



Freedom of Information and Access to Government Records Around the World¹

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Overview

There are an increasing number of countries around the world that have adopted or are considering adopting freedom of information acts. Over 30 countries now have laws that require the disclosure of government records and dozens more are considering acts.

Many countries that have recently created or updated their constitutions have specific rights to freedom of information in their constitution. In other countries, the courts have found an implicit right to FOI as an element of free speech.

FOIA in 2000

2000 was a positive year for freedom of information around the world. In the past year, there have been a considerable number of developments. A number of countries approved laws and many others began the

process drafting and adopting them. Today, there are now nearly 40 countries around the world with FOI laws.

Regionally, there have many countries advancing toward laws for anti-corruption and freedom of press efforts. In Asia, a number of countries are following the lead of Japan and Thailand, including Indonesia, India, Nepal, and Mongolia. In Pakistan, a code of access was recently proposed by the military government.. More gradually, many African nations are also debating the adoption of laws. In January 2000, South Africa became the first country to adopt a FOI law. There are now well-developed efforts in Kenya and Nigeria. Journalist groups are also leading in Uganda, Tanzania, and Namibia. In Latin America, many countries have constitutional rights to access but they have been adopting laws more slowly.

Finally in Europe, there have been developments both on the international and at the national government levels. Unfortunately, the European Union has promoted restrictions on access to records held by EU organizations. On the national level, there is more positive news. After 20 years, the UK finally has a FOI law. There are also efforts now in Switzerland and Germany to adopt laws. Many countries in Eastern and Central Europe are also following the lead of Hungary and the Czech Republic: all of the Baltic nations now have acts; Slovakia and Bulgaria adopted acts in past year; and Poland, Georgia, Moldova, Albania and Bosnia are also considering acts.

There have also been developments in the substance of the laws. One of the most interesting is the inclusion of a "public interest test" found in the new UK act, and in the pending Bosnian bill. This requires that information or materials otherwise found to be exempt may be released if " public benefit in knowing the information outweighs any harm that may be caused from disclosure."

Another interesting development is the growing trend towards extending FOIA laws in countries to include non-governmental bodies such as companies and NGOs that receive public money to do public projects. This is frequently used to cover hospitals but could have broad affects.

There have also been new developments on oversight. The national Hungarian, and Canadian and German provincial models show a new trend of placing the national data protection authority also in charge of overseeing freedom of information. The new UK and Estonian laws also include this provision. It remains to be seen if these countries will be given sufficient resources to enforce the laws.

An electronic version of this report with more information on freedom of information laws from around the world is available on the Privacy International Web site at <http://www.privacyinternational.org/issues/foia/>

Argentina

Article 43 of the Constitution, enacted in 1994, provides a right of habeas data for individuals to obtain information held about them by government agencies: "Every person may file an action to obtain knowledge of the data about them and its purpose, whether contained in public or private registries or databases intended to provide information; and in the case of false data or discrimination, to suppress,

rectify, make confidential, or update the data. The privacy of news information sources may not be affected."³ The Supreme Court is currently reviewing a case involving Habeas Data.

In November 1998, the City of Buenos Aires approved a law on access to information. The law gives all persons the right to ask for and to receive information held by the local authorities and creates a right of judicial review. Individuals have the right under habeas data to update, rectification, confidentiality or suppression of information.⁴

Australia

The federal Freedom of Information Act 1982⁵ provides for access to government records. The Commonwealth Ombudsman promotes the Act and handles complaints about procedural failures. Merits review (appeals) of adverse FOI decisions is provided by the Administrative Appeals Tribunal, with the possibility of further appeals on points of law to the Federal Court. Budget cuts have severely restricted the capacity of the Attorney General's Dept and Ombudsman to support the Act and there is now little central direction, guidance or monitoring. The government has announced an extension of the Act to cover contracted service providers, but a bill has not yet been introduced. All of the States and the ACT, but not the Northern Territory also have Freedom of Information laws which include rights for individuals to gain access to and to correct personal information about themselves.⁶

Austria

The Auskunftspflichtgesetz is a Freedom of Information law that obliges federal authorities to answer questions regarding their areas of responsibility.⁷ However, it does not permit citizens to access documents, just to receive answers from the government on the content of information. The nine Austrian Provinces have laws that place similar obligations on their authorities.

³ Constitución de la Nación Argentina (1994), <http://www.constitution.org/cons/argentin.htm>.

⁴ Ley No. 104, de Acceso a la Información, promulgada por el Decreto N° 2.930 del 17 de diciembre de 1998, Boletín Oficial de la Ciudad de Buenos Aires del 29 de diciembre de 1998, No. 600, pág. 9360. <<http://www.fas.org/sgp/eprint/bsasfoi2.html>>. See Pablo Andrés Palazzi, El derecho de acceso a la información pública en la ley N° 104 de la Ciudad Autónoma de Buenos Aires. REDI, Número 11 - Junio de 1999, <http://publicaciones.derecho.org/redi/>.

⁵ Freedom of Information Act 1982, http://www.austlii.edu.au/au/legis/cth/consol_act/foia1982222/, Freedom of Information (Fees and Charges) Regulations 1982, http://www.austlii.edu.au/au/legis/cth/consol_reg/foiacr432/index.html, Freedom of Information (Miscellaneous Provisions) regulations 1982 http://www.austlii.edu.au/au/legis/cth/consol_reg/foipr612/index.html.

⁶ For an overview of FOI laws in Australia and links to relevant government sites, see the University of Tasmania's FOI Review web pages at <http://www.comlaw.utas.edu.au/law/foi/>.

⁷ BGBl 1987/285 (15 May 1987).

Belgium

There are freedom of information laws on the right of access to administrative documents on the national⁸ and local and regional levels.⁹ Each jurisdiction has a Commission d'accès aux documents administratifs which oversees the act.

Belize

The Freedom of Information Act was approved in 1994.¹⁰ The law provides for general access to documents held by government departments except for courts and the Office of the Governor General. The definition of documents include "public contracts, grants or leases of land, or any written or printed matter, any map, plan or photograph, and any article or thing that has been so treated in relation to any sounds or visual images that those sounds or visual images are capable, with or without the aid of some other device, of being reproduced from the article or thing, and includes a copy of any such matter, map, plan, photograph, article or thing, but does not include library material maintained for reference purposes." Documents affecting national security, defense, international relations, cabinet proceedings are exempt.

Denials can be appealed to an Ombudsman who can force the disclosure of some documents but not those determined to be exempt. The losing party may appeal to the Supreme Court.

Bosnia and Herzegovina

In July 1999, Carlos Westendorp, the High Representative for Bosnia and Herzegovina ordered that a Freedom of Information bill be developed by the OCSE. The draft was released in June 2000.¹¹

The draft act covers "all government and administrative departments, agencies and related bodies, the courts, and bodies set up by statute that perform a public function." It also provides for a broad right of access by any person or legal entity, both in and outside of Bosnia. Information can be withheld for three reasons: "It would cause "substantial harm" to the "legitimate aim" of foreign policy, defense, or security interests, monetary policy, the protection of public safety, crime prevention or investigation, or the protection of the deliberative process"; to "protect sensitive commercial information or trade secrets that a public authority may have access to for whatever reason"; and to protect personal privacy.

⁸ Loi du 11 avril 1994 relative à la publicité de l'administration Law, la loi du 12 novembre 1997 relative à la publicité de l'administration dans les provinces et les communes.

⁹ COMMISSION COMMUNAUTAIRE COMMUNE DE BRUXELLES-CAPITALE, Ordonnance relative à la publicité de l'administration, 26 Juin 1997; Flanders law of 23.10.1991.

¹⁰ Freedom of Information Act 1994, 14th May, 1994 <<http://www.Transparency.de/documents/source-book/c/cvF/fl.html>>

¹¹ <http://www.oscebih.org/mediaaffairs/eng/media-affairs-documents.htm>

A "public interest test" will be applied to any exemption. According to the OCSE, "the public interest test requires the public authority to release information, even though it has claimed an exemption, if the public benefit in knowing the information outweighs any harm that may be caused from disclosure."

An Information Ombudsman will be created to hear appeals. Requestors can also appeal internally and challenge decisions in court.

Brazil

Article 5 (14) of the 1988 Constitution of Brazil states, "access to information is ensured to everyone and confidentiality of the source is protected whenever necessary for the professional activity."

Individuals have a constitutional right of Habeas Data to access information about themselves held by public agencies which has been adopted into law.¹²

Bulgaria

The Bulgarian Constitution of 1991 Article 41 states, "(1) Everyone shall be entitled to seek, obtain and disseminate information. This right shall not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health and morality. (2) Citizens shall be entitled to obtain information from state bodies and agencies on any matter of legitimate interest to them which is not a state or other secret prescribed by law and does not affect the rights of others."¹³

The Law for Access to Information to provide access to government records was enacted in June 2000.¹⁴ The law allows for access to records except in cases of state security or personal privacy. Minor fines are anticipated against officials who unlawfully withhold documents.¹⁵ The Bulgarian National Bank announced in July 1999 that it would be the first state institution to open up its archive of documents from the Communist era, starting in September.¹⁶ The 1997 Access to Documents of the Former State Security Service Act regulates the access, proceedings of disclosure and use of information kept in the documents of the former State Security Service.

The Bulgarian National Bank announced in July 1999 that it would be the first state institution to open up its archive of documents from the Communist era, starting in September.¹⁷ The 1997 Access to

¹² LEI Nº 9.507, DE 12 DE NOVEMBRO DE 1997.

¹³ Constitution of the Republic of Bulgaria of 13 July 1991, http://www.uni-wuerzburg.de/law/bu00t_.html.

¹⁴ Access to Public Information Act (draft), <<http://www.aip-bg.org/documents/access.htm>>.

¹⁵ . National Assembly Adopts Access to Public Information Bill, FBIS, 22 June 2000.

¹⁶ . RFE/RL NEWSLINE Vol. 3, No. 142, Part II, 23 July 1999

¹⁷ RFE/RL NEWSLINE Vol. 3, No. 142, Part II, 23 July 1999

Documents of the Former State Security Service Act regulates the access, proceedings of disclosure and use of information kept in the documents of the former State Security Service.

Canada

The Access to Information Act¹⁸ provides individuals with a right of access to information held by the federal public sector. The Act gives Canadians and other individuals and corporations present in Canada the right to apply for and obtain copies of federal government records. "Records" include letters, memos, reports, photographs, films, microforms, plans, drawings, diagrams, maps, sound and video recordings, and machine-readable or computer files. About 12,000 requests are made annually for government records.¹⁹

The Act is overseen by the Office of the Information Commissioner of Canada.²⁰ The Commissioner can investigate and issue recommendations but does not have power to issue binding orders. The Office handed 1,670 complaints in 1998/99. It also released report cards on several agencies and issued seven subpoenas on government officials. The Canadian Federal Court has ruled that government has an obligation to answer all access requests regardless of the perceived motives of the requesters. Similarly, the commissioner must investigate all complaints even if the government seeks to block him from so doing on the grounds that the complaints are made for an improper purpose.

The Government of Canada established an Access to Information Review Task Force in August 2000.²¹ According to the Justice Ministry, the task force will "have a mandate to review all components of the Access to Information framework, including the Act, Regulations, policies and procedures. A final is scheduled to be released in the fall of 2001, which will analyze the administrative and legislative aspects of Access to Information and provide recommendations for improvement. "

A new non-governmental coalition formed in March 2000 to promote freedom of information in Canada.²²

Each of the provinces also has a freedom of information law and most have a commissioner to provide enforcement and oversight.²³

¹⁸ Access to Information Act, C. A-1. <http://canada.justice.gc.ca/STABLE/EN/Laws/Chap/A/A-1.html>. (Annotated)

¹⁹ Office of the Information Commissioner of Canada, Annual Report 1998-9, July 21, 1999. <http://fox.nstn.ca/~smulloy/oic98_9e.pdf>.

²⁰ Information Commissioner of Canada, <<http://magi.com/~accessca/>.

²¹ <http://update.foilaw.net/>

²² Home Page: <http://www.opengovernmentcanada.org/>

²³ See Alasdair Roberts, Limited Access: Assessing the Health of Canada's Freedom of Information Laws, April 1998. <http://qsilver.queensu.ca/~foi/foi.pdf>.

Columbia

The 1991 Constitution provides for a right of access to government records.²⁴

Columbia has a long history of FOIA. In 1888, the Code of Political and Municipal Organization allowed for individuals to request documents held in government agencies and archives, unless it was specifically forbidden by another law.²⁵ In 1985, the Law ordering the Publicity of Official Acts and Documents was approved.²⁶ The law allows any person to examine the actual documents held by public agencies and obtain copies. Exceptions are for documents protected by the Constitution, another law, national defense or security. After 30 years, all secrecy is removed and the document becomes a public record. Requests must be responded to in 10 days. If a document request is denied, the petitioner can appeal to an Administrative Tribunal. According to experts, "enforcement of the law is haphazard and the FOIA bureaucracy charged with processing requests does not exist."²⁷

Czech Republic

The Parliament approved the Freedom of Information Law in May 1999. The law is based on the U.S. FOIA and provides for citizens access to all government records held by State bodies, local self-governing authorities and certain other official institutions, such as the Chamber of Lawyers or the Chamber of Doctors except for classified information, trade secrets or personal data.²⁸ The law went into effect on January 1, 2000.

In April 1996, the Parliament approved a law that allows any Czech citizen to obtain his or her file created by the Communist-era secret police (StB). Non-Czech citizens are not allowed to access their records. The Interior Ministry holds 60,000 records but it is estimated that many more were destroyed in 1989. In October 1998, there was a controversy over the rumors that the records showed that former Vienna Mayor Helmut Zilk, who was about to receive an award from Czech President Vaclav Havel, was a collaborator with the StB. It was suspected that the Office for the Documentation and Investigation of the Crimes of Communism was the source of the documents.

²⁴ http://www.fij.edu.co/constitucion/index_91.htm

²⁵ Alberto Donadio, Freedom of Information in Columbia, Access Reports, February 16, 1994.

²⁶ Law 57, July 5, 1985 Ordering the Publicity of Official Acts and Documents.

²⁷ Ibid, Donadio

²⁸ "Freedom of info clears last hurdle," The Prague Post, May 19, 1999.

Denmark

The Access to Information Act and the Access to Public Administration Files Act²⁹ govern access to government records. There is currently an effort to replace the acts with a new law based on E.U. Directive 95/46.

Estonia

Article 44 of the Estonian Constitution provides for a right of FOIA:

- (1) Everyone shall have the right to freely receive information circulated for general use.
- (2) At the request of Estonian citizens, and to the extent and in accordance with procedures determined by law, all state and local government authorities and their officials shall be obligated to provide information on their work, with the exception of information which is forbidden by law to be divulged, and information which is intended for internal use only.
- (3) Estonian citizens shall have the right to become acquainted with information about themselves held by state and local government authorities and in state and local government archives, in accordance with procedures determined by law. This right may be restricted by law in order to protect the rights and liberties of other persons, and the secrecy of children's ancestry, as well as to prevent a crime, or in the interests of apprehending a criminal or to clarify the truth for a court case.
- (4) Unless otherwise determined by law, the rights specified in Paragraphs (2) and (3) shall exist equally for Estonian citizens and citizens of other states and stateless persons who are present in Estonia.³⁰

The Parliament ordered the government to draft a FOIA bill in 1997. The Public Information Act was approved in November 2000 and it took effect in January 2001.³¹ The act covers state and local agencies, legal persons in public law and private entities that are conducting public duties including educational, health care, social or other public services.

The Act also includes significant provisions on electronic access. Government departments and other holders of public information have an affirmative duty to post an extensive list of information on the web, and e-mail requests must be treated as official requests for information. State secrets are broadly exempted. The Act is enforced by the Data Protection Inspectorate

²⁹ lov nr 572 af 19 desember 1985 om offentlighed i forvaltningen).

³⁰ Constitution of Estonia http://www.uni-wuerzburg.de/law/en00000_.html

³¹ Public Information Act, Passed 15 November 2000(RT¹ I 2000, 92, 597).

European Union

Currently, access to documents held by European Union bodies is governed by the 1993 Code of Conduct Concerning Public Access to Council and Commission documents (93/730/EC).³² The code allows for access to documents held by the Council of Ministers and the European Commission. Requestors can either view the documents or be charged a reasonable fee. Documents can be withheld for the following reasons: protecting the public interest including public security, international relations, monetary stability, court proceedings, inspections and investigations; privacy, commercial and industrial secrecy, Community's financial interest, protection of confidentiality and the protection of an institution's interest in the confidentiality of its proceedings. Requestors can file complaints with the European Ombudsman if their requests are denied.

The European Union is currently developing legislation on a right of access. Under Article 255 of the Treaty of Amsterdam, they must have a new right in place by May 2001:

Article 255 (ex Article 191a)

1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3.
2. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 251 within two years of the entry into force of the Treaty of Amsterdam.
3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents.

In January 2000, the Commission released a proposed regulation on access to documents following a secret process in which no drafts or public consultations were officially released. There has been considerable controversy about the proposal and subsequent amended versions because the regulation would severely limit access to many records. The regulation maintains the current exemptions under the 1993 code and additional exemptions for materials including documents that would impede the "effectiveness of the institution's decision-making process."

Graham Watson, the Chair of the Committee on Citizens' Freedoms and Rights in the European Parliament described the effectiveness exemption as "effectively a double exclusion of internal documents," and is "both excessive and unnecessary in a modern public administration." Jacob Söderman, the European Union Ombudsman, described the Commission's proposal as "a list of exemptions from access without precedent in the modern world... there probably won't be a document in the EU's possession that couldn't legally be withheld from public scrutiny." Currently there is an unusual "trialogue" between the European Parliament, the European Commission and the Council of Ministers on developing an agreement.³³ The new Swedish Presidency of the EU has promised to back openness.

³² http://europa.eu.int/eur-lex/en/lif/dat/1993/en_393X0730.html

³³ See <http://www.statewatch.org/secreteurope.html>

Finland

The Publicity (of Public Actions) Act went into effect on December 1, 1999³⁴ replacing the Publicity of Official Documents Act of 1951.³⁵ It provides for a general right to access any document created by a government agency, or sent or received by a government agency, including electronic records. Finland is a country that has traditionally adhered to the Nordic tradition of open access to government files. In fact, the world's first freedom of information act dates back as far as the Riksdag's (Swedish Parliament) 1766 "Access to Public Records Act." This Act also applied to Finland, then a Swedish-governed territory.³⁶

France

Two laws in France provide for a right to access government records.³⁷ All records are available except those involving internal government deliberations, state security, personal information protected by the law on data protection, commercial secrets and other documents protected by law. The law does not apply to documents held by the Conseil d'Etat or the courts.

Two laws in France provide for a right to access government records.³⁸ The laws were amended in April 2000 to clarify access to legal documents and also identify the civil servant processing the request.³⁹

The Commission d'accès aux documents administratifs is charged with enforcing the acts.⁴⁰ According to the CADA, it handled 4,000 inquiries per year between 1996 and 1999.

³⁴ Act on the Openness of Government Activities, <http://www.om.fi/1184.htm>

³⁵ Act 83/9/2/1951

³⁶ Wayne Madsen, *Handbook of Personal Data Protection* (London: Macmillan; New York: Stockton Press, 1992).

³⁷ Loi no. 78-753 du 17 juillet 1978 de la liberté d'accès aux documents administratifs; Loi no 79-587 du juillet 1979 relative à la motivation des actes administratifs et à l'amélioration des relations entre l'administration et le public. <http://www.legifrance.gouv.fr/textes/html/fic197807170753.htm>

³⁸ Loi no. 78-753 du 17 juillet 1978 de la liberté d'accès aux documents administratifs <<http://www.legifrance.gouv.fr/textes/html/fic197807170753.htm>>; Loi no 79-587 du juillet 1979 relative à la motivation des actes administratifs et à l'amélioration des relations entre l'administration et le public.

³⁹ Loi n°2000-321 du 12 avril 2000 relative aux droits des citoyens dans leurs relations avec les administrations (J.O. du 13 avril 2000). <http://www.legifrance.gouv.fr/citoyen/jorf_nor.ow?numjo=FPPX9800029L>. Travaux préparatoires, see: <http://www.assembleenationale.fr/2/2dbc_2000.htm#loi2000_321>.

⁴⁰ Rapport d'activité - 9ème rapport Commission d'accès aux documents administratifs (CADA) Edition 1999.<http://www.ladocfrancaise.gouv.fr/fic_pdf/cada.pdf>.

Germany

There is no general federal freedom of information act in Germany. The federal government is discussing the necessity of a FOIA between the federal and the state governments and waiting for the Council of Europe to finish its' recommendations on freedom of information.

Since 1990, a law allows for access to the files of the Stasi, East Germany's former security service, by individuals and researchers. The law created a Federal Commission for the Records of the State Security Services of the Former GDR (the Gauck Authority) which has a staff of 3,000 piecing together shredded documents and making files available.⁴¹ There have been 1.6 million requests from individuals for access to the files and 2.7 million requests for background checks since the archives became available.⁴² Many of the files were destroyed in 1989 but sometime in 1990, the U.S. Central Intelligence Agency was able to obtain the names, aliases and payment histories of 4,000 spies who worked in various countries for Stasi of informers from the Soviet Union. The U.S. Government is refused to give the files to the German government, claiming that it would harm the people in the files until December 1999.⁴³ In May 2000, files about former Chancellor Helmut Kohl telephone calls were found to be missing from the archives when they were going to be used to investigate corruption.⁴⁴ The Stasi had conducted extensive wiretapping of Kohl for years.

The Land of Brandenburg adopted a freedom of information law in 1998 to allow citizen access to government records.⁴⁵ The act is enforced by the Information and Data Protection Commissioner. More recently, Berlin⁴⁶ and Schleswig Holstein⁴⁷ have also adopted FOI laws.

Greece

Article 5 of the Greek Code of Administrative Procedure (Law No. 2690/1999)⁴⁸ is a new freedom of information act that provides citizens the right to access administrative documents created by government agencies. It replaced Law 1599/1986.

⁴¹ Web Site: <<http://www.snafu.de/~bstu/>>.

⁴² "Gauck reports steady flow of inquiries about stasi records," The Week in Germany, July 16, 1999

⁴³ "U.S.-Held Files Seen Uncovering E. German Spies." Reuters, February 4, 1999.

⁴⁴ Stasi files on Kohl's tapped calls vanish, The Times, May 17, 2000

⁴⁵ Akteneinsichts- und Informationszugangsgesetz (AIG), 1998

⁴⁶ <http://www.datenschutz-berlin.de/recht/bln/ifg/ifg.htm>

⁴⁷ <http://www.rewi.hu-berlin.de/Datenschutz/DSB/SH/material/recht/infofrei/infofrei.htm>

⁴⁸ <http://www.rz.uni-frankfurt.de/~sobotta/greecenew.htm>

Hong Kong

The Code on Access to Information⁴⁹ requires civil servants to provide records held by government departments unless there are specific reasons for not doing so. Departments can withhold information if it relates to 16 different categories including defense, external affairs, law enforcement and personal privacy. Formal complaints of denials can be filed with the Ombudsman. It is not considered to be very effective.

Hungary

Article 61 (1) of the Constitution states: "In the Republic of Hungary everyone has the right to the free declaration of his views and opinions, and has the right of access to information of public interest, and also the freedom of disseminate such information."⁵⁰

Act No. LXIII of 1992 on the Protection of Personal Data and Disclosure of Data of Public Interest covers the collection and use of personal information in both the public sector and private sector. It is a combined Data Protection and Freedom of Information Act.⁵¹

The Parliamentary Commissioner for Data Protection and Freedom of Information oversees the 1992 Act.⁵² Besides acting as an ombudsman for both data protection and freedom of information, the Commissioner's tasks include: maintaining the Data Protection Register, and providing opinions on DP and FOI-related draft legislation as well as each category of official secrets. Under the Secrecy Act of 1995, the Commissioner is entitled to change the classification of state and official secrets as well. The Commissioner (along with the two other Parliamentary Commissioners – one for human rights in general, the other for the ethnic minorities) was elected for the first time on June 30, 1995, for a six year term.

Iceland

The Freedom of Information Act of 1996 (Upplysingalög) governs the release of records.⁵³ The act was first proposed in 1969. Under the act, individuals, including non-residents, and legal entities have a legal right to documents without having to show a reason for the document. There are exceptions for national security, commercial and personal information. Copyrighted material can be provided to requestors but it is then their responsibility if they republish the materials in a manner inconsistent with the copyright. Denials can be appealed to the Information Committee.

⁴⁹ Code on Access to Information, March 1995, <http://www.info.gov.hk/access/code.htm>.

⁵⁰ Constitution of the Republic of Hungary, <http://centraleurope.com/ceo/country/hungary/constit/hucons01.html>.

⁵¹ ACT LXIII OF 1992 on the Protection of Personal Data and the Publicity of Data of Public Interest, http://www.privacy.org/pi/countries/hungary/hungary_privacy_law_1992.html.

⁵² Web Site: <http://www.obh.hu/>

⁵³ Act no. 50/1996, <http://www.rz.uni-frankfurt.de/~sobotta/Enskthyd.doc>

India

The Supreme Court ruled in 1982 that access to government information was an essential part of the fundamental right to freedom of speech and expression⁵⁴

A draft Freedom of Information Act was introduced into the Parliament in July 2000.⁵⁵ The bill would provide a general right to access information and create a National Council for Freedom of Information and State Councils. It contains seven broad categories of exemptions. The draft was heavily criticized by campaigners who said that the bill provided only limited access to government records.⁵⁶ The National Centre for Advocacy Studies said, “Many of the aspects towards information availability have been left completely in the hands of bureaucrats, which defeats the very purpose of the bill.” NGO representatives estimate that the bill will be approved in Summer 2001.

In 1997, the state of Tamil Nadu adopted the Act for Right to Information and the states of Gujarat and Rajasthan have administratively provided access to records. The state of Madhya Pradesh enacted a Right to Information Bill in March 1998

Indonesia

The Coalition for Information Freedom, a group of 17 NGOs, released a draft freedom of information act in February 2001. They are planning to present it to Parliament in the next month.

The draft act sets broad rights for access by any person to information held by government agencies, legislative and judicial bodies, state owned companies, NGOs getting public funding for activities and private companies conducting government activities. Government bodies have an obligation to maintain and disseminate information. Information can be withheld for reasons of law enforcement, intellectual property, national defense and security, health and safety of a person or the public or for protecting private confidentiality.

It creates a Central Information Commission and regional information commissions to oversee the act. The Commission can overrule a withholding of information if there is a greater public interest to disclose the information.

⁵⁴ S.P. Gupta vs. Union of India (AIR 1982 SC 149); See Government of India, Report of the Working Group on Right to Information and Promotion of Open and Transparent Government, May 1997.

⁵⁵ Freedom of Information Bill, 2000. <<http://www.humanrightsinitiative.org/RTI/foibill1.htm>>.

⁵⁶ “Open-government bill flawed, say activists,” South China Morning Post, January 11, 2000. “NGOs oppose information bill,” The Times of India, March 7, 2000.

Ireland

The Freedom of Information Act was approved in 1997 and went into effect in April 1998.⁵⁷ The act creates a presumption that the public can access documents created by government agencies and requires that government agencies make internal information on their rules and activities available.

The Office of the Information Commissioner enforces the act. According to the Information Commissioner's 1999 Annual Report, over 11,000 FOI requests in total were made to public bodies in 1999. The Commissioner accepted 443 cases for review, of which 141 were completed.⁵⁸

Israel

The Supreme Court ruled in the 1990 Shalit case that there was a fundamental right for citizens to obtain information from the government.⁵⁹

The Freedom of Information Law was approved unanimously by the Knesset in May 1998.⁶⁰ It provides for broad access to records held by government offices, local councils and government-owned corporations. Requests for information must be processed within 30 days. A court can review decisions to withheld information. According to the Association for Civil Liberties in Israel, there have now been several court decisions on the new law, which is being used "effectively."

Italy

The Act of 241/7.8.1990 provides for access to government documents.⁶¹ However, it requires that requestors provide a legitimate reason for the request.

Japan

The Disclosure of Information Act⁶² was approved by the Diet in May 1999 after 20 years of debate. The law allows any individual or company to request government information in electronic or printed form. A

⁵⁷ Freedom of Information Act, 1997.

<<http://www.irlgov.ie/finance/free1.htm>

⁵⁸ Irish Information Commissioner, Annual Report, 1999. <<http://www.irlgov.ie/oic/report99/pub.htm>

⁵⁹ H.C. 1601-4/90 Shalit et al. v. Peres et al., 44(3) P.D. 353. See Debbie L. Rabina, Access to government information in Israel: stages in the continuing development of a national information policy. <<http://www.ifla.org/IV/ifla66/papers/018-160e.htm>>.

⁶⁰ See The Coalition for Freedom of Information, <<http://www.nif.org/cfi/foipeng.html>>.

⁶¹ http://www.giustizia.it/cassazione/serv-novita/1241_90.html#ART22

nine-person committee in the Office of the Prime Minister will receive complaints about information which the government refuses to make public and will examine whether the decisions made by the ministries and agencies were appropriate. Government officials will still have broad discretion to refuse requests but requestors will be able to appeal decisions to withhold documents to one of eight different district courts. The law went into effect in 2001.

A survey by Kyodo News in May 1999 found that 31 city and prefectural governments are in the process of adopting legislation consistent with the new law. Sixteen of them are including a principle of "right to know."⁶³

Kenya

The Official Secrets Act, like its namesake in the United Kingdom, places severe restrictions on the dissemination of government information in Kenya. Ministers have broad discretion to classify information as a government secret.

The International Commission of Jurists – Kenya launched a campaign to adopt a FOI law in August 1999. They presented a draft proposal for the enactment of a law on freedom of information to the Attorney General and released a detailed report finding support for a law. They conducted a survey of the media, legal professionals and judicial officials, government officials, business sector personalities and the general public and found that 96% supported the idea of a freedom of information act.

South Korea

The Supreme Court ruled in 1989 that there is a constitutional right to information "as an aspect of the right of freedom of expression, and specific implementing legislation to define the contours of the right was not a prerequisite to its enforcement."⁶⁴

The Act on Disclosure of Information by Public Agencies is a freedom of information act that allows Koreans to demand access to government records. It was enacted in 1996 and went into effect in 1998.

⁶² <http://www.somucho.go.jp/gyoukan/kanri/translation.htm>

⁶³ Kyodo News, May 22, 1999.

⁶⁴ Right to Information(1 KCCR 176, 88 HunMa 22, Sep. 4, 1989), <http://www.ccourt.go.kr/english/case4.html>

Latvia

The Law on Freedom of Information was adopted by the Saeima in October 1998 and signed into law by the State President in November 1998.⁶⁵ It guarantees public access to all information in "any technically feasible form" not specifically restricted by law.

Information can only be limited if there is a law; the information is for internal use of an institution; trade secrets; information about the private life of an individual, and certification, examination, project, tender and similar evaluation procedures. Individuals may use it to obtain their own records.

Lithuania

Article 25(5) of the constitution states, "Citizens shall have the right to obtain any available information which concerns them from State agencies in the manner established by law."

The 1996 Law on the Provision of Information to the Public provides:

1. Every individual in the Republic of Lithuania shall have the right to acquaint himself with all of the official documents of the state, municipal governments and government institutions and other budgetary organisations, with the exception of those which shall be classified according to laws.
2. In refusing to provide information to a public information producer (his representative), state officers must not later than on the next working day, inform him of this in writing, indicating the reason for the refusal.
3. The laws shall establish the liability of state officers for unjustified refusal to provide information or for giving false information.
4. Political parties, political and public organisations, trade union and other organisations shall provide people and public information producers with official information concerning the activity of organisations represented by them, according to the procedure established in their bylaws, with the exception of information which according to Republic of Lithuania laws shall be confidential.

⁶⁶

The Law on Provision of Information to the Public was amended in December 2000. Article 6 states that "Every individual shall have the right to obtain from State and local authority institutions and agencies and other budgetary institutions public information regarding their activities, their official documents (copies), as well as private information about himself"⁶⁷ State and local governments must provide the

⁶⁵ Law on Freedom of Information, Adopted 29 October 1998, Signed 6 November 1998.

⁶⁶ The Law on the Provision of Information to the Public, 2 July 1996 No.I-1418 (As amended by 23 January 1997)
http://www.lrtv.lt/en_lrtvm.htm

⁶⁷ http://www.lrtv.lt/en_lrtvm.htm

information under the Law On the Right to Obtain Information from State and Local government Institutions. Information must be provided within a week.

Luxembourg

There is no general freedom of information law in Luxembourg. Under the 1960 decree on state archives, the archives are to be open to the public but citizens must make a written request explaining why they want access and ministers have broad discretion to deny requests.⁶⁸ The government announced in August 1999 that it was planning to develop a new press bill including a right to access records.⁶⁹

Moldova

Article 34 of the Constitution provides for a right of access to information:

- (1) Having access to any information of public interest is everybody's right, that may not be curtailed.
- (2) According with their established level of competence, public authorities shall ensure that citizens are correctly informed both on public affairs and matters of personal interest.
- (3) The right of access to information may not prejudice either the measures taken to protect the citizens or the national security.
- (4) The State and private media are obliged to ensure that correct information reaches public opinion.
- (5) The public media shall not be submitted to censorship.⁷⁰

In addition Article 37 on the environment also provides for a right to information "(2) The State guarantees every citizen the right of free access to truthful information regarding the state of the natural environment, the living and working conditions, and the quality of food products and household appliances."

The "Law on Free Access to Information" drafted by the Committee for Freedom of the Press is currently being considered by the Parliament.⁷¹ According to the Independent Center for Journalism, the Parliament had their first reading on the draft on 15 July 1999, and is scheduled to examine it article by article in order to adopt it. The Swedish Ministry of Justice⁷², Article 19⁷³ and The American Bar Association submitted comments on the bill in April and May 1999, suggesting a number of changes.⁷⁴

⁶⁸ Arrêté grand-ducal fixant l'organisation et les conditions de fonctionnement des Archives de l'Etat.

⁶⁹ Le programme gouvernemental: Accord de coalition PCS/PDL, August 1999.

<<http://www.gouvernement.lu/gouv/fr/gouv/progg/coalfr.html#1>>

⁷⁰ CONSTITUTION OF THE REPUBLIC OF MOLDOVA. Adopted on July 29, 1994,

<http://www.urich.edu/~jpjones/confinder/moldova3.htm>

⁷¹ <http://ijc.iatp.md/mluhp/failaw.html>

⁷² Analysis of the of the Moldovan Draft Law on Freedom of Information, May 1999

<<http://www.internews.ru/law/moldova/analysis/>>

Under the draft law, "Any person has the right to seek, obtain and publish information of any kind." Institutions must respond within 15 days. Information can be withheld for respecting other people's rights and reputation; protection of national security or public order, as well as public health or morals; information falling under the category of state secrets, regulated by organic law and qualified as information protected by the state and related to its military, economic, technical-scientific, foreign policy, intelligence, counterintelligence and investigation activities; confidential business information submitted to public institutions under conditions of confidentiality; personal data, personal and medical files whose disclosure may be considered as interference with one's private life, which is protected by the current legislation; information related to the investigative activity of the corresponding bodies; information that represents the final or intermediary results of scientific and technical research; information whose disclosure may affect the environment, as provided by law. Denials or delays can be appealed "with hierarchically superior bodies, parliamentary advocates, as well as in court."

Nepal

In June 2000, a delegation of journalists presented Jaya Prakash Prasad Gupta, Nepal's Information and Communication minister, a draft freedom of information bill, and asked him to present it to Parliament.

The bill provides for a broad right of access to official information and also information on performance of political parties, NGOs and companies. The bill also requires officials to periodically disclose information and keep systematic records. Officials who refuse to comply with requests can be fined \$75.00.

Netherlands

The Government Information (Public Access) Act of 1991⁷³ is based on the constitutional right of access to information. It creates a presumption that documents created by a public agency should be available to everyone.

Information can be withheld if it relates to international relations of the state, the "economic or financial interest of the state," investigation of criminal offenses, inspections by public authorities or personal privacy. However this must be balanced against the importance of the disclosure.

Requestors can appeal denials to an administrative court which has the final decision.

⁷³ Memorandum on Aspects of the Moldovan Draft Law on Freedom of Information, London, May 1999

<<http://www.article19.org/pubs/mlamolin.htm>>

⁷⁴ Analysis of the Draft Law on Free Access to Information for the Republic of Moldova, April 4, 1999.

<http://www.abanet.org/ceeli/assessments/Moldova/Moldoviafreeaccessinfo.htm>

⁷⁵ Act of 31 October 1991, containing regulations governing public access to government information. This replaced the Act on Public Access to Information of 9 November 1978.

New Zealand

The Official Information Act 1982 and the Local Government Official Information and Meetings Act 1987 are freedom of information legislation governing the public sector.

Enforcement is supervised by the Office of the Ombudsman. There are significant interconnections between this freedom of information legislation and the Privacy Act in subject matter, administration, and jurisprudence, so much so that the three enactments may be viewed, in relation to access to information, as complementary components of one overall statutory scheme.

Nigeria

A Freedom of Information Act was introduced in the House of Representatives by two legislators in 1999.⁷⁶ The bill provides for a right of access to government records and those held by private bodies "carrying out public functions." It was developed by the Media Rights Agenda with the assistance of Article 19 and other Nigerian NGOs.

The bill has gone through two readings in the House of Representatives and is pending in the House Committee on Information. It is scheduled to have a third reading and be approved by the House in late February 2001. According to the Media Rights Agenda⁷⁷, a press and freedom of expression association in Nigeria, President Olusegun Obasanjo has agreed to approve the bill, and they expect it to be enacted by Summer 2001.

Norway

The Public Access to Documents in the (Public) Administration provides for public access to government records.⁷⁸ Under the Act, there is a broad right of access to records. The act has been in effect since 1971.

The Act does not apply to records held by the Storting (Parliament), the Office of the Auditor General, the Storting's Ombudsman for Public Administration or other institutions of the Storting. There are exemptions for internal documents; "could be detrimental to the security of the realm, national defence or relations with foreign states or international organizations"; subject to a duty of secrecy; "in the interests

⁷⁶ <http://www.internews.org/mra/freeinfo/freeinfo.htm>

⁷⁷ <http://www.internews.org/mra/>

⁷⁸ The Freedom of Information Act of 1970 (lov om offentlighet i forvaltningen av 19 juni 1970 nr 69). Amended by Act No. 47 of 11 June 1982 and Act no. 86 of 17 December 1982 and Act of 10 January 1997 No. 7. <http://www.ub.uio.no/ujur/ulovdata/lov-19700619-069-eng.pdf>.

of proper execution of the financial, pay or personnel management"; the minutes of the Council of State, Photographs of persons entered in a personal data register; Complaints, reports and other documents concerning breaches of the law; Answers to examinations or similar tests; and Documents prepared by a ministry in connection with annual fiscal budgets. The King can make a determination that historical documents in the archive that are otherwise exempted can be publicly released.

If access is denied, individuals can appeal to a higher authority under the act and then to a Court.

Pakistan

The Federal Minister for Information released a draft Freedom of Information Ordinance in August 2000. The draft, which is based on a 1997 ordinance that was never adopted, provides for broad exemptions including the notes officials put on files, minutes of meetings, interim orders, classified records (with no limits on classification), and records relating to the personal privacy of any individual. Government officials have broad discretion to determine if the requestor is "fit" to obtain the record and there are no penalties for refusing to comply.

The draft has been heavily criticized by commentators. Council of Pakistan Newspaper Editors President Arif Nizami said that the revisions make the already weak 1997 ordinance even weaker. The International Press Institute wrote that, "the Ordinance is a lack-lustre attempt at providing a freedom of information law in Pakistan and displays little commitment on the part of the ruling authorities to practice open and honest government."

Peru

Freedom of information is constitutionally protected under the right of habeas data. The first case to test the habeas data clause, which reviewed clause 7 of Article 2, was brought in the criminal court system in January 1994. The Supreme Court ruled in March 1994 that the case should not have been brought in the criminal courts, nullified all previous decisions on the case, and ordered it resubmitted to the civil court system.⁷⁹ Several cases have allowed the courts to establish their jurisdiction over, and support for, habeas data. In 1996 the Supreme Court, citing clause 5 of Article 2 of the Constitution, ordered the Ministry of Energy and Mines to release environmental surveys of a private mining operation to the Peruvian Society of Environmental Rights.⁸⁰ Also in 1996, the Supreme Court sided with the Civil Labor Association against the General Director of Mining and ordered the release of an environmental impact study submitted by the Southern Perú Cooper Corporation.⁸¹

⁷⁹ "AUTOS & VISTOS: Comentarios jurisprudenciales". *Colegio de Abogados de Lima y Gaceta Juridica*, January, 1996. pp. 41-53.

⁸⁰ VerExp. N° 1658-95. published in the Diario Oficial *El Peruano*. "Jurisprudencia". September 4, 1996. pp. 2297.

⁸¹ VerExp. N° 263-96. published in the Diario Oficial *El Peruano*. December 28, 1996. pp. 2698: repeated December 29, 1996. pp. 2748-2749.

In May, 1994, Law N° 26301⁸² was passed in order to set temporary legal standards for the legal application of habeas data. The Law requires that all habeas data actions be notarized, although reasons for the requested action need not be given, and filed with the legal authority from which information or an action is desired. The Law sets out the time periods and procedures for taking actions under clauses 5, 6 and/or 7 of Article 2 of the Constitution. The Law was updated in June 1995⁸³ to give a right of action, provide greater access to records, and to limit its use as a means of censorship.

Philippines

Article 3, Section 7 of the 1987 Constitution, states:

"The right of the people to information of matters of public concern shall be recognized. Access to official records and documents, and papers pertaining to official acts, transactions, or decisions as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law."⁸⁴

The Code of Conduct and Ethical Standards for Public Officials and Employees⁸⁵ mandates disclosure of public transactions and guarantees access to official information, records or documents. Agencies must act on a request within 15 working days from receipt of the request. Complaints against public officials and employees who fail to act on request can be filed with the Civil Service Commission or the Office of the Ombudsman.

Poland

Article 61 of the Constitution provides a right of FOIA and mandates that the Parliament enact a law setting out this right.⁸⁶

(1) A citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions. Such right shall also include receipt of information on the activities of self-governing economic or professional organs and other persons or organizational units relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury.

⁸² Ley N° 26301, APRUEBAN LEY REFERIDA A LA APLICACION DE LA ACCION CONSTITUCIONAL DE HABEAS DATA, May 2, 1994, <http://www.asesor.com.pe/teleley/bull505.htm>.

⁸³ IFEX, "Habeas Data law modified and approved," 1995/04/25; IFEX, "President's Office promulgates reforms to Habeas Data laws," 1995/06/12.

⁸⁴ Constitution of Philippines <<http://www.chanrobles.com/philsupremelaw1.htm>>.

⁸⁵ Republic Act 6713 of 1987 <<http://www.bknet.org/laws/ra6713.html>>.

⁸⁶ Constitution of Poland, <http://www.uni-wuerzburg.de/law/pl00000_.html>

(2) The right to obtain information shall ensure access to documents and entry to sittings of collective organs of public authority formed by universal elections, with the opportunity to make sound and visual recordings.

(3) Limitations upon the rights referred to in Paragraphs (1) and (2), may be imposed by statute solely to protect freedoms and rights of other persons and economic subjects, public order, security or important economic interests of the State.

There is no general freedom of information act in Poland. The Polish Journalists' Union (SDP) and the Adam Smith Centre developed a bill and presented it to Parliament in June 2000. They urged the government to adopt the bill in the current session of Parliament. In May, the two groups met with Prime Minister Jerzy Buzek, who agreed that the law should be adopted.⁸⁷

Poland enacted The Classified Information Protection Act in January 1999 as a condition to entering NATO.⁸⁸ The act covers classified information or information collected by government agencies that disclosure "might damage interests of the state, public interests, or lawfully protected interests of citizens or of an organization."

There have also been efforts to deal with the files and former employees of the communist era secret police. A law creating a National Remembrance Institute (IPN) to allow victims of the communist era secret police access to records was approved by the Parliament in October 1998. President Aleksander Kwasniewski vetoed the bill saying that it should allow all Poles access to the records but his veto was overridden and he later signed the bill.⁸⁹ A new director was finally approved for the institute in June 2000. The IPN will now take control of all archives of the communist-era security service and those of courts, prosecutors' offices, the former communist party and other institutions. "It will take several months before the opening of the first file," said Zak. Poles will be allowed to see their personal files compiled by the authorities before 1989 and learn if they suffered from discrimination and possibly who informed on them.⁹⁰

The Screening Act, which allows a special commission to examine the records of government officials who might have collaborated with the secret police, was approved in June 1997 but was delaying until 1998. In November 1998, the Constitutional Tribunal ruled that the act was constitutional except for two provisions. As of January 1999, the Screening Department of the Appellate Court had received 23,460 screening statements from public officials.⁹¹ In July 2000, the Parliamentary Commission for Special Services determined that the State Protection Office had not violated the Act when it gave the lustration court documents on President Aleksander Kwasniewski but found that the UOP improperly concluding that Kwasniewski was a secret agent and had delayed providing documents which prevented the court from investigating. The Democratic Left Alliance (SLD) said that the UOP had done this deliberately to influence the election.⁹²

⁸⁷ Journalists, Adam Smith Centre present freedom of information, PAP news agency, June 12, 2000.

⁸⁸ The Classified Information Protection Act of 22 January 1999.

⁸⁹ Veto Overridden, President Signs Secret Files Bill, Polish News Bulletin, December 21, 1998.

⁹⁰ Reuters, June 8, 2000.

⁹¹ Appellate Court Receives Over 23,000 Screening Statements, Polish News Bulletin, January 5, 1999.

⁹² RFE/RL NEWSLINE Vol. 4, No. 146, Part II, 1 August 2000

Portugal

Law n° 65/93, of 26 August 1993 provides for access to government records in any form by any person.⁹³ Documents can be withheld for “internal or external security”, secrecy of justice, and personal privacy.

It is overseen by the Commission for Access to Administrative Documents (CADA) an independent Parliamentary agency.⁹⁴ The CADA can examine complaints, provide opinions on access, and decide on classification of systems. CADA issued 177 opinions in 1998.

Russian Federation

Article 24 (2) of the Constitution states: "The bodies of state authority and the bodies of local self-government and the officials thereof shall provide to each citizen access to any documents and materials directly affecting his/her rights and liberties unless otherwise stipulated under the law."

The Law of the Russian Federation on Information, Informatization, and Information Protection is a Freedom of Information law.⁹⁵ Under the act "Government information resources of the Russian Federation are public; they are generally accessible." Requestors are not required to provide a reason for their request. The law prohibits limits on the following types of information:

- Laws and other regulations which concern the legal position of the government bodies, territorial self-governing bodies, organisations and social associations, or the rights, freedoms and duties of the citizens, and procedures involved;
- Documents which report on unusual events, ecological, meteorological, demographic, health and epidemic-related facts, or contain other information which is of importance for the functioning of supply and production facilities or for the safety of the citizens and the economy;
- Documents which report on activities of the government bodies and territorial self-governing bodies, on use of the budget funds or other governmental and local stocks, on economic situation and supply requirements, except for documents affecting state secrets.
- Documents in the public collections of libraries and archives, information systems of government bodies, territorial self-governing bodies, social associations and organisations, which are of public interest or essential for the exercise of citizens' rights, freedoms and duties.

The law is overseen by the Committee of the State Duma on Information and Informatization and the State Committee on Information and Informatization under the Russian President Authority.

⁹³ Lei n° 65/93, de 26 de Agosto, com as alterações constantes da Lei n° 8/95, de 29 de Março e pela Lei n°94/99, de 16 de Julho <<http://www.cada.pt/paginas/lada.html>>.

⁹⁴ Home Page: <<http://www.cada.pt/>>.

⁹⁵ Russian Federation Federal Act No. 24-FZ, Law of the Russian Federation on Information, Informatization and Information Protection, 25th January 1995. <http://www.datenschutz-berlin.de/gesetze/internat/fen.htm> (extracts).

According to an analysis by Viktor Monachov, a drafter of the law, the law only covers the mass media access to information on political processes.

A project for a general act has been under discussion since 1990. It had a first reading in 1997 but has not yet been approved.⁹⁶ A more extensive FOIA bill entitled “Federal Law on the Right to Access Information” is currently pending in the Duma. The bill creates a presumption that information is “available and open,” “reliable and complete,” and “must be timely disclosed.” Agencies must respond within 30 days. Information can be withheld if it is a “national, commercial, official, professional or banking secret” or related to a “valid investigation and fact-finding proceedings.” If information is withheld, the person can appeal to the agency, then to a court and the Human Rights Ombudsman.

Slovakia

The Act on Free Access to Information was approved by the Parliament in May 2000. It sets broad rules on disclosure of information held by the government. There are limitations on information that is classified, that is a trade secret, that would violate privacy, or was obtained “from a person not required by law to provide information, who upon notification of the Obligee instructed the Obligee in writing not to disclose information,” or that “concerns the decision-making power of the courts and law enforcement bodies.” Appeals are made to higher agencies and can be reviewed by a court. There are separate requirements for disclosure of environmental information that covers private organizations. The Act became effective January 1, 2001.⁹⁷

South Africa

Section 32 of the South African Constitution of 1996 states:

(1) Everyone has the right of access to – (a) any information held by the state, and; (b) any information that is held by another person and that is required for the exercise or protection of any rights; (2) National legislation must be enacted to give effect to this right, and ⁹⁸may provide for reasonable measures to alleviate the administrative and financial burden on the state.

The Act on Free Access to Information was approved by the Parliament in May 2000. It sets broad rules on disclosure of information held by the government. There are limitations on information that is classified, that is a trade secret, that would violate privacy, or was obtained “from a person not required by law to provide information, who upon notification of the Obligee instructed the Obligee in writing not

⁹⁶ Viktor Monachov "DIE ENTWICKLUNG DES INFORMATIONSRECHTS IN RUSSLAND".

<<http://www.lda.brandenburg.de/internat/Symp99/monachov.pdf>>

⁹⁷ Act on Free Access to Information <<http://www.infozakon.sk/zakon-schvalenyvnrshr.htm>> (In Slovakian).

⁹⁸ The Constitution of the Republic of South Africa, Act 108 of 1996.

<http://www.parliament.gov.za/legislation/1996/saconst.html>.

to disclose information,” or that “concerns the decision-making power of the courts and law enforcement bodies.” Appeals are made to higher agencies and can be reviewed by a court. There are separate requirements for disclosure of environmental information that covers private organizations. The Act became effective January 1, 2001.⁹⁹ The Act will be enforced by the Human Rights Commission.

Draft regulations were proposed in May 2000¹⁰⁰ and several sections of the Act took effect in September 2000.¹⁰¹

It was reported that the apartheid-era security police maintained 314,000 files on individuals and 9,400 on organizations.¹⁰² Many documents were reported destroyed in 1993 by military intelligence.

Spain

The law of 30/26/11/1992 provides for access to government information.¹⁰³

Sweden

Sweden is a country that has traditionally adhered to the Nordic tradition of open access to government files. The world's first freedom of information act was the Riksdag's (Swedish Parliament) "Freedom of the Press Act of 1766." The Act required that official documents should "upon request immediately be made available to anyone making a request" at no charge. The Freedom of the Press Act¹⁰⁴ is now part of the Constitution and decrees that "every Swedish citizen shall have free access to official documents." Decisions by public authorities to deny access to official documents may be appealed to general administrative courts and ultimately, to the Supreme Administrative Court. The Parliamentary Ombudsman has some oversight functions for freedom of information.

Thailand

Section 48 (bis) of the Constitution states: "Persons shall have the right to receive information or news from the government agency or state agency or public enterprise in order to check the performance of the

⁹⁹ Act on Free Access to Information <<http://www.infozakon.sk/zakon-schvalenyvnrsr.htm>> (In Slovakian).

¹⁰⁰ <http://www.pmg.org.za/bills/Act2-20DraftRegs000512.htm>

¹⁰¹ <http://www.polity.org.za/govdocs/notices/2000/not2555.html>

¹⁰² Gavin Evans, South Africa: Home truths, The Independent, October 31, 1998.

¹⁰³ Ley 30/1992, de 26 de Noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común. <<http://www.um.es/siu/marco/30-92.htm>>

¹⁰⁴ http://www.riksdagen.se/arbetar/grundbok_en/FPA02.htm#E11E27

government official or state official when such matter have or may have affects on the living of such person as the law provided."¹⁰⁵

The Official Information Act was approved in July 1997 and went into effect in December 1997.¹⁰⁶ The Act allows for citizens to obtain government information such as the result of consideration or a decision which has a direct effect on a private individual, work-plan, project and annual expenditure estimates, and manuals or order relating to work procedure of State officials which affects the rights and duties of private individuals.

The Official Information Commission oversees the act. Individuals can appeal denials to the Commission. According to the OIC, in 1999, there were 113 complaints, 80 of which were solved while the remaining 33 are under processing. There were 32 cases in 1998.

According to the OIC, they have found a number of problems with implementing the new act. These include:

- Most people neither understand key elements of the Act nor realize their own right. Most people do not know how to utilize the law in compliance with their demand to have access to the State information. People cannot exercise their right, as they do not know the procedures.
- As for government agencies, the high-ranking officials do not understand the law and do not know how to implement the Act. More than this, as they lack adequate knowledge of the law and the main principles of information disclosure service in order to achieve people's right to know, they thus cannot administer the office in accordance with the Act. Another significant aspect is they have less skill in exercising the matter of discretion.
- The servicing level of the government agencies still also has deficient knowledge about the Information Act. They are not used to the very new principles of information disclosure as a crucial part of servicing. They have negative attitudes towards the Act. Some feel that the Act puts more burden to them, and like the executive level, they have less experience in implementing the law, in terms of servicing procedures, information disclosure and judgment practices on the kind of information.¹⁰⁷

In October 2000, the Supreme Court ruled upheld an order by the Official Information Commission to disclose school entrance exam results demanded by parents of children who were rejected by an elite elementary school. According to media reports, in November, the Cabinet approved a measure that prohibits confidentiality clauses in government contracts.

Ukraine¹⁰⁸

Article 34 of the Constitution guarantees the rights "to freely collect, store, use and disseminate information by oral, written or other means of his or her choice."

Article 29 of the Act "On Information" adopted by Parliament on October 2, 1992 (No2657-XII) prohibits provides a procedure for access to information from government agencies. A government department

¹⁰⁵ Constitution of the Kingdom of Thailand, B.E. 2534 (1991), <<http://www.parliament.go.th/files/library/b05-b.htm>>

¹⁰⁶ Official Information Act, B.E. 2540 (1997), <http://www.krisdika.go.th/law/text/lawpub/e02092540/text.htm>

¹⁰⁷ Nakorn Serirak, Thailand's Information Law,

¹⁰⁸ Source: Andriy Pazyuk, Privacy Ukraine, "Freedom of Information in Ukraine", March 2000.

must determine within ten days if the information can be released. The author of rejected or delayed inquiry has a right to appeal the decision to higher echelon or court.

Article 2 of "On the Order of Dissemination of Information on Public Bodies and Local Governments Activity by Mass-Media"¹⁰⁹ requires public bodies to inform the mass media about their activities. The Statute guarantees free access to such information for journalists except when prescribed by the Statute "On State Secrecy". The Statute prohibits putting pressure upon and interfering in activity of journalists.

At the same time, there is a tendency by the executive to limit the constitutional right to know. The Cabinet of Ministers adopted with Enactment of November 27, 1998 (No. 1893) Regulation On the Order of Recording, Storage and Use of Papers, Matters, Issues and other Material Objects with Confidential Information Possessed by State.¹¹⁰ The Regulation provides for the rule of access limitation using by designating information with "Official Secrecy".

United Kingdom

The Freedom of Information Act 2000 was approved in November 2000 after nearly 20 years of effort. The government has five years to implement the act and has not yet announced when they plan to start.

The Act sets out general right of access to information. However, it contains many exemptions and received considerable criticism from many NGOs and politicians across the political spectrum as being insufficient and weaker than the existing code of practice. Under a "class exemption," information can be limited if it is determined to be within a broad class of information. This includes policy formulations, ministerial communications, investigations and proceedings, and "the effective conduct of public affairs", factual information, its analysis, research findings, scientific assessments, evidence of health hazards, reports on overseas practice, cost data, technical assumptions, consultants' studies and untested assertions fed into the system by lobbyists. There is a requirement on the release of statistics but only where they relate to a decision which has been made. Statistics about an undecided matter can be suppressed.

There is also a more limited "Prejudice Exemption" where the government body must show prejudice (harm) to specified interests. These include areas relating to defense, international relations, economy, crime prevention, and immigration.

A number of intelligence and police agencies are excluded from coverage under the act.

One important safeguard is the inclusion of a "Public Interest test" which provides that information can only be withheld where public interest in maintaining the exemption outweighs the public interest in disclosure.

¹⁰⁹ Statute of September 23, 1997 (No 539/97)

¹¹⁰ According to the article 34 of the Constitution, *law* may restrict the exercise of the freedom of information. The term *law* applies to Statutes adopted by Parliament. The Cabinet of Ministers exceeds own authority with adoption of the mentioned Enactment. Besides, the Statute "On Information" does not provides for such type of information as "*confidential information possessed by state*".

The law will create a new office, the Information Commissioner, who will oversee both the Freedom of Information regime and the Data Protection Act 1998. However, the Commissioner's decision can be overruled by the Minister of the Department in some cases.

A 1994 "Code of Practice on Access to Government Information" provides some access to government records but has 15 broad exemptions. Dissatisfied applicants can complain, via a Member of Parliament, to the Parliamentary Ombudsman if their request is denied.¹¹¹

Currently, there are several restrictions on FOI in UK law. The repressive Official Secrecy Act¹¹² was used recently against journalist Tony Geraghty for his book "The Irish War," which details surveillance techniques used in Northern Ireland and the UK by the police and intelligence services.¹¹³ Another journalist was arrested under the OSA in February 2000 for communicating with former intelligence agent David Shayler.

Scotland

A Freedom of Information Law draft is currently being debated in Scotland and is expected to be introduced in the fall. A consultation document was released in November 1999.¹¹⁴ The draft is considered much stronger than the UK bill. It requires disclosure of facts behind decisions, a stronger balancing test for restricting information that a disclosure would cause "substantial prejudice," and give the Information Commissioner far greater powers to mandate disclosure of information if it is determined to be in the public interest.

Wales

Welsh Assembly First Secretary Rhodri Morgan proposed in March 2000 a FOIA bill also much broader than the UK bill. It would force disclosure of information unless it would cause "substantial harm" if it were released. However, experts note that the Welsh Assembly has limited legislative powers.

Falkland Islands

The Committees (Access to Information) Bill 2000 was passed by the Legislative Council and consequently the Codes of Practice on Access to Government Information were made policy.

¹¹¹ Government of the United Kingdom, Code of Practice on Access to Government Information, April 4 1994, revised in January 1997, <http://www.cfoi.org.uk/coptext.html>

¹¹² <http://www.cyber-rights.org/secrecy/>

¹¹³ See <http://jya.com/irish-war.htm>.

¹¹⁴ <http://www.scotland.gov.uk/library2/doc07/opsc-00.htm>

United States

The Freedom of Information Act was enacted in 1966 and has been amended several times.¹¹⁵ It allows for access to federal government records by any requestor, except those held by the courts or the White House. However, there are numerous exceptions, long delays at many agencies, and little oversight unless a requestor files a lawsuit to enforce its rights.

The Act was amended in 1996 by the Electronic Freedom of Information Act to specifically provide access to records in electronic form.¹¹⁶

There are also laws in all states on providing access to government records.¹¹⁷ A number of states have information commissions which review decisions.

Other Countries

There are a number of other international bodies and countries that are also considering or have approved freedom of information acts including the Council of Europe,¹¹⁸ Republic of Georgia,¹¹⁹ Taiwan, Jamaica, and Trinidad and Tobago. Future updates of this report will include overviews of available bills and laws.

¹¹⁵ Freedom of Information Act, 5 USC 552, 1966.

<http://www.epic.org/open_gov/foia/us_foia_act.html>.

¹¹⁶ Electronic Freedom of Information Act Amendments of 1996,

<http://www.epic.org/open_gov/efoia.html>.

¹¹⁷ See Reporters Committee for Freedom of the Press. <<http://www.reporters.net/nfoic/web/index.htm>>.

¹¹⁸ <http://www.rz.uni-frankfurt.de/~sobotta/FOI.htm>

¹¹⁹ <http://www.abanet.org/ceeli/assessments/Georgia/Georgiafofinfo.htm>