



OPEN SOCIETY
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Briefing regarding the elaboration of a Council of Europe treaty on access to official documents

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ARTICLE 19 · 6-8 Amwell Street · London EC1R 1UQ · United Kingdom
Tel +44 20 7278 9292 · Fax +44 20 7278 7660 · info@article19.org · <http://www.article19.org>

Open Society Justice Initiative · 400 W 59th Street · New York, New York 10019 · USA
Tel: + 1 212 548 0384 · info@justiceinitiative.org · www.justiceinitiative.org

Access Info Europe · Calle Príncipe de Anglona 5 · 28005 Madrid · Spain
Tel: + 34 91 354 6308 · info@access-info.org · www.access-info.org

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Through this Briefing, ARTICLE 19 and the Open Society Justice Initiative, as organisations with observer status at the Council of Europe's Group of Specialists on access to official documents (DH-S-AC), together with Access Info Europe, seek to make a constructive contribution to the process of drafting a binding treaty in the area of access to information.

The Briefing consists of two parts. Part 1 is a general commentary containing our observations and recommendations on the direction of the drafting process and the last working document, compiled after the 13th meeting (31 May – 2 June 2006). Part 2 consists of a series comparative notes, which detail how the access to information laws of 26 Council of Europe Member States tackle two key issues: the information covered by the national access laws and the public bodies covered by the these law.

PART 1: COMMENTARY ON THE WORKING DOCUMENT

Preliminary considerations: Rationale of the treaty drafting process

The Committee of Ministers' Recommendation (2002)2 to Member States on Access to Official Documents has received widespread recognition as an authoritative enunciation of the key international principles concerning the right to access to information. It has been endorsed in academic and advocacy circles, while fairly consistently serving as an important benchmark for those Member States which have adopted or amended access to information legislation since 2002.

It is therefore welcome that there have been few significant challenges to the 'acquis' of the Recommendation in the Group of Specialists, and that there is an apparent consensus that R(2002)2 should serve as the skeleton of the prospective treaty.

At the same time, there has been a certain reluctance to think beyond R(2002)2 towards a stronger or more precisely elaborated guarantee of the right. In our view, these are important reasons for promulgating a treaty in this area, particularly in a context where the great majority of Council of Europe Member States have already adopted access to information laws. The purpose of the treaty should be to encourage an improvement in those laws rather than merely to provide an instrument to which most Member States can comfortably sign on as a demonstration of political support for this right. In addition, the treaty should establish a strong monitoring mechanism, to help ensure that ratification of the treaty will lead to genuinely improved respect for the right to information in Member States. A more progressive treaty with an effective enforcement mechanism may take longer to garner the number of ratifications necessary for its entry into force, but will ultimately do more to achieve the goals which justify the treaty-drafting enterprise in the first place.

It should be borne in mind, furthermore, that the treaty is likely to displace R(2002)2 as the most important CoE benchmark for access to information laws, even amongst those Member States which opt not to ratify it. Should the treaty fall below the standard of R(2002)2, it might actually legitimise legislation which would not pass muster under that Recommendation.

We accordingly urge the Group of Specialists to consider a more robust protection of the right of access to information, as set out below.

Access to official documents versus access to information

One of the major differences in the laws of the member states of the Council of Europe which has been identified by the Group of Specialists is the distinction between ‘access to documents’ and ‘access to information’ regimes. Considerable discussion has been devoted to the implications of this distinction for the drafting of the treaty.

Experience from the various Member States and beyond suggests that both an ‘information’-based system and a ‘documents’-based system can have significant pitfalls, which the treaty should seek to prevent. We consider the best solution to be a balance between the two, whereby the individual has a right to request either documents or information, and the public authority is required to provide such information as can be extracted from existing documents.

Pitfalls

Access to information not yet in existence

One objection raised against an information-based regime is the additional burden it may impose on public authorities, compared to a documents-based regime. This can prove a problem in particular if the regime requires the production of new information to satisfy a request. We agree, for purposes of the present exercise, with the view that public authorities should not be obliged to generate information they do not hold, when the answer to a request cannot be extracted from existing documents. The purpose of the access to information laws adopted in modern democracies is not to promote the production of new information, but to enable individuals to inspect the information that is held and, where necessary, to publicise unwarranted gaps in this information.

Access limited to existing documents

On the other hand, while public authorities may not be required to generate *new information*, they should in principle be required to extract information from documents they hold, where this can be done reasonably easily, even if this effectively requires them to produce a *new document*, if this is necessary for the satisfaction of a request. The usefulness of an access regime would be severely undermined if it were limited to insight into, or copies of, existing documents. Many requests on topics of great public interest relate to information that is not recorded in one or a small number of documents, but can nevertheless be derived with relative ease from existing files. Public authorities should, for instance, be under an obligation to answer questions about the types of documents they hold. Similarly, a requester might ask how much funding was invested in new computer equipment over a 5 year-period. It should not be possible to refuse a request of this kind on the basis that it requires adding up sums from five different documents or performing a database search, and thereby creating a ‘new’ document. Article 6(5) of the current working document could however be taken to justify such a refusal, in stating that “the public authority is not under a duty to comply with the request if it is a document which cannot be identified.”

Access to information to the exclusion of underlying documents

Conversely, the treaty should not permit States Parties to maintain an ‘access to information’ regime which operates to the exclusion of access to actual documents. Requesters may have good reasons to wish to inspect original documents (or copies thereof) rather than receive a new document containing an overview of the contents of the original. The dangers of an overly strict interpretation along these lines were underlined recently at the international level, when the UNDP Public Information and Documentation Oversight Panel refused to grant access to certain documents on the basis that a 300-word summary of their contents had satisfied the request.¹

A possible solution

To summarise the above, individuals should enjoy not just a right to request specific *documents*, but also to request *information*. In the latter case, it is incumbent on the public authority to identify the documents in which the information in question is recorded.

An authority may refuse to comply with a request if the information in question cannot be derived from existing documents. However, a refusal should not be permitted on the grounds that complying with the request would require the creation of a new document. Moreover, it should not be permitted to satisfy a request for a particular document by providing information about its contents in lieu of the original or a copy thereof.

We are concerned that, as currently worded, Article 3 of the working document defines only a right of “access, on request, to official documents”. Article 6(5) further affirms this position by stating that public authorities must assist applicants “to identify the requested official document”.

Access to documents is a significantly narrower right than access to information; it is an inferior, not an alternative approach. As the comparative study in Part 2 of this Briefing shows, this point is recognised by a significant proportion of Council of Europe Member States. In 21 of the 26 countries surveyed, individuals enjoy a right of access to information. Accordingly, if the treaty is to reflect the best practice of Member States, it should depart from the current focus on access to documents and embrace the wider notion of information.

Scope of the working document

The scope of an access to information regime has three dimensions: (i) who has the right to make a request; (ii) who has an obligation to provide access; (iii) what type of material is covered by the regime.

Requesters

Article 3 states simply that States Parties shall guarantee the right of “everyone” to have access to official documents, without discrimination on any ground. This provision seems suitably broad and should enable even foreign nationals not resident in the country in question

¹ See <http://www.article19.org/pdfs/press/undp-disclosure-policy.pdf>.

to avail themselves of the right. Consideration could be given to making this point explicit, since non-nationals and non-residents are the groups most at risk of being excluded from domestic access regimes.

Bodies subject to a duty to provide access

Legislative bodies and judicial authorities

There is a consensus in the Group of Experts that the bodies subject to a duty of access should at a minimum include “government and administration at the national, regional or local level”. This wording is consistent with the current law and practice of Council of Europe Member States.

The main point of debate under this heading is whether the duty of access should be extended to legislative bodies and judicial authorities. The present working document would require States Parties to decide, “bearing in mind the public interest and, in the light of their domestic law and practice” whether such bodies and authorities should be covered by the domestic access legislation (Article 2(1)). Insofar as legislative bodies and judicial authorities perform “administrative functions as provided for by national law”, they would be subject to the mandatory part of the treaty (Article 1(ii)).

We see no principled reason for treating legislative bodies or judicial authorities any differently under an access to information regime than executive bodies. Legislative bodies and judicial authorities perform public functions and are financed with public money; the rationales that call for transparency of the executive apply with equal force to the legislature and judiciary. Maximum transparency in these institutions will enable citizens to form an opinion on their functioning, foster efficiency, reduce corruption and ultimately increase public confidence in them.

It seems to us that opposition to applying an access to information regime to legislative bodies and judicial authorities stems from three separate ideas. The first is that existing mechanisms, such as the right to a public trial or the right to attend meetings of legislative bodies, adequately ensure transparency of the activities of the legislative and judicial branches of government. The second is an expectation that many of the documents held by these bodies will be covered by a particular exception justifying their non-disclosure. This applies in particular to judicial authorities in the area of criminal law. The third is the belief that an overarching access to information regime for all three branches of government would contradict the principle of separation of powers.

It is true that many Council of Europe Member States, especially those in the western half of the continent, have a certain tradition of openness concerning the conduct of legislative and legal proceedings. In the case of judicial authorities, however, it is generally only the courts which carry out their business in public, and not other bodies which may fall within the concept of ‘judicial authorities’. Furthermore, openness in the judiciary is limited to what is necessary to ensure the fairness of trials and does not take into account wider considerations of the public interest. In the case of legislative bodies, meetings and their records will usually be open to the public, but this is not always true of the documents and reports on which legislators base their decisions.

In any case, the fact that a considerable degree of openness exists already in the legislative and judicial branches of the governments of Member States pleads in favour of, rather than against, extending the scope of the treaty to these branches. Ratification of such a treaty will not require a major overhaul of existing procedures for most Member States. Nevertheless, openness is likely to increase further as States Parties are forced to examine the adequacy of their arrangements and make provisions to deal with individual requests for information which is not already publicly available.

The second possible objection, namely that judicial authorities should be exempt because they hold mainly sensitive information, contradicts the very idea of a right of access to information, which implies that information should be open unless a compelling public or private interest demands otherwise. The fact that a document is held by a particular type of institution is irrelevant to whether its disclosure affects such an interest. Just because some institutions hold more sensitive information than others does not mean that they should categorically be removed from the ambit of the law; they still hold some information that is not exempt. The deciding factor should always be whether disclosing a particular document will lead to an overriding harm to another important interest, not what type of body holds the document. Any other rule is bound to lead to information being withheld against the greater public good.

The third objection, regarding the separation of powers, need not be a concern in the drafting of the treaty, since it really goes to the question of how the treaty obligations are implemented. States Parties can do this in a manner which accords with their own particular rules on the separation of powers. There is nothing to prevent States Parties from adopting separate legislation or regulations for each branch of government, so long as each separate regime is consistent with the requirements of the treaty.

Accordingly, we urge the Group of Specialists to consider a wider provision which requires States Parties to bring any public body, whether executive, legislative or judicial, under the umbrella of its access to information legislation. This would be in keeping with the existing practice of a large number of Member States, as evidenced by the survey in Part II below. The distinction between ‘administrative’ and other functions is hard to apply in the real world, particularly since it relies on the questionable assumption that such a distinction is drawn in national law. More importantly, that distinction fails to recognise that access to information is not just a principle of good administration: it is a fundamental right of every individual to scrutinise how public authorities are using the powers entrusted to them, whether they be administrative, legislative or judicial.

Natural or legal persons

Article 1(1)(iii) of the working document provides that natural or legal persons are subject to a duty to provide access insofar as they “perform public functions or exercise administrative authority as provided for by national law.”

As the survey in Part 2 shows, it is consistent with the practice of most Member States to impose such an obligation when a private person is in fact acting in a public capacity. We have two observations. The first is that the phrase “as provided for by national law” rests on the questionable assumption that there is always an explicit legal basis for the transfer of public responsibilities to private bodies. Private firms may however be contracted to perform

public responsibilities through an ordinary agreement rather than a law to this effect. We recommend simply deleting this phrase.

Second, in a number of Member States, a duty to provide access is also imposed on private bodies substantially financed by public funds. Given the increasing tendency of modern governments to achieve policy goals through grants to private institutions, it seems important that the public should be given an opportunity to verify that these grants are being used efficiently to promote the public interest.

An amended version of Article 1(1) might read as follows:

“public authorities” means:

- (i.) government and administration at national, regional or local level;
- (ii.) legislative bodies and judicial authorities at national, regional or local level;
- (iii.) natural or legal persons insofar as they perform public functions, exercise administrative authority or are substantially financed by public funds;
- (iv.) organs of international organisations and their sub-departments.

Material covered by the treaty

The definition of ‘information’ or ‘documents’ in any access regime should be as broad as possible, to avoid data being withheld on the basis that it is not covered by the regime, rather than because a specific, recognised exception applies.

The definition of “official documents” given in Article 1(2) of the working document excludes “documents under preparation”. Presumably the purpose of excluding such documents is to prevent the notepad being pulled away from under the civil servant’s pen, so to speak. This is a legitimate concern, but it should not be dealt with through the definition of what constitutes an official document, but rather through the regime of exceptions. Article 4(1)(x) already provides for the withholding of official documents “during/concerning the internal preparation/examination of a matter.” The danger of excluding unfinished documents at the definitional level is, in the first place, that the public interest override will not apply so that these documents will be subject to automatic withholding even where there is a very strong public interest in their disclosure, as in the case of draft policies or decisions of public bodies. Often, there is a strong case that such documents should be available for public discussion before they have been finalised. Second, this definition may be abused, for example by claiming that documents which are always under preparation, such as databases, fall outside the access regime.

Dealing with unfinished documents under the regime of exceptions ensures that the public authority seeking to withhold the document in question must weigh whether or not disclosure would cause actual harm, or there is an overriding public interest in disclosure (see Article 4(2)). Moreover, any refusal must be in writing and state reasons (Article 6(7)), and can be appealed (Article 9(1)).

Exceptions

Principle IV of the 2002 Recommendation contains a list of 10 compelling private and public interests whose protection may justify a refusal to disclose information. These have largely been repeated in Article 4 of the working document. Pursuant to Principles IV(2) of the Recommendation, such a refusal is permissible only if disclosure would or would be likely actually to harm one of these interests, and there is no overriding public interest in disclosure. The broad language in which the 10 exceptions are framed could be problematic, but this is somewhat rectified by the instruction to Member States to define limitations based on these headings “precisely in law”, and by the harm test and public interest override.

Given that the working document is a draft treaty, and in accordance with our comment at the outset that an important purpose of such a treaty-drafting exercise is to elaborate the applicable minimum standards in greater detail, we believe a number of items would benefit from more precise wording. Moreover, we are troubled by the proposal to insert an additional item (xii) concerning communications between governments and royal families.

Exception v: Commercial and other Economic Interests

Most access laws of Member States recognise the possibility of withholding information in order to protect the trade and commercial secrets of private or public enterprises. Such an exception is clearly justified insofar as it aims to prevent unfair competitive advantages or disadvantages arising from access requests. In a number of Member States, however, commercial exceptions have been abused to withhold information which exposed irregularities in public procurement processes or other forms of wrongdoing. To prevent this from happening, we suggest formulating the exception in terms of the specific *harm* it seeks to avoid, namely unfair changes to a competitive position, as well as adding a safeguard that basic information relating to public procurement will be open.

A possible wording would be: “the legitimate competitive interests of a public or private entity, insofar as this is compatible with the need for public scrutiny of procurement processes.”

Exception vi: Equality of Parties

Exception (vi) reads: “the equality of parties concerning court proceedings [and the smooth functioning of Justice]”. This exception could be stated much more simply as “the fair and effective administration of justice”. This wording reflects common usage in common law jurisdictions and removes the need for the proposed item (xi), concerning disciplinary procedures. Disciplinary procedures are encompassed within the term ‘justice’. Furthermore, we doubt whether equality of the parties is the right idea here. In criminal cases, for example, the parties are not deemed equal and the accused benefits from special rights and protections.

Exception viii: Inspection, Control and Supervision

The expression “inspection, control and supervision” is very unclear and liable to be misunderstood. Our own understanding is that item (viii) is intended to guarantee the ability of authorities to maintain an element of surprise when verifying compliance with legal requirements, for example through audits, breathalyser tests or the collection of food samples, or to protect the integrity of tests and examinations.

An effort should be made to find a clearer wording, such as “the ability of public authorities to verify compliance with legal requirements through inspections or controls, and to conduct tests or examinations”.

Exception x: Internal Deliberations

Exception (x) reads: “the confidentiality of deliberations within or between public authorities during [/ concerning] the internal preparation [/ examination] of a matter.”

It is clearly important for the effectiveness of the work of public authorities that they have “space to think”, but it is equally important that the public is involved in decision-making processes whenever possible. Moreover, once a decision has been finalised, the public should in principle be afforded an opportunity to know how it was arrived at. The current wording does not strike an adequate balance between the different interests at stake.

There are basically two types of internal deliberations-related harm which might justify a refusal to disclose information: (1) serious prejudice to the current or future formulation of policy or decisions, including the free and frank provision of advice; and (2) frustration of the success of the policy or decision in question through premature disclosure. Formulating the exception in terms of these interests would narrow the risk of excessive secrecy. As currently worded, the exception covers any type of information used in a decision-making process, without reference to any anticipated harm. Indeed, by using the term confidentiality in the definition of what should be considered to be exempt, the phrase is circular, so that it accepts as confidential anything deemed by officials to be confidential.

As a further safeguard of meaningful public participation in decision-making, the first leg of the exception should apply only to (parts of) documents which disclose the opinions of the civil servants preparing the decision, not to opinions of third parties or factual documents. This is the case, for example, in the domestic laws of the UK and Germany. Upon finalisation of the decision, all documents relating to its preparation should be opened, except where doing so would have a chilling effect on future policy development or decision-making, as always, subject to any overriding public interest.

Exception xi: Disciplinary procedures

As noted above, exception (xi) can easily be encompassed within an amended version of exception (vi).

Exception xii: Royal communications

We strongly oppose inclusion of this exception. In our view, it flies in the face of the purpose of the treaty and has the effect of preserving relics from a past era of secretive and unaccountable government. While we recognise the concern that a small number of countries will have to carefully review the compatibility of the treaty with their constitution if no exception for royal communications is recognised, we do not believe this justifies including an essentially counter-democratic clause. In fact, a debate on ratification of the treaty would present a good opportunity for monarchies to re-examine whether it is still appropriate in the 21st century for a royal family to be able to communicate with the government without any form of public scrutiny.

Data marked as secret

It has provisionally been agreed within the Group of Specialists that the list of exceptions should be exhaustive.² In this respect, a problem is presented by the law or practice of a number of Member States, which permit the non-disclosure of documents on the basis that they have been marked as secret pursuant to a classification or secrecy law, or administrative rule.

It seems clear that it should not be within the power of a civil servant to block access to a document simply on the grounds, without more, that he or she has attached a particular label to it. Even if such a label is required to be in conformity with the rules in the classification law, this approach is unsuitable as it is bound to lead to mistakes or deliberate mislabelling to prevent embarrassing disclosures. It also effectively sets up a parallel regime of exceptions – those provided for in the classification law as mandating confidential labelling – which is unnecessary and unsatisfactory, being bound to generate at least certain inconsistencies with the access to information law. Furthermore, classification cannot take into account the extent to which harm will be caused in future by disclosure or the public interest pertaining at the time of a potential future request for the information.

We strongly support the view that the exceptions in the treaty should be comprehensive. The draft treaty under consideration does not purport to tell States Parties how they should put its provisions into effect in domestic law. For purposes of this question, therefore, it is enough for the treaty to provide for an exception to disclosure whenever an overriding public or private interest calls for this. It will then be up to States Parties to bring their domestic law – whether in the form of an access to information law, classification law, or secrecy law – into line with the treaty. However, to make it quite clear that access rules should override classification systems, we recommend inserting an additional provision, stating explicitly that access may only be refused on the basis of a rule conforming to the exceptions set out in the treaty, irrespective of whether the documents concerned have been marked as restricted according to any domestic procedure.

The three options for Article 5(2)

The wording chosen here should reflect the possibility of partial access, so that only those parts of a document or those pieces of information to which an exception applies may be withheld. This idea is best reflected by option 3. Option 2 does state that access to an official document may be refused in part, but it does not make it explicitly clear that the restricted part should be the one to which an exception applies.

Possible wording for this is as follows:

Access to information may be refused if its disclosure would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure. Where the harm in question relates to only part of the information contained in a requested document, this information shall be redacted or obscured and the remainder of the document shall be released.

² Abridged Report of the 12th Meeting, 18-20 January 2006, DH-S-AC(2006)004, p. 14.

Summary of recommendations

In general

- An effort should be made to draft a treaty which provides more robust and detailed safeguards of the right to access information than the existing Recommendation (2002)2.

On access to information versus access to documents

- In keeping with the practice of a substantial majority of Member States, the treaty should guarantee a right of access to *information* as well as to documents.
- Public authorities need not be under an obligation to create new information to satisfy a request, but should be required to provide information which can reasonably be extracted from existing documents, even if this requires the creation of a new document.
- Where a request is for a particular document, the request should be satisfied by provision of that document and not by information concerning its contents.

On the scope of the treaty

- Consideration should be given to adding an explicit statement to the treaty, to the effect that the right to access is enjoyed by everyone without discrimination on the basis of *nationality or residence*.
- The treaty should not distinguish between the administrative and non-administrative functions of public bodies, including legislative bodies and judicial authorities, as there is no principled basis for such distinction and it is difficult to apply in practice.
- Consistently with the practice of a large number of Member States, legislative bodies and judicial authorities should be made subject to the treaty on a par with executive bodies.
- Natural or legal persons performing public functions or exercising administrative authority should be subject to the treaty, regardless of whether those functions or authorities are provided for by national law.
- Natural or legal persons should also be subject to the treaty when substantially financed by public funds.
- “Preparatory documents” should not be excluded from the scope of the treaty at the definitional level. The need to ensure effective policy preparation can be dealt with through an exception to that effect.

On exceptions

- Exception (v) should be formulated in terms of the specific *harm* it seeks to avoid, namely unfair changes to a competitive position. A safeguard should be added, ensuring that basic information relating to public procurement will be open.
- Exception (vi) can be stated simply as “the fair and effective administration of justice”. This removes the need for an additional exception (xi).

- Exception (viii) should be worded more clearly, for example as “the ability of public authorities to verify compliance with legal requirements through inspections or controls, and to conduct tests or examinations”.
- Exception (x) should be narrowed to take account of the need for public participation in decision-making. The exception should prevent only (1) serious prejudice to the current or future formulation of policy or decisions, including the free and frank provision of advice; and (2) frustration of the success of the policy or decision in question through premature disclosure. Moreover, it should not extend to third party opinions or documents and information which form the factual basis for a decision.
- Exception (xii) protecting royal communications should be deleted.
- An additional provision should be inserted, stating explicitly that access may only be refused on the basis of a rule conforming to the exceptions set out in the treaty, irrespective of whether the documents concerned have been marked as restricted according to any domestic procedure.
- Of the three options for Article 5(2), the last should be used, or the alternative formulation set out above.

PART 2: COMPARATIVE OVERVIEW OF MEMBER STATE LAWS

In order to have a more complete picture of the law and practice in the Member States of the Council of Europe, we conducted a survey of access to information laws (ATI laws) in 26 Member States. Contributing experts were lawyers, academics and practitioners working with members of the Freedom of Information Advocates Network

1. Scope of Information Covered

In this section, we compare the current law and practice of Council of Europe Member States with the definition of “information” or “official documents” in Council of Europe Recommendation 2002(2) as input into the elaboration of a binding treaty by the Council on access to information.

The draft convention as currently being considered by the DH-S-AC states:

‘Official documents’ means all information recorded in any form, drawn up or received and held by public authorities and linked to any public or administrative function, with the exception of documents under preparation.

Based on the comparative survey, the relevant portion of which can be found at Annex 1, we found the following:

Information vs. Documents

In 22 of the 26 countries surveyed, the definition refers to information rather than documents.

Definition of Information

Many of these legal regimes have a broad definition of information as including all information and documents of any format held by public bodies.

This comparative study therefore indicates that the appropriate standard should be that the right to information is a right to all information held by the authority at the time of the request. This would also be in keeping with the recent jurisprudence of the Inter-American Court of Human Rights.

A number of the experts who contributed to the comparative study reacted with concern to the current Council of Europe definition as it would limit the scope of the right to information “linked to the public or administrative function of the authority”. Annex 1 shows the nature of the definitions in these laws.

Some laws are even broader. The law in Latvia, in particular, encompasses information or compilations of information under the control of an institution *or which it is obliged to create for the performance of its specified functions*. The majority of ATI laws, however, are limited to information held or controlled by the public body.

In 23 of the 26 countries surveyed, the definition of information includes information such as preparatory notes and file notations, although in Latvia and Moldova it was noted that they are often not provided in practice and in Hungary a 1994 Constitutional Court decision established an exception, although this remains unclear and controversial.

Documents also included

Many of these laws also refer to and define “documents”. For example in Turkey, it is defined as all information included in the records of an institution, but the law also refers to documents, defining documents as being of any format.

There seem to be a number of reasons that the legislators have found it necessary to supplement the definition of “information” with “documents”. These include:

- In order to clarify that the right to information applies to all mediums of storage of information (for example in Armenia, electronic or hard copy documents, records, videos, films, photos, drawings, schemes, notes, maps, etc. are all specified). Emails are subject to the law in 24 of the countries surveyed.
- For the practical purpose of allowing requestors to identify the location of the information they are seeking and the form in which they would like to receive it.
- Reference to documents also facilitates partial access to information as it allows the law to instruct authorities to redact or obscure information in a particular document that would fall under an exception while requiring them to release the remainder of the information in that document.

Such provisions do not, however, mean that the right is limited to requesting documents nor that the authority is limited to providing documents. If information is to be found in many documents the authority has the possibility to provide the information in one new document. For example, in Sweden, a request cannot be refused if it is possible to extract the information required by some routine measure.

Similarly in France, although only existing documents are subject to the ATI law and the administration is not compelled to create a document to meet a request, documents which can be created through a computerized process have to be communicated (such as lists, for instance).

This is the practice in many countries, particularly where the administration does not hold information in a form best suited to respond to the information needs of the public. In this sense access to information laws can be an important motor of reform of government information management, particularly important in countries in transition, requiring authorities to organize information in a form that better suits decision-making and public participation.

The dual information-documents regimes all permit requestors to inspect or receive copies of the original documents that contain the information sought.

The right to receive an answer or summary of information held by an authority is also guaranteed by a number of constitutions and long-standing administrative law practices that permit members of the public to petition government and to receive answers to questions. For

example, in Bulgaria one of the forms of access is to have “an explanation” which can be an oral or written explanation.

Documents under Preparation/ “Unfinished” Documents

This section addresses the question of documents under preparation. In some countries, there appears to be some confusion regarding the definition of “preparatory documents”, which may have two meanings. First, it may refer to a document that is unfinished in the sense that it is still being drafted and, second, it may refer to a document that is used as background to or for purposes of taking a decision or developing policy.

This double-meaning may be due, in part, to earlier ATI laws, such as the 1978 French law, Article 2 of which states: “The right to delivery shall apply to completed documents only. It shall not apply to documents that are instrumental in an administrative decision until the latter has been taken.” This exemption covers two types of documents :

- “preparatory documents” used as input to a decision which has not yet been taken (there is one exception to this rule: when the final decision relates to the environment, preparatory documents such as impact studies can be communicated); and
- unfinished documents still being prepared.

This confusion has been perpetuated by the Explanatory Memorandum to Council of Europe Recommendation 2002(2) which states:

In member states, there are different traditions and practices concerning the qualification of documents as “official documents”. In principle, unfinished documents are not covered by this notion. Furthermore, in some member states, documents which contribute to the decision-making process (for instance, opinions, memoranda, etc.) are not considered as official until the decision to which they refer is taken. However, in other member states, documents can be made available before the decision for which the document is being prepared is taken, in particular to enable participation in the decision-making process.

For the purposes of this section, we are referring to “unfinished” documents. At the next point below addresses documents being used as background to decision.

In 18 of the countries surveyed, the definition of information *includes* documents under preparation in the sense of *unfinished documents*). Indeed, in a number of countries it is clearly established in law and practice that they fall under the broad definition of information that is subject to the law. In the UK, for example, the definition of information includes documents under preparation or draft documents. It is noted that access to such documents is subject, of course, to the regime of exceptions in the legislation.

In at least 2 of these 18 countries, however, this information is included but there is nevertheless an exception for information that is not complete and would lead to an erroneous interpretation of the document. In Belgium, for example, there is an exception for documents that are not final or incomplete *and* where disclosure can lead to erroneous interpretations. Macedonia has a similar provisions with an exceptions for information contained in a document that is being compiled and still being harmonized within an information holder, the

disclosure of which would cause misunderstanding of the contents of the document in question

A further 6 countries specifically exclude unfinished documents: France, Montenegro, Netherlands, Slovenia and Sweden. In Montenegro for example, only the legislature has the obligation to supply draft documents. In the Netherlands, unfinished documents need not be released but there is nevertheless the possibility that a judge will order the release of such information should the institution seem to be taking an undue time to finalise them.

(Information was not supplied or not clear for a further 3 countries).

Preparatory Documents, Policy Advice and the Space to Think

In this section we address the documents which are being used as background for an administrative decision, policy development or other internal process. Exceptions for such documents are sometimes justified by reference to the notion of a need for “space to think” within a public authority as well as the protection of more formal decision-making processes.

At least 19 of the 26 States surveyed do not limit to scope of information covered by the ATI law by excluding preparatory documents but, instead, protect internal processes through the regime of exceptions. This has the advantage of leading to a narrower scope of exclusion and also brings the information within the scope of the public interest override.

Only in France and Sweden is it clear that such information is excluded from the definition of information.

In many other countries, the exception applies only until the decision has been taken. In other countries, the scope of the exception is limited to certain types of preparatory documents. In yet other countries, specific harm-based exceptions have been crafted. Some examples of the way in which this functions are as follows:

- Bulgaria: there is an exception for documents related to preparation of an administrative decision if it constitutes advice, or an opinion or recommendation.
- Czech Republic: the obligation to provide information does not apply to questions about opinions or future decisions. The exception applies only to the period before the decision is finalised. There is also an exception for internal instructions and staffing regulations.
- Ireland: there is an exception for records relating to deliberative processes. In *Wall and Department of Health*, the Information Commissioner indicated that records relating to deliberations of public bodies may be withheld only until the decision to which they relate has been made, noting: “[T]here is a strong argument in favour of protecting proposals from release at an early stage in order to allow the public body to properly consider the matter. However, once the decision to proceed with any proposed action is taken, the need to withhold the release of the information weakens.”
- Latvia: there is an exception for internal information and “information necessary to issue a final decision on a matter as well as such information prepared by outside actors”, such as consultants. Normally this applies to draft or unfinished documents.
- Netherlands: there is an exception for documents about financial deals, which become accessible after the final signature and/or after the effectuation of the deal.

- Romania: there is an exception for information regarding the deliberations of the authorities, but only if they are also classified by law.
- UK: there is an exception for policy advice and also to preserve the free and frank provision of internal advice.

2. Bodies Covered: Comparative Analysis

Our survey of 26 countries found that the scope of bodies covered by domestic access to information (ATI) laws is broad, and has become progressively broader with more recent laws having a wider ambit. The relevant portion of the comparative study can be found at Annex 2.

For example, the legislation of Macedonia, the last country in the region to adopt an ATI law (2006), encompasses the government and administration at national and local level but also legislative bodies and judicial authorities, private bodies (natural and legal persons) that perform public functions and all other bodies and institutions that are established by law (different independent Commissions, Regulatory bodies, etc.).

From the survey, the following results emerge in relation to bodies covered by ATI legislation:

- Government and administration at national, regional or local level are covered under the ATI laws in all 26 countries.
- Administrative information held by legislative and judicial bodies comes within the scope of the ATI laws of 25 of 26 countries in the study. In some countries this has been confirmed by jurisprudence. This is the case, for example in Georgia, where the Constitutional Court ruled: “the administrative function of legislative and judicial bodies is the same as public function and therefore freedom of information affects it in all cases”.³ The only reported exception is that the parliament in Norway is not covered by the ATI law.
- Other information relating to legislative bodies comes within the scope of the ATI laws of 21 of the countries surveyed and in the remainder is governed by specific legislation.
- Other information held by judicial bodies comes within the scope of the ATI laws of 15 countries of 26. In another 3 countries (Czech Republic, Hungary and Slovakia) there is access to final court decisions but not to all court records.
 - In Ireland, records held by courts and tribunals are excluded, but there are exemptions to this for general administrative information and for records related to proceedings and not created by the court or tribunal.

³ See *Rusudan Tabatadze and GYLA vs. Georgian parliament*.

- France represents a typical situation for many Western European countries whereby documents that or not administrative documents of judicial bodies do not fall within the scope of the access to information laws due to the constitutional principle of separation of powers. A separate regime covers access to such documents, with strong provisions for proactive disclosure and on-line availability of such information.
- Private bodies performing public functions are covered by the ATI laws in all 26 countries so, despite some variations in definition, the principle is clearly established.
- At least 13 of the countries surveyed have a definition that covers private bodies that operate with public funds. Some experts specifically noted that it is important that the Council of Europe clarify that bodies that rely significantly on public funds should be covered by ATI legislation. This is to address the specific problem of state functions being devolved to private bodies, sometimes to avoid accountability and to facilitate corruption.
- The Secret Services are covered in the acts of 23 of 25 countries for which we have information, although many much of the information they hold could fall within the scope of the regime of exceptions. In the UK the Security Services are excluded from the list of public bodies and information relating to them is also covered by a specific exception.

In some countries there has been jurisprudence to confirm that secret services are covered. In Bulgaria, for example, the courts have expressly underlined the fact that security services are subject to the Access to Public Information Act.⁴ In Montenegro, the Agency for National Security is a state agency (body), subject to the Law on Free Access to Information. This was confirmed in a successful court case in October 2006, where access to the budget and staff numbers of this body was ordered. Similarly, in Serbia the Information Commissioner recently ruled that the Security Services (BIA) were covered by the ATI law and should release information on the number of persons put under tape surveillance in 2005.

- We did not ask as specific question on the Armed forces but experts in Albania, the Czech Republic, France, Germany, and the UK noted that they are covered. This is known to be the case in a number of other countries in Central and Eastern Europe.
- Exceptions for other bodies: Most countries (22) did not report that other bodies that might otherwise fall within the definition of the bodies covered by the law were specifically excluded. In general all bodies are included and in some, such as Hungary, even state bodies that do not have legal personality are required to provide information.

Those countries that reported particular exclusions for particular bodies were:

- Ireland: the police force is has not yet been included in the schedule of bodies covered by the law

⁴ See *Zoya Dimitrova v. Secretary of the President*, available at: <http://www.aip-bg.org/library/dela/case52.htm>.

- Bosnia: the international community (OHR) is not covered.
- Netherlands: the General Accounting Office; the Administrative Supreme Court annex Advisory Board and the National Ombudsman [but the latter has an own access regime] are not covered by the ATI law.
- Norway: the Auditor General and Ombudsman are not obliged by the ATI law.

Briefing regarding the elaboration of a Council of Europe treaty on access to official documents
- submitted by Access Info Europe, Article 19 and the Open Society Justice Initiative

Annex 1 - Information included in the scope of national access to information laws

Country	Const. Date	Constitution	FOI law Date	Access to Info	Definition of Information	Includes “documents under preparation” or “working papers and drafts”?	Includes preparatory notes, file notations, e-mails?
Albania	1998	FOI and ATI	1999	yes - in constitution; law refers to documents an information	Access to official documents defined as “all documents” and “ all information ”	yes – there is no exemption for such documents	yes , “all information” – nothing specifically excluded
Armenia	1995	FOI and Right to Answer from Government	2003	yes – constitutional right	broad definition of “ information ” on all mediums	yes – these would be covered by the law	yes , “all information” – nothing specifically excluded
Belgium	1831	ATI	1994	yes – constitutional right confirmed in legislation and jurisprudence	administrative documents means “ all information , in any form, an administrative authority holds/disposes of”.	yes, but in exemptions not in definition of information – for docs that are not final or incomplete AND can lead to erroneous interpretations.	yes , includes “all information”
Bosnia and Herzegovina	1995	No specific provisions – it’s a statutory right only	2000	yes – statutory right	“ information ” – “any material which communicates facts, opinions, data or any other content... regardless of physical form”	yes	yes – “material ... regardless of physical form, characteristics, when it was created ...”
Bulgaria	1991	FOI and ATI	2000	yes – constitutional and statutory right	“ information ... giving opportunity to citizens to form opinions on” bodies obliged by the act.	yes, but exemption for docs related to preparation of admin decision if constitute advice or opinion or recommendation.	yes – there is no specific exclusion
Croatia	1990	ATI	2003	yes – constitutional right	information – broad definition of all formats and documents include any formats	yes – all information controlled or disposed of by authorities is covered	yes – falls under the definition

Country	Const. Date	Constitution	FOI law	Access to Info	Definition of Information	Includes “documents under preparation” or “working papers and drafts” ?	Includes preparatory notes, file notations, e-mails?
Czech Republic	1993	FOI and ATI	1999	yes – constitutional right (obligation by govt bodies to provide information part of FOI)	information – any content or part content recorded in any form on any medium. (but Act shall not apply to the provision of information – subject-matter of industrial property 1a), and other information if a special law 1b) regulates their provision, namely the processing of requests, including their elements and the manner of request submission, time limits, remedies and the manner of information provision.)	yes but exemption – obligation does not apply to questions about opinions, future decisions and the creation of new information. Exemption for new information ascertained during preparation of a decision; limited to pre-exemption period only. Also exemption for internal instructions and staffing regulations.	yes – falls under definition
Denmark	1849	No specific provisions	1985	documents	administrative files = “ all documents ”	[not clear – law applies to documents which seems to mean completed documents] no : but there is an exemption for authority’s internal material (class exemption)	yes
France	1958	No specific provisions – it has been argued that it’s part of the individual liberties of 1789 Declaration	1978	administrative documents	“ administrative documents ” broad meaning = any files, reports, studies, records, minutes, statistics, orders, instructions, ministerial circulars, memoranda or replies containing an interpretation of positive law or description of administrative procedures, recommendations, forecasts, and decisions originating from obliged bodies.	no – documents that are unfinished are not covered. The right to delivery shall apply to completed documents only. Also It shall not apply to documents that are instrumental in an administrative decision until the latter has been taken. So, this exemption covers two types of documents – preparatory documents before a decision; “under preparation”	Documents may be written, audio, video recordings, or documents obtainable through any currently-used automated process.

Country	Const. Date	Constitution	FOI law	Access to Info	Definition of Information	Includes under “documents under preparation” or “working papers and drafts” ?	Includes preparatory notes, file notations, e-mails?
Georgia	1995	FOI and ATI	1999	yes	“Public information” – an official document (including chart, model, plan, diagram, photograph, electronic information, and video and audio records), i.e. information held by a public agency, or that received, processed, created, or sent by a public agency or a public servant in connection with official activities.	yes	yes
Germany	1949	FOI	2005	yes – constitutional provision at federal level and 1 state; statutory in another 8 states.	Official information is any record made for official purposes regardless of the manner in which it is stored..	yes - access to documents under preparation is exempted only to protect the specific agency action prepared. Later on access is granted.	yes
Hungary	1949	FOI and ATI	1992	yes – it’s a constitutional right	“data of public interest” = any information or knowledge, not falling under the definition of personal data, processed by an obliged body. Also supplemented by “data public on grounds of public interest”.	yes	yes – but an exemption has been established by jurisprudence citing a Council of Europe recommendation.
Ireland	1937	No specific provisions	1997	yes – statutory right	broad definition of information – broader than the CoE definition as it is not linked to administrative function	yes - documents under preparation are not excluded, however there is an exemption in respect of records relating to deliberative processes, but this is limited to the decision-making period.	yes – all records held by public bodies are covered

Country	Const. Date	Constitution	FOI law	Access to Info	Definition of Information	Includes “documents under preparation” or “working papers and drafts” ?	Includes preparatory notes, file notations, e-mails?
Latvia	1922	FOI	1998	yes – statutory right also some jurisprudence interprets constitutional provision on FOI as including right of access to information	information – any information or compilation of information under the control of an institution or which it is <u>obliged to create for the performance of its specified functions.</u>	yes – covered by the law and then there is an exemption for internal information and “information necessary to issue a final decision on a matter as well as such information prepared by outside actors” eg: consultants. Normally this applies to draft or unfinished documents (only ref to docs not info).	yes (although in practice, de facto, these are not supplied)
Macedonia	1991	FOI and ATI	2006	yes – constitutional right	“information of public character” refers to all information in any form created and disposed by an information holder (ie: in line with its competences) – documents are defined as any format including digital. Law specifically obliges release of information related to proposed (draft) programs, programs, strategies, views, opinions, studies, and other similar documents related to the information holder’s competence.	yes but exemptions include information contained in a document undergoing a procedure of compiling and still being subject of harmonization with an information holder, the disclosure of which would cause misunderstanding of the contents of the document in question;	yes , all information in any form
Moldova	1994	ATI	2000	yes – constitutional right	official information = all information held and administered by information providers; broad definition of formats;	not sure : law not clear on this point	yes – even if not provided in practice

Country	Const. Date	Constitution	FOI law	Access to Info	Definition of Information	Includes “documents under preparation” or “working papers and drafts” ?	Includes preparatory notes, file notations, e-mails?
Montenegro	1992	FOI and limited ATI for environmental and personal information	2005	yes – statutory (and constitutional for environmental info and personal data)	information of public importance includes all information held by public authority whether created by them or another, irrespective of date of creation or how it was obtained.	no – draft versions of policies are exempted and only legislative must provide drafts	yes
Netherlands	1815	No specific provisions	1978	yes	information: requester may ask for any information stored in documents, and documents are defined as being of all formats.	no: documents under preparation are temporarily not accessible, but if the preparation takes to long – in the eyes of a judge- they are even accessible in this phase. Internal deliberations is an exemption . Also exemption for documents about financial deals are accessible after the final signature and/or after the effectuation of the deal	Yes: All types of docs, including drafts, emails, letters between ministers, and so on
Norway	1814	ATI – introduced 2004	1970	yes – constitutional right	The case documents of the public administration are documents drawn up by an administrative agency, received by or submitted to such an agency. A logically limited amount of information stored in a medium for subsequent reading, listening, presentation, or transfer shall be regarded as a document.	[not reported]	yes , covered by definition of information in the law. A document is drawn up when it has been dispatched, or, when the public agency has concluded its handling of the case.

Country	Const. Date	Constitution	FOI law	Access to Info	Definition of Information	Includes “documents under preparation” or “working papers and drafts” ?	Includes preparatory notes, file notations, e-mails?
Romania	1991	FOI and ATI	2001	yes – constitutional right	Public interest information means any information which relates to the activities or arises from the activities of a public authority or a public institution, regardless of the support or the form or way of expressing the information	yes, but exemption for information regarding the deliberations of the authorities, if they are classified by law	yes
Serbia	2003	no provisions yet, but it is included in proposed constitution	2003	yes – supreme court has recognised that there is a right to receive data from public bodies	Information of public importance , according to the Law, is information held by a public authority body, created during work or related to the work of the public authority body, contained in a document – there is a wide definition of formats	yes – but there is as yet little practice that defines the definition of “documents” but probably applies to completed documents.	yes
Slovakia	1992	FOI and ATI	2000	yes – constitutional and statutory right	information – from the law it is clear that this also means documents, but not only documents.	yes - working papers and drafts are included	yes
Slovenia	1991	FOI and ATI	2003	yes – constitutional right of access to information	all information originating from the field of work of public bodies and occurring in the form of a documents a case, a dossier, a register, or other documentary material (“the document”) drawn up by the body or in cooperation with another body or acquired from other persons.	no: unfinished information is not covered. Also: there is and exemption for information that is in the process of being drawn up and is still subject to consultation by the body, and the disclosure of which would lead to misunderstandings of its contents. –	yes

Country	Const. Date	Constitution	FOI law	Access to Info	Definition of Information	Includes “documents under preparation” or “working papers and drafts” ?	Includes preparatory notes, file notations, e-mails?
Sweden	1975	FOI and ATI	1766	documents	public has a right to access documents that are regarded as official documents : 1. held by an authority and 2. according to special rules is regarded as having been received or drawn up by a public authority.	no - preliminary outlines and drafts (for example, of a decision of an authority) and memoranda (notes) are not official documents if they have not been retained for filing. By “memoranda” is meant an aide-mémoire or other notation made for preparation of a case or matter and which has not introduced any new factual information.	no - see left. e-mails are covered.
Turkey	1982	FOI	2003	yes	information (all information included in the records of an institution) – but the law also refers to documents (defining documents as being of any format).	yes (not excluded from definition of information nor exempted)	yes - no specific mention
United Kingdom	unwritten	FOI (bill of rights)	2000	yes – statutory right	Any recorded information held by or on behalf of an authority in any format.	Yes : there is no exemption under the FOI Act for documents under preparation or draft documents. such documents are accessible subject to the other exemptions in the legislation, eg: for policy advice. The Environmental Information Regulations allow bodies to refuse to disclose material in the course of completion subject to a public interest test.	Yes

Briefing regarding the elaboration of a Council of Europe treaty on access to official documents
- submitted by Access Info Europe, Article 19 and the Open Society Justice Initiative

Annex 2 - Bodies covered by national access to information laws and other transparency legislation

Country	Government and National Administration (central, regional and local)	Legislative and Judicial authorities insofar as they perform public functions	Legislative and Judicial Bodies, other information	Private bodies (natural or legal persons) insofar as they perform public functions	Notes on other bodies	Are secret services obliged or exempted?	Any other bodies specifically exempted from any access to information obligations?
Albania	Yes	Yes	Yes	Yes	Armed forces are included	Obliged	No
Armenia	Yes	Yes	Yes: The Parliament is covered by the 3rd article of the FOI law The law covers all state bodies, including the parliament. Access to court documents is granted by the RA Civil Code and the RA Criminal Procedure Code (8, 28 and 138 articles of the Civil Code, 16 article of the Criminal Procedure Code).	Yes	Includes bodies financed out of the state budget	Obliged	No
Belgium	Yes	Yes	No	Yes	-	Obliged (but there is an exemption for information classified on grounds of state security)	None reported
Bosnia and Herzegovina	Yes	Yes	Yes	Yes	Also any body financed by or owned or controlled by a public authority	Obliged	No (but international community / OHR not obliged)

Country	Government and National Administration (central, regional and local)	Legislative and Judicial authorities insofar as they perform public functions	Legislative and Judicial Bodies, other information	Private bodies (natural or legal persons) insofar as they perform public functions	Notes on other bodies	Are secret services obliged or exempted?	Any other bodies specifically exempted from any access to information obligations?
Bulgaria	Yes	Yes	Yes	Yes	Media with respect to some information	Obligated: The Courts have expressly underlined the fact that the security services are subject to the ATI law.	No
Croatia	Yes	Yes	Yes	Yes	Yes, and bodies financed by public money	Obligated	No
Czech Republic	Yes	Yes	partially	Yes	Law also applies to bodies entrusted by the law with making decisions on the rights, legislatively protected interests or duties of natural persons and legal entities in the public administration sector. Such duty applies solely to the scope of their discretionary powers. Armed forces are obliged	Obligated	[not reported]
Denmark	Yes	Yes	[not reported]	Yes – some bodies operating with public funds or performing public functions.	Act also applies to utilities (electricity, gas and heating). Ministers may extend the act to private bodies operating with public funds or empowered to take decisions on behalf of central or local government.	Obligated	No
France	Yes	Yes: the law of July 17, 1978 covers administrative information held by the judiciary	Specific legislation cover access to other legislative and judicial information (Code de procédure pénale, or, regarding administrative jurisdictions, by the Code de justice administrative).	Yes – public corporations covered	“public establishments” and “independent administrative authorities” covered * Armed forces and secret services are obliged by the law (although of course the information they hold is subject to exemptions).	Obligated by 1978 law	No

Country	Government and National Administration (central, regional and local)	Legislative and Judicial authorities insofar as they perform public functions	Legislative and Judicial Bodies, other information	Private bodies (natural or legal persons) insofar as they perform public functions	Notes on other bodies	Are secret services obliged or exempted?	Any other bodies specifically exempted from any access to information obligations?
Georgia	Yes	Yes	Legislative – yes, under special legislation or access to and promulgation of work of Parliament. Judicial – more complicated as law not clear and practice varies.	Yes - freedom of information affects all the persons of private law, which exercises public authority in accordance with law.	Freedom of information obliges legal persons of Private Law funded by the State or local government budget.	Not included	[not reported]
Germany	Yes	Yes	No but other legislation does give access to such docs	Yes	Federal Legislation encompasses all federal agencies and courts, State legislation encompasses government at state, regional and local level. Armed forces are covered but exemptions for information that would harm military or other sensitive security interests.	Obliged (but exemptions apply to intelligence services and agencies and other public offices of the federal government under Security Screening Act (“Sicherheitsüberprüfungsgesetz”).	No
Hungary	Yes	Yes	Yes – with the exception of documents relating to court proceedings although there is a limited obligation to publish judgments	Yes	Yes: all state bodies are obliged, including Constitutional Court, Parliamentary commissioners, Head of State and his office, Public Prosecutor and his office, and many other bodies that report to parliament but are not part of government in sense of being under control of Prime Minister and his Ministers.	Obliged	No– even state bodies that do not have legal personality maybe be sued for information

Country	Government and National Administration (central, regional and local)	Legislative and Judicial authorities insofar as they perform public functions	Legislative and Judicial Bodies, other information	Private bodies (natural or legal persons) insofar as they perform public functions	Notes on other bodies	Are secret services obliged or exempted?	Any other bodies specifically exempted from any access to information obligations?
Ireland	Yes (not act sets up a list of bodies covered)	Yes	Yes – Although records held by courts and tribunals are excluded, this exclusion has exemptions for general administrative information and records related to proceedings and not created by the court or tribunal.	Yes	Yes – bodies established under the Companies Act to exercise public powers and financed from the public purse may be brought under the scope of the act and have been, eg: private bodies offering services to disabled with public funds. In addition there are exemptions for some records concerning certain office holders are excluded : Attorney General, Director of Public Prosecutions and records relating to the President.	Obliged - there are no exclusions for defence forces	Yes, kind of: Police force is not excluded but has not yet been included;
Latvia	Yes	Yes	Yes	Yes	Broad definition of institution includes all legal entities having public authority powers under regulatory enactment of a public law contract	Obliged	No
Macedonia	Yes (no regional level in the country)	Yes	Yes	Yes	Includes other bodies and institutions established by law such as Commissions, Regulatory bodies, etc	Obliged	No
Moldova	Yes - Law obliges: -Parliament, President, Government , Public Administration, Judicial Authorities - local and central public institutions	Yes	Yes	Yes	Law obliges organizations founded by public authorities that are financed from the state budget, are responsible for activities of administration, or other non-commercial activities; - individuals and legal entities that, under the law or contract with public authorities, are empowered to provide some public services and to collect, select, preserve and hold official information, including data with private character.	Obliged	No

Country	Government and National Administration (central, regional and local)	Legislative and Judicial authorities insofar as they perform public functions	Legislative and Judicial Bodies, other information	Private bodies (natural or legal persons) insofar as they perform public functions	Notes on other bodies	Are secret services obliged or exempted?	Any other bodies specifically exempted from any access to information obligations?
Montenegro	Yes	Yes	Yes	Yes	Any legal person founded or funded wholly or predominantly by a state body	Obliged– and a case on October 2006 confirmed this	No
Netherlands	Yes	Yes	Yes	Yes [for instance the public broadcast organization or the Nederlandse Bank]		Obliged , although exemption for some information they hold [operational docs and docs younger than 5 years]	Exempted bodies are: General Accounting Office; Administrative Supreme Court annex Advisory Board; National Ombudsman [but he has an own access regime]
Norway	Yes	No – act does not apply to Storting (parliament), and other Storting institutions	Act does not apply to cases dealt with pursuant to the statutes relating to the administration of justice	Yes	A private legal person shall be considered to be an administrative agency in cases where such person makes individual decisions or issues regulations.	[not reported]	Auditor General, and Ombudsman
Romania	Yes	Yes	Yes	Yes	Definition of public bodies: any public institution/authority which uses or administrates public financial resources, any autonomous administration, any national company, any private company under the authority of a central or local public authority and who's shares are owned by the state or by a local administrative unit, as main or sole shareholders.	Obliged (but some laws exempt information on activities of the Intelligence Service and Foreign Intelligence Service	No
Serbia	Yes	Yes	Yes	Yes	Organizations vested with public authority and legal persons founded by or funded wholly or predominantly by a state body.	Obliged	No

Country	Government and National Administration (central, regional and local)	Legislative and Judicial authorities insofar as they perform public functions	Legislative and Judicial Bodies, other information	Private bodies (natural or legal persons) insofar as they perform public functions	Notes on other bodies	Are secret services obliged or exempted?	Any other bodies specifically exempted from any access to information obligations?
Slovakia	Yes	Yes	Yes but there is access only to final decisions, not to court proceedings	Yes	Includes bodies that have been given decision-making power, or established by state bodies or other obliges shall also be obliged. Legal entities that manage public funds or operate with state or municipal property shall also be obliged to disclose information pertaining to the management of the public funds and property.	Obliged	No
Slovenia	Yes	Yes	Yes	Yes	Law also defines obliged bodies as those using public funds and public service contractors	Obliged	No
Sweden	Yes	Yes	Yes	Yes – some private bodies performing public functions are mentioned in the annex of the Secrecy Act	Legal persons owned or controlled by municipal authorities (Annex to Secrecy Act)	Obliged	No
Turkey	Yes	Yes	No	Yes – such as companies established by municipalities	Implementing regulation (Article 2) also includes: Central government bodies and their affiliates, local governments and their companies, unions and affiliates, all enterprises, institutions, agencies which have public legal entity including Central Bank, stock Exchange, universities, chambers, etc.	Obliged, but exemption for information regarding the duties and activities of civil and military intelligence units (info affecting the professional honour and working life is within scope of right to information).	No

Country	Government and National Administration (central, regional and local)	Legislative and Judicial authorities insofar as they perform public functions	Legislative and Judicial Bodies, other information	Private bodies (natural or legal persons) insofar as they perform public functions	Notes on other bodies	Are secret services obliged or exempted?	Any other bodies specifically exempted from any access to information obligations?
United Kingdom	Yes	Yes	Legislative yes. Judicial no – act does not apply to the Courts or Tribunals apart from their administrative functions. However, other legislation, including Rule 5.4 of the Civil Procedure Rules deals with access to court documents in civil proceedings in the county courts, the High Court and Court of Appeal. It allows any person, on payment of the prescribed fee, to inspect and take a copy of (a) a claim form (b) a judgement or order given or made in public, and (c) any other document if the court gives permission.	Yes - Health and Education services are covered. Other private bodies re not covered by the FOI act but some private bodies are subject to Environmental Access to Information Regulations.	The FOI Act also applies to: <ul style="list-style-type: none"> the Armed Forces (except the special forces) the police the National Health Service (including GPs, opticians and dentists) schools, colleges and universities BBC and Channel 4 (in respect of information held for the purposes other than those of journalism, art and literature) many other non-departmental public bodies, advisory committees. 	Exempted from act through combination of scope and exemptions (information held by the security and intelligence services, court and tribunals fall under the exemptions)	No