

## NATIONAL ASSEMBLY

Law n.° 34 /2014  
of 31 December

Given the need to establish legal mechanisms for the exercise of the right to information under the provisions of paragraphs 1 and 6 of Article 48, in conjunction with paragraph 1 of Article 179 of the Republican Constitution, the National Assembly determines:

### CHAPTER I GENERAL PROVISIONS

#### Article 1

(Objective)

The present law governs the exercise of the right to information, in support of the constitutional principle of consistent democratic participation of citizens in public affairs and in establishing other related fundamental rights.

#### Article 2

(Definitions)

The meaning of terms and expressions utilised is contained in the glossary attached to the present law which forms an integral part of said law.

#### Article 3

(Scope )

The present Law applies to State organs and institutions, incorporated within the State's direct and indirect administration, its foreign-based representation, local authorities and private entities, legally or contractually bound to carry out activities of general interest or that are in receipt of public funds regardless of the source, and holding information of public interest.

Article 4  
(Principles)

1. The exercise of the right to information shall be in compliance with the constitutional order and shall safeguard national unity and social cohesion.

2 The right to information is governed, *inter alia*, by the following principles:

- a) respect for human dignity;
- b) maximum disclosure of information;
- c) public interest
- d) transparency of the activities of public and private entities;
- e) consistent accountability to citizens;
- f) open government/open public administration;
- g) prohibition of unlimited exceptions;
- h) promoting active citizenship
- i) consistent democratic participation of citizens in public affairs;
- j) simplified and expedited legal and regulatory procedures.
- k) respect for classified information

Article 5  
(Respect for dignity)

The exercise of the right to information shall safeguard other rights and interests protected by the Constitution, namely the right to honour, good name, reputation, protection of public image and private life.

Article 6  
(Principle of maximum disclosure)

1. Private and public entities covered by the present Act are required to make available public interest information in their possession by publishing such information through various lawful means, rendering it ever more accessible to citizens, subject to the exceptions expressly provided in the present Act and other applicable legislation.

2 For the purposes of the provision in the paragraph above, the entities covered by the present Act shall fully disclose the following information:

- a) organization and operation of the services and content of decisions that may have an impact on the rights and freedoms of citizens;
- b) work plans and annual budgets as well as their respective implementation reports;
- c) reports of audits, inquiries, inspections and probes into their activities;
- d) environmental assessment reports;

- e) minutes of proceedings for any public tenders;
- f) contracts concluded, including relevant income and expenditure accounts.

3. The means of disclosure referred to in paragraph 1 of the present article shall include the *Boletim da República* [Official Gazette], print, radio and television broadcast media, internet websites and [posters at designated sites].

Article 7  
(Principle of transparency)

Public and Private entities wielding public powers, whether by law or by contract, shall carry out their respective activities in the interest of society. Thus such activities should be disclosed to citizens.

Article 8  
(Principle of Democratic Participation)

Consistent democratic participation of citizens in public affairs requires access to information in the public interest to enable citizens to form and make known their opinions on public affairs, thereby influencing the decision-making process of entities wielding public powers.

Article 9  
(Principle of obligation to publish)

1. Access to information requires that the organs cited in Article 3 of the present Act publish and disseminate public interest documents pertaining to the organization and operations of public organs as well as content of any decision or policy with a bearing on fundamental rights and freedoms of citizens .
2. Restricting access to information in the public interest is prohibited, with the exception of legally exempted information.

Article 10  
(Principle of Open Government/Open Public Administration)

1. Governments should maintain open archives, barring exceptions provided for by law.
2. Open government/Public Administration is based on freedom of access to public documents and archives without requiring the applicant to demonstrate legitimate and direct interest, or the purpose for which the information is intended, save for the restrictions contained in the present Act and other legislation.

3. All information shall be contained in duly catalogued and indexed records in order to facilitate the right to information.

#### Article 11

(Principle of Prohibition of Unlimited exceptions)

Non-disclosure or refusal to release information shall always be reasoned on the basis of the regime of exceptions and legal restrictions.

#### Article 12

(Principle of Promptness in Availing Information)

1. Requests for information shall be promptly addressed and dealt with.
2. Information shall be provided in the legally prescribed format and time frame.

### CHAPTER II

Exercise of the right to information

#### Article 13

(Right to information)

The right to information makes it possible to solicit, seek, consult, receive and disseminate information in the public interest held by the entities set out in Article 3 of the present Law.

#### Article 14

(Legitimacy)

1. Every citizen is entitled to request and be provided information in the public interest.
2. This right may also be exercised by collective legal persons and media bodies.

#### Article 15

(Access to Information)

1. The request for information is addressed to an administrator or support staff member responsible for document, data and archives management. The applicant shall provide proper identification and describe the type of information requested.

2 The request for access to information must be made in writing in the following cases:

- a) where official correspondence is concerned;
- b) in respect of work-related information, unless the request is for use in civil or criminal proceedings based on said information;

c) information provided by employees on fellow employees, unless authorized in writing by the latter.

3. In the cases enumerated above, with oral requests, these shall be put in writing, in duplicate, by the receiving officer who then provides a copy to the applicant.

4. Whenever a disabled person seeks to make a request staff attending to them shall take all necessary steps to assist the applicant.

#### Article 16

(Deadline for making information available)

The competent administrative authorities shall make documents available for consultation or use in proceedings and forward certificates requested no later than twenty one days after the date of submission of request.

#### Article 17

(Service Free of charge)

Information is provided free of charge, except for document reproduction, notarized statements or affidavits [certificates] which are subject to fees.

#### Article 18

(Exercise of the right to information)

The right of access to information may be realised through the following methods:

- a) orally, in writing or through gestures [sign language];
- b) reproduction of documents;
- c) forwarded notarized statement;
- d) free consultation carried out in the relevant departments;
- e) issuing of certificates.

#### Article 19

(Submission of incorrectly supplied information)

In case of error in providing classified information the applicant is never held liable for disclosing the information.

#### Article 20

(Restrictions and limitations)

1. The right to information may be restricted, rendered conditional or limited once the requested information is classified as State secret, Secret, Confidential and Restricted.

2. Notwithstanding other restrictions explicitly set forth in specific legislation, the restrictions referred to above shall apply in the following cases:

- a) state secret;
- b) judicial secrecy;
- c) information held by government, received in confidence, from other states or international organizations;
- d) professional secrecy;
- e) banking secrecy, except in cases where specific legislation allows access;
- f) personal data in electronic files held by public or private authorities;
- g) in the context of special measures for protection of victims, whistleblowers and witnesses;
- h) information on the private life and privacy of citizens;
- i) trade or industrial secrets;
- j) secrets relating to literary, artistic or scientific works;
- k) information relating to criminal proceedings, disciplinary hearings or other actions, where disclosure could prejudice ongoing investigations and other constitutionally enshrined principles;
- l) scientific or technological research and development projects or final reports of research projects whose secrecy is essential to the security of society and the State.

#### Article 21 (State Secrets)

1. For the purposes of the present Act, a state secret refers to data, information, materials and documents, regardless of their form, character and mode of transmission, which have been assigned a degree of security classification necessitating protection from unauthorized disclosure, and which if disclosed to unauthorized persons would be likely to jeopardize or compromise national independence, unity, integrity of the state as well as internal and external security.

2 Subject to the conditionalities cited above, the following data, information, documents or materials may be considered as meeting the criteria of state secret:

- a) that which is transmitted on a confidential basis by other States or international organizations;
- b) that which safeguards the rights, freedoms and guarantees of citizens;
- c) that which is intended to protect and ensure the operationalisation and safety of Defense and Security staff, equipment, material and facilities;
- d) that which may facilitate crimes against the State Security apparatus;
- e) that which by virtue of its commercial, industrial, environmental, scientific, technical, monetary, financial or economic nature may be relevant to safeguarding national sovereignty or the pursuit of that objective.

3. Classification of information as a state secret is governed by law. Such classification is effectively conferred by the employee who produces the information, in line with the provisions of the classification system.

4. Documents classified as state secret are subject to protective measures to guard against espionage, sabotage and information leaks.

Article 22  
(Judicial Secrecy)

Judicial secrecy is governed by specific legislation, in order to safeguard the pursuit of sound judicial practice and protect the privacy of citizens

Article 23  
(Professional Secrecy)

1. Information relating to professional secrecy is confidential.

2. Civil servants and any other persons who, by virtue of their occupation, have access to classified information are required to maintain professional secrecy.

Article 24  
(Banking Secrecy)

1. Disclosure, exposure or use of information on facts or elements pertaining to the activities of credit institutions and financial corporations or their relationships with customers is prohibited where such knowledge is acquired exclusively in the course of performing duties or providing services.

2. Names of customers', accounts, movements and other financial transactions are especially confidential.

3. Facts or elements pertaining to customer relations with credit institutions and financial corporations may be disclosed, subject to explicit permission by the customer.

Article 25  
(Personal data held by authorities)

Information held by authorities concerning privacy of an identified or identifiable natural person, may not be disclosed, other than through a judicial ruling.

## Article 26

(Special measures for protection of victims, whistleblowers and witnesses)

1. Information regarding victims, whistleblowers and witnesses shall not be provided or published.

2 Measures for protection of victims, whistleblowers and witnesses relate to:

- a) protecting the identity of protected persons by assigning code names which shall be used during trials;
- b) concealing of appearance, voice distortion or both, when the protected person gives statements or depositions in open court proceedings or subject to challenges;
- c) use of videoconferencing, which may include the measures cited above to ensure protected persons are not recognized;
- d) early discovery of evidence, when warranted by the age, health, plans for impending travel abroad or any other relevant reason, of the person making a deposition or statement.

3. Measures referred to above shall cease when the original risk or danger ceases to exist or where the competent authority deems them to be unnecessary once justifying circumstances cease to exist.

## Article 27

(Information on the private life and privacy of citizens)

1. Information relating to personality rights, in particular that which can harm or prejudice an individual's honour, good name and public image.

2. Information relating to images of private life can only be disclosed with the explicit consent of its owner.

## Article 28

(Trade or industrial secrets)

1. Access to information may be refused where it jeopardizes the trade and industrial secrets as well as the inner workings of companies.

2. Information regarding manufacturing techniques, patents, trade and advertising information and strategies, whereby disclosure of such knowledge to competitors could affect the company's productivity, is considered trade or industrial secret.

Article 29  
(Secrets relating to copyright)

The use of information which may infringe copyright of literary, artistic or scientific works, as well as reproduction, distribution and use of the works and related information that may lead to unfair competition practices, is not permitted.

Article 30  
(Access to classified documents)

Access to classified information or documents is only permitted upon expiration of the period of classification.

Article 31  
(Decision)

Refusal to provide information, documents or to allow documents to be consulted shall be argued on the basis of the present Act

Article 32  
(Language)

All information shall be provided in the official language and may be disclosed in the official language or any national language.

CHAPTER III  
GUARANTEES AGAINST INFRINGEMENT [ASSURANCES ON LEGALITY]

Article 33  
(Guarantees for right of access to information)

1. Refusal to grant access to information may be contested through appeals for equitable relief, before the courts or by invoking the right to petition under the law.
2. Judicial challenge is brought before the Administrative Courts.

Article 34  
(Administrative appeal)

1. Refusal to grant access may be:

- a) contested targeting the person in authority who made the decision, within five days from the date of notification of the decision;
- b) contested by hierarchical recourse within ninety days from the date of notification of rejection;

2. The hierarchical appeal shall be decided within fifteen days.

Article 35  
(Opinion of the Document Review Committees)

1. The decision on the hierarchy appeal shall be preceded by an opinion of the Document Review Committee at the appropriate territorial level.

2. The Document Review Committees have five days to produce the above mentioned opinion..

Article 36  
(Judicial Challenge)

The judicial challenge of decisions denying requests for information, consultation of files and issuance of certificates, is governed by the regulation on disputes in the administrative process and is effected through:

- a) an action for annulment;
- b) subpoena for information, consultation of files and issuance of certificates;
- c) subpoena issued to administrative body, private individual or business entity to provide information.

CHAPTER IV  
Sanctions

Article 37  
(Breach of Confidentiality)

1. Violation of professional secrecy is sanctioned under the statutory law of the relevant industry or under applicable labour legislation.

2. Penalties for violation of judicial secrecy are set out in the relevant legislation.

3. Banking legislation applies to breach of banking secrecy laws.

Article 38  
(Violation of human dignity)

Without prejudice to civil liability if applicable, violation of personality rights is punishable under the regime of crimes against honour, provided for in criminal law.

Article 39  
(Violation of State Secret)

1. Notwithstanding the application of applicable disciplinary action, the violation is punishable under the law on state secrets.

2. Notwithstanding the application of the penalties above, entities responsible for protecting Secrets of State may take administrative measures to prevent access in the short term or disclosure of state secret. Citizens may appeal against such measures.

Article 40  
(Infringement of industrial and intellectual property rights)

The distribution and dissemination of information protected under the rights of industrial or intellectual property are sanctioned under their own legislation.

Article 41  
(Improper Use of Information)

1. Persons in possession of information who make improper use of it may be charged with defamation, slander and libel punishable under the Criminal Code.

2. Without prejudice to the provision above, persons who make improper use of the information may be charged with other crimes.

CHAPTER V  
FINAL PROVISIONS

Article 42  
(Report of the Document Review Committees)

The Governing Body of the State Archives National Information System submits to the Ombudsman, for inclusion in the Annual Report to Parliament, the annual report on

implementation of the present Act, including, in particular, requests received, granted and denied, as well as constraints encountered and other relevant information.

Article 43  
(Enactment)

Government is responsible for enacting the present Act and establishing the body responsible for its enforcement within 180 days of its publication.

Article 44  
(Entry into force)

The present Law shall come into force on the date of its publication.

Approved by the National Assembly, on 26 November 2014

*Verónica Nataniel Macamo Dlhovo*

Speaker of the National Assembly,.

Promulgated on 18 December 2014

ARMANDO EMÍLIO GUEBUZA

The President of the Republic

Glossary\*

A

Archive - set of documents covering any time frame and format which are collected and maintained irrespective of their character or medium, because of their value throughout the period of activity of natural or legal persons, be they public or private, to serve as works of reference, evidence, information or research sources.

D

Personal data: information relating to identified or identifiable natural persons, either manually or electronically registered.

Document: All records held by public or private bodies defined in the present Law, regardless of storage format: writings, audio, visual, electronic or any other format.

Classified Document: containing information or data of a military, political, economic, trade-related, scientific, technical or other nature, the disclosure of which could jeopardize prejudice, undermine or disrupt security of the State, population or national economy

I

information - refers to knowledge, statistics, reports and various forms and modes of expression - recorded or codified - including books, audio tapes, video recordings and type written documents; includes all records held by a public or private body as defined in the present Act, regardless of the format - document, tape, electronic recording or other legally acceptable formats - of their public or private source and date of production.

Classified information - pertaining to content that may be qualified, depending on the circumstances, as State Secret, Secret, Confidential or Restricted Public Interest Information – information that is held by the entities referred to in Article 3 of this Law that may contribute to exercising citizenship, maintaining or building social values, that promotes personal and social welfare of citizens and that furthers the common good in accordance with restrictions contained in this Law.

Personal information- information containing identifying information on a person and aspects of his/her private and public life.

Processing of information- range of actions pertaining to the compilation, recording, storage and proper use of information.