actors, regardless of which branch or level or part of the State apparatus they occupy. The same is true of the right to information. For federal States, this may mean that each component part should adopt its own right to information legislation. Better practice legislation thus applies to all three branches of government, to any body that is established by the constitution or a law, and to any body that is owned, controlled or funded by other public authorities, at least to the extent of that funding. More progressive laws also apply to private bodies that do not otherwise meet that description where they provide a public function, such as a private hospital or school.

Although some of the earlier right to information laws were more limited in scope, often not applying to the legislative or judicial branches of government, this is the category with the highest overall average score from among the 128 countries assessed on the RTI Rating.<sup>14</sup>

## **6. Requesting Procedures**

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<sup>13</sup> This quote is drawn from Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to freedom of expression. The ICCPR was adopted by UN General Assembly Resolution 2200A (XXI), 16 December 1966, and entered into force 23 March 1976.

<sup>14</sup> See Centre for Law and Democracy, *Right to Information Laws Trends Snapshot: Based on the Global RTI Rating*, 2020, p. 4, [https://www.law-democracy.org/live/wp-content/uploads/2020/09/Trends-Snapshot-2020.FINAL\\_.pdf](https://www.law-democracy.org/live/wp-content/uploads/2020/09/Trends-Snapshot-2020.FINAL_.pdf).

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The rules governing the lodging and processing of requests for information, or requesting procedures, are a key part of any right to information system. They need to be designed so as to be user friendly and yet practical for both applicants and public authorities. Although these rules tend not to be very controversial, the overall average score on this category from among the 128 countries assessed on the RTI was just 58%, leaving considerable room for improvement.<sup>15</sup>

The RTI Rating sets out the standards for requesting procedures clearly, of which some of the key better practices are:

- Applicants should only need to provide limited information when making a request for information, namely just a description of the information they are seeking and an address for delivery of that information, which might be an email address, while public authorities should specifically be precluded from asking them for the reasons for their requests.
- It should be possible to lodge requests in a number of ways, as long as the public authority has the capacity to receive them, including in person, by mail or by email and ideally even orally.
- Public authorities should be under an obligation to provide assistance to applicants where they need it to make a request, for example to describe the information they are looking for sufficiently precisely to enable the public authority to identify it, as well as under a specific obligation to provide assistance to applicants with special needs, for example due to illiteracy or disability.
- Public authorities should be required to provide applicants with a receipt for their request either immediately or shortly after the request is lodged, depending on how this is done.
- Public authorities should be required to comply with applicants' preferences in terms of the format in which information is provided to them, unless this would harm the record or be unduly burdensome.
- Clear time limits should be established for responding to requests which should be done as soon as possible and in any case within a maximum number of working days, of which ten days is best practice and twenty days should be an upper limit. It is reasonable to allow this period to be extended but only where this is justified in exceptional cases, subject to a requirement to inform the applicant about the extension and the reasons for it within the original time limit.
- A clear regime should be in place regarding fees. It should be free simply to lodge a request, only the reasonable cost of any photocopying and sending information should be subject to a charge, which should be set centrally for all public authorities, a set number of pages, say 10 or 20, should be provided for free (noting that in most cases the cost of collecting such a small fee would exceed the value of the fee), and fee waivers should be established for impecunious applicants.
- Where a request is refused, the applicant should be given clear reasons for this and also informed of his or her right to challenge the refusal at a higher level (i.e. lodge a complaint against that decision).

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<sup>15</sup> *Ibid.*

Although this formally goes beyond requesting procedures, rules should be in place, whether in the right to information law, another law or via policy instruments, to enable applicants to reuse freely information they have obtained via either a request or proactive disclosure. Such reuse may be subject to limited conditions, such as acknowledging the original source of the information, where practical, and limited constraints, where justified, such as non-alteration of certain types of records where this would be misleading, such as altering the text of a law or legal judgment while still presenting it as being that law or judgment.

## **7. The Regime of Exceptions**

The right to information, like its parent right, the right to freedom of expression, is not an absolute right. Every right to information system establishes a number of exceptions to the right, or circumstances where public authorities may or must refuse to disclose information, often referred to as the “regime of exceptions”. This is a very important part of any right to information system since it effectively defines the dividing line between openness and closure. It is crucially important, on the one hand, to protect legitimate interests against harmful disclosures and equally important, on the other hand, not to provide for overbroad exceptions which undermine the essence of the right. As with restrictions on the right to freedom of expression, this is an extremely sensitive area although, at the same time, international standards do establish a number of clear principles governing exceptions.

It is widely accepted that a three-part test applies to exceptions to the right of access, as follows:

1. Exceptions should only protect one of a limited number of interests set out in the law which conform to the list of interests which international law recognises as legitimate for this purpose. Broadly speaking, international law recognises protection of the following interests as potentially justifying a refusal to disclose information: national security; international relations; public health and safety; the prevention, investigation and prosecution of legal wrongs; privacy; legitimate commercial and other economic interests; management of the economy; fair administration of justice; legal advice privilege; conservation of the environment; and legitimate policy making and other operations of public authorities.
2. It is only legitimate to refuse to disclose specific information where this would pose a serious risk of harm to one of the protected interests, often referred to as the “harm test”. Thus, it is not enough for information merely to relate to or be about national security; the disclosure of that information should pose a specific risk of harm to national security.
3. Information should still be disclosed, even where a risk of harm is present, unless that harm outweighs the overall benefits of disclosure, often referred to as the “public interest override”. Thus, even if the disclosure of certain information would pose a risk of harm to national security, where the information exposes a greater harm, such as corruption or human rights abuse, it should still be disclosed.

It may be noted that these conditions need to apply at the time a request for information is made, not when a record is first created. Most information loses its sensitivity over time, often quite

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rapidly, and once it is no longer sensitive it should not longer be kept secret. As a practical corollary of this, better practice is to place a presumptive overall time limit – say of 15 or 20 years – on all exceptions which protect public interests,<sup>16</sup> which may only be extended in exceptional cases and through a special procedure (for example by having a minister sign a certificate to this effect).

A number of consequences flow from this test. First, the mere fact that information has been administratively classified is not, of itself, relevant. It is only where the classification of a record is justified, at the time of a request, and as assessed against the three-part test, that it is legitimate. In other words, classification needs to be reviewed when a request is made to ensure that the conditions of the three-part test are met. Otherwise, mere administrative action, which is ultimately what classification is, would defeat the right of access and the right to information would have no meaning. Thus, better practice is to treat classification simply as an internal procedure which signals that information is sensitive, rather than as a decision not to disclose a record.

Second, the test has implications for the relationship between the right to information law, assuming it reflects the three-part test, and other laws with secrecy provisions. If those secrecy provisions themselves reflect the three-part test, they will be legitimate and presumably in line with the right to information law. Otherwise, especially given that secrecy provisions may have been adopted a long time ago, the right to information law should prevail in case of any conflict between it and another law. Put differently, the right to information law should be treated as a quasi-constitutional law, given that it implements a constitutional or international human right.

Where information has been supplied by a third party, better practice is to consult with that third party to see if he or she either agrees to disclosure – which makes everything very simple – or objects to disclosure. In the latter case, this helps the public authority to understand why the information may be confidential, which the third party will often be in the best position to know. At the same time, the decision on this should always rest with the public authority, among other things because, based on the same relationship with the information which provides the third party with knowledge about its sensitivity, they may also be over protective of its confidentiality.

Finally, it is often the case that only part of the information sought by an applicant is exempt. In that case, that part should be removed (severed) and the rest of the record or information provided.

## **8. Appeals**

The need for applicants to be able to lodge complaints or appeals with an independent administrative body has already been addressed above, under Institutional Framework. It is also

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<sup>16</sup> This does not apply in the same way to private interests, such as privacy or commercially sensitive information, which may last well beyond 20 years.

important to provide for appeals from the decision of that administrative body to the courts. Some right to information issues are very complex legally, especially in terms of exceptions, and it is important for these issues ultimately to be able to be brought before courts for resolution.

In addition to the points raised in relation to an independent administrative body under Institutional Framework, the following points are relevant to complaints:

- It should be free to lodge administrative complaints and simple enough to do this that the services of a lawyer are not needed.
- The grounds upon which a complaint may be based should be broad and include any failure to respect the legal rules relating to the processing of requests and not just refusals to provide information.
- The law should establish at least a minimum framework of procedures for the processing of complaints, including time limits for completing this, and the oversight body should adopt more detailed rules on this.

## **9. Sanctions and Protections**

It is important to provide for sanctions for wilful failures to apply the right to information law, or obstruction of access to information, failing which the law is unlikely to be observed faithfully. Put differently, there should be consequences for those who flout the law. While many laws provide for criminal sanctions in such cases, experience suggests that these are very unlikely to be applied and that a lighter system of administrative or disciplinary sanctions is more likely to be effective. Ideally, sanctions should also be available for public authorities which systematically fail to meet their obligations under the law, although Indicator 51, providing for this, is one of the RTI Rating indicators with the lowest overall rates of compliance.

Protections are also needed for those who disclose information pursuant to the law in good faith. In most countries, there are harsh sanctions for officials and often others who disclose information which is supposed to be kept confidential. Absent protection for good faith disclosures under the right to information law, officials will always be concerned about the risk of being held to be in breach of the secrecy rules, leading them to err on the side of caution when it comes to disclosing information and thereby undermining the achievement of the objectives of the right to information law. International standards also call for protection for those who release information about wrongdoing, as a sort of variant on the public interest override (i.e. on the theory that it is in the public interest for information about wrongdoing to be made public).

## **10. Promotional Measures**

Right to information laws need some support to achieve their full potential, including through measures which may be classified as promotional in nature. Ideally, a central body, whether the oversight body or the nodal body or potentially another body, should be given general

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responsibility for promoting proper implementation of the law. Absent this, there is unlikely to be strong leadership on this issue.

It is very important for actions to be undertaken to raise public awareness about the law, especially in the period shortly after it has been adopted. Put simply, individuals who are not aware of their right to make requests for information will not make such requests and the objectives of the law will remain unfulfilled. Ideally, every public authority will contribute to this effort, and especially those public authorities with broad outreach to the public, such as those working in the areas of education, health and policing. If every public office of just these three sectors had on display a poster about the right to information, it would not be long before almost everyone had heard about it. There are many other ways to conduct public outreach, including through social media and the education system.

A proper records management system should be put in place across the public sector. This is important not only to facilitate the right to information – a public authority cannot grant access to a record it cannot locate – but also to enhance the overall effectiveness of the authority – officials cannot do their jobs properly if they cannot locate the information they need to do this. This should, at a minimum, involve having a central body – whether the oversight body, the nodal body or the body which is responsible for the archives – set binding minimum standards in this area, monitor compliance with those standards and provide training to officials on how to meet the standards in practice.

It is crucially important that officials be provided with training on how to implement the right to information law. Information officials have the greatest need in this regard, given the centrality of their work to effective implementation, but ideally at least some training, perhaps just of a couple of hours' duration, should be provided to all officials. In some countries this is cast as a specific legal obligation for public authorities while in others it is addressed more at a policy or even just a programmatic level.

Finally, it is important to make available adequate reporting on what is being done to implement the right to information law. Better practice in this area is for each public authority to produce a brief report annually on what it has done in this regard, including statistical information about the processing of requests (how many it received, how it dealt with them, how long this took and so on), which might either be a section of their general annual report or a separate report. Then, a central body, often the oversight body, should produce a central report on what is being done overall in this regard, including aggregated statistics on requests.