

Draft Law on the Right to Information

PREAMBLE

The Constitution of the Republic, in Article 48, paragraph 1, enshrines the freedom of expression and the freedom of the press, as well as the right to information, which, in accordance with paragraph 4 of the same constitutional article, should be regulated by law.

Under paragraph 2 of the same article, the exercise of the right to information may not be limited by censorship.

Furthermore, under the provisions of paragraph 3 of this same article, freedom of the press includes access to sources of information.

In these terms, and under the provisions of Article 179, paragraph 1, of the Constitution, the Assembly of the Republic hereby decrees:

CHAPTER I Right to Information

Article 1 Objectives

The objectives of the present law are:

a) to guarantee exercise of the constitutionally enshrined right to information, which will contribute to strengthening democracy, improving governance, increasing public participation and decentralisation, guarantee integrated development, promote transparency and accountability, contribute to the fight against corruption, support media freedom, and guarantee the provision of equitable, efficient and high quality services to satisfy the basic needs and comply with the socio-economic rights of citizens;

b) create mechanisms or procedures necessary for the effective exercise of the right to information so as to guarantee access to data or records in the possession of the public authorities and of private bodies where the information is necessary for the exercise and/or protection of a right in an efficient, non-burdensome and reasonable way, based on principles of maximum exposure and minimum exceptions;

c) promote the transparency, accountability and effective governance of all public authorities and private bodies through the education of all citizens to know their rights under this law, to better exercise them, and understand the role and functioning of the public authorities; and to participate effectively in the taking of decisions by the public authorities that affect their rights.

Article 2

Right to Information

1. Under the terms of the present law, all citizens have the right of access to information held by or under the control of any public authority; or body that exercises powers of this nature, or that provide any services based on law or legal dealings where the disclosure of information is in the public interest.

2. The right of access to information does not need special authorisation, except in those cases especially envisaged in law.

Article 3 Publication

All bodies of the public administration are obliged to divulge to the public the following data and information:

- a) The data of their organic structure, purpose and attributes;
- b) The powers arising from their attributes;
- c) The procedures followed in the decision making process, including channels of supervision and accountability;
- c) The norms, regulations, instructions, manuals and records maintained or under their control or used by their workers in the pursuance of their duties;
- d) The details of any arrangement that may exist for consultations with or in representation of members of the public with regard to policy formulation or later implementation;
- e) The address of its head office, or representation of its head office, delegation or representation;
- f) Its respective budget, including data on all the plans, proposed expenditure, and monthly reports on disbursements made;
- g) Information related with the assets of its respective office-holders;
- h) The design and execution of programmes of subsidies, including the sums received, criteria for access to the funds, and data on the beneficiaries of such programmes;
- i) All concessions, licences or authorisations, with their beneficiaries;
- j) Detailed information on all contracts signed;
- k) Public services, goods acquired or hired, or services contracted;
- l) The reports that each public authority should produce in accordance with the law;
- m) The results of any audits, corresponding to the explanations;
- n) All the relevant facts related with important policies and decisions of public interest;

o) The data displayed on installations available for citizens where they may obtain information, including the names, titles and data on contacts of information officers and appeal authorities.

2. The information to which this article refers shall be made public in such a way as to facilitate its use and understanding by citizens, with the guarantee of quality, veracity and reliability.

3. All bodies of the Public Administration shall make permanent efforts to provide more information pro-actively to the public at regular intervals, through the various means of communication, including the Internet, such that the public makes minimum resort to use of the Law to obtain information.

4. All information shall be divulged in the local language, taking into consideration cost-efficiency and the most efficient method of communication in each place, including through notices at public administration counters, newspapers, public announcements, radio broadcasting, the Internet, the office inspectorate of any public authority, or any others.

Article 4

Scope

1. The right of access to information includes the right to:

- a) Consult, free of charge, work, documents and records,
- b) Take notes, extracts or certified copies of documents or records;
- c) Obtain copies or certificates of documents;
- d) Obtain information in the form of diskettes, floppies, cassettes video-cassettes or any electronic means or in printed form from whatever place such information is kept on computer or in any other form.

2. Information means any material in any form, including records, documents, memoranda, annotations, from archives, e-mails, opinions, advice, drafts, press statements, circulars, orders, contracts, reports, documents, examples, models, material data existing in any electronic form, and information related with any private body that the public authority may have access to based on any other law currently in force;

3: Body of the Public Administration means any authority or body of an institution, autonomous or not, legally created or constituted by or based on the Constitution or by law, including bodies of the following sectors:

- a) Executive, Legislative and Judicial;
- b) any body belonging to, subordinate to, supervised by, or substantially funded, directly or indirectly, by funds from the state Budget.

Article 5 Exceptions

1. National Security: A body may refuse to divulge information if it may cause serious damage to national defence or security and to national economic interests, namely:

- a) When it may cause serious damage to the Government's capacity to manage the national economy; or
- b) In defence of the legitimate commercial or financial interest of a public body, unless the information requested has a serious bearing on public safety, public health, or environmental risk or concerns a violation of human rights, under way or anticipated.

2. Strengthening of the law: A body may refuse to disclose any information when it may cause serious damage:

- a) To preventing or combating crime;
- b) To the arrest or pursuit of the agents of crimes;
- c) To the administration of justice;
- d) To the exercise of a right;
- e) To the evaluation by a public body of criminal or civil proceedings or regulatory action referring to any law.

3. Premature disclosure of government policy: A body may refuse to disclose information in the event that by doing so it might seriously frustrate the success of a policy due to the premature disclosure of that policy.

4. Commercial and Confidential Information: A body may refuse to disclose information if:

- a) It has been obtained from third parties and its disclosure constitutes a breach of confidence;
- b) It has been obtained in confidence from third parties and contains a commercial secret;
- c) Its disclosure would cause serious losses to the commercial or financial interests of the third party;
- d) Unless the information requested concerns a serious threat to public safety, public health, environmental risk or a violation of human rights, under way or anticipated.

5. Personal Privacy: A body may refuse to disclose information when it involves violation of the rights of a third person except when:

- a) The person effected is or has been a public official and the information is related with his respective duties;
- b) The holder of the right has consented to the disclosure.

6. Access to information may not be denied by applying the provisions contained in the law on state secrets or any other laws in

force, and even in the exceptions envisaged in this present law, the public interest shall override the interests guarded by these legal provisions.

CHAPTER II

Exercise of the right

Article 6

Request

1. Any person interested in obtaining information under the terms of this present law shall formulate a request by one of the means legally permitted to exercise rights in any official or local language of Mozambique. The requests shall not need a special form, but shall include:

- a) data on the identity and address of the petitioner;
- b) sufficient information to identify the information requested and the process necessary to access it.

2. A request addressed to a private body shall identify the right that the petitioner wishes to exercise or protect, and explain the need of the information requested for this purpose.

3. The body addressed shall confirm reception of the request, indicating the date of reception and the name of the official who received it.

Article 7
Destination of the request

1. The request shall be delivered to the head office or representation of the body to which it is addressed.
2. If it is received by a separate body, the latter shall be charged with remitting it to the body addressed, and shall inform the petitioner of this.

Article 8
Duty to support

1. The agents of the Public Administration shall always provide the necessary support to the interested parties for the correct formulation of the respective requests.
2. Any citizen, who due to illiteracy or incapacity, is unable to make a request for access to the records of a public body, may make the request orally, and the Information Officer of that body shall write down this oral request on the prescribed form, and give a copy of this to the petitioner.
3. If a petitioner has made a request for access that is not in accordance with the requirements of the Law, the Information Officer in question may not reject the request for lack of conformity, unless he has informed the petitioner of the rejection of the request, and indicated on the notice:
 - a) the reasons for rejection, and the information officer, or other official whom he indicates, shall assist the petitioner to formulate the request in an acceptable way;

- b) given the petitioner a reasonable opportunity to supply the mentioned assistance;
- c) given the petitioner a reasonable opportunity to confirm the request, or to alter it so as to make it conform to the law.

Article 9

Time limits

1. The reply to a request shall be given speedily, and may not exceed:
 - a) 10 days as from the date of reception of the request; or
 - b) 20 days, in the case of the transfer of the request to another body, under the terms envisaged in Article 7, paragraph 2, of this present law.
2. When the request for information is intended to safeguard or protect the life, the physical integrity or the freedom of any person, the reply shall be given within 48 hours.

Article 10

Fees

1. Satisfying a request for information under this present law is exempt from fees.
2. However, payment of a fee may be required in exceptional cases, as long as this does not exceed the real cost of providing the information.
3. Without prejudice to the provision of paragraph 1 of this article, the information officer or appeal authority shall cancel the fee or part thereof when the respective payment is beyond the means of the petitioner or the person in whose name the request is made;

Article 11

When the body petitioned is unable to satisfy the request formulated within the legally fixed time limit, it shall immediately inform the petitioner of this fact, and at the same time reimburse the amount of any fee that may have been paid.

Article 12

Authorisation of the request

Once the request for access to information has been granted, the petitioner shall be entitled to a notice of confirmation, given in writing, indicating:

- a) the access fee, if there is one;
- b) the form of access granted; and
- c) any other condition for the exercise of the right.

Article 13

Partial disclosure

If the request for access to information is rejected, because the information is reserved, or its publication is prohibited, access may be permitted to the part not affected by the prohibition, as long as this part may be separated from the other without danger of access to this. The petitioner shall be duly informed of the grounds for the partial rejection of the requests and of any other conditions for access.

Article 14

Rejection of a request

In the case of partial or total refusal, the information officer shall take a position in writing towards the request, informing the petitioner of the reasons for the rejection, indicating to him the applicable legal provisions, data or other material facts that he took as a base; the name and the post of the person competent for the decision; the rights of the petitioner in regard of reviewing the decision, including the contact data for the appeal authority, the deadlines and procedures for challenging the decision.

CHAPTER III

Complaints and appeals

Article 15

Refusal

The rejection of a request for exercising the right to information allows a challenge by way of complaint and appeal, in terms of the law.

Article 16

Challenge

1. The complaint shall be addressed to the person who decided to reject the request.
2. For its part, the appeal is addressed to the hierarchical superior of the person who took the decision.
3. An appeal may also be made to the Ombudsman, within five days, counted from the reception of the definitive decision of the body to which the information request was addressed.

Article 17
Litigious appeal

Should an unjustified refusal persist, even with the intervention of the Ombudsman, the interested party may appeal to the Administrative Tribunal, observing due process.

CHAPTER IV
Final and transitional provisions

Article 18
Archives

1. All bodies of the Public Administration and the other bodies covered by the duty of information, under the terms envisaged in the present law, shall keep all their records duly catalogued and indexed in a way and form that facilitates the right to information
2. The bodies mentioned in this article shall, within a reasonable time, have all their records appropriately computerised, and linked to a network throughout the country by various systems so that access to such records is facilitated.

Article 19
Protection of staff

Nobody may be held responsible in criminal or civil law for any information provided in good faith in the exercise of their functions or compliance with their duty, in the terms envisaged in this law.

Article 20
Protection of sources

1. Nobody shall be subjected to legal, administrative or employment sanctions for disclosing information on bad practices, or that may constitute a serious threat to health, safety or the environment, as long as they have acted in good faith, and in the belief that the information was substantially true and showed evidence of bad practices or a serious threat to health, safety or the environment.

2. For purposes of paragraph 1 of this article, bad practices include the commission of a criminal offence, failure to comply with a legal obligation, failure of justice, corruption, dishonesty or abuse of power.

Article 21
Repeal

All legislation contrary to the provisions of the current law is hereby automatically repealed.

Article 22
Entry into force

This law shall take effect immediately.