



ACCESS TO INFORMATION LAW

ACCESS TO INFORMATION LAW

Chapter - 1

General Provisions

The basis

Article: 1

This law has been laid down following article fifty (50) of the constitution of Afghanistan.

Objectives

Article: 2

The objectives of this law are:

1. To ensure the right of access to information for all citizens from the government and non-government institutions
2. To observe article 19 of International Covenant on Civil and Political Rights considering article 3 of Afghan constitution.
3. To ensure transparency and accountability in the conduct of governmental and nongovernment institutions.
4. To organize request processing and provision of information.

Terminologies

Article: 3

The terminologies in the law describe the following concepts:

1. **Information:** Is any type of documents, recorded and registered information, models and samples
2. **Personal Information:** Information about a person that include his/her name, surname, residential and workplace addresses, condition of personal and family life, letters, correspondences, transactions, bank account, passwords and all other information that are not related to his/her official duties.
3. **Applicant:** Is an internal legal and real person who requests for the required information from relevant government and nongovernment institutions.
4. **Publication:** Information dissemination in a manner that is accessible and usable to the public.
5. **Information request form** is a priced printed sheet that is provided to the applicant in order to write their requests in accordance with this law.
6. **Institutions:** Include ministries, general independent directorates, independent state commissions, executive, Judicial and national assembly Institutions, local administrations, provincial, districts, villages and municipalities councils, boards of municipalities, enterprise, government corporations, joint ventures and all other Institutions.

7. **Non-government Organizations:** According to the enacted laws in the country, Non-government organizations includes all those organizations and institutions that are active out of the framework of government organizations.

Chapter 2

Access to information

Right to access information:

Article: 4

- (1) Information applicant is entitled to access information from institutions according the provisions mentioned in this law
- (2) Institutions are responsible to provide information to the applicants and public according the provisions of this law.

Request for information

Article: 5

- (1) For access to information, the applicant shall refer to the relevant institution and fill the information request form.
- (2) Institutions are responsible to respond in written to the information requested.

Timeframe of providing information

Article: 6

- (1) Institutions are responsible to provide the requested information to the applicant in a maximum duration of 10 working days starting from information request day. In case of justifiable reasons this duration can be extended to three more days.
- (2) Institutions are responsible to provide media with the requested news related information within three days of time period from the date of receiving information request form.
- (3) Institutions are responsible to provide the requested information that is necessary for the safety, security and freedom of an individual within 24 hours of receiving request form.

Expenditure of providing information

Article: 7

- (1) Whenever the provisions of information require expenditure, the applicant is responsible to pay for the actual expenditure; otherwise the request will be rejected.
- (2) The amount of expenditure and the manner of payment is established in accordance with the procedure prepared by the relevant Institutions and approved by the Monitoring Commission on Access to Information

Procedure of providing information

Article: 8

- (1) Institutions are responsible to provide requested information in one of the following forms provided that the original document is not damaged:
- 1- A copy of the original document.
 - 2- A written note from the original document.
 - 3- A copy of the original document in a written, audio or video form
 - 4- Providing information in audio or video form
 - 5- Providing sample

Providing information through interview

Article: 9

Providing information through journalist's interview with government and nongovernment officials and employees is not subject to the legal provisions mentioned in articles 6, 7 and 8 of this law.

Chapter 3

Providing Information

Public information office:

Article: 10

- (1) Institutions are responsible to specify a public information office for the purpose of citizens' right to access information.
- (2) Public information office mentioned in article 10.(1) is responsible to put the identity and contact details of relevant officials to public access for the purpose of awareness.

Duties of public Information Office

Article: 11

Public information Office has the following duties:

- 1- Submit Information request form back to the applicant.
- 2- Issue information request form to the applicant in accordance with the provisions of this law.
- 3- Submit information request form to the relevant department for provision of information.
- 4- Retrieve the request form as mentioned in article 11. 3 and provide it back to the applicant
- 5- Cooperate with the staff of relevant department in the process of Information provision.
- 6- Ensure that information provided is in accordance with the provisions mentioned in this law.
- 7- Publish information in Institutions' web site and other relevant media.
- 8- Perform all duties assigned by relevant office to improve access to information affairs.

Rejection of information request form

Article: 12

In case information request form is not in accordance with the provisions mentioned in this law, the public information office will reject it by citing the reasons in a written form.

Assessment of complains

Article: 13

- (1) In case the information applicant is not satisfied with the information provided, the applicant can submit a complaint in a written form to the relevant public information office.
- (2) The public information office is responsible to assess the received complain and make a decision for solution in accordance with provisions in the law within three working days.
- (3) In case the applicant is not satisfied with the assessment mentioned in paragraph (2) of this article, he/she can refer to the access to information monitoring commission.

Annual Publication of Information

Article: 14

- (1) Institutions are responsible to publish the following information at least once a year:
 - 1- Organizational structure, duties and authorities of the Institutions and its related performances report
 - 2- Financial status of the institutions
 - 3- Details of direct services provided to public.
 - 4- Procedure of addressing public information requests and public complains.
 - 5- Related legislative documents
 - 6- Related Bills, Procedures and guidelines.
 - 7- Related internal and international contracts, protocols and memorandums
 - 8- Related policies, strategies and work plans.
 - 9- All other institutional specific matters.
- (2) Institutions are responsible to create an information bank (data base) for a better protection of documents and information as well as to facilitate public access to information

Prohibitions

Article: 15

- (1) Providing information in the following instances is prohibited.
 - 1- In case the independence, Sovereignty, territorial integrity, national security and national interest is faced with danger.
 - 2- In case it harm Afghanistan's political, economic and social bonds with other countries.
 - 3- In cases the life, properties and prestige of a person is endangered.
 - 4- In case it becomes a barrier in crime detection or crime prevention.

- 5- In case it disrupts the process of detection, investigation and prosecution of the suspect or the safeguards in this regard.
 - 6- In case it disrupts the process of fair trial and enforcement of a judicial order.
 - 7- In case it violates the privacy of an individual.
 - 8- In case information is about commercial matters, private properties and bank account. Or diagnosed otherwise in the law.
- (2) The following cases are exempted in article 15. (1). 7 and 8:
- 1- In case a competent court approves disclosure of personal information.
 - 2- In case the copyright law and competition support law¹ and all other legislative documents are not violated.
 - 3- Violation of article 15. (1) is crime; the perpetrator shall come under judicial prosecution.

Chapter 4

Monitoring Commission on Access to Information

Establishment of commission

Article: 16

- 1) For achieving the objectives mentioned in this law, a monitoring commission on access to information which in this law is named 'commission' will be formed with the following composition in the center:
 - 1- Authorized representative of Ministry of Information and Culture.
 - 2- Authorized representative of Ministry of Communication and Information Technology.
 - 3- Authorized representative of Ministry of Foreign Affairs
 - 4- Authorized representative of the National Security Directorate
 - 5- Authorized representative of Afghanistan Independent Human Rights Commission.
 - 6- Authorized representative of Independent Bar Association
 - 7- Authorized representative of Lawyers Union of Afghanistan
 - 8- Two elected representatives of Professional Journalists' Unions
 - 9- One elected representative from political parties
 - 10- Two elected representative form civil society
 - 11- Representative of chamber of commerce
- 2) Commissions in provinces are formed of authorized representatives of the relevant departments and institutions in accordance with the provisions of article 16. (1).
- 3) Members of commissions in article 16. (1 and 2) are appointed for three year. Their re-appointment for another term is permitted.

¹ An economic law approved in 5 chapters and 35 articles by the parliament of Afghanistan. The aim of this law is to prevent entrepreneurs' monopoly, support and provide competition opportunities and defend public interests.

- 4) Commissions in article 16. (1 and 2) in their first meeting elect the chairman, deputy chairman and secretary amongst its members for one year term. Their reelection for another term is permitted
- 5) The members of the commission mentioned in article 16.1 and 2 are entitled of the right of presence the amount of which is proposed by ministry of information and culture, and approved by the president.
- 6) The right of presence mentioned in article 16.5 is paid from the budget of ministry of information and culture.
- 7) The functions of the commission are set according to the procedure that is prepared by the commission.

Note

Membership Criteria

Article: 17

A person fulfilling the following criteria can be appointed as a member of the commission in center and provinces.

- 1- Have citizenship of Afghanistan only
- 2- Completed 30 years of age
- 3- Not having membership in any political party at the time of being a member of the commission
- 4- Have a bachelor's degree at least
- 5- Not convicted for violation of civil rights and crimes against humanity
- 6- Have three years of work experience

Disqualification of membership

Article: 18

- (1) The member of commission in center and provinces loses membership in the following circumstances:
 - 1- A written resignation from membership of the relevant commission, after it is confirmed by majority of the members and approved by the chairman.
 - 2- Dismissal from the job in the institution that the member represents.
 - 3- Physical and mental incapacity which prevents the member from performing his/her duties.
 - 4- When it is proved that the information provided is false on the basis of fulfilling membership criteria.
 - 5- No participation in four consecutive or eight anomalous meetings in one year without providing convincing reasons.
- (2) When a member of commission loses membership in one of the cases mentioned in article 1. (1), the relevant institution within 15 work days introduces another qualified person to be the substitute for the remaining time period.

Functions and powers of the commission

Article: 19

The commissions in center and provinces have the following powers and functions in their respective areas:

- 1- Monitor applicant's access to information process from the respective institutions and the manner in which information is provided.
- 2- Assess applicants' complains.
- 3- Demand documents from information offices of institutions if required.
- 4- Provide suitable advice to information applicants and institutions
- 5- Evaluate reports of information offices in relevant institutions.
- 6- Present and publish annual report of activities of the commission to the President and the National assembly.
- 7- Promote the culture of access to information in the country through conducting educational programs.
- 8- Disseminate commission's decision for public awareness.
- 9- Monitor implementation of the provisions of this law.
- 10- Approval of the relevant Bills and procedures.
- 11- Perform all functions mentioned in this law.

Holding meetings of the commission**Article: 20**

- (1) Ordinary meetings of commissions in the center and provinces will be hold once in every 7 days and the extraordinary meetings will be held as per the request of the chairman or with the suggestion of one third of the members.
- (2) Quorum for holding meetings of the commission is the presence of the majority of members.
- (3) Decisions of commission are based on the majority votes of the present members. In case of equal votes, the side that has been voted by the chairman is considered majority.
- (4) Commissions in provinces are responsible to provide a quarterly report of their activities to the commission in the center.
- (5) Affairs of the meeting are set up by a separate procedure.

Reporting timeframe of information offices**Article: 21**

Information offices are responsible to provide their monthly activities report to the relevant commissions.

Limitations**Article: 22**

- (1) The chairman and members of commissions shall not take part in decision making meetings in which they have an interest.
- (2) Chairman and members of the commissions shall not disclose or use any information that they have gained or that which is prohibited based on the provisions of this law, for their and their relatives interests while on duty or thereafter.
- (3) In case the chairman or members of commissions violates provision of article 22. (2), the violator shall come under judicial prosecution according to the provisions of the law.

Implementation of commission's decisions

Article: 23

The decision of commission is final and implementable after it is declared by the commission.

Administrative and Executive Affairs:

Article: 24:

- (1) Administrative and executive affairs of commission organized and led by the Ministry of Information and Culture in the center and by Directorates of Information and Culture in the provinces.

Chapter 5

Addressing Complaints

Complains of the information applicant

Article: 25

- (1) An applicant can present complains to the commission in accordance with the provisions of this law.
- (2) Commission is responsible to assess that complaint in two working meetings from the date it is received.
- (3) The manner of assessing complaints, relevant documents are set in the procedure ordained by central commission.
- (4) Commissions in provinces assess complains and relevant documents according the procedure mentioned in article 25 (3).

Violation and correctional fines

Article: 26

- (1) The followings are recognized as violation of this law:
 - 1- Providing such information to the applicant that does not conform to the contents of information request form.
 - 2- Refusal of information to the applicant without justified reasons.
 - 3- The violation of this article which may result in material and other wise harms to a person, should be compensated in accordance with the law.
 - 4- Providing such information to the commission that is contrary to reality.
 - 5- Not providing requested information within the allocated timeframe.
 - 6- Not observing decisions and procedures of the commission.
 - 7- Not providing report of information office to the commission on specified timeframe.
- (2) In case any violation mentioned in article 26. (1) is proved, commission shall decide on one of the following punishment according to the circumstances:
 - 1- Admonition
 - 2- Written warning

- 3- Recommend to the relevant department deduction of salary according the law
- (3) In cases of violations mentioned paragraph (1) of this article, which results in material and moral damage to the natural and legal persons should be compensated according to law.
- (4) The relevant departments are responsible to implement the recommended correctional fines and ensure the commission of the implementation

Chapter 6

Miscellaneous Provisions

Confirmation of violation:

Article: 27

In case any violation committed by non-government institutions is proved, the commission shall according to the circumstances decide on one of the punishment mentioned in 26. (2) of this law.

Transfer of money to the bank

Article: 28

The sums acquired through the implementation of this law, shall be transferred to the revenue collection account of the government.

Establishing bills, procedures and guidelines

Article: 29

The commission mentioned in article 16. (1) Shall establish separate bills, procedures and guidelines to improve implementation of this law.

Enforcement

Article: 30

This law shall come into force 30 days after it is published in official Gazette.