

RTI Legislation Rating Methodology

The Right to Information (RTI) Legislation Rating Methodology is a tool to assess or rate the overall legal framework for the right to information in a country, based on how well that framework gives effect to the right to access information held by public authorities. The Methodology provides an overall numerical assessment of how well a country scores out of a maximum of 150 points in terms of giving legal effect to the right to information. It also provides sub-ratings in seven different thematic areas – the Right of Access, Scope, Requesting Procedures, Exceptions and Refusals, Appeals, Sanctions and Protections and Promotional Measures – thereby providing a detailed assessment of the legal framework’s specific strengths and weaknesses in the seven thematic areas.¹

Access Info Europe and the Centre for Law and Democracy (CLD) have been working together to develop the Methodology for nearly a year. At the heart of the Methodology is a set of 61 main Indicators, each with a possible score range (in most cases of 0-2), depending on how well the legal framework delivers the Indicator. The Indicators are drawn from a wide range of international standards on the right to information, as well as comparative study of numerous right to information laws from around the world and pilot testing of the Methodology on selected laws. An Advisory Council of renowned experts on the right to information has been advising CLD and Access Info Europe on the development of the Indicators.

The Methodology also includes detailed scoring rules, which illustrate how points are allocated under each Indicator, as well as a database for recording the assessment results. The weighting for the main elements of access to information laws is as follows:

Section	Max Points
1. Right of Access	6
2. Scope	30
3. Requesting Procedures	30
4. Exceptions and Refusals	30
5. Appeals	30
6. Sanctions and Protections	8
7. Promotional Measures	16
Total score	150

¹ The Methodology does not assess one key aspect of the right to information, namely rules on the proactive disclosure of information. The reason for this is that proactive disclosure rules are often spread among many different pieces of legislation, making it difficult to provide a scientific assessment without significant resources.

Each of the four key elements of a right to information system – Scope, Requesting Procedures, Exceptions and Refusals and Appeals – have been given an equal weighting of 30 points, while the other three elements have been allocated fewer points. In this way, the Methodology aims to give appropriate weight to the different parts of the system.

Access Info Europe and CLD will continue to develop the scoring rules as we conduct pilot assessments on a representative range of countries around the world. This will be followed with a comprehensive assessment of all national right to information laws.

Helen Darbishire and Toby Mendel
29 September 2010

List of Indicators

I. Right of Access: __ / 6

Indicator	Score Range
1. The legal framework (constitution/statutory law/jurisprudence) recognises a fundamental right of access to information.	0-2
2. The legal framework creates a specific presumption in favour of access to all information held by public authorities, subject only to limited exceptions.	0-2
3. The legal framework contains a statement of principles calling for a broad interpretation of the RTI law and emphasising the benefits of the right to information.	0-2

II. Scope __ / 30

Indicator	Score Range
4. Everyone (including non-citizens and legal entities) has the right to file requests for information.	0-2
5. The right of access applies to all material held by or on behalf of public authorities which is recorded in any format, regardless of who produced it.	0-4
6. Requesters have a right to access both information and records/documents (i.e. a right both to ask for information and to apply for specific documents).	0-2
7. The right of access applies to the executive branch with no bodies excluded.	0-8

8.	The right of access applies to the legislature, including both administrative and other information, with no bodies excluded.	0-4
9.	The right of access applies to the judicial branch, including both administrative and other information, with no bodies excluded.	0-4
10.	The right of access applies to State-owned enterprises (commercial entities that are owned or controlled by the State).	0-2
11.	The right of access applies to other public authorities, including constitutional, statutory and oversight bodies (such as an election commission or information commission/er).	0-2
12.	The right of access applies to a) private bodies that perform a public function and b) private bodies that receive significant public funding.	0-2

III. Requesting Procedures

__ / 30

Indicator	Score Range	
13.	Requesters are not required to provide reasons for their requests.	0-2
14.	Requesters are only required to provide the details necessary for identifying and delivering the information (i.e. some form of address for delivery).	0-2
15.	There are clear and relatively simple procedures for making requests. Requests may be submitted by any means of communication, with no requirement to use official forms or to state that the information is being requested under the access to information law.	0-2
16.	Public officials are required to provide assistance to help requesters formulate their requests, or to contact and assist requesters where requests that have been made are vague, unduly broad or otherwise need clarification.	0-2
17.	Public officials are required to provide assistance to requesters who require it because of special needs, for example because they are illiterate or disabled.	0-2
18.	Requesters are provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed 5 working days.	0-2
19.	Clear and appropriate procedures are in place for situations where the authority to which a request is directed does not have the requested information. This includes an obligation to inform the requester that the information is not held and to refer the requester to another institution or to transfer the request where the public authority knows where the information is held.	0-2
20.	Public authorities are required to comply with requesters' preferences regarding how they access information, subject only to clear and limited overrides (e.g. to protect a record).	0-2
21.	Public authorities are required to respond to requests as soon as possible.	0-2

22.	There are clear and reasonable maximum timelines (20 working days or less) for responding to requests, regardless of the manner of satisfying the request (including through publication).	0-2
23.	There are clear limits on timeline extensions (20 working days or less), including a requirement that requesters be notified and provided with the reasons for the extension.	0-2
24.	It is free to file requests.	0-2
25.	There are clear rules relating to access fees, which are set centrally, rather than being determined by individual public authorities. These include a requirement that fees be limited to the cost of reproducing and sending the information (so that inspection of documents and electronic copies are free) and a certain initial number of pages (at least 20) are provided for free.	0-2
26.	There are fee waivers for impecunious requesters.	0-2
27.	There are no limitations on or charges for reuse of information received from public bodies, except where a third party (which is not a public authority) holds a legally-protected copyright over the information.	0-2

IV. Exceptions and Refusals

___ / 30

Indicator	Score Range	
28.	The standards in the RTI Law trump restrictions on information disclosure (secrecy provisions) in other legislation to the extent of any conflict.	0-4
29.	The exceptions to the right of access are consistent with international standards. Permissible exceptions are: national security; international relations; public health and safety; the prevention, investigation and prosecution of legal wrongs; privacy; legitimate commercial and other economic interests; management of the economy; fair administration of justice and legal advice privilege; conservation of the environment; and legitimate policy making and other operations of public authorities. It is also permissible to refer requesters to information which is already publicly available, for example online or in published form.	0-10
30.	A harm test applies to all exceptions, so that it is only where disclosure poses a risk of actual harm to a protected interest that it may be refused.	0-4
31.	There is a mandatory public interest override so that information must be disclosed where this is in the overall public interest, even if this may harm a protected interest. There are 'hard' overrides (which apply absolutely), for example for information about human rights, corruption or crimes against humanity.	0-4
32.	Information must be released as soon as an exception ceases to apply (for example, for after a contract tender process decision has been taken). The law contains a clause stating that exceptions to protect public interests do not apply to information which is over 20 years old.	0-2

33.	Clear and appropriate procedures are in place for consulting with third parties who provided information which is the subject of a request on a confidential basis. Public authorities shall take into account any objections by third parties when considering requests for information, but third parties do not have veto power over the release of information.	0-2
34.	There is a severability clause so that where only part of a record is covered by an exception the remainder must be disclosed.	0-2
35.	When refusing to provide access to information, public authorities must a) state the exact legal grounds and reason(s) for the refusal and b) inform the applicant of the relevant appeals procedures.	0-2

V. Appeals

__ / 30

Indicator	Score Range	
36.	Where it is mandatory to lodge an internal appeal (e.g. to a higher authority within the public authority that first refused access or otherwise failed to comply with the law) before proceeding to an external appeal, this must be simple, free of charge and completed within clear timelines (20 working days or less).	0-2
37.	Requesters have the right to lodge an (external) appeal with an independent administrative oversight body (e.g. an information commission).	0-2
38.	The member(s) of the oversight body are appointed in a manner that is protected against political interference and have security of tenure so they are protected against arbitrary dismissal (procedurally/substantively) once appointed.	0-2
39.	The oversight body reports to and has its budget approved by the parliament, or other effective mechanisms are in place to protect its financial independence.	0-2
40.	There prohibitions on individuals with strong political connections from being appointed to this body and requirements of professional expertise.	0-2
41.	The independent oversight body has the necessary mandate and power to perform its functions, including to review classified documents and inspect the premises of public bodies.	0-2
42.	The decisions of the independent oversight body are binding.	0-2
43.	In deciding an appeal, the independent oversight body has the power to order appropriate remedies for the requester, including the declassification of information.	0-2
44.	Requesters have a right to lodge a judicial appeal in addition to an appeal to an independent oversight body (i.e. a second external appeal).	0-2
45.	Appeals (internal and both forms of external) are free of charge and do not require legal assistance.	0-2
46.	The grounds for an external appeal are broad (including not only refusals to provide information but also refusals to provide information in the form requested, administrative silence and other breach of timelines, charging excessive fees, etc.)	0-4
47.	Clear procedures, including timelines, are in place for dealing with external appeals.	0-2
48.	In the appeal process, the government bears the burden of demonstrating that it did not operate in breach of the rules.	0-2

49.	The external appellate body has the power to impose appropriate structural measures on the public authority (e.g. to conduct more training or to engage in better record management).	0-2
-----	---	-----

VI. Sanctions and Protections

__ / 8

Indicator	Score Range	
50.	Sanctions may be imposed on those who wilfully act to undermine the right to information, including through the unauthorised destruction of information.	0-2
51.	There is a system for redressing the problem of public authorities which systematically fail to disclose information or underperform (either through imposing sanctions on them or requiring remedial actions of them).	0-2
52.	The independent oversight body and its staff are granted legal immunity for acts undertaken in good faith in the exercise or performance of any power, duty or function under the RTI Law. Others are granted similar immunity for the good faith release of information pursuant to the RTI Law.	0-2
53.	There are legal protections against imposing sanctions on those who, in good faith, release information which discloses wrongdoing (i.e. whistleblowers).	0-2

VII. Promotional Measures

__ / 16

Indicator	Score Range	
54.	Public authorities are required to appoint dedicated officials (information officers) or units with a responsibility for ensuring that they comply with their information disclosure obligations.	0-2
55.	A central body, such as an information commission(er) or government department, is given overall responsibility for promoting the right to information.	0-2
56.	Public awareness-raising efforts (e.g. producing a guide for the public or introducing RTI awareness into schools) are required to be undertaken by law.	0-2
57.	A system is in place whereby minimum standards regarding the management of records are set and applied.	0-2
58.	Public authorities are required to create and update lists or registers of the documents in their possession, and to make these public.	0-2
59.	Training programmes for officials are required to be put in place.	0-2
60.	Public authorities are required to report annually on the actions they have taken to implement their disclosure obligations. This includes statistics on requests received and how they were dealt with.	0-2
61.	A central body, such as an information commission(er) or government	0-2

department, has an obligation to present a consolidated report to the legislature on implementation of the law.	
---	--

Final Score

__ / 150