

The Draft Freedom of Information (State of Selangor) Enactment

CHRI's Preliminary Analysis

A Summary

The Government of the State of Selangor, Malaysia has tabled a Freedom of Information (FOI) Bill in the Selangor Legislative Assembly on 14th July 2010. CHRI appreciates the positive provisions contained in draft "The Freedom of Information (State of Selangor) Enactment". Provisions guaranteeing access to information to every person and making it obligatory for departments to provide information that is not exempt are positive in nature. However, the Bill contains several provisions that are not in tune with international best practice standards of FOI legislation. CHRI has prepared a preliminary analysis of the Bill providing for recommendations for improvement. A summary of the analysis of the FOI Bill is given below.

- **Provide the legislation with overriding effect:** Access to information under the Bill is restricted by the continued operation of the Official Secrets Act, 1972 in parallel. This dilutes the overriding goal of the Bill which is to enhance disclosure of information for the public interest. **CHRI recommends that the Bill must contain a provision that will override all other laws to the extent of inconsistency.**
- **Enlarge the scope of the Bill to cover all organs of the State:** The Bill provides access to information to every government department but does not cover the legislature, the judiciary or private bodies providing public services such as telephony, supply of power and water, road transport for people's use. They must also be accountable to the people they serve and transparency is the first step towards ensuring this happens. **CHRI recommends enlarging the scope of the Bill to cover the legislature and the judiciary and private bodies performing public functions or utilizing public funds as being covered by the access law.**
- **Include a provision for proactive disclosure:** The Bill currently lacks a fundamental requirement and feature of FOI best practices namely, departments being required to give out information to people *suo motu*. There must be no need for making formal requests for basic information about the structure, organization and functioning of departments. This will reduce the number of formal requests that people may file to obtain information. **CHRI recommends inclusion of a clause on proactive disclosure.**
- **Ensure that reasons are not asked from applicants for asking information:** The Bill makes it compulsory for the applicant to mention the "reason and purpose" behind seeking information. This provision can lead to harassment of requesters. Further, if giving reasons becomes compulsory then the law must contain the range of reasons that are considered acceptable in order to prevent the abuse of the power to reject a request for invalid reasons. Listing all possible valid reasons is a near impossible exercise as is the exercise of verification. **CHRI recommends deleting the requirement of "reason and purpose" from the applicant while making a request for information.**
- **Reduce the time limit for response by department:** The Bill stipulates a time period of 30 days for a response from the department receiving the information request and 7 days for cases related to life or liberty of a person. This time period is too liberal considering that the law will apply to only the

State of Selangor. **CHRI recommends reducing the time limit to 21 days for ordinary cases and 2 days for information relating to the life or liberty of a person.**

- **Include provisions for transfer:** According to the Bill, information will be refused if it does not exist or is not under the control of the department receiving the request. International best practice dictates that public bodies be imposed with the duty of transferring applications to the department concerned if the information is not held by them as public officials have access to the internal workings of government. **CHRI recommends inclusion of the provision for transfer of applications in the Bill.**
- **Include a separate section for 'Exemptions':** The exemptions to disclosure are listed in the Interpretation clause itself indicating that such categories of information are not even 'information' according to the Bill. This contradicts the commonsensical understanding of the term 'information' which is data, facts, figures, opinions and advice. **CHRI recommends that the list of exemptions be moved out of the Interpretations clause and be added as a separate provision in the body of the Bill.**
- **Include provisions for severability:** All information contained in a file marked 'secret' or 'confidential' need not be sensitive in nature. FOI best practice standards provide for severing sensitive information from non-sensitive information and providing the redacted version to the applicant wherever feasible. **CHRI recommends inclusion of the provision for severability in the Bill.**
- **Include a provision for overriding the exemptions in the public interest:** The Bill makes the exempt information list unchallengeable and perpetual. It is against international best practice to provide blanket exemption to any category of information for all times. There can be instances when despite the information being sensitive in nature public interest in disclosure may outweigh the need for secrecy. **CHRI recommends the inclusion of a provision for disclosing even exempt information if the larger public interest outweighs the harm likely to be caused by disclosure.**
- **Provide for an internal review mechanism:** The Bill does not contain a review mechanism that is internal to the bodies covered by this Bill. **CHRI recommends an internal review mechanism which allows the applicant to seek a review of the decision made by the Information officer within a specific time limit.**
- **Replace the Appeal Board with an autonomous Selangor Information Commission:** The term "Appeal Board" restricts it to the role of only an adjudicating body whereas Information Commissions over the world also champion transparency by providing guidance on implementation and monitoring compliance in departments. **CHRI recommends replacing the "Appeal Board" with "Selangor Information Commission" providing it with financial and operational autonomy and including all the above mentioned provisions in the Bill.**
- **Delete the provision allowing Information Officers to ignore vexatious and unreasonable requests:** The Bill allows Information Officers to ignore vexatious, unreasonable or already provided for information requests. This provision is liable to misuse in the absence of a clear understanding of what constitutes a 'vexatious' or 'unreasonable' request. Furthermore what may appear to be serious and public spirited to an applicant may be termed as frivolous information request by unscrupulous officials who stand to gain from continued secrecy about their actions. **CHRI recommends deleting this provision.**
