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Right to Information in ASEAN Member States, Mongolia and Timor-Leste¹



The Right to Information (RTI) plays a vital role in empowering citizens with the right to access public information, and in fostering public participation in society. It helps to hold public bodies to account by placing a responsibility on them to release information in an accessible format. RTI serves as a powerful tool in the fight against corruption. It is also recognized as a key component of human rights, including the right to freedom of expression, and the right to participation in government.

This discussion paper provides an overview of RTI under international law, and examples of RTI frameworks and practices in Member States in the Association of Southeast Asian Nations (ASEAN), Mongolia and Timor-Leste (States). It highlights examples of good practices, and provides recommendations and suggestions for enhancing RTI legislation and mechanisms.

What is RTI?

RTI, also known as “Freedom of Information” or “Access to Information”, is the right of individuals in society to seek, access and receive information held by public bodies.

Article 10 of the United Nations Convention against Corruption (UNCAC) on public reporting requires each State party to take measures to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes. Such measures may include: (a) adopting procedures or regulations for the general public to request information on the organization, functioning and decision-making process of its public administration, (b) simplifying administrative procedures in order to facilitate public access to decision-making authorities, and (c) publishing information, which may include periodic reports on the risks of corruption in its public administration.²

Article 13 of UNCAC on the participation of society requires each State party to take measures to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption, and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This includes (among other suggested measures): enhancing the transparency of decision-making processes, ensuring that the public has effective access to information, and respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.³

¹ This research was conducted and commissioned by the UNODC Regional Office for Southeast Asia and the Pacific (ROSEAP) and Field Support Section of the Corruption and Economic Crime Branch. This was with the support of the Government of Sweden, Ministry of Justice of the Republic of Korea, and the Bureau of International Narcotics and Law Enforcement Affairs of the United States.

² United Nations Convention Against Corruption, article 10. Accessible via: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

³ United Nations Convention Against Corruption, article 13. Accessible via: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

In addition to the provisions contained in UNCAC, RTI is contained in article 19 of the Universal Declaration of Human Rights (UDHR) and article 19 of the International Covenant on Civil and Political Rights (ICCPR).⁴ Both articles include RTI as a key component of the right to freedom of expression. General comment number 34 of the Human Rights Committee provides a detailed interpretation of article 19 of ICCPR, including the right of access to information.⁵ Table 1 provides a summary of the key elements which are required to give effect to the right of access to information.

Table 1. General Comment Number 34 of the Human Rights Committee: Elements required to give effect to RTI	
1. Pro-active disclosure	Pro-actively publish government information of public interest in the public domain without the need for a request to be made.
2. Easy access to information	Easy, prompt, effective and practical access to information.
3. Enact procedures to process requests for information	Adopt procedures to provide access to information (such as by means of RTI legislation). These procedures should provide for timely processing of requests according to clear rules.
4. Low fees	Fees should not constitute an unreasonable impediment to accessing information.
5. Provide reasons for refusals	Should provide reasons for any refusal to provide access to information.
6. An appeals procedure	Arrangements should be put in place to allow appeals from refusals to provide access or where there has been a failure to respond.

All of the States that are the focus of this paper are States parties to UNCAC, and most have signed or ratified/acceded to ICCPR, as detailed in Table 2. In addition, Principle 23 of the ASEAN Human Rights Declaration contains the right to “receive and impart information.”⁶ The Declaration was adopted unanimously by ASEAN Member States in 2012.

Table 2. International agreements to which the States are a party				
States	UNCAC	ICCPR (Article 19)		ASEAN
	Ratified/ Acceded	Signed	Ratified/ Acceded	Member
Brunei Darussalam	2 December 2008	-	-	Yes
Cambodia	5 September 2007	17 October 1980	26 May 1992	Yes
Indonesia	19 September 2006	-	23 February 2006	Yes
Lao People’s Democratic Republic (Lao PDR)	25 December 2009	7 December 2020	25 September 2009	Yes
Malaysia	24 September 2008	-	-	Yes

⁴ Universal Declaration of Human Rights. Accessible via: <https://documents.un.org/doc/resolution/gen/nr0/043/88/pdf/nr004388.pdf?token=ts0fi8SvjXUfPbFVUW&fe=true>; International Covenant on Civil and Political Rights. Accessible via: <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>.

⁵ International Covenant on Civil and Political Rights, Human Rights Committee, 102nd session, 12 September 2011 (CCPR/C/GC/34), para. 18-19. Accessible via: <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

⁶ ASEAN Human Rights Declaration, 19 November 2012. Accessible via: <https://asean.org/asean-human-rights-declaration/>.

States	UNCAC	ICCPR (Article 19)		ASEAN
	Ratified/ Acceded	Signed	Ratified/ Acceded	Member
Mongolia	11 January 2006	5 June 1968	18 Nov 1974	No
Myanmar	20 December 2012	-	-	Yes
Philippines	8 November 2006	19 December 1966	23 October 1986	Yes
Singapore	6 November 2009	-	-	Yes
Thailand	11 March 2011	-	26 October 1996	Yes
Timor-Leste	27 March 2009	-	18 September 2003	No
Viet Nam	19 August 2009	-	24 September 1982	Yes

Why is RTI Important?

RTI helps to secure the participation of citizens in society and to protect human rights.⁷ It helps individuals to access information, ultimately accelerating efforts to reduce corruption and strengthen transparency. RTI also provides a valuable tool for journalists and other commentators who use information obtained from RTI requests to inform the public on important matters of public interest.⁸ Civil society groups and academic researchers, for example, can also benefit from information obtained from RTI requests, in-turn informing the public and enhancing awareness of important issues.

RTI also plays an integral role in promoting peaceful and inclusive societies for sustainable development, providing access to justice for all, and building effective, accountable and inclusive institutions at all levels (Sustainable Development Goal (SDG) 16).⁹ SDG 16 includes targets that are supported by effective RTI regimes.¹⁰ These targets include: to “ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements”, to “develop effective, accountable and transparent institutions at all levels”, and to “substantially reduce corruption and bribery in all their forms.” A recent Global Progress Report on SDG 16 indicators¹¹ noted that there was a globally moderate increase in the number of countries that had adopted and implemented constitutional, statutory and/ or policy guarantees for public access to information. The report highlighted that as of July 2024, 138 UN Member States had adopted legal or policy frameworks on access to information.

Transparency of public sector activity helps to hold governments, public officials and public bodies accountable for their conduct. The ability to monitor public sector activities through RTI can help expose misconduct and promote integrity within public bodies. Access to information about entitlements, processes and rights can also improve service delivery by public bodies.

⁷ For further discussion, see for example: “Access to information: a condition for citizen participation,” UNODC Anti-Corruption Module 10. Accessible via: https://www.unodc.org/e4j/zh/anti-corruption/module-10/key-issues/access-to-information_-a-condition-for-citizen-participation.html.

⁸ Reporting on Corruption: A Resource Tool for Governments and Journalists, UNODC, 2013, pp. 38-45. Accessible via: https://www.unodc.org/documents/corruption/Publications/2013/Resource_Tool_for_Governments_and_Journalists_COSP5_ebook.pdf.

⁹ Sustainable Development Goal 16, Targets and Indicators. Accessible via: https://sdgs.un.org/goals/goal16#targets_and_indicators.

¹⁰ Ibid.

¹¹ Global Progress Report on Sustainable Development Goal 16 Indicators, p. 27. Accessible via: https://www.unodc.org/documents/data-and-analysis/sdgs/sdg16_progress_report_2024.pdf.

Lawful RTI Restrictions

While RTI is a fundamental right, it cannot be absolute. Article 13 of UNCAC and article 19(3) of ICCPR specify that the right may be subject to restrictions that are provided by law and are necessary for: (a) the respect of the rights or reputations of others, or (b) the protection of national security or public order, or of public health or morals.

These limited restrictions to RTI recognize that circumstances may arise where disclosures of information are refused on legitimate grounds to safeguard the rights of others, including privacy protections and national security interests. The Committee on the Rights of the Child, for example, has previously identified that laws on access to information should protect children's rights to privacy.¹²

UNCAC Reviews and the Universal Periodic Review

Several States have received recommendations applicable to enhancing RTI schemes in line with article 10 of the UNCAC, as part of the second cycle of the Mechanism for the Review of Implementation of UNCAC, and the Universal Periodic Review (UPR).¹³ The key recommendations include:

- Brunei Darussalam has been encouraged to “continue its efforts in the implementation of the Sustainable Development Goals, with a focus on ensuring sustainable livelihoods and improving accessibility to information and fundamental freedoms.”¹⁴
- Indonesia has been encouraged to “[c]ontinue efforts towards full implementation of Law No. 14 of 2008, including to ensure that all public agencies are endowed with public information officers.”¹⁵
- Lao PDR, which does not have dedicated RTI legislation, has been encouraged to “[s]trengthen measures to regulate public access to information, including by considering the adoption of a dedicated legal framework and appeals mechanism, and continue efforts to simplify administrative procedures to facilitate access to the competent authorities.”¹⁶
- Malaysia has been encouraged to “strengthen procedures or regulations allowing members of the public to obtain information”, and “consider the adoption of access to information legislation at the federal level.”¹⁷
- The Philippines has been encouraged to “[a]dopt a comprehensive legislative and institutional framework to regulate in detail the procedure for access to information held by public bodies beyond the executive departments (Executive Order No. 2), including legislative, judicial and constitutional bodies, as well as public service contractors engaged in government transactions.”¹⁸

¹² Concluding observations on the combined 4th - 6th periodic reports of Cambodia: Committee on the Rights of the Child (CRC/C/KHM/CO/4-6), 2022, para. 23. Accessible via: <https://digitallibrary.un.org/record/3978638?ln=en&v=pdf>.

¹³ At the time of writing, Brunei Darussalam, Cambodia, Singapore and Timor-Leste had not completed their second review cycles under the UNCAC Implementation Review Mechanism.

¹⁴ Recommendation by the State of Palestine. Report of the Working Group on the Universal Periodic Review Brunei Darussalam (A/HRC/42/11), 2019, para. 121.103. Accessible via: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F42%2F11&Language=E&DeviceType=Desktop&LangRequested=False>.

¹⁵ UNODC Country Review (2nd Cycle), Executive Summary (CAC/COSP/IRG/II/1/1/Add.7), p. 5. Accessible via: <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V1802700e.pdf>.

¹⁶ UNODC Country Review (2nd Cycle) Report. Accessible via: https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2022-09-21_Lao_Cycle_II_Country_Review_Report_EN.pdf.

¹⁷ UNODC Country Review (2nd Cycle) Report. Accessible via: <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V1802700e.pdf>. In the Report of the Working Group on the Universal Periodic Review,

Review (A/HRC/40/11), para. 151.136. The Slovak Republic made the recommendation to “[e]nact legislation guaranteeing the right of access to information and ensure its full implementation.”

¹⁸ UNODC Country Review (2nd Cycle) Report. Accessible via: https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/13-17June2022/CAC-COSP-IRG-II-3-1-ADD.7/V2202191_E.pdf.

- Singapore has been encouraged to “introduce a freedom of information provision guaranteeing access to public information and data.”¹⁹
- Viet Nam has been encouraged to continue to “implement the framework for access to information to ensure that State agencies adopt clear procedures on access to information, train government employees in handling requests and raise public awareness; [and] continue efforts to enhance the transparency of decisions and procedures on access to information.”²⁰

States that have received UNCAC or UPR recommendations relevant to RTI should consider adopting those recommendations to improve public access to information, and to strengthen their accountability in line with these international standards.

Additionally, the effectiveness of RTI schemes can be undermined when public bodies and bodies performing a public function limit access to information improperly by applying the exemptions to disclosure in a manner that unfairly frustrates the principle of RTI and undermines the public interest. States parties are therefore required to uphold the principle of RTI by ensuring that only the restrictions provided by law and necessary for the reasons outlined in article 13 of UNCAC (and article 19(3) of ICCPR) are applied. More generally, States parties are encouraged to consider RTI as an important component to the right to freedom of expression, and as an important transparency tool in the fight against corruption.

States with RTI as a Constitutional Right

Eleven of the 12 States that are the focus of this paper have a constitution which contains a right to freedom of expression (Brunei Darussalam is the exception). Eight of these 11 States have a constitutional provision that specifies RTI, as detailed in Table 3.

Table 3. States with constitutional provisions specifying RTI

State	Constitutional provision
Indonesia	Constitution of the Republic of Indonesia, Article 28F.
Lao PDR	Constitution of the Lao People’s Democratic Republic, Article 44.
Malaysia	Federal Constitution of Malaysia, Article 10(a).
Mongolia	Constitution of Mongolia, Article 16(17).
Philippines	Constitution of the Republic of the Philippines, Article 3(7).
Thailand	Constitution of the Kingdom of Thailand, Section 41(1).
Timor-Leste	Constitution of the Democratic Republic of Timor-Leste, Section 40.
Viet Nam	Constitution of the Socialist Republic of Vietnam, Article 25.

The Constitution of the Republic of the Philippines further provides an explicit public interest disclosure scheme: “[s]ubject to reasonable conditions prescribed by law, the state adopts and implements a policy of full public disclosure of all its transactions involving public interest” (Article 2(28)).

States that have a general constitutional right to freedom of expression without a specific reference to RTI are encouraged to consider interpreting the general right to freedom of expression to include RTI.²¹

¹⁹ Recommendation by Switzerland. Report of the Working Group on the Universal Periodic Review Singapore (A/HRC/48/16, 2021), para. 59:164. Accessible via: <https://documents.un.org/doc/undoc/gen/g21/197/27/pdf/g2119727.pdf?token=irzquihLY17N2pva8n&fe=true>.

²⁰ UNODC Country Review (2nd Cycle) Report. Accessible via: https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2023_11_17_VietNam_Cycle_II_Country_Report_EN.pdf.

²¹ For a discussion on the inclusion of RTI in the definition of “freedom of expression,” see: Reporting on Corruption: A Resource Tool for Governments and Journalists, UNODC, 2013, p. 2. Accessible via: https://www.unodc.org/documents/corruption/Publications/2013/Resource_Tool_for_Governments_and_Journalists_COSP5_ebook.pdf.

States with RTI Legislation

Seven States have some form of legislative framework on RTI, as detailed in Table 4.

Table 4. States with RTI legislative frameworks	
State	Legal provisions
Indonesia	Law Number 14/2008 on Public Information Disclosure 2008.
Malaysia	Pulau Pinang Freedom of Information Enactment 2010. Selangor state's Freedom of Information Enactment 2011.
Mongolia	Law on Transparency of Public Information 2021.
The Philippines	Executive Order Number 2, 2016.
Thailand	Official Information Act B.E. 2540, 1997.
Timor-Leste	Decree-Law Number 43/2016, Rules Relating to Access to Official Documents, 2016.
Viet Nam	Law on Access to Information 2016.

Malaysia's RTI legislation applies at the sub-national level, meaning it does not apply at a federal level. At present, two Malaysian states, Pulau Pinang and Selangor, have enacted legislation which allow RTI requests to be made in those states. State-level legislation is subordinate to federal legislation, such as the Official Secrets Act 1972. Secrecy laws, such as this, are common around the world and generally contain restrictions on public disclosure of certain types of information.

At least two States are progressing new RTI legislation. The Government of Malaysia stated in its National Anti-Corruption Strategy (2024-2028), launched on 7 May 2024, that it would enact a Freedom of Information Bill for public to access government information.²² Cambodia is also reportedly finalizing its draft Access to Information Law.²³

Overview of the RTI Legislation

This section reviews the RTI legislation of the seven States that have explicit RTI legislative frameworks: Indonesia, Malaysia, Mongolia, the Philippines, Thailand, Timor-Leste and Viet Nam. This is with reference to the principles of general comment number 34 of the Human Rights Committee, contained in Table 1 of this paper.

Pro-active disclosure

The legislation of four States – Indonesia, Mongolia, Thailand and Viet Nam – contains provisions which require public bodies to pro-actively disclose information.²⁴ For example, article 12.1 of Mongolia's Law on Transparency of Public Information 2021 identifies that "information related to state and official secrets can be processed to be non-identifiable and made open data." Article 12.4 states that the "data

²² Malaysia, National Anti-Corruption Strategy (2024-2028), Strategy 2, sub-strategy 15, p. 38. Accessible via: https://www.sprm.gov.my/admin/uploads_publication/strategi-pembantaran-rasuah-nasional-2024-2028--en-08052024.pdf; see also: Enactment of Freedom of Information Act Approved in Principle, Prime Minister's Office of Malaysia, 14 September 2003. Accessible via: <https://www.pmo.gov.my/2023/09/enactment-of-freedom-of-information-act-approved-in-principle-pm-anwar/>.

²³ Seoung Nimol, Ministry of Information Finalizing Protracted Access to Information Draft Law, Cambodia News, 24 January 2024. Accessible via: <https://cambojanews.com/ministry-of-information-finalizing-protracted-access-to-information-draft-law/>.

²⁴ Indonesia: Law Number 14/2008 on Public Information Disclosure 2008, art. 9; Mongolia: Law on Transparency of Public Information 2021, art. 8.1; Thailand: Official Information Act B.E. 2540, 1997, ss. 7 and 9; Viet Nam: Law on Access to Information 2016, art. 17.

subject regularly updates the open data it has developed.” Some States have chosen to publish official data on dedicated websites, for example, Malaysia and Mongolia.²⁵

States that do not place pro-active disclosure requirements on public institutions are encouraged to consider adopting such measures.

Easy access to information

Three States – Indonesia, Mongolia and Viet Nam – make explicit reference to easy or convenient access to information in their laws. For example, Viet Nam’s Law on Access to Information 2016 includes the principle that citizens should be provided with information in a timely, transparent and convenient manner (see examples in Table 6).

Ease of access to public information is an important principle. It is advisable for States to consider ways to make public information more accessible, whether through pro-active disclosure and publication of information, or by the design and processing of RTI requests.²⁶ In this context, it is also important to adopt inclusive approaches that support all people to exercise their RTI. This may include taking into consideration gender dimensions, the rights of persons with disabilities, diverse languages, and other groups for whom access to information could be better supported. For example, the Committee on the Rights of Persons with Disabilities has identified issues concerning the “insufficient provision of information in accessible formats” in several countries.²⁷

Technology can be used to facilitate access to information by providing online platforms for digital transparency, real-time updates and interactive interfaces for people to seek and retrieve data. For example, the second cycle of the UNCAC Implementation Review Mechanism highlighted Mongolia’s e-government platform, and encouraged Mongolia to make it available to all citizens, including those living outside Ulaanbaatar, to the extent possible.

In Malaysia, section 6(4)(2) of the state of Selangor’s Freedom of Information Enactment 2011 and section 6(2) of the state of Pulau Pinang’s Freedom of Information Enactment 2010 enable persons unable to submit a request in writing, due to illiteracy or disability, to make such an application orally. The state of Selangor further provides the option, under section 10(4) of the Freedom of Information Enactment 2011, for the information to be communicated in “an alternative form in which he can access it.”

In the Philippines, section 9 of the Executive Order Number 2 of 2016 details that the public official receiving the request “shall provide reasonable assistance free of charge, to enable all parties, particularly those with special needs, to comply with the request requirements.”

²⁵ Government of Malaysia, Malaysia’s Official Open Data Portal. Accessible via: data.gov.my; Government of Mongolia, Open Data Portal. Accessible via: <https://www.shilen.gov.mn/home>.

²⁶ For example, the UN Special Rapporteur on the situation of human rights in Cambodia identified that the public should have easier access to information to check for accountability and transparency. See: Situation of human rights in Cambodia, Report of the Special Rapporteur on the situation of human rights in Cambodia, 20 July 2023 (A/HRC/54/75), para. 91. Accessible via: <https://www.ohchr.org/en/documents/country-reports/ahrc5475-situation-human-rights-cambodia-report-special-rapporteur>.

²⁷ Committee on the Rights of Persons with Disabilities Concluding observations on the initial report of the Lao People’s Democratic Republic (CRPD/C/LAO/CO/1), 30 September 2022, para. 38. Accessible via: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FLAO%2FCO%2F1&Lang=en; Committee on the Rights of Persons with Disabilities Concluding observations on the combined second and third periodic reports of Mongolia (CRPD/C/MNG/CO/2-3), 5 October 2023, para. 43. Accessible via: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FMNG%2FCO%2F2-3&Lang=en; Committee on the Rights of Persons with Disabilities Concluding observations on the initial report of Singapore (CRPD/C/SGP/CO/1), 5 October 2022, para. 41: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FSGP%2FCO%2F1.

Table 6. Examples of legal provisions highlighting the importance of easy access to information

Indonesia: Article 13(1)(b), Law Number 14/2008 on Public Information Disclosure 2008

requires every public agency to set up and develop “an information service supply system that is fast, easy and reasonable, in accordance with the standard technical directives of public information prevailing nation-wide.”

Mongolia: Article 5.1.3, Law on Transparency of Public Information 2021

states that the “provision of information and provision of services should be quick and easy.”

Viet Nam: Article 3(3), Law on Access to Information 2016 states that “[i]nformation must be provided for citizens in timely, transparent and convenient methods, in compliance with orders and procedures regulated by the laws.”

Procedures to process requests for information

The laws specified in Table 4, notably of Indonesia, Malaysia (Pulau Pinang), Mongolia, the Philippines, Timor-Leste and Viet Nam, detail the procedures for how requests can be made for information and processed under the law.²⁸ For example, Timor-Leste mandates 10 days for processing a request for information (see Table 7).

States are encouraged to consider codifying in law the procedures for making a request for information and procedures for responding to requests. This can ensure that clear rules are adopted and applied by public bodies.

Table 7. Examples of legal provisions detailing the process of making and responding to requests for information

Indonesia: Public Information Disclosure Act, section 14 provides that public agencies must respond to requests for information within 14 working days from the date of receipt of the request.

Malaysia (Pulau Pinang): Freedom of Information Enactment 2010, sections 6-7 provide that an application may be made orally if a person is unable to make an application in writing due to illiteracy or disability. It also specifies that a response is to be provided within 14 working days.

Mongolia: Law on Transparency of Public Information, section 15.6.2 provides that a request for information must be processed within five business days.

The Philippines: Executive Order No. 2 2016, section 9 identifies that a request may be submitted in writing and details several requirements, including the need to provide proof of identification or authorization, a reasonable description of the information requested, and the reason for or purpose of the request.

Timor-Leste: Decree-Law N. 43/2016 Rules Relating to Access to Official Documents 2016, article 11 identifies that the government official has 10 days in which to respond to requests, and may: a) reject the request, b) invite the applicant to refine the request, c) authorize access, or d) refuse access to the document.

Viet Nam: Law on Access to Information 2016, article 14 provides that a response to a request for information must be provided within 15 business days from the date of receipt of the request.

²⁸ Indonesia: Law Number 14/2008 on Public Information Disclosure 2008, art. 22; Malaysia (Pulau Pinang): Freedom of Information Enactment 2010, art. 6-7; Mongolia: Law on Transparency of Public Information 2021; Philippines: Executive Order No. 2, 2016, art. 13; Timor-Leste, Decree-Law N.43/2016, Rules Relating to Access to Official Documents 2016, art. 10; Viet Nam, Law on Access to Information 2016, Ch. III.

Low fees

Indonesia's law explicitly states that the applicant can obtain information at a low cost (Law 14/2008 on Public Information Disclosure, article 2(3)). Similarly, Thailand's Official Information Act B.E. 2540, 1997, section 9(8) specifies that a State agency may lay down the rules on collection of fees but that "regard shall also be had to the making of concession given to persons with low incomes, unless otherwise provided by specific law." In the Philippines, Executive Order Number 2, 2016, section 10 specifies that government offices may charge a fee to reimburse "necessary costs, including actual costs of reproduction and copying of the information requested," but that "in no case shall the applicable fees be so onerous as to defeat the purpose" of the Order.

States are encouraged to consider the impact of charging applicants for making requests, even where costs are calculated to cover the reproduction and/ or postage of documents. The cost of applying for or receiving documents could be prohibitive to applicants with a low income, especially where the request for information is wide-ranging or involves lengthy documents.

States are encouraged to review how public bodies currently charge for the disclosure of documents, and if there is an alternative means to provide these without fees (for example, by publishing the documents online). States may also wish to enshrine the principle of low fees for disclosing documents in legislation to ensure that the cost does not create a barrier to access the information.

Provide reasons for refusals

Seven States – Indonesia, Malaysia, Mongolia, the Philippines, Thailand, Timor-Leste and Viet Nam – require reasons to be given to applicants when refusing a request for information.²⁹

While it is positive that States provide reasons for refusing requests, it is recommended that States periodically review the basis upon which refusals are made to check that restrictions are limited to those defined in article 13 of the UNCAC (and article 19(3) of ICCPR). There is a danger that an individual's RTI will be infringed where restrictions (also referred to as exemptions or exceptions) are improperly applied in practice. It is therefore necessary for leaders, such as senior executives of government bodies, to proactively endorse principles of RTI, and for public servants tasked with responding to RTI requests to be properly trained. This would ensure that RTI laws are applied consistently and that restrictions are only applied when lawful and necessary. States with RTI legislation are advised to consider whether the restrictions included in domestic legislation are consistent with the limitations provided by UNCAC, and other international and regional instruments, and are clearly drafted in a manner that facilitates the ease of interpretation and application.³⁰

An appeals procedure

Seven States – Indonesia, Malaysia, Mongolia, the Philippines, Thailand, Timor-Leste and Viet Nam – allow applicants to complain about, or appeal a decision taken by a public authority to refuse a

²⁹ Indonesia: Law Number 14/2008 on Public Information Disclosure 2008, art. 22(7)(c); Malaysia: Pulau Pinang Freedom of Information Enactment 2010, s. 8(2) and Selangor state's Freedom of Information Enactment 2011, s. 8(2); Mongolia: Law on Transparency of Public Information 2021, art. 15.3; the Philippines: Executive Order No. 2, 2016, s. 12; Thailand: Official Information Act B.E. 2540, 1997, s. 15(7); Timor-Leste: Decree-Law N.43/2016. Rules Relating to Access to Official Documents 2016, art. 8(2); Viet Nam: Law on Access to Information 2016, art. 28(1)(d).

³⁰ For example, preliminary observations by the UN Special Rapporteur on freedom of opinion and expression, Ms Irene Khan, at the end of her visit to the Philippines stated, "Executive Order No. 2 that operationalizes freedom of information provides for overly broad or vaguely framed exemptions" and urged the "government to adopt a law on access to information in line with international human rights standards, which includes maximum disclosure in the public interest. Exemptions from disclosure should be provided clearly in the law, be narrowly defined, and subject to independent oversight." Philippines: UN expert calls for more sustained reforms to prevent threats and killings of journalists and activists, press release, 2 February 2024. Accessible via: <https://www.ohchr.org/en/press-releases/2024/02/philippines-un-expert-calls-more-sustained-reforms-prevent-threats-and>.

request or part of a request.³¹ For example, Indonesia established the Information Commission, which is independent of government. It oversees and enforces the implementation of the Law on Public Information Disclosure, including the handling of objections through mediation and if necessary, adjudication. Table 8 provides further details on the appeals procedures in Indonesia, the Philippines and Malaysia.

Table 8: Appealing a decision to refuse disclosure or failure to provide information

Indonesia: Law Number 14/2008 on Public Information Disclosure 2008, chapter VIII details an “objections” process, allowing objections to be made in writing to the supervisor of the Information Management and Documentation Office. The Information Commission has power to conduct a mediation process between the applicant and organization. If this fails, the Commission can settle the matter by adjudication (see articles 47-50). A judicial review of a Commission decision may be sought through the administrative court system.

The Philippines: Executive Order Number 2, 2016, section 13 identifies that an appeal, where a request for access to information is denied, may be made to the person or office next higher in the authority. The appeal must be filed within 15 working days from the notice of the denial, or the lapse of the relevant period to respond, and decided by the next higher authority within 30 working days. Upon the exhaustion of the administrative appeal remedies, the requesting party may file for judicial action.

Malaysia: RTI laws in the states of Pulau Pinang and Selangor establish independent Boards of Appeal that handle appeals related to access to information. The Boards of Appeal have the authority to decide whether or not to grant access to the requested information.

The appeal processes vary between States. Some States have established an information commission that has the power to mediate and adjudicate disputes, whereas the authorities in other countries have advisory and facilitative dispute resolution functions without the power to make binding decisions regarding access to information. For example, the RTI law in Thailand establishes an Official Information Board comprising of officials entrusted by the Prime Minister to facilitate (but not adjudicate) mediations.³² Its recommendations are not legally binding. Accordingly, an applicant who wishes to dispute a decision by a government agency regarding access to information may pursue the ordinary avenues in the legal system of Thailand, such as administrative appeals or judicial review.

States are encouraged to consider adopting, if not established already, an independent information commission. This could have the role to review, mediate and adjudicate on appeals by applicants, who have received refusal notices from public agencies. The functions of an information commission can also support the implementation of RTI laws, raise awareness of its provisions, and where appropriate, maintain oversight of the operation of RTI in public bodies. This could include by performing inspections, issuing enforcement notices, conducting reviews, and making recommendations for applicants, agencies and policymakers.

³¹ Indonesia: Law Number 14/2008 on Public Information Disclosure, 2008, ch. VIII; Malaysia: Pulau Pinang Freedom of Information Enactment 2010, s. 9 and Selangor state’s Freedom of Information Enactment 2011, s. 9; Mongolia: Law on Transparency of Public Information 2021, art. 14.1.6 and 14.2; the Philippines: Executive Order No. 2, 2016, s. 13; Thailand: Official Information Act B.E. 2540, 1997, s. 33; Timor-Leste: Decree-Law N.43/2016. Rules Relating to Access to Official Documents 2016, art. 19; Viet Nam: Law on Access to Information 2016, art. 14.

³² Official Information Act B.E. 2540, 1997, s. 27.

Recommendations

Based on the findings in this discussion paper, ASEAN Member States, Mongolia and Timor-Leste are encouraged to consider the following recommendations and suggestions for enhancing their RTI legislation and mechanisms:

1. The right to freedom of expression be interpreted to include the right to access information. States should therefore consider the compatibility of existing constitutional rights with UNCAC, UNDHR and ICCPR where the constitutional provisions do not specifically identify a RTI.
2. States without RTI legislation adopt specific legislation and procedures to allow for the pro-active disclosure of information by public agencies, rights and processes for seeking information, processes for handling requests, and processes for appeals.
3. States that have received UNCAC or UPR recommendations relevant to RTI consider adopting those recommendations.
4. Where States have not already done so, adopt a legal requirement for public bodies to pro-actively publish information in the public interest.
5. Provide easy access to information by all people, including persons with illiteracy or disabilities. States should consider ways to ensure that information can be provided in a variety of formats, including through digital platforms.
6. Recipients of requests for information be trained and instructed to provide assistance to requesters.
7. Codify the procedures for making a request for information and procedures for responding to requests in law. This can help to ensure that clear rules are adopted and applied.
8. Review the practice of imposing financial charges on people who seek information to ensure that any fees are not a barrier to accessing information. States may consider enshrining the principle of low fees or no fees in law.
9. Review policies and practices regarding the disclosure restrictions to ensure that decisions are consistent with international law. Under UNCAC and ICCPR, any restrictions on the release of information must be provided by law and must only be necessary for: (a) the respect of the rights or reputations of others, or (b) the protection of national security or public order, or of public health or morals.
10. Leaders, such as senior executives of government bodies, proactively endorse principles of RTI, and train public servants tasked with responding to RTI requests to apply only lawful and necessary restrictions.
11. Establish an independent information commission to review, mediate and adjudicate on appeals by applicants, who have had their request for information refused by a public body.
12. Consider giving the information commission oversight functions to RTI operations in public bodies, such as by performing inspections, issuing enforcement notices, conducting reviews, and making recommendations for applicants, agencies and policymakers.