THE *WWW.FREEDOMINFO.ORG* GLOBAL SURVEY:

FREEDOM OF INFORMATION AND ACCESS TO GOVERNMENT RECORD LAWS AROUND THE WORLD[1]

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A new era of government transparency has arrived. Laws opening government records and processes are now commonplace among democratic countries. It is now widely recognized that the culture of secrecy that has been the modus operandi of many governments for centuries is no longer feasible in a global age of information and not compatible with modern government.

Over fifty countries now have adopted comprehensive laws to facilitate access. In just the past year, six countries have adopted laws and over thirty more are in the process. The laws are broadly similar, allowing for a general right by citizens, residents and often anyone else to demand information from government bodies. There are exemptions for withholding critical information and appeals processes and oversight.

However, the battle is far from over. Many of the laws are not adequate. In some countries, the laws lie dormant due to a failure to implement them properly or a lack of demand. In others, the exemptions are abused by governments to prevent their embarrassment. New laws promoting secrecy in the global war on terror have undercut access. International organizations take over national government roles and have not subjected themselves to the same rules. These problems need to be addressed by all of the participants.

Access ebbs and flows at any given time in any country but the transformation has begun and it is no longer possible to tell citizens that they have no right to know.

OVERVIEW

Access to government records and information is an essential requirement for modern government and developing and maintaining a civil and democratic society. Access facilitates public knowledge and discussion. It provides an important guard against abuses, mismanagement and corruption. It can also be beneficial to governments themselves – openness and transparency in the decision making process can assist in developing citizen trust in government actions.

Governments around the world are increasingly making more information about their activities available. Over 50 countries around the world have now adopted comprehensive Freedom of Information Acts to facilitate access to records held by government bodies and

over thirty more have pending efforts. While FOI acts have been around for several centuries, over half of the FOI laws have been acted in just the last 10 years. The growth in transparency is in response to demands by civil society organizations, the media and international lenders. Governments in the information age must provide information to survive.

While the vast majority of countries that have adopted laws are northern and industrialized, the rest of the world is also moving in the same direction. In Asia, nearly a dozen countries have either adopted laws are or are on the brink of doing so including India and Pakistan, which adopted laws in 2002. In South and Central America, a half dozen countries have adopted laws and nearly a dozen more are currently considering them. The issue is starting to emerge in Africa, South Africa enacted its law in 2001 and many countries in southern and central Africa, mostly members of the Commonwealth, are following South Africa's lead. Nigeria, Ghana and Kenya are likely to enact legislation in the near future.

In addition, countries have also adopted other laws that can provide for limited access including data protection laws that allow individuals to access their own records held by government agencies and private organizations, specific statutes that give rights of access in certain areas such as health or the environment, and codes of practices.

Factors for adoption

There have been a variety of internal and external pressures on governments to adopt FOI laws. Civil society groups have played a key role in the promotion and adoption of laws in many countries. This has included campaigning by press and environmental groups. Governments are providing more as part of their "e-government" efforts to make services more efficient and accessible.

- *Constitutional rights.* The transition to democracy for most countries has led to the recognition of human rights in constitutions. Almost all newly developed or modified constitutions include a right to access information from government bodies. Over 40 countries now have constitutional provisions on access. They also often include provisions on a right to information on the environment and the right of individuals to access their personal files.

- *Scandals.* Often, crises brought about because of a lack of transparency have led to the adoption of laws to prevent future problems. In long established democracies such as Ireland, Japan and the UK, laws were finally adopted as a result of sustained campaigns by civil society and political scandals relating the health and the environment. Anti-corruption campaigns have been hugely successful in transitional countries attempting to change their cultures. The Thai Prime Minister in August 2003 called for citizens to use their Access to Information Act to reduce corruption.

- *Modernization and the Information Society,* The expansion of the Internet into everyday usage has increased demand for more information by the public, businesses and civil society groups. Inside governments, the need to modernize record systems and the move towards e-government has created an internal constituency that is promoting the dissemination of information as a goal in itself. In Slovenia, the

Ministry for the Information Society was the leading voice for the successful adoption of the law.

- *International pressure.* The international community has been influential in promoting access. In some countries such as Bosnia, the international organizations running the country ordered the creation of a law. International bodies such as the Commonwealth, Council of Europe and the Organization of American States have drafted guidelines or model legislation and the Council of Europe decided in September 2003 to develop the first international treaty on access. The World Bank, the International Monetary Fund and others have pressed countries to adopt laws to reduce corruption and to make financial systems more accountable. The Aarhus Convention on access to environmental information promoted by the UN has been signed by dozens of countries who are now committed to adopted laws on access to environmental information.

A Brief Comparison of Laws

Overall, most FOI laws around the world are broadly similar. In part, this is because only a few countries' laws have been used as models. The US FOIA has probably been the most influential law. Canada's and Australia's laws have been prominent with countries based on the common law tradition.

The most basic feature of FOI laws is the ability for individuals to ask for materials held by public authorities and other government bodies. This is variously defined as records, documents or information. The definitions vary and in many laws led to gaps in access as computers replaced paper filing systems. Newer laws broadly define the concept so that there is little difference between them. The right to request information is generally open to citizens, permanent residents and corporations in the country without a need to show a legal interest. A majority of countries now allow anyone around the world to ask for information.

Generally the acts apply to nearly all major government bodies in the countries, except for the Parliament and the Courts. In some countries, the security and intelligence services are also exempt from coverage. In many parliamentary systems, documents that are submitted to the Cabinet for decisions and records of Cabinet meetings are also excluded.

An 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 and more basic government functions are outsourced to private entities. In South Africa, the law also allows individuals and government agencies to obtain information from private entities if it is necessary to enforce people's rights.

As international governmental organizations play an increasingly important role, the right of access to information must be codified in these new agreements. A key problem with access to information is that these organizations are based on a diplomatic system. Thus decisions that were once made on a local or national level where the citizen had access and entry into the process are now being made outside the country in a more secretive setting. Activists have constantly pressured organizations such as the WTO, the World Bank and the IMF to

release more information. However, this is still limited. The EU's access regime, which is one of the most developed of any IGO, is more limited than that of most of the member countries. In other countries such as Bosnia and Kosovo, access to information held by international bodies that have the power to make binding decisions in the country is currently being debated.

There are a number of common exemptions that are found in nearly all laws. These include the protection of national security and international relations, personal privacy, commercial confidentiality, law enforcement and public order, information received in confidence, and internal discussions.

Most laws require that a harm must be shown before the information can be withheld, for at least some of the provisions. The test for harm generally varies depending on the type of information that is to be protected. Privacy, protecting internal decisionmaking, and national security tend to get the highest level of protection.

A number of countries' laws require that any withholding must be balanced against disclosure in the public interest. This allows for information to be released even if harm is shown if the public benefit in knowing the information outweighs the harm that may be caused from disclosure.

There are a variety of mechanisms for appeals and enforcing acts. These include administrative reviews, court reviews and enforcement by independent bodies. The effectiveness of these different methods vary greatly. In general, the jurisdictions that have created an outside monitor such as an ombudsman or information commissioners appear to be more open. Ireland and New Zealand are frequently citied as having some of the most vigorous oversight systems.

The first level of appeal in almost all countries is internal. This typically involves appealing to a higher level in the body that the request was made to asking them to review the denials. This is of mixed utility. This can be an expensive and quick way to review decisions. However, the experience in many countries is that the internal system tends to uphold many of the denials and is used more for delaying releases than enhancing access.

Once the internal appeals have been completed, the next stage is an appeal to an external body. In many countries, an Ombudsman (usually an independent officer appointed by the Parliament) can be asked to review the decision as part of their general powers reviewing the administration of the government. Ombudsmen generally do not the power to make a binding decision but in most countries, their opinions are considered to be quite influential and typically are followed.

Over a dozen countries have created an independent Information Commission. In some countries such as Ireland and the UK, the Information Commissioner has the power to make binding decisions, subject to limited appeals or overrides by Ministers in certain cases. The commissions can be part of the Parliament, an independent part of another government body or the Prime Ministers' Office (such as in Thailand) or a completely independent body.[3]

[3] These countries include Belgium, Canada, Estonia, France, Hungary, Ireland, Latvia, Mexico, Portugal, Slovenia, Thailand, United Kingdom and on the regional level in Canada and Germany.

Some countries have combined the FOI commission with the national data protection commission. In Ireland, the Information Commissioner is also the general Ombudsman. The Information Commissioner often has other duties besides merely handling appeals. This includes general oversight of the system but also reviewing and proposing changes, training, and public awareness.

Alternatively, some countries including Japan and Iceland have created review panels to review decisions.

The final level of review in most FOI laws is the courts. Almost all countries allow the requestor to appeal final decisions of agencies to national courts. The courts can obtain copies of most records and make decisions. A less efficient system is where the courts serve as the only external point of review, such as in the United States and Bulgaria. This effectively prevents many users from enforcing their rights because of the costs and significant delays involved in bring cases to courts. The courts are also generally deferential to agencies, especially in matters of national security related information.

Another common feature in FOI laws is the duty of government agencies to routinely release certain categories of information. These typically include information on the structure of the organization, its primary functions, a listing of its top employees, annual reports, and other information. Newer FOI laws tend to proscribe a listing of information and require that the information be available on the Internet.

Problems

The enactment of a FOI law is only the beginning. For it to be of any use, it must be implemented. Governments must change their internal cultures. Civil society must test it and demand information. Governments resist releasing information, causing long delays, courts uncut legal requirements and users give up hope and stop making requests.

The mere existence of an act does not always mean that access is possible. In some countries freedom of information laws are that in name only. In Zimbabwe, the Protection of Privacy and Access to Information Act sets strict regulations on journalists and its access provisions are all but unused. In Paraguay, the FOI law enacted restricted speech and was so controversial that media and civil society groups successfully pressured the government to rescind it shortly after it was approved. In Serbia, the Public Information Act was designed to restrict public information, not promote it.

Some laws are adopted and never implemented. In Albania, there is no use of the law because neither users nor government officials are aware of it. In Bosnia, one of the world's best designed laws is only used infrequently.

In many countries, the access mechanisms deliberately undercut. The Panamanian government enacted its law in January 2002 and then promptly adopted rules requiring that individuals show a legal interest, a deliberate contradiction of the law. Independent oversight bodies are weakened by lack of funds which prevent timely appeals.

Excessive fees are often charged in some countries to prevent requests. In Ireland, the law was amended in 2003 to impose high fees for those appealing decisions. In Australian, the Commonwealth law's fees for appeal are so high that few are able to afford to do so.

Information about intelligence services is frequently withheld for national security groups in an overly broad manner that has little to do with protecting the state. The events of September 11 and the global war on terror are often used as justification for keeping information secret, no matter the relevance or harm caused.

To succeed, these restrictions must be resisted. Civil society, the media and other political actors must publicly criticize restrictions and hold campaigns. Courts and ombudsmen must be asked to reject government decisions as being unjustified. Parliaments must step in and reverse changes and fix bad laws.

ALBANIA

Article 23 of the 1998 Constitution states:

> 1. The right to information is guaranteed.
> 2. Everyone has the right, in compliance with law, to get information about the activity of state organs, as well as of persons who exercise state functions.
> 3. Everybody is given the possibility to follow the meetings of collectively elected organs.[4]

In addition, Article 56 provides, "Everyone has the right to be informed for the status of the environment and its protection."

The Law on Right to Information for Official Documents was enacted in June 1999.[5] The law allows any person to request information contained in official documents. This includes personal information on individuals exercising state functions related to the performance of their duties. Public authorities must decide in 15 days and respond within 30 days.

There are no exceptions in the law for withholding information. Documents can be withheld only if another law (eg. the laws on data protection or classified information) restricts their disclosure.

Government agencies are required to publish their location, functions, rules, methods and procedures. Documents that have been previously released and those that the public authority deems important to others must also be published.

The People's Advocate (Ombudsman) is tasked with oversight of the law. Under the statute setting up the office, the Advocate is an independent office elected by three-fifths of

[4] Constitution of Albania, 1998. http://www.ipls.org/services/kusht/contents.html.

[5] The law on the right to information over the official documents, No. 8503, June 30, 1999. http://www.ijnet.org/img/assets/1033/ALBACC2I-Law-Helen2.doc

Parliament for a five-year term.[6] The Advocate can receive complaints and conduct investigations. As part of an investigation, he can demand classified information from government bodies. Once he has completed an investigation, the Advocate can recommend a criminal investigation, court action or dismissal of officials for serious offenses.

Implementation of the law has been limited. There are a low number of requests as the act is not well known. Many public bodies have not appointed and trained information officers to implement the act and there is little record keeping of requests. The OECD in a 2002 report on anti-corruption efforts noted that, "there are no adequate mechanisms in place to provide full access to information."[7] The OECD recommended that the government, "[a]ctively enforce the recently enacted Right to Information Law by publicizing standard procedures and establishing information cells in each institution where the public can request information."

Law No. 8457 on Classified Information regulates the creation and control of classified information. It creates a Directorate for the Security of Classified Information to enforce security rules. It was adopted to ensure compatibility with NATO standards.[8]

The Law on the Protection of Personal Data allows for individuals to access their own records held by public and private bodies.[9] It is overseen by the Ombudsman.

Albania signed the Aarhus Convention in 1998 and ratified it in 2001.[10] The Law on Environmental Protection was adopted in 1993. A law on access to environmental information is pending. In 1998, the Minister of Health and Environment issued Guidelines on environmental information and public access to environmental information.[11]

ARMENIA

The Parliament unanimously approved the Law on Freedom of Information on September 23, 2003.[12] It goes into effect ten days after it is officially published.

The law allows any citizen to demand information from state and local bodies, state offices, organizations financed by the state budget, private organizations of public importance and state officials. Bodies must normally provide the information in five days. Oral requests are required to be responded to immediately.

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[6] Statute No. 8454, dated 4.2.1999 on People's Advocate. http://www.law.nyu.edu/eecr/bycountryrefs/albaniaPeopleAd.html.

[7] OECD, Anti-corruption Measures in South Eastern Europe: Civil Society's Involvement (OECD 2002). http://www1.oecd.org/daf/SPAIcom/pdf/CSreport.pdf

[8] See Ministry of Defense of Albania, Restructuring of the Armed Forces 2002-2010. http://www.mod.gov.al/anglisht/AntNATO_Angl/Ant_NATOlink3.htm

[9] Law on the Protection of Personal Data, No.8517, dated 22.07.1999. http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Data_protection/Documents/National_laws/AlbaniaProtectionPersonalData.asp

[10] Law no. 8672, 26 October 2000. For more information on environmental access, see UNECE, Environmental Performance Reviews -- Albania, November 2002. http://www.unece.org/env/epr/studies/albania/welcome.htm

[11] No. 7, dated 19 January 1998.

[12] See the Association of Investigative Journalists FOI Center for more details and the text of the law (forthcoming). http://www.hetq.am/en/foi.html

There are mandatory exemptions for information that contains state, official bank or trade secrets, infringes the privacy of a person, contains pre-investigative data, discloses data that needs to be protected for a professional activity such as privilege, infringes copyright or intellectual property rights. Information cannot be withheld if it involves urgent cases that threaten public security and health or national disasters and their aftermaths, presents the overall economic, environmental, health trade and culture situation of Armenia, or if withholding the information will have a negative impact on the implementation of state programs related to socio-economic, scientific, spiritual and cultural development.

Appeals can be made to the state body (an ombudsman or human rights commission when one is set up) or a court.

Public bodies must appoint an official responsible for the law. They must also publish information yearly relating to the activities and services, budget, forms, lists of personnel (including education and salary), recruitment procedures, lists of information, program of public events, and information on the use of the Act. If the body has a web site, then they must publish the information on the site.

The Law on State and Official Secrets sets rules on the classification and protection of information relating to military and foreign relations.[13]

Armenia signed the Aarhus Convention in June 1998 and ratified it in August 2001.[14]

AUSTRALIA

The federal Freedom of Information Act 1982[15] provides for access to documents held by Commonwealth agencies.[16] The Act requires that agencies respond within 30 days to information requests.

There are exemptions for documents relating to national security, defense and relations between states; documents submitted to, generated by, or reveal deliberations of, the Cabinet or Executive Council; Internal working documents; law enforcement and public safety, personal privacy; the national economy; privilege; and confidentiality. There are, however, a variety of "public interest" provisions depending on the type of information.

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[13] Law on State and Official Secrets. 1996. http://www.internews.am/legislation/russian/laws2001-arm/gaxtniq.zip (in Armenian)

[14] See Regional Environmental Centre, Doors to Democracy, Current Trends and Practices in Public Participation in Environmental Decisionmaking inthe Newly Independent States, June 1998. http://www.rec.org/REC/Publications/PPDoors/NIS/cover.html

[15] 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.

[16] 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/.

Under the Act, applicants can first appeal internally. In 2001-02, there were 226 decisions made on internal review. 56 percent upheld the agency decision and 42 percent resulted in the agency conceding additional materials. The Administrative Appeals Tribunal handles merits review (appeals) of adverse decisions while appeals on points of law are referred to the Federal Court. The Commonwealth Ombudsman handles complaints about procedural failures. The Ombudsman received 266 complaints and the Tribunal decided 140 appeals in 2001-2002. Budget cuts have severely restricted the capacity of the Attorney General's Department and the Ombudsman to support the Act and there is now little central direction, guidance or monitoring.

According to the Attorney General's 2001-2002 report, there were 37,169 information requests between July 2001 and June 2002.[17] Almost ninety percent of those requests were for personal information, mostly from the Department of Veterans' Affairs, the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), and Centrelink. Ten percent of the requests were for policy-related documents. Overall, 76 percent of all requests were granted in full, 18 percent were granted in part and five percent were refused. The AG estimated the total cost of FOI at $17 million. Between December 1, 1982 and June 30, 2002, Commonwealth agencies have received a total of 601,277 access requests.

There are many criticisms of the effectiveness of the Act.[18] The Australian Law Reform Commission and the Administrative Review Council released a joint report in January 1995 calling for substantial changes to improve the law. The review called for the creation of an office of the FOI Commissioner, making the Act more pro-disclosure, limiting exemptions, reviewing secrecy provisions and limiting charges.[19] In June 1999, a report by the Commonwealth Ombudsman found "widespread problems in the recording of FOI decisions and probable misuse of exemptions to the disclosure of information under the legislation" and recommended changes to the Act and the creation of an oversight agency.[20] The Senate held an inquiry in April 2001 on a private members amendment bill to adopt the recommendations of the ALRC and ARC report but to date, there have been no substantive changes in the Act.[21] An effort to exempt matters relating to Internet sites banned by the Australian Broadcasting Authority was approved by the Senate in September 2003.[22] In July 2003, the Labour justice spokesman Robert McClelland asked the Ombudsman to investigate why fees had more than doubled from 1996 to 2001.

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[17] Attorney-General's Department, Freedom of Information Act 1982 Annual Report 2001-02. Available at http://www.ag.gov.au/foi

[18] See Matthew Ricketson, Keeping the lid on information, The Age, November 28 2002.

[19] The Australian Law Reform Commission, Open government: a review of the federal *Freedom of Information Act 1982*, ALRC 77, January 1995. http://www.austlii.edu.au/au/other/alrc/publications/reports/77/ALRC77.html.

[20] Commonwealth Ombudsman, 'Needs to Know' Own motion investigation into the administration of the Freedom of Information Act 1982 in Commonwealth agencies, June 1999. http://www.comb.gov.au/publications_information/Special_Reports/NeedstoKnow.pdf.

[21] Senate Legal and Constitutional Legislation Committee, "Inquiry into the Freedom of Information Amendment (Open Government) Bill 2000, April 2001. http://www.aph.gov.au/Senate/committee/legcon_ctte/freedom/report/report.pdf

[22] See Electronic Frontiers Australia, Amendments to FOI Act: Communications Legislation Amendment Bill 2002. Available at http://www.efa.org.au/FOI/clabill2002/

Under the Archives Act, most documents are available after 30 years. Cabinet notebooks are closed for 50 years.[23] The Crimes Act provides for punishment for the release of information without authorization.[24]

The Privacy Amendment (Private Sector) Act 2000 gives individuals the right to access records about themselves held by private parties.[25]

The self-governing Northern Territory enacted the Information Act 2002, a combined privacy and FOI law, in November 2002 and it took effect in July 2003. All six states and two territories now have freedom of information laws.[26] There are also privacy acts in most states and territories.[27]

AUSTRIA

Article 20 of the 1987 Constitution sets out requirements on secrecy and requires that government bodies and corporations must provide information to citizens:

> (3) All functionaries entrusted with Federal, Laender and municipal administrative duties as well as the functionaries of other public law corporate bodies are, save as otherwise provided by law, pledged to secrecy about all facts of which they have obtained knowledge exclusively from their official activity and whose concealment is enjoined on them in the interest of the maintenance of public peace, order and security, of universal national defense, of external relations, in the interest of a public law corporate body, for the preparation of a ruling or in the preponderant interest of the parties involved (official secrecy). Official secrecy does not exist for functionaries appointed by a popular representative body if it expressly asks for such information.
>
> (4) All functionaries entrusted with Federation, Laender and municipal administrative duties as well as the functionaries of other public law corporate bodies shall impart information about matters pertaining to their sphere of competence in so far as this does not conflict with a legal obligation to maintain secrecy; an onus on professional associations to supply information extends only to members of their respective organizations and this inasmuch as fulfillment of their statutory functions is not impeded. The detailed regulations are, as regards the Federal authorities and the self-administration to be settled by Federal law in respect of legislation and execution, the business of the Federation; as regards the Laender and municipal authorities and the self-administration to be settled by Land law in respect of framework legislation, they are the business of the Federation while the implemental legislation and execution are Land business.[28]

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[23] See National Archives, The Cabinet Notebooks. http://www.naa.gov.au/the_collection/cabinet.html

[24] The Crimes Act. *http://scaletext.law.gov.au/html/pasteact/0/28/top.htm*

[25] Privacy Act 1988. Amended by Privacy Amendment (Private Sector) Act 2000. http://www.privacy.gov.au/publications/privacy88_240103.doc

[26] See Australian Privacy Foundation, Privacy Laws - States and Territories of Australia. http://www.privacy.org.au/Resources/PLawsST.html

[27] Ibid.

[28] Austrian Federal Constitutional Laws (selection), Herausgegeben vom Bundespressedienst, Wien 2000.

The 1987 Auskunftspflichtgesetz (Federal Law on the Duty to Furnish Information) obliges federal authorities to answer questions regarding their areas of responsibility within eight weeks.[29] It applies to national departments, the municipalities, the municipality federations and the self-governing bodies. They are limited by the secrecy provisions set out in Article 20(3) of the Constitution.

However, the law does not oblige government bodies to provide access to the documents, only that they provide answers to requests for information. If an interest can be shown, then the individual requesting information can obtain copies of the documents under the Code of Administrative Procedures or the Data Protection Act. The nine Austrian states have laws that place similar obligations on their authorities.[30]

The Federal Law on Environmental Information adopted in 1993 implements the European Union Directive 90/313/EEC on the freedom of access to information on the environment for information held by the federal government.[31] The EU brought a case in the European Court of Justice identifying several areas where the convention had not been properly implemented. It dropped the case in 2002 following changes in the national and state laws.[32] In December 2002, the Advocate General of the ECJ issued an opinion in a case brought by a MP that administrative documents relating to the labeling of genetically modified foods were not covered by the 1990 Directive.[33] Austria signed the Aarhus Treaty in June 1998 but has not yet ratified it. There are also laws in the states on providing environmental information.[34]

The Data Protection Act allows individuals to access personal information about themselves held by public and private bodies.[35] It is overseen by the Data Protection Commission.[36]

The Federal Archives Act sets rules on the preservation of official documents.[37]

BELGIUM

Article 32 of the Constitution was amended in 1993 to include a right of access to records held by the government:

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[29] BGBl 1987/285 (15 May 1987). http://www.kronegger.at/recht/norm/apg.htm

[30] See Council of Europe, Responses to the Questionnaire on National Practices in Terms of Access to Official Documents, Sem-AC(2002)002 Bil, 18 November 2002.

[31] Umweltinformationsgesetz (Law on access to information on the environment), BGBl. No 495/1993, BGBl. No 137/1999.

[32] Case C-86/01. See European Commission, "Access to Environmental Information: Commission moves against Austria, " 13 September 2000.

[33] Opinion of Advocate General Tizzano, Case C-316/01 Dr Eva Glawischnig v Bundesminister für soziale Sicherheit, 5 December 2002.

[34] See Eva Glawischnig & Georg Gunsberg, "Austria: Legal and Institutional Framework and Practices for Public Participation" in Doors to Democracy: Current Trends and Practices in Public Participation in Environmental Decisionmaking in Western Europe, Regional Environmental Centre, June 1998.

[35] Datenschutzgesetz 2000 (DSG 2000), Austrian Federal Law Gazette part I No. 165/1999. http://www.bka.gv.at/datenschutz/legal.htm

[36] Home page: http://www.bka.gv.at/datenschutz/

[37] Federal Archives Act, Federal Law Gazette I No 162/1999.

> Everyone has the right to consult any administrative document and to have a copy made, except in the cases and conditions stipulated by the laws, decrees, or rulings referred to in Article 134.[38]

The constitutional right is implemented on the federal level in a 1994 law on the right of access to administrative documents held by federal public authorities.[39] The acts allow individuals to ask in writing for access to any record held by executive authorities and can include documents created by judicial files.[40] The law also includes a right to have the document explained. Government agencies must respond immediately or within thirty days if the request is delayed or rejected. Each decision must include information on the process of appealing and name the civil servant handing the dossier.

There are three categories of exemptions. In the first category, information must be withheld unless the public interest in releasing is more important. This applies to documents relating to public security, fundamental rights, international relations, public order, security and defense, investigations into criminal matters, commercially confidential information and the name of a whistleblower. The second category provides for mandatory exceptions for personal privacy, a legal requirement for secrecy and the secrecy of deliberations of federal government authorities. The third category provides for discretionary exemptions if the document is vague or misleading or incomplete, related to an opinion given freely on a confidential basis, or the request is abusing or vague. The two first categories of exceptions are applicable on all administrative bodies, the third category applies only to federal administrative bodies. Under the 2000 amendments, documents relating to environmental matters cannot be withheld under exemptions in the first category and those in the 2nd category made secret under another law. Documents obtained under the laws cannot be used or distributed for commercial purposes.

Citizens can appeal denials of information requests to the administrative agency which asks for advice from the Commission d'accès aux documents administratifs. The Commission issues advisory opinions both on request and on its own initiative. The Commission received 106 requests for advice in 2002 and 103 in 2001. Requestors can then make a limited judicial appeal to the Counsel of State.

The Act also requires that each federal public authority provide a description of their functions and organization. Each authority must have an information officer.

Access to environmental information is incorporated in the legislation. The 2000 amendments to the Act applies the act to the 1990 EU Directive on Environment. Belgium signed the Aarhus Convention in 1998 and ratified it in January 2001.

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[38] Constitution of Belgium, 1994. http://www.uni-wuerzburg.de/law/be00000_.html. See Frankie Schram, "Executive Transparency in Belgium", Freedom of Information Review, No 95, October 2001. According to an analysis by Professor Frankie Schram, this was broadly envisioned in the *traveaux préparatoires* to include a wide range of documents in any form held by and executive authority.

[39] Loi du 11 avril 1994 relative à la publicité de l'administration. Modifee par Loi 25 Juin 1998 et Loi 26 Juin 2000. http://www.privacyinternational.org/countries/belgium/loi-publicite.rtf

[40] Schram *Id*.

The Parliament adopted a law on the security of information in 1998.[41] It creates three levels of classification: Top Secret, Secret and Confidential. It exempts classified information from access under the 1994 Act.

The Law on Protection of Personal Data gives individuals the right to access and correct files about themselves held by public and private bodies.[42] It is enforced by the Data Protection Commission.[43] For administrative documents that contain personal information, access is handed under the 1994 access law.

There are also laws implementing access rules at the regional, community and municipal levels.[44]

BELIZE

The Freedom of Information Act was enacted in 1994.[45] The law provides for access to documents held by government departments except for the courts and the Office of the Governor General. Agencies must respond within 14 days.

The definition of documents includes, "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, and Cabinet proceedings are exempt. Other exemptions can be imposed after a "test for harm" that shows that release of the documents would adversely affect trade secrets, personal privacy, confidence, privilege, operations of ministries, enforcement of the law, and the national economy.

Denials can be appealed to an Ombudsman who can force the disclosure of some documents but he cannot examine or order the disclosure of documents in the exempted categories. The losing party may appeal to the Supreme Court.

The Political Reform Commission in 2000 found that the Act was not used often and recommended that:

> Government review and amend the Freedom of Information Act with the objective of narrowing the scope of the Act's definition of documents exempted from public

[41] Loi relative à la classification et aux habilitations de sécurité, 11 décembre 1998.
[42] Loi relative à la protection des données à caractère personnel du 8 décembre 1992. http://www.law.kuleuven.ac.be/icri/documents/12privacylaw.html
[43] Homepage: http://www.privacy.fgov.be/
[44] la loi du 12 novembre 1997 relative à la publicité de l'administration dans les provinces et les communes. http://users.swing.be/sw086276/info/L_12_11_1997.htm
[45] Freedom of Information Act 1994, 14th May 1994 http://www.belizelaw.org/lawadmin/PDF files/cap013.pdf

> access. The Commission further recommends that the Act be amended to provide for the automatic release of all government documents after fifteen years have passed.[46]

The Archives Act sets a 30 years rule for the release of documents except for documents that are confidential or secret. [47]

BOSNIA AND HERZEGOVINA

The Freedom of Information Act was adopted in October 2000 in Bosnia-Herzegovina and in Republika Srpska in May 2001 and went into effect in February 2002.[48] The Act was adopted in July 1999, after Carlos Westendorp, the High Representative for Bosnia and Herzegovina, ordered that a freedom of information bill be developed by the OSCE (Organization for Security and Co-operation in Europe). A high-level group of international and national experts developed a draft bill in June 2000 which was based on some of the best practices from around the world.

The Act applies to information in any form held by any public authority including legal entities carrying out public functions. It also provides for a broad right of access by any person or legal entity, both in and outside of Bosnia. The request must be in writing. The government agency must respond in 15 days.

Information can be withheld if it would cause "substantial harm" to defense and security interests, the protection of public safety, crime prevention and crime detection. Nondisclosure is also mandated to protect the deliberative process of a public authority, corporate secrets and personal privacy. A public interest test is applied to any exemption. Most importantly, the FOI does not apply to international organization such as the OSCE which control the government.

An Ombudsman hears appeals. Those who have been denied information can also appeal internally and challenge decisions in court. The Federation Ombudsman has issued two opinions on implementation of the FOI. The first, issued before the Act went into force called for Ministries to disseminate guides, a register and select information officers.[49] In the second decision, the Ombudsman recommended against the release of intelligence files related to candidates for the upcoming election.[50]

The use of the law has thus far been limited. According to the Ombudsman:

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[46] Final Report of the Political Reform Commission, January 2000. Available at http://www.belize.gov.bz/library/political_reform/

[47] Belize Archives Act. http://www.belizelaw.org/lawadmin/PDF files/cap333.pdf

[48] Freedom Of Access To Information Act For The Federation of Bosnia and Herzegovina, July 2001, http://www.ohr.int/ohr-dept/media-d/med-recon/freedom/default.asp?content_id=7269, Freedom Of Access To Information Act For The Republika Srpska, May 18, 2001. http://www.ohr.int/ohr-dept/media-d/med-recon/freedom/default.asp?content_id=7270.

[49] Ombudsmen of the Federation of Bosnia and Herzegovina, Recommendation for the implementation of the freedom of access to information act, Sept 2001. http://www.bihfedomb.org/eng/reports/special/secretfiles.htm

[50] Ombudsmen of the Federation of Bosnia and Herzegovina , Recommendation for the implementation of the freedom of access to information act (2). http://www.bihfedomb.org/eng/reports/special/secretfiles2.htm

> [A]fter 11 months of application of the Law just a small number of the authorities' organs undertook necessary preparations and timely published acts prescribed by the Law (guidance on application of the Law, index-register information, names of officials responsible for provision of information). If one knows that mentioned legal obligation is related to all public organs (all organs of legislative, judicial and executive authorities), all administrative organs, including legal persons competent for performance of public functions, as well as legal persons owned or controlled by the Federation, cantons, cities or municipalities - number of which is at least couple of hundreds, if not thousands (all schools, faculties, public institutions, public companies, etc.), - number of 126 public organs that acted properly and harmonized their acts in accordance with the Law and forwarded these documents to the Institution of the Federation Ombudsmen, then this number is far from being satisfactory.[51]

The Law on the Protection of Personal Data was enacted in December 2001. It allows individuals to access and correct files containing their personal information held by public and private bodies. It also requires the creation of a Data Protection Commission.

BULGARIA

Article 41 of the Bulgarian Constitution of 1991 states:

> (1) Everyone shall be entitled to seek, receive and impart 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.[52]

In 1996, the Constitutional Court ruled that while the Constitution gives a right to information to any person, this right needed to be determined by legislation.[53] There were a number of lower court cases which rejected requests by citizens and NGOs to obtain information.[54]

The Access to Public Information Act was enacted in June 2000.[55] The law allows for any person or legal entity to demand access to information in any form held by state institutions

[51] See Ombudsmen of the Federation of Bosnia and Herzegovina, Citizens' Rights to Information and Situation in the Area of Journalistic Freedoms. Annual Report for 2002, March 2003. http://www.bihfedomb.org/eng/reports/2002/rpt2002media.htm

[52] Constitution of the Republic of Bulgaria of 13 July 1991, http://www.uni-wuerzburg.de/law/bu00t___.html

[53] Judgment No. 7, Case No. 1 of 1996. http://www.aip-bg.org/documents/ruling.htm

[54] See Gergana Jouleva, Bulgaria- The Access to Information Programme: Fighting for Transparency During the Democratic Transition, July 2002. Available at http://www.freedominfo.org/case/bulgaria1.htm

[55] Access to Public Information Act, http://www.aip-bg.org/library/laws/apia.htm. Amended by Personal Data Protection Act and Protection of Classified Information Act. See the Access to Information Programme home page for detailed studies and reports on freedom of information in Bulgaria. http://www.aip-bg.org/index_eng.htm

and other entities funded by the state budget and exercising public functions. Requests can be verbal or written and must be processed within 14 days.

Information can be withheld if it is personal information about an individual, a state or official secret, business secret, or pre-decisional material. Restrictions must be provided for in an Act of Parliament. Information relating to preparatory work or opinions or statements of ongoing negotiations can be withheld for 2 years. Partial access is required but has not been widely adopted.

Unusually, there is no internal appeals mechanism. Denials can be appealed to the regional court or the Supreme Administrative Court. Minor fines can be levied against government officials who do not follow the requirements of the Act.

Government bodies have a duty to publish information about their structures, functions and acts; a list of acts issued, a list of data volumes and resources, and contact information for access requests. The Minister of State Administration must publish an annual summary of the reports. Bodies are also required to publish information to prevent a threat to life, health or property.

There were 32,857 requests under the Act in 2002.[56] A large number of the requests are verbal (12,403) which the poor information management systems of the departments cannot handle well and most are unanswered or are tacit denials. Many problems have been identified with the law. These include:

- The very definition of "public information" is not clear, mixing "public" and "social" aspects;
- There is no independent body to oversee the procedures of the law. This could lead to unnecessary delays and those who have been denied access have no resort but to go to court, which is a costly procedure;
- There is no description of what state bodies should do to ensure the effective implementation of the law, for instance, through training public servants, providing reading rooms, etc.;
- Despite the law and subsequent measures such as the Electronic Registry of Executive Institutions and Acts and the Law for Personal Data Protection, information disclosure practices are still marked by centralized decision making, administrative discretion, poorly organized information retrieval systems, etc.; and
- The bureaucracy in general is not prepared to implement the law.

In May 2003, the Parliament approved at first hearing amendments to the APIA.[57] The amendments would give a more precise definition of "public information"; expand the range of institutions; creates a "balance of interests" test; create an administrative procedure for appeals; allows for fines when officials refuse to issue a decision or follow a court order; and exempts the media from being required to provide information.

[56] AIP, Report on Access to Public Information in Bulgaria 2002. Available at http://www.aip-bg.org/

[57] See http://www.aip-bg.org/projlaw.htm

The Parliament approved the Law for the Protection of Classified Information in April 2002 as part of Bulgaria's efforts to join NATO.[58] It created a Commission on Classified Information appointed by the Prime Minister and four levels of security for classified information. The law provides a very broad scope of classification authority, allowing everyone who is empowered to sign a document to classify it. There are requirements to show harm for some provisions but no overriding public interest tests. The law revoked the 1997 Access to Documents of the Former State Security Service Act and Former Intelligence Service of the General Staff Act which regulated access to, and provided procedures for, the disclosure and use of documents stored in the former State Security Service, including files on government officials. It also eliminated the Commission on State Security Records set up under the 1997 Act. A regulation now establishes access and the right of individuals to access their files created by the former security police is currently unclear. A group of MPs asked the Constitutional Court to review the constitutionality of the provisions that abolished the law on access to former state security files and created a register of classified documents. The Constitutional Court upheld the provisions in 2002.[59]

Under the Administration Act, the Council of Ministers must publish a register of administrative structures and their acts which is defined as "all normative, individual and common administrative acts." The register must be on the Internet. In 2002, the regulation was amended to limit the Acts published to only those relating to exercising government control.[60]

Bulgaria signed the Aarhus Treaty in 1998 but has not yet ratified it. A new Environmental Protection Act was approved in 2002. The new act provides for less automatic disclosure and more exemptions than the previous law from 1991.[61]

The Personal Data Protection Act, which came into force in January 2002, gives individuals the right to access and correct information held about them by public and private bodies.[62] However, it might also prevent the information relating to public officials acting in their official capacity from being released. A Data Protection Commission was created in 2002 to oversee the act.

In 2002 a bill on the National Archives was introduced. There is no appeals mechanism if access to records is denied.

CANADA

The 1983 Access to Information Act[63] provides Canadian citizens and other permanent residents and corporations in Canada the right to apply for and obtain copies of records held

[58] Law for the Protection of Classified Information, Prom. SG. 45/30 Apr 2002, corr. SG. 5/17 Jan 2003. http://faculty.maxwell.syr.edu/asroberts/foi/library/secrecylaws/BG_class_info_law.pdf For a review, see Alexander Kashumov, National Security and the Right to Information, 2003. Available at http://www.freedominfo.org

[59] Decision No. 11 of 2002.

[60] See AIP,Report on Access to Public Information in Bulgaria 2002.

[61] See Access to Information Programme, The Current Situation of the Access to Public Information in Bulgaria 2002.

[62] Personal Data Protection Act. http://www.aip-bg.org/pdf/pdpa.pdf

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

by government institutions. "Records" include letters, memos, reports, photographs, films, microforms, plans, drawings, diagrams, maps, sound and video recordings, and machine-readable or computer files. The institution must reply in 15 days.

Records can be withheld for numerous reasons: they were obtained in confidence from a foreign government, international organization, provincial or municipal or regional government; would injure federal-provincial or international affairs or national defense; relate to legal investigations, trade secrets, financial, commercial, scientific or technical information belonging to the government or materially injurious to the financial interests of Canada; include personal information defined by the Privacy Act; contain trade secrets and other confidential information of third parties; or relate to operations of the government that are less than 20 years old. Documents designated as Cabinet confidences are excluded from the Act and are presumed secret for 20 years.

The Cabinet confidences exemption has been described as the "Mack Truck" exemption because of the wide discretion it gives. This has been recently limited by the courts. The Supreme Court ruled in July 2002 that the decisions of the government to withhold documents under this exemption can be reviewed by the courts and other bodies including the Information Commissioner to ensure they were procedurally correct.[64] Following this decision, the Federal Court of Appeals ruled in February 2003 that discussion papers that contain background explanations, problem analysis and policy options can be released once a decision is made.[65] This was provided for in the ATIA but shortly after it went into effect, the government renamed the documents "memorandums to the Cabinet" and claimed that the exemption did not apply.

The Supreme Court also ruled in March 2003 that employment histories of RCMP officers can be released under the ATIA.[66] The Court found that Parliament has provided less privacy protections for those who work for the government relating to their functions or positions. The Court also rejected the claim by the Commissioner of the RCMP that disclosing the information would not promote accountability, noting that the act was open to any person regardless of the motivation for the request.

The Office of the Information Commissioner of Canada oversees the Act's implementation.[67] The Commissioner can investigate and issue recommendations but does not have the power to issue binding orders. It can ask for judicial review if its recommendation is not followed. The Canadian Federal Court has ruled that government has an obligation to answer all access requests regardless of the perceived motives of those making the requests. Similarly, the commissioner must investigate all complaints even if the government seeks to block him from doing so on the grounds that the complaints are made for an improper purpose. The Office handed 956 complaints and 3,157 inquiries and completed 1,004 investigations in 2002-2003. The office issues report cards on agencies that received the most complaints. This is aimed at remedying problems of systemic noncompliance within some major departments.

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[64] Babcock v. Canada (Attorney General) , Supreme Court of Canada, July 11, 2002. http://www.canlii.org/ca/cas/scc/2002/2002scc57.html

[65] Canada (Minister of Environment) v. Canada (Information Commissioner) , 2003 FCA 68. February 7, 2003. http://www.canlii.org/ca/cas/fca/2003/2003fca68.html

[66] Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police) , 2003-03-06, Supreme Ct Canada. http://www.canlii.org/ca/cas/scc/2003/2003scc8.html

[67] Homepage of the Information Commissioner of Canada, http://www.infocom.gc.ca/

Most of the agencies that have had negative report cards have substantially improved their procedures in the following years. The report also notes that the overall complaints for delays dropped from 28 percent to 16 percent indicating that government departments were becoming more responsive.

The ATIA was amended by the Terrorism Act in November 2001. The amendments allow the Attorney General to issue a certificate to bar an investigation by the Information Commissioner regarding information obtained in confidence from a "foreign entity" or for protection of national security if the Commissioner has ordered the release of information. Limited judicial review is provided for. However, the Information Commissioner testified in December 2001 that the review is "so limited as to be fruitless for any objector and demeaning to the reviewing judge."[68] Thus far, no certificates have been issued. The Privy Council Office also ordered that all requests relating to anti-terrorism must be reviewed by the Office. That policy has ended. However, Transport Canada is refusing to release information on passenger and baggage screening, which was criticized by the Senate Committee on National Security and Defence in January 2003.

The Government of Canada established an Access to Information Review Task Force in August 2000.[69] The task force was made up mostly of government insiders. It released its final report in June 2002, stating that the structure of the Access to Information Act is sufficient but also recommended over 100 changes, including limiting the subpoena power of the Information Commissioner.[70] The Information Commissioner expressed "disappointment" with the report stating, "the recommendations for legislative change in the report would significantly expand the zone of secrecy in Canada".[71] Thus far, none of the recommendations have been adopted.

Over 21,000 requests were made under the ATIA in 2001-2002, up slightly from the previous year and the highest since the law was enacted.[72] Of these requests, 32 percent were released in full, 40 percent were released in part, three percent were exempted or excluded from release and over 21 percent were not processed for reasons of insufficient information, abandonment or nonexistence of records. The Immigration Service received the largest number of requests – 30 percent. 43 percent of requests were by businesses, the public made 33 percent and 12 percent by the media.

The Information Commissioner has been critical of the government's efforts to restrict access. He began his 1999-2000 annual report with "Mayday - Mayday." In his 2000-2001 report, he issued detailed recommendations on improving the Act, stating that while the Act could still be considered a success, that there were persistent problems, such as delays, excessive secrecy, improper record-handling practices, fees as barriers to access, inadequate searches and political interference. There is also concern about the growing number of quasi-governmental organizations that perform public functions but operate outside the law. In his

[68] http://infocom.gc.ca/speeches/speechview-e.asp?intspeechId=65

[69] Homepage: http://www.atirtf-geai.gc.ca/home-e.html

[70] Access to Information: Making it Work for Canadians: Report of the Access to Information Review Task Force (2002). http://www.atirtf-geai.gc.ca/report2002-e.html

[71] Information Commissioner responds to the release of the report of the Access to Information Review Task Force, June 18, 2002. http://www.infocom.gc.ca/pressreleases/preleaseview-e.asp?intPressReleaseId=7

[72] Treasury Board of Canada, InfoSource Bulletin No 25, Statistical Tables 2001-2002 Access to Information, August 2002. http://dsp-psd.communication.gc.ca/Collection/BT51-3-10-2-2001E_AUG.pdf

2002-2003 report, he notes that the government's poor information management threatens access but recognizes that the government is starting to recognize the need to change their practices.[73] Following this, the Treasury Board announced a new policy on Management of Government Information Holdings in May 2003, which is hoped will substantially improve record keeping, especially of electronic records.[74]

Individuals can access and correct their records held by federal agencies under the Privacy Act, a companion law to the ATIA.[75] There were over 36,000 requests for records in 2001-2002. Under the Personal Information Protection and Electronic Documents Act (PIPEDA), individuals can access and correct their records held by federally regulated businesses such as telecommunications companies and banks.[76] In 2004, its coverage will expand to cover all businesses except in provinces which have adopted similar laws. The Acts are overseen by the Privacy Commissioner who has similar powers to the Information Commissioner.[77]

The Security of Information Act, criminalizes the unauthorized release, possession or reception of secret information.[78] Employees of the various intelligence services are permanently bound to secrecy. There is a limited defense for disclosing information to reveal a criminal offence but the person must have first informed a Deputy Minister and the relevant commission or committee. The act was previously called the Official Secrets Act and was amended and renamed by the 2001 Anti-terrorism Act.

All the Canadian provinces have a freedom of information law and most have a commissioner to provide enforcement and oversight.[79]

COLOMBIA

The Constitution provides for a right of access to government records.[80] Article 74 states "Every person has a right to access to public documents except in cases established by law." Article 15 provides a right of "habeas data" that allows individuals to access information about themselves held by public and private bodies. Article 78 regulates consumer product information, and Article 112 allows political parties the right of "access to official information and documentation". Article 23 provides for the mechanism to demand information, "Every person has the right to present petitions to the authorities for the general or private interest and to secure their prompt resolution."

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[73] Annual Report of the Information Commissioner 2002-2003.

[74] Policy on the Management of Government Information, May 1, 2003. http://www.tbs-sct.gc.ca/pubs_pol/ciopubs/TB_GIH/mgih-grdg_e.asp

[75] Privacy Act. R.S. 1985, c. P-21 http://laws.justice.gc.ca/en/P-21/index.html

[76] Personal Information Protection and Electronic Documents Act. http://www.privcom.gc.ca/legislation/02_06_01_e.asp

[77] Homepage: http://www.privcom.gc.ca/index_e.asp

[78] Security of Information Act, c. O-5. http://laws.justice.gc.ca/en/O-5/

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

[80] Constitution of Colombia, 1991, revised 2001. http://www.georgetown.edu/pdba/Constitutions/Colombia/col91.html

The Constitutional Court has ruled in over 90 cases relating to Habeas Data since 1992.[81]

Colombia has a long history of freedom of information legislation. In 1888, the Code of Political and Municipal Organization allowed individuals to request documents held in government agencies and archives, unless release of these documents was specifically forbidden by another law.[82]

More recently, the Law Ordering the Publicity of Official Acts and Documents was adopted in 1985.[83] This law allows any person to examine the actual documents held by public agencies and obtain copies, unless these documents are protected by the Constitution, another law, or for national defense or security considerations. Information requests must be processed in 10 days.

If a document request is denied, appeals can be made to an Administrative Tribunal.

The law also requires the publication of acts and rules. The Constitutional Court ruled in December 1999 that under the 1985 Act and a 1998 amendment, legislative acts would only be in force against individuals once they were published.[84]

According to experts, "enforcement of the law is haphazard and the FOIA bureaucracy charged with processing requests does not exist."[85] The World Bank has funded efforts to make more information available electronically through an e-portal.[86]

Under the General Law of Public Archives, after 30 years, all documents become public records except for those that contain confidential information or relate to national security.[87]

A data protection bill which would give citizens a right of access to their records held by public and private bodies is pending in the Chamber of Deputies.[88] It was approved by the Senate in December 2001.

CZECH REPUBLIC

The 1993 Charter of Fundamental Rights and Freedoms provides for a right to information.[89] Article 17 states: (1) Freedom of expression and the right to information are guaranteed. (2)

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[81] See EPIC and Privacy International, Privacy and Human Rights 2003: Colombia. http://www.privacyinternational.org/survey/phr2003/countries/colombia.htm

[82] Alberto Donadio, Freedom of Information in Colombia, Access Reports, February 16, 1994.

[83] Ley 57 de 1985 (Julio 5) Por la cual se ordena la publicidad de los actos y documentos oficiales. http://www.privacyinternational.org/countries/colombia/ley57-foi.doc

[84] C-957, 1 December 1999.

[85] Ibid, Donadio.

[86] See World Bank, Colombia's Government Portal, August 2001, http://www1.worldbank.org/publicsector/egov/colombiaportal_cs.htm

[87] Ley 594 de 2000 (julio 14) por medio de la cual se dicta la Ley General de Archivos y se dictan otras disposiciones. http://www.mincultura.gov.co/nuevo/cerodos/DOCUMENTOS/Ley594.pdf

[88] See http://ulpiano.com/colombia.pdf

[89] Charter of Fundamental Rights and Freedoms. http://www.psp.cz/cgi-bin/eng/docs/laws/listina.html

Everybody has the right to express freely his or her opinion by word, in writing, in the press, in pictures or in any other form, as well as freely to seek, receive and disseminate ideas and information irrespective of the frontiers of the State. (3) Censorship is not permitted. (4) The freedom of expression and the right to seek and disseminate information may be limited by law in the case of measures essential in a democratic society for protecting the rights and freedoms of others, the security of the State, public security, public health, and morality. (5) Organs of the State and of local self-government shall provide in an appropriate manner information on their activity. The conditions and the form of implementation of this duty shall be set by law.

The Law on Free Access to Information was adopted in May 1999 and went into effect on January 1, 2000.[90] The law allows any natural or legal person to access information held by State authorities, communal bodies and private institutions managing public funds. Requests can be made in writing or orally. The public bodies are required to respond to requests within 15 days.

There are exemptions for classified information, privacy, business secrets, internal processes of a government body, information collected for a decision that has not yet been made, intellectual property, criminal investigations, activities of the courts, and activities of the intelligence services. Fees can be demanded for costs related to searching for information, making copies and sending information.

Appeals are made to the superior body in the state authority concerned, which must decide in 15 days. An "exposition" can be filled when a central state body rejects an information request. The decision can then be appealed to a court under a separate law. NGO Otevrená Spolecnost is currently seeking a decision of the Highest Administrative Court to force the government to release copies of all FOI decisions nationwide.

Public bodies must also publish information about their structure and procedures as well as annual reports of their information-disclosure activities.

Otevrená Spolecnost's Right to Information Project conducted studies in 2001 and 2002 and found that citizens have obtained access in a majority of cases and the authorities have not been overwhelmed by requests.[91] It also found a number of problems including excessive fees being imposed, the overuse of commercial secrets and data protection as justifications for withholding, unjustified denials by agencies that claim that they are not subject to the act or simply ignore the law, and a failure of agencies to provide segregable information. Amendments to the law were debated in the Senate in 2002 but were not adopted.

The Protection of Classified Information Act was approved in May 1998 as part of the Czech Republic's entry into NATO.[92] It sets 28 types of information that can be classified into four levels of classification. The Constitutional Court ruled in June 2002 that some provisions were unconstitutional because they did not provide for judicial review and the law was

[90] Law Dated 11 May 1999 On free access to information, 106/1999 Coll. http://www.uvdt.cz/dokumenty/zakonsvobinf.doc

[91] See Open Society, b.a., Free Access to Information in the Czech Republic, August 2002. http://www.otevrete.cz/index.php?id=142&akce=clanek

[92] Act 148/1998 dated 11 June 1998 on Protection of Classified Information and on Amendment to Certain Acts. http://www.nbu.cz/en/act148.php Most recently amended by Act No. 310/2002 Coll. Regulation 348/2002 concerning Security Eligibility of Individuals, July 22, 2002. http://www.nbu.cz/angl/regulation.html

amended.[93] The Office for the Documentation and Investigation of the Crimes of Communism (UDV) is in charge of security checks.

The 2000 Data Protection Act allows individuals to access their records held by public and private bodies.[94] It is enforced by the Office for Personal Data Protection.[95] In April 1996, Parliament approved a law that allows any Czech citizen to obtain his or her file created by the communist-era secret police (StB).[96] The law placed the Interior Ministry's Office for the Documentation and Investigation of the Crimes of Communism (UDV) in charge of the files.[97] 3,000 people accessed their files between 1996 and 2002.[98] The Interior Ministry was estimated to hold 60,000 records but it is believed that many more were destroyed in 1989. In March 2002, President Havel signed legislation expanding access to the police files of the communist regime.[99] Now any Czech citizen over 18 years old can access nearly any file. President Havel said the need for truth prevailed over the risks of releasing information.[100] The government published a list of 75,000 StB collaborators in 2003 on the Ministry of Interior's website.[101]

The Czech Republic signed the Aarhus Convention in June 1998 but has not yet ratified it. Law No 123/1998 on the right to information on the environment requires that public bodies disclose information on environmental matters.[102]

DENMARK

Like other Nordic countries, Denmark has a long history on access to information. As far back as 1865, an act allowing losing parties in a court case to see administrative files was enacted. The first general (but limited) act on access to information was adopted in 1964 and the 1970 Act on Access of the Public to Documents in Administrative Files created a comprehensive freedom of information scheme.[103]

The 1985 Access to Public Administration Files Act[104] governs access to government records. It replaced the 1970 law. It allows "any person" to demand documents in an administrative

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[93] Finding No. 322/2001 Coll.

[94] Act of 4 April 2000 on Protection of the Personal Data, http://www.uoou.cz/eng/101_2000.php3

[95] Web Site: http://www.uoou.cz/eng/index.php3

[96] Act N. 140/1996 Coll. of 26 April 1996 on Disclosure of Files Established by Activities of the Former State Security Force. See Former Secret Police Files Will Be Open to Public. http://www.mzv.cz/washington/newslet/c09-1296.htm

[97] Homepage: http://www.mvcr.cz/policie/udv/english/

[98] RFE/RL, Czech Republic: Bill Would Open Communist Secret Police Files To General Public, 13 February 2002.

[99] Act 107/2002 amending Act No. 140/1996 Coll. on providing access to volumes created within the activities of the former State Security, and some other Acts.

[100] *RFE/RL*, March 15, 2002.

[101] Radio Prague, Czechs wait thirteen years for official names of secret police collaborators, 24 March 2003. http://www.radio.cz/en/article/38934

[102] Law No. 123 /1998 on Access to Information on the Environment, of May 13, 1998. http://www.eel.nl/countries/czech_act.htm

[103] See Hallo, ed., Access to Environmental Information in Europe: Denmark (Kluwer Law 1996).

[104] Access to Public Administration Files Act. Act No. 572, 19 December 1985. http://www.privacyinternational.org/countries/denmark/dk-foi-85.doc

file. Authorities must respond as soon as possible to requests if it takes longer than ten days must inform the requestor of why the response is delayed and when an answer is expected.

The Act applies to "all activity exercised by the public administration" and to electricity, gas and heating plants. The Minister of Justice can extend coverage of the Act to companies and other institutions that are using public funds and making decisions on behalf of central or local governments. It does not apply to the Courts or legislators. Documents relating to criminal justice or the drafting of bills before they are introduced in the Folketing are exempt. Authorities receiving information of importance orally to a decision by an agency have an obligation to take note of the information.

The following documents are also exempted from disclosure: internal case material prior to a final decision; records, documents and minutes of the Council of State; correspondence between authorities and outside experts in developing laws or for use in court proceedings or deliberations on possible legal proceedings; material gathered for public statistics or scientific research; information related to the private life of an individual; and documents on technical plans or processes of material importance. Nondisclosure is also allowed if the documents contain essential information relating to the security of the state and defense of the realm, protection of foreign policy, law enforcement, taxation and public financial interests. Factual information of importance to the matter shall be released if it is included in internal case material or certain other exempted documents. Public authorities must release information if there is a danger to life, health. property or the environment.

An exemption for EU documents was removed in 1991. The law was also amended in 2000 to limit access to some data about government employees.

The Folketingets Ombudsman can review decisions and issue opinions recommending that documents be released or that the authority justify its decisions better.[105] The Ombudsman cannot order public authorities to act but its recommendations are generally followed.[106] It can also start its own investigations and is currently reviewing the access functions of the Ministry of Taxation. The Ombudsman receives 200-300 complaints each year relating to access to records and decided against the public bodies in around 15 percent of the cases. It takes 3-5 months for each decision. Decisions on access can also be appealed to the courts but this is rare.

The Government has set up a committee to review the act and prepare changes to the law.[107] It will consider the effects of new technologies, the role of other laws, the effect of restructuring on how government departments work, and the need for an independent oversight agency. It is being chaired by the Ombudsman with participation from government departments and users and is expected to take several years to complete its review and issue recommendations for changes to the Act.

[105] Home page: http://www.ombudsmanden.dk/

[106] Council of Europe, Responses to the Questionnaire on National Practices in Terms of Access to Official Documents - Denmark, Sem-AC(2002)002 Bil, 18 November 2002, p.188. See also Summaries of annual reports for reviews of recent cases at http://www.ombudsmanden.dk/index.asp?art=summ-eng.htm&id=summ-eng&fold=international

[107] COE report, Ibid, p. 223.

The Public Administration Act governs access to records where a person is party to an administrative decision.[108] There is a greater access to records under the legislation for parties.

The Act on Processing of Personal Data allows individuals to access their records held by public and private bodies.[109] It is enforced by the Datatilsynet (Data Protection Agency).[110]

The Act on the legal status of patients allows access for patients to their health records, unless consideration for the person requesting disclosure or for other private interests is of overriding importance.[111]

Denmark signed the Aarhus Convention in June 1998 and ratified and approved it in September 2000. The Access to Environmental Information Act implements the European Environmental Information Directive (90/313/EEC)[112] and was amended in 2000 to implement the Aarhus Convention.[113]

Under the Archives Act, most archives of public bodies are available after 30 years.[114] Archives containing personal information are kept closed for 80 years and those containing information relating national security and other reasons can be closed for varying times.

Under the Home Rule Act, Greenland has a separate set of laws generally based on Danish law.[115] The 1994 Public Administration Act and the 1994 Access to Public Administration Files Act were inspired by Danish legislation as well as practice.[116] The old Danish Public Authorities' Registers Act and Private Registers Act of 1979 are still in force in Greenland. There is also a 1998 Act on Archives,[117] which provides access by the public to archives.

ESTONIA

Article 44 of the Estonian Constitution states:

> (1) Everyone shall have the right to freely receive information circulated for general use.

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[108] Act 571 of 19 December 1995.

[109] The Act on Processing of Personal Data (Act No. 429 of 31 May 2000). http://www.datatilsynet.dk/eng/

[110] Homepage: http://www.datatilsynet.no/

[111] Act 482 of 1 July 1998.

[112] Act from the Ministry of the Environment on Access to Information on the Environment. No. 292 of April 27, 1994. http://www.mst.dk/rules/Acts%20in%20force/Intersectoral%20in%20force/03040200.doc

[113] Act from the Ministry of Environment and Energy, Amending Certain Environmental Acts. No. 447 of May 31, 2000. http://www.mst.dk/rules/Acts%20in%20force/Intersectoral%20in%20force/03040500.doc

[114] See presentation of Hanne Rasmussen, International Council of Archives, SPP Rome, February 2002. http://www.spp-ica.org/files/docs2002/Rasmussen.doc

[115] Act No. 577 of 29 November 1978.

[116] Act No. 8 of 13 June 1994 on Public Administration Act, Act No. 9 of 13 June 1994 on Access to Public Administration Files with later amendments.

[117] Act No. 22 of 30 October 1998.

> (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.[118]

The Public Information Act (PIA) was approved in November 2000 and took effect in January 2001.[119] 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. Any person may make a request for information and the holder of information must respond within five working days. Requests for information are registered. Fees may be waived if information is requested for research purposes.

The Act does not apply to information classified as a state secret. Internal information can be withheld for five years. This includes information relating to pending court cases; collected in the course of state supervision proceedings; would damage the foreign relations of the state; relating to armaments and location of military units; would endanger heritage or natural habitats; security measures; draft legislation and regulations; other documents not in the register; and personal information. Information relating to public opinion polls, generalized statistics, economic and social forecasts, the environment, property and consumer-product quality cannot be restricted.

The Act also includes significant provisions on electronic access and disclosure. Government department must maintain document registers. National and local government departments and other holders of public information have the duty to maintain websites and post an extensive list of information on the Web including statistics on crime and economics; enabling statutes and structural units of agencies; job descriptions of officials, their addresses, qualifications and salary rates; information relating to health or safety; budgets and draft budgets; information on the state of the environment; and draft acts, regulations and plans including explanatory memorandum. They are also required to ensure that the information is not "outdated, inaccurate or misleading." In addition, e-mail requests must be treated as official requests for information. Public libraries were required to have access to computer networks by 2002.

The Act is enforced by the Data Protection Inspectorate.[120] The Inspectorate can review the procedures of the public authorities and receive complaints. Officials can demand

[118] Constitution of Estonia, http://www.uni-wuerzburg.de/law/en00000_.html
[119] Public Information Act, Passed 15 November 2000. RT I 2000, 92, 597. http://www.legaltext.ee/text/en/X40095K1.htm
[120] Homepage: http://new.dp.gov.ee/?lang=en

explanations from government bodies and examine internal documents. The Inspectorate can order a body to comply with the Act and release documents. The Inspectorate has made inquiries with data holders and believes that the act is generally followed although in 15 percent of the cases there was non compliance and five cases of a breach of the PIA.[121] The body can appeal to an administrative court. There have been only a few court cases so far.

The State Secrets Act controls the creation, use and dissemination of secret information.[122] It was amended in August 2001 to comply with NATO requirements. It sets four levels of classification and information can be classified for up to fifty years.

The Data Protection Act allows individuals to obtain and correct records containing personal information about themselves held by public and private bodies. It is enforced by the Data Protection Inspectorate.

The Archives Act requires that public records are transferred to the Archive after twenty years.[123]

Estonia signed the Aarhus Convention in June 1998 and ratified it in August 2001. The PIA applies to access environmental information. The Environmental Register Act requires the collection in a database of detailed information regarding the environment including pollution, waste and radioactive waste, genetically modified organisms, natural environmental factors, permits and other materials.[124] The information is public unless it could cause a danger to public safety, environmental damage, or contains intellectual property secrets, There are also a variety of other environmental laws that provide for collection and disclosure of information environmental information. [125]

FINLAND

Section 12 of the 2000 Constitution states:

> (1) Everyone has freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of the freedom of expression are laid down by an Act. Provisions on restrictions relating to pictorial programs that are necessary for the protection of children may be laid down by an Act.

[121] Council of Europe, Responses to the Questionnaire on National Practices in Terms of Access to Official Documents - Estonia, Sem-AC(2002)002 Bil, 18 November 2002, p.154.

[122] State Secrets Act RT1 I 1999, 16, 271. http://www.legaltext.ee/text/en/X30057K4.htm . See also Approval of Procedure for Protection of State Secrets and Procedure for Issue of Permits for Access to State Secrets, Government of the Republic Regulation No. 216 of 8 July 1999, RT I 1999, 61, 622. http://www.legaltext.ee/text/en/X40004K4.htm

[123] The Archives Act. RT I 1998, 36/37, 552. http://www.legaltext.ee/text/en/X2058K4.htm

[124] Environmental Register Act, Passed 19 June 2002 (RT I 2002, 58, 361). http://www.legaltext.ee/text/en/X60041.htm

[125] Council of Europe report, p.121.

> (2) Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings.[126]

Finland has a long tradition of open access to government files. The Riksdag's (Swedish Parliament) 1766 Access to Public Records Act, the world's first freedom of information law, was introduced by a Finnish clergyman and Member of Parliament named Anders Chydenius and the Act applied to Finland, then a Swedish-governed territory.[127] When Finland became an independent republic in 1919, its new Constitution was based on the Swedish one and included freedom of information. In 1951, the Parliament approved the Act on Publicity of Official Documents, which remained in effect until 1999.[128]

The Act on the Openness of Government Activities went into effect on December 1, 1999.[129] It provides for a general right to access any "official document" in the public domain held by public authorities and private bodies that exercise public authority, including electronic records.

Those asking for information are not required to provide reasons for their request or to verify their identity unless they are requesting personal or other secret information. Responses to requests must be made within 14 days.

Access to "nonofficial documents" and documents not in the official domain such as private notes and internal discussions are limited and may not be archived. Documents which contain information on decision-making must be kept.

The new law codified 120 preexisting secrecy provisions in 32 categories of secret documents that are exempt from release with different harm tests depending on the type of information. These include documents relating to foreign affairs, criminal investigations, the police (including tactical and technical plans), the security police, military intelligence and armed forces "unless it is obvious that access will not compromise" those interests, business secrets, and personal information including lifestyle and political convictions except for those in political or elected office. Documents are kept secret for 25 years unless otherwise provided by law except for personal information which is closed for 50 years after the death of the individual.

Government authorities are also required to publish information about their activities and government meetings are open to the public. Indices of documents must be maintained. Government departments have their own websites and have been actively promoting e-government policies.

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[126] Constitution of Finland, 2000. http://www.uni-wuerzburg.de/law/fi00000_.html

[127] See Stephen Lamble, "Freedom of Information, A Finnish clergyman's gift to democracy", Freedom of Information Review, No. 97, February 2002.

[128] Act 83/9/2/1951.

[129] Act on the Openness of Government Activities, No. 621/99, http://www.om.fi/1184.htm. Decree on the Openness of Government Activities and on Good Practice in Information Management (1030/1999). http://www.finlex.fi/pdf/saadkaan/E9991030.PDF See "Right of Access to Documents: New Finnish Legislation", Freedom of Information Review, No. 92, April 2001.

Appeals to any denial can be made to a higher authority and then to an Administrative Court. The Chancellor of Justice and the Parliamentary Ombudsman can also review the decision.

Finland signed the Aarhus Convention in June 1998. Access to environmental information is through the Act. The Environmental Protection Act requires that monitoring data on the environment be made public.[130]

The Personal Data Act allows individuals to access and correct their records held by public and private bodies.[131] It is enforced by the Data Protection Ombudsman.[132]

The Archives Act sets rules requiring the retention of important documents.[133]

FRANCE

Article 14 of the 1789 Declaration of the Rights of Man called for access to information about the budget to be made freely available: "All the citizens have a right to decide, either personally or by their representatives, as to the necessity of the public contribution; to grant this freely; to know to what uses it is put."[134]

The 1978 Law on Access to Administrative Documents provides for a right to access by all persons to administrative documents held by public bodies.[135] These documents include "files, reports, studies, records, minutes, statistics, orders, instructions, ministerial circulars, memoranda or replies containing an interpretation of positive law or a description of administrative procedures, recommendations, forecasts and decisions originating from the State, territorial authorities, public institutions or from public or private-law organizations managing a public service." They can be in any form. Documents handed over are subject to copyright rules and cannot be reproduced for commercial purposes. Public bodies must respond in one month.

Proceedings of the parliamentary assemblies, recommendations issued by the Conseil d'État and administrative jurisdictions, documents of the State Audit Office, documents regarding the investigation of complaints referred to the Ombudsman of the Republic and documents prior to the drafting of the health-organization accreditation report are excluded from the definition of administrative documents. Documents that are "instrumental in an administrative decision until the latter has been taken" are not available until the decision is made.

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130 Environmental Protection Act . No. 86/2000.

131 Personal Data Act (523/1999). http://www.tietosuoja.fi/uploads/hopxtvf.HTM

132 Homepage: http://www.tietosuoja.fi/1560.htm

133 Archives Act (831/1994). http://www.narc.fi/law/lawfr.html

134 http://www.yale.edu/lawweb/avalon/rightsof.htm

135 Loi no. 78-753 du 17 juillet 1978 de la liberté d'accès au 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. Amended by 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/texteconsolide/PPEAV.htm English version: http://www.cada.fr/uk/center2.htm

There are also mandatory exemptions for documents that would harm the secrecy of the proceedings of the government and proper authorities coming under the executive power; national defense secrecy; the conduct of France's foreign policy; the State's security, public safety and security of individuals; the currency and public credit; the proper conduct of proceedings begun before jurisdictions or of operations preliminary to such proceedings, unless authorization is given by the authority concerned; actions by the proper services to detect tax and customs offences; or secrets protected by the law. Documents that would harm personal privacy, trade or manufacturing secrets, pass a value judgment on an individual, or show behavior of an individual can only be given to the person principally involved.

The Commission d'accèss aux documents administratifs (CADA) is charged with oversight.[136] It can mediate disputes and issue recommendations but its decisions are not binding. A complaint must be decided by the CADA before it can be appealed to an administrative court. It handled over 5,000 requests in 2002. On average, 50 percent of its recommendations are for the body to release the information that it is withholding (50.7 % in 2002). The bodies refuse to follow the advice in less than 10 percent of the cases.[137] The CADA also issued opinions in 379 cases under a 2002 law that allows for individuals to access their medical records without needing it to be sent to a doctor first.[138]

France signed the Aarhus Convention in June 1998 and ratified and implemented it in July 2002. It included a declaration that "The French Government will see to the dissemination of relevant information for the protection of the environment while, at the same time, ensuring protection of industrial and commercial secrets, with reference to established legal practice applicable in France." The European Commission brought an action against France in the European Court of Justice for failing to implement the 1990 EU Environmental Directive, determining that the 1978 act was not adequate in providing environmental information. The ECJ ruled in June 2003 that the French government had failed to adequately implement the directive.[139]

A 1998 law sets rules on classification of national security information.[140] The Commission consultative du secret de la défense nationale (CCSDN) gives advice on the declassification and release of national security information in court cases. The advice is published in the Official Journal.[141]

The 1978 Data Protection Act acts in conjunction with the access law and allows individuals to obtain and correct files that contain personal information about themselves from public and private bodies.[142] The law was amended in 2003 to implement the 1995 EU Data Protection

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[136] Homepage: http://www.cada.fr/

[137] Council of Europe, Responses to the Questionnaire on National Practices in Terms of Access to Official Documents - France, Sem-AC(2002)002 Bil, 18 November 2002, p.155.

[138] Loi No. 2002-303 de 4 mars 2002 relative aux droits des maladies et a la qualité du system de la santé public

[139] Commission of the European Communities v French Republic, Case C-233/00. Decision of 26 June 2003. Available at http://www.curia.eu.int/

[140] Loi no 98-567 du 8 juillet 1998 instituant une Commission consultative du secret de la défense nationale, http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=DEFX9700140L See Rapport 2001 de la Commission consultative du secret de la défense nationale, http://www.ladocumentationfrancaise.fr/brp/notices/014000754.shtml

[141] For a copy of decisions, see http://www.reseauvoltaire.net/rubrique387.html

[142] Loi du 6 janvier 1978 modifiée relative à l'informatique, aux fichiers et aux libertés après adoption en par le Sénat du projet de loi de transposition http://www.cnil.fr/textes/docs/CNIL-Loi78-17_modSenat1-VI.pdf

Directive. It is enforced by the Commission Nationale de l'Informatique et des Libertés (CNIL).[143]

The 1979 Law on Archives makes files held in the archives public after thirty years.[144] Files containing information relating to individuals' medical or personal life, international relations and national security can be kept closed for varying times up to 150 years. Following the 2000 law, the CADA can give opinions on the release of withheld documents in the archives. It made 44 recommendations in 2001 and 36 recommendations in 2002. In 2002, it recommended release of documents in 29 cases but its opinion was only followed in 9 of the cases.

A 2002 law allows for former adoptees and wards of the state to access their records and find out the names of their parents, relatives and their medical conditions.[145] It created a new commission, the Conseil national pour l'accès aux origines personnelles (CNAOP) to enforce the act. Prior to the formation of the CNAOP in August 2002, the CADA issued 132 opinions.

GEORGIA

The Constitution of Georgia includes two provisions specifying a right of access to information.[146]

> Article 37(5). Individuals have the right to complete, objective and timely information on their working and living conditions.
>
> Article 41 1. Every citizen has the right according to the law to know information about himself which exists in state institutions as long as they do not contain state, professional or commercial secrets, as well as with official records existing there. 2. Information existing in official papers connected with health, finances or other private matters of an individual are not available to other individuals without the prior consent of the affected individual, except in cases determined by law, when it is necessary for the state and public security, defense of health, rights and freedoms of others.

The Law on Freedom of Information was adopted as Chapter 3 of the General Administrative Code of Georgia in 1999 and amended in 2001.[147] It sets a general presumption that information kept, received or held by a public agency should be open. All public information should be entered into a public register in two days. The law gives anyone the right to submit

[143] Home Page: http://www.cnil.fr/

[144] Loi n° 79-18 du 3 janvier 1979, Loi sur les archives. http://www.legifrance.gouv.fr/texteconsolide/PPEAY.htm

[145] Loi no 2002-93 du 22 janvier 2002 relative à l'accès aux origines des personnes adoptées et pupilles de l'Etat. http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=MESX0205318L. For information, see http://vosdroits.service-public.fr/ARBO/10050203-NXFAM749.html. Dossier législatif: http://www.senat.fr/dossierleg/pjl00-352.html

[146] Constitution of the Republic of Georgia, http://www.friends-partners.org/oldfriends/constitution/constitution.georgia.html

[147] General Administrative Code of Georgia 2002. http://www.iris.ge/docs/translations/code_admin_general.doc. For more information see IRIS, Freedom of Information Guide, 2002. http://www.iris.ge/docs/translations/guide_foi_eng.doc

a written request for public information regardless of the form that information takes and without having to state the reasons for the request. The agency must respond immediately and can only delay if the information is in another locality, is of a significant volume or is at another agency. Fees can only be applied for copying costs. The law also sets rules on the access and use of personal information.

There are exemptions for information that is protected by another law or that which is considered a state, commercial, professional or personal secret. Names of some public servants participating in a decision by an official can be withheld under executive privilege but the papers can be released. The 2001 amendment prohibits the withholding of the names of political officials.

Information relating to the environment and hazards to heath, structures and objectives of agencies, election results, results of audits and inspections, registers of information and any other information that is not state, commercial, or personal secrets cannot be classified. All public information created before 1990 is open. Agencies are also required to issue reports each year on the requests and their responses under the act.

Those whose requests have been denied can appeal internally or can ask a court to nullify an agency decision. The court can review classified information to see if it has been classified properly.

The Supreme Court ruled in June 2003 that legal fees can be obtained as damages when a requester wins a case.

The International Society for Fair Elections and Democracy conducted a national survey of public accessability of information in 2001 and found that it was still difficult for ordinary citizens to obtain information.[148] 59 percent of the responses to the requests violated the law. The survey also found low awareness of the law among officials. The US State Department in its Human Rights Report for 2002 stated, "The adoption of a freedom of information act and judicial enforcement of this law made agencies more willing to provide information. However, the Government often failed to register freedom of information act requests, as required by the administrative code."[149]

The Law on State Secrets sets rules on the classification of information which "disclosure or loss of which may inflict harm on the sovereignty, constitutional framework or political and economic interests of Georgia".[150] There are three categories with fixed terms for the length of classification "Of Extraordinary Importance"- 20 years, Top Secret – 10 years and Secret – 5 years. The State Inspection for Protection of State Secrets oversees the protection of secrets and can order declassification. A 1997 decree sets the procedures on classification.[151] Information shall be declassified no later than the end of the fixed term (unless it is extended by the President) or when it is no longer necessary to be classified.

[148] International Society for Fair Elections and Democracy, The report on the monitoring of openness and accessibility of information, 2002.

[149] US State Department, Country Reports on Human Rights Practices 2002- Georgia, March 2003.

[150] Law On State Secrets. No. 455. 29 October 1996. http://www.iris.ge/docs/translations/law_state_secrets.doc

[151] "The Procedure for Defining the Information as a State Secret and its Protection " Decree No. 42 of the President of Georgia of 1997, 21 January 1997

Georgia signed the Aarhus Convention in June 1998 and ratified it in April 2000. The Law on Environmental Protection provides for a right to information about the environment and other related laws provide for public registers.[152]

GREECE

Article 10(3) of the Constitution provides for a limited right of access:

> A request for information shall oblige the competent authority to reply, provided the law thus stipulates.[153]

Article 5 of the Code of Administrative Procedure[154] adopted in 1999 provides "interested persons" the right to access administrative documents created by government agencies. It supercedes Article 16 of Law 1599/1986 on the relations between citizen and the state which covered documents created by legal entities belonging to the public sector. The law states that the "interested persons" may request in writing administrative documents which are defined as "all documents produced by public authorities such as reports, studies, minutes, statistics, administrative circulars, responses opinions and decisions." Persons with a "special legitimate interest" can obtain documents created by third parties that relate to a case involving the person.

Under the 1986 law, the Council of State ruled that parties must show a specific legal interest before they can obtain documents even though the law did not require it.[155] The agency must reply within one month and the applicant must pay for costs.

Documents relating to the personal life of an individual are not subject to the Act. Secrets defined by law, including those relating to national defense, public order and taxation cannot be released. Documents can also be restricted if they relate to discussions of the Council of Ministers or if they could harm judicial, military or administrative investigations of criminal or administrative offenses.

The Law on the Protection of Individuals with regard to the Processing of Personal Data allows any person to obtain their personal information held by government departments or private entities.[156] It is enforced by the Hellenic Data Protection Authority.[157]

Greece signed the Aarhus Convention in June 1998 but has not yet ratified it. A 1995 joint ministerial decree implemented the EU 90/313/EEC Directive after the European Commission started an infringement proceeding against Greece.[158]

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[152] See UNECE, Environmental Performance Reviews – Georgia 2003 http://www.unece.org/env/epr/studies/georgia/

[153] Constitution of Greece. http://www.mfa.gr/syntagma/

[154] Law No. 2690/1999. http://www.gspa.gr/inetdhes/EUP/procedure_code.doc

[155] See European Commission, Overview of Member States' National Legislation Concerning Access to Documents, SG.B.2/CD D (2000), 9 October 2000.

[156] Law no. 2472 on the Protection of Individuals with regard to the Processing of Personal Data. http://www.dpa.gr/Documents/Eng/2472engl_all.doc

[157] Homepage: http://www.dpa.gr/

HUNGARY

Article 61 (1) of the Constitution states:

> "In the Republic of Hungary, everyone has the right to the freely express his opinion, and furthermore to access and distribute information of public interest. "[159]

The Constitutional Court ruled in 1992 that freedom of information is a fundamental right essential for citizen oversight.[160] In 1994, the Court struck down the law on state secrets, ruling that it was too restrictive and infringed on freedom of information.[161]

Act No. LXIII of 1992 on the Protection of Personal Data and Disclosure of Data of Public Interest is a combined Data Protection and Freedom of Information Act, the only one in the world.[162] The Act guarantees that all persons should have access to information of public interest which is defined as any information being processed by government authorities except for personal information. Agencies must respond in 15 days to requests and must publish or enable access to important data about their activities.

State secrets or official secrets and information related to national defense, national security, criminal investigations, monetary and currency policy, international relations and judicial procedure can be restricted if specifically required by law. Internal documents are generally not available for 30 years.

The Parliamentary Commissioner for Data Protection and Freedom of Information oversees the 1992 Act.[163] 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 data protection and information access-related draft legislation as well as each category of official secrets. Less than 10 percent of the complaints filed with the Commissioner each year relate to freedom of information. In 2001, only 57 complaints were received, a drop of 34 percent from the previous year.[164]

Those denied access can appeal to the courts. There have been few such appeals.

The Ministry of Justice began in 2001 developing legislation that would split the two acts into separate laws. During discussions on the new bill, some powerful Members of Parliament suggested eliminating the Commissioner's Office, but that proposal was rejected.

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[158] Joint Ministerial Decision 77921/1440 of 06/09/1995, Official Gazette 795 B' 14/9/1995 on the freedom of access of the citizens to the public authorities for information relating to the environment. See Hallo, Access to Environmental Information in Europe: Greece (Kluwer Law 1996).

[159] Constitution of the Republic of Hungary, http://www.uni-wuerzburg.de/law/hu00000_.html.

[160] Decision 32/1992.(VI.29.) ABH

[161] Decision 34/1999 (VI.24) AB

[162] Act LXIII OF 1992 on the Protection of Personal Data and the Publicity of Data of Public Interest, http://www.obh.hu/adatved/indexek/AVTV-EN.htm

[163] Web Site: http://www.obh.hu/

[164] Annual Report of the Data Protection Ombudsman for 2001.

The law was amended in 2003 to set out detailed rules on what is "data in the public interest" but retained the single combined law.

The Secrecy Act of 1995 sets rules on the classification of information. It was amended in 1999 to incorporate NATO rules. The Parliamentary Commissioner is entitled to change the classification of state and official secrets.[165]

Individuals can have access to their own files created by the communist-era secret police under the 1994 Screening Act.[166] The Office of History in the Interior Ministry controls the files. The law was amended in January 2003 to allow for greater access following revelations that Prime Minister Peter Medgyessy once worked for the communist-era intelligence service.[167] The new laws makes information about high ranking public officials public data and allows victims to see the records of the people who spied on them.

Under the Act on Public Records, Public Archives, and the Protection of Private Archives, public authorities must transfer files within 15 years.[168] Any individual can access records created before May 1990 or over 30 years old. Archives can be closed for longer in the interest of privacy, state secrets, official secrets and business confidential data.

Hungary signed the Aarhus Convention in December 1998 and ratified it in July 2001. Access to environmental information is through the 1992 FOI/DP Act.

ICELAND

The Information Act (Upplysingalög) governs the release of records held by state and municipal administrations and private parties exercising state power that affects individual rights or obligations.[169] The Act was first proposed in 1969 but was not adopted until 1996. Under the Act, individuals, including nonresidents and legal entities, have a legal right to documents and other materials without having to show a reason why they are asking for these documents. Government bodies must explain in writing if they have not processed a request in seven days.

Exempted from the Act are materials relating to meetings of the Council of State and the Cabinet, memoranda recorded at ministerial meetings and documents which have been prepared for such meetings, correspondence prepared for court proceedings, working documents before a final decision is made, and applications for employment. The Act also does not apply to registrations, enforcement proceedings, property attachments, injunctions, sales in execution, moratoria on debts, compositions, liquidations, divisions of estates at

[165] Act LXV of 1995 on State and Official Secrets. http://faculty.maxwell.syr.edu/asroberts/foi/library/hungary_secrecy_95.pdf

[166] Act XXIII of 1994 on the Screening of Holders of Some Important Positions, Holders of Positions of Public Trust and Opinion-Leading Public Figures, and on the Office of History. http://www.th.hu/html/en/torv.html

[167] Act III of 2003, 14 January 2003. For more information on the controversy, see RFE/RL NEWSLINE Vol. 6, No. 117, Part II, 24 June 2002.

[168] Act LXVI of 1995 on Public Records, Public Archives, and the Protection of Private Archives. http://www.osa.ceu.hu/bridge/access&protection/01.htm

[169] Act no. 50/1996. http://www.rz.uni-frankfurt.de/~sobotta/Enskthyd.doc

death and other official divisions, investigations or prosecutions in criminal cases, information under the Administrative Procedure Act and the Personal Data Act, and cases where other provisions are made in international agreements to which Iceland is a party.

Information about a person's private life or important financial or commercial interests of enterprises or other legal persons is withheld unless the person gives permission. Information relating to security or defense of the state, relations with other countries, commercial activities by state bodies and measures by state bodies that "would be rendered meaningless or would not produce their intended result if they were known to the general public" prior to the measures being conducted can be withheld if there are "important public interests." Copyrighted material can be released with the provision that those obtaining them must respect copyright rules.

Denials can be appealed to the Information Committee which rules on the disputes. Government bodies are required to comply with the decisions but can appeal to the courts. The Committee made 139 rulings between 1997 and 2001.[170]

Individuals can obtain records that contain their personal information from public and private bodies under the Personal Data Act.[171] The Act is enforced by the Persónyvernd (Data Protection Authority).[172]

Iceland signed the Aarhus Convention in June 1998 but has not ratified it. Access to environmental information is available under the Act on Public Access to Environmental Information.[173] The Minister of the Environment is also obliged to publish information.

Under the Act on The National Archives of Iceland, files are transferred to the archives after 30 years.[174]

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 expression[175] The Court ruled in 2002 that voters have a right to know information about candidates for elected offices and ordered the Election Commission to make candidates publish information about criminal records, assets, liabilities and educational qualifications.[176]

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[170] Council of Europe, Responses to the Questionnaire on National Practices in Terms of Access to Official Documents - Iceland, Sem-AC(2002)002 Bil, 18 November 2002, p.157.

[171] Act on Protection and Processing of Personal Data, No. 77/2000 (Amendments: Act No. 90/2001 and Act No. 81/2002). http://www.personuvernd.is/tolvunefnd.nsf/pages/1E685B166D04084D00256922004744AE

[172] Web Site: http://personuvernd.is/tolvunefnd.nsf/pages/english

[173] Public Access to Environmental Information Act, 21/1993.

[174] The Act on The National Archives of Iceland Law No. 66/1985. http://www.archives.is/index.php?node=145

[175] 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. For a detailed review of the situation of freedom of information in India until 2001, See Article 19, Global Trends on the Right to Information: A Survey of South Asia, July 2001. Available at http://www.article19.org/

[176] Union of India v. Association For Democratic Reforms. Civil Appeal No 7178 of 2001. http://www.privacyinternational.org/countries/india/india-v-adr-foia-502.pdf

The Freedom of Information Act was approved in January 2003.[177] Under the act, all Indian citizens have a right to ask to ask for information from public authorities. The public authority must respond in 30 days (48 hours if it concerns the life and liberty of a person).

The act does not apply to intelligence and security agencies. There are mandatory exemptions for information that would harm national security, public safety and order or international relations; information that would harm centre-state relations; cabinet papers; advice in policy making prior to decision; trade or commercial secrets; or would result in a breach of parliamentary privileges or a court order. Most of the information cannot be exempted if it relates to an event that is over 25 years old. There are also discretionary exemptions if the request is too vague or large a request; information this is about to be published; has already been published; or would be an unwarranted invasion of privacy.

Appeals are to the authority. A second appeal is to the central or state government. The courts cannot hear appeals.

Public authorities must appoint public information officers. They must also publish information on their structure, duties, all relevant facts concerning important decisions and policies, give reasons for its decisions to those affected by them, and publish facts about any project before initiating any project.

The Department of Personnel and Training (DoPT) is in charge of implementing the Act. The Secretary of the DoPT said in August 2002 that they have not set a timetable for it to come into force because of the number of decisions about the rules need to be made.[178]

The Official Secrets Act, 1923 is based on the 1911 UK OSA.[179] It prohibits the unauthorized collection or disclosure of information and is frequently used against the media.[180]

The Public Records Act, 1993 sets a thirty year rule for access to archives.[181]

Many of the states in India have enacted Right to Information Acts since 1997 due to pressure from activists fighting corruption. These include Goa, Tamil Nadu, Madhya Pradesh, Karnataka, Maharashtra, Delhi and Rajasthan. Uttar Pradesh has adopted a Code of Practice on Access to Information. The Maharashtra Government's Right to Information Act was adopted (replacing a 2002 Ordinance) in August 2003 after activist Anna Hazare went on a hunger strike. According to the DoPT, the national law will take precedence once it comes into force but this is unclear as several state governments have enacted laws with the permission of the centre since the adoption of the national law.

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[177] Freedom of Information Act 2002, Act No. 5 of 2003, January 6, 2003. http://www.manupatra.com/downloads/acts/the%20freedom%20of%20information%20act%202002.htm

[178] Don't be too happy, too soon, access to file can still take yrs, The Indian Express, August 12, 2003.

[179] The Official Secrets Act, 1923, Act no. 19 of 1923. http://www.vakilno1.com/bareacts/officialsecretsact/officialsecretsact.htm

[180] See Govt still not clear on what's a secret, Times of India, January 8, 2003.

[181] Public Records Act, 1993. No. 69 OF 1993 (22nd December, 1993). http://nationalarchives.nic.in/public_record93.html

IRELAND

The Freedom of Information Act was approved in 1997 and went into effect in April 1998.[182] The Act creates a broad presumption that the public can access all information held by government bodies describing itself in the title as, "An act to enable members of the public to obtain access, to the greatest extent possible consistent with the public interest and the right to privacy, to information in the possession of public bodies and to enable persons to have personal information relating to them in the possession of such bodies corrected and, accordingly, to provide for a right of access to records held by such bodies."

Under the Act, any person can request any record held by a public body. The Act lists the government departments and bodies it covers. The Minister of Finance can by regulation add more bodies and has been slowly expanding the scope of the legislation to new organizations, now numbering around 400.[183] It has committed to extend the application to nearly all bodies by 2005. The Act does not apply to the Garda Síochána (police). Government bodies must respond within four weeks and justify why information is withheld. It also requires that agencies provide a written explanation to individuals of decisions that affect their interests.

The Act only applies to documents created after April 1998, unless they contain personal information or are necessary to understand other documents covered under the Act.

There are a number of exemptions and exclusions with different harm and public-interest tests. Records can be withheld if they relate to: the deliberative process unless the public interest is better served by releasing the document; cases where the release of information would prejudice the effectiveness of investigations or audits or the performance of government functions and negotiations unless the public interest is better served by releasing the documents; or cases where disclosure would prejudice law enforcement, security, defense and international affairs. Documents must be withheld where they relate to ministerial Cabinet meetings with an exception for certain records related to a decision made over ten years before the request or those that contain factual information relating to a decision of the government; contempt of court and parliamentary proceedings; legal professional privilege; information obtained in confidence; commercially sensitive information and personal information, or where (with certain exceptions) disclosure is prohibited or authorized by other legislation.

There is a public-interest test for records obtained in confidence or those containing personal or commercially sensitive information. But the public-interest argument cannot be made for records related to defense or international relations. The argument, however, can be made in a limited way for law-enforcement records.

Public bodies are required to publish information relating to their structure, functions, duties, descriptions of records, and the internal rules, procedures, practices, guidelines, and interpretations of the agency.

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[182] Freedom of Information Act, 1997, http://www.irlgov.ie/finance/publications/foi/FREE1.HTM. For a comprehensive overview, see McDonagh, Freedom of Information in Ireland (Sweet and Marwell, 1998), and McDonagh, "Freedom of Information in Ireland: Five Years On," (September 22, 2003) at http://www.freedominfo.org/reports/ireland.htm.

[183] See http://www.finance.gov.ie/publications/foi/foibodies.htm

The Freedom of Information (Amendment) Act was approved in April 2003.[184] The amendment extends the time before Cabinet Documents are available from five years to ten years and expands the coverage of the exemption; allows public servants to issue unappealable certificates that deliberative processes are ongoing to prevent access and weakens the public interest test; weakens the harm test for security, defence and international relations; and allows the government to impose fees for requests and appeals. The government announced in June 2003 that it was imposing a new fee structure based in the amendment - €15 for requests, €75 for internal reviews and €150 for reviews to the Information Commissioner. The Commissioner was critical about the changes and new fees noting that "the charges could act as a financial disincentive" of which, "the scale of charges may distort the level playing field."[185] The Department of Communications also began to publish the name and address of every foi requestor on its web site along with the response, which has been criticized by the media as an effort to stop the use of FOI for investigative reporting and by the Data Protection Commissioner and civil liberties groups as threatening privacy.[186]

The Office of the Information Commissioner oversees and enforces the Act.[187] Decisions of the Commissioner are binding and can be appealed only on a point of law. In 2002 the Commissioner, who is also the Ombudsman, agreed to hear 585 appeals (4 percent of all requests). The Commissioner issued 226 formal decisions, affirming the decision of the government body in 73 percent of the cases. The Minister of Justice issued two certificates in 2002 to prevent release of sensitive information. A new commissioner, Ms Emily O'Reilly, was appointed in 2003 to replace Mr Kevin Murphy, who retired.

Inside the government, the FOI Central Policy Unit (CPU) in the Department of Finance coordinates the Act.[188] The CPU chairs several working and advisory groups and promotes and trains staff on the Act. It also recommends which government bodies the Act ought to cover in the future.

There were 17,200 requests made in 2002 and increase of 11 percent from 2001 and 35 percent from 2000.[189] 46 percent of all requests were granted in full and 21 in part. 19 percent were denied in full, an increase from 15 percent in 2001. Over half were by individuals asking for their personal information.

Under the National Archives Act, records that are over 30 years old must be transferred to the National Archives and be made available to the public.[190] There is an "access gap" between 1998 when the FOI went into effect and those documents covered under the Archives Act for the next 25 years.[191]

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[184] Freedom of Information (Amendment) Act 2003, Number 9 of 2003. http://www.gov.ie/bills28/acts/2003/a903.pdf

[185] See Press Release issued by the Information Commissioner on 1 July 2003.

[186] See FOI Log. http://www.dcmnr.gov.ie/display.asp?pg=326

[187] Homepage: http://www.irlgov.ie/oic/

[188] Homepage: http://www.irlgov.ie/finance/publications/foi/foi.htm

[189] Fifth Report by the Minister for Finance on Freedom of Information, 1 January — December 2002, August 2003. http://www.finance.gov.ie/publications/foi/FOI5THREPORT.pdf

[190] National Archives Act 1986. http://www.nationalarchives.ie/PROI1867.html

[191] See McDonagh, Freedom of Information in Ireland (Sweet and Marwell, 1998), chapter 20.

The Official Secrets Act 1963, which is based on UK Official Secrets Act 1911 remains in force and criminalizes the unauthorized release of information. A new bill, the Garda Siochana Bill 2003 would impose penalties of 30,000 euro fines and five years jail time on current or former Garda employees who "without lawful authority disclosing information about a person or body which came to his/her knowledge by virtue of their office."

Ireland signed the Aarhus Convention in June 1998 but has not ratified it. The Access to Information on the Environment Regulations, 1998 implement the 1992 EU Directive on access to environmental information.[192]

Individuals can obtain computerized records containing personal information about themselves held by public and private bodies under the Data Protection Act 1988 which was updated in 2003 by the Data Protection (Amendment) Act to extend to manual files.[193] It is overseen by the Data Protection Commissioner. [194] Individuals will be now able to demand their records under either the DPA or the FOIA with slightly different requirements.

ISRAEL

The Supreme Court ruled in the 1990 Shalit case that citizens have a fundamental right to obtain information from the government.[195]

The Freedom of Information Law was unanimously approved by the Knesset in May 1998 and went into effect in May 1999.[196] The law was the culmination of a campaign launched in 1992 by the Coalition for Freedom of Information. The law allows any citizen or resident access to information held by public authorities including government ministries, Parliament, courts, local councils, government-owned corporations and other bodies doing public business. It can also be used by non-citizens and non-residents relating to their rights in Israel. The information can be in any form, including written, recorded, filmed, photographed or digitized. Requests for information must be processed within 30 days and departments have 15 days after processing to provide the information.

The security services and other bodies that handle intelligence matters, national security and foreign policy are excluded from coverage under the Act. There are mandatory exemptions for information that would harm national security, foreign affairs of the safety of an individual, or that the Minister of Defense has declared to be necessary for protecting national security; personal privacy, or is protected by another law. There are discretionary exemptions for information that may interfere with the functioning of a public authority; policies under development; negotiations with external bodies of individuals; internal

[192] European Communities Act, 1972 (Access to Information on the Environment) Regulations 1998. S.I. No 125/1998.http://www.environ.ie/DOEI/doeipub.nsf/0/fecdecefd52bc7bc80256b76005db5ee/$FILE/SI%20125%20of%201998.pdf

[193] Compendium of both Data Protection Acts. http://www.dataprivacy.ie/images/Compendium%20Act.pdf

[194] Homepage: http://www.dataprivacy.ie/index.htm

[195] H.C. 1601-4/90 Shalit et al. v. Peres el at., 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

[196] Freedom of Information Law 5758-1998.

deliberations; internal agency management; trade or professional secrets (except for some environmental information); privileged information; law enforcement customs and procedures; disciplinary affairs of public employees; and would damage the privacy of a dead person. The public authority must consider the public interest in releasing the information.

Those denied information may appeal to the courts, which can review all information that is withheld and order the release of information if it finds that the public interest in disclosure is greater than the reason for withholding and the disclosure if not prohibited by another law. There have been a number of court cases where the courts have ordered release of information.

The government must publish a list of public authorities and the public authorities must publish regulations, guidelines and information detailing how to use the FOIL. The authorities must also publish an annual report on their structure and activities and appoint an official responsible for the act. Under e-government efforts, government departments are required to publish information on their web sites including reports.[197]

There have been a number of courts cases. Environmental NGOs are regularly using the Act.[198]

Under the Protection of Privacy Law, individuals have a right to access their personal information held in databanks by government or private entities.[199] It is enforced by the Registrar of Databases within the Ministry of Justice.

The Archive Law 1955 and regulations set a 30 year rule for access to documents submitted to the National Archives and 50 year rule for military documents.[200] However, many government departments have created their own archives which are not subject to the law.[201]

Chapter 76 of the Penal Code sets rules on classification of information and prohibits government employees from disclosing information.

ITALY

Chapter V of Law No. 241 of 7 August 1990 provides for access to administrative documents.[202] The right to access is limited. The law states that those requesting information must have "an interest to safeguard in legally relevant situations." The 1992 regulations require "a personal concrete interest to safeguard in legally relevant situations." The courts

[197] Israel Government Gateway. http://www.info.gov.il/eng/mainpage.asp. See Israel: Round Table Report, ICA 36th Conference, October 2002.

[198] See eg. Israel Union For Environmental Defense, July 2002 High Court petition: The public's right-to-know. http://www.iued.org.il/inerAct.asp?A=LA&ID=105&P=p2

[199] The Protection of Privacy Law 5741-1981, 1011 Laws of the State of Israel 128.

[200] Archives Law, 4715-1955.

[201] Deborah Rabina, Examination of and Recommendations for a national information policy for Israel: the Use of Democratic Models for the Understanding of Information Policy Processes (Phd Thesis, 2001).

[202] Law No. 241 of 7 August 1990. http://www.governo.it/Presidenza/DICA/documentazione_accesso/normativa/legge241_1990_eng.html

have ruled that this includes the right of environmental groups and local councilors to demand information on behalf of those they represent.

Documents include "any graphic, photographic, cinematic, electromagnetic or other representation of the contents of acts, including internal acts, produced by public administrations or used for purposes of administrative activity." It applies to "administrative bodies of the state, including special and autonomous bodies, public entities and the providers of public services, as well as guarantee and supervisory authorities." Public bodies must respond within 30 days but they can delay release if this would "prevent or severely impede the performance of administrative action."

Information can be withheld when it relates to a) security, national defense and international relations; b) monetary and foreign exchange policy; c) public order, prevention and repression of crime and d) privacy of third parties. The 1992 regulations require that nondisclosure must generally be justified in terms of "concrete damage" to the public interest, but they also state that access may be denied if there is specific, identified damage to national security and defense or international relations; if there is a danger of damaging monetary and foreign exchange policy; and if they relate to the enforcement of laws and the privacy and confidentiality of individuals, legal persons, groups, enterprises and associations.

Appeals can be made to a regional administrative court. The decision of the court can be appealed to the Council of State.

Government bodies are required to publish "all directives, programs, rules, instructions, circulars and all acts concerning the organizations, functions, or purposes of a public administrative body." Each body must keep a database of information requests, which is linked to a national database.

The law also created a Committee on Access to Administrative Documents under the Office of the Prime Minister.[203] The Committee issues an annual report and can request all documents except those subject to state secrecy. The Committee is also tasked with operating and analyzing the general databank of information requests.

Law 142/90 on local authorities gives rights to access administrative documents for public participation in local administration.

Italy signed the Aarhus Convention in 1998 and ratified in 2001. Under Law 349/86, any citizen has a right of access to information related to the environment held by the Ministry of the Environment. The courts have ruled that environmental information is broadly defined.[204] A 1997 decree implements the 1990 EU environmental information directive and does not require a specific interest.[205] The European Court of Human Rights ruled in the 1998 case of Guerra v Italy that governments had an obligation to inform citizens of risks from a chemical

[203] Homepage: http://www.governo.it/Presidenza/ACCESSO/index.html

[204] See Hallo, Access to Environmental Information in Europe: Italy (Kluwer Law 1996).

[205] Decreto legislativo del 24/02/1997 n. 39, Attuazione della direttiva 90/313/CEE, concernente la libertà di accesso alle informazioni in materia di ambiente, Supplemento ordinario alla Gazzetta Ufficiale Serie generale, n.54, del 06/03/1997, pag 3.

factory under Article 8 (protecting privacy and family life) of the European Convention on Human Rights, which Italy failed to do.[206]

Under the Data Protection Act of 1996, individuals can access records containing personal information about themselves held by public and private bodies.[207] It is enforced by the Garante.[208]

JAMAICA

The Access to Information Act was adopted in July 2002.[209] The law creates a general right of access by any person to official documents held by public authorities. Authorities must respond in 30 days but can delay access if required by law, to allow the person who received the document a reasonable time to present it to the body or person it was prepared for or if the premature release prior to an occurrence of an event would be contrary to the public interest.

The Governor-General, security and intelligence services, the judicial function of courts, and bodies as decreed by the Minister of Information are excluded from the scope of the act.

Documents are exempt from disclosure if they would prejudice security, defense, or international relations; contain information from a foreign government communicated in confidence; is a submission to the Cabinet or a Cabinet Decision or record of any deliberation of the Cabinet (except for factual information); are law enforcement documents that would endanger or could reasonably expected to endanger lives, prejudice investigations, or reveal methods or sources; the document is privileged or would be a breach of confidence, contempt of court of infringe the privileges of Parliament, contains opinions, advice or recommendations or a record of consultations or deliberations for Cabinet decisions that are not factual, scientific or technical in nature or if the release is not in the public interest; would harm the national economy; would reveal trade secrets or other confidential commercial information; could be expected to result in damage, destruction, or interference with historical sites, national monuments or endangered species if the release is not in the public interest; or relating to the personal affairs of any person alive or dead. The Prime Minister can issue a conclusive certificate that the document is a Cabinet record. Other responsible Ministers can issue a certificate exempting documents relating to national security, law enforcement or national economy. Exemptions are 20 years or less as the minister decrees.

Individuals can also apply to correct documents that contain personal information that is incorrect if the documents are used for administrative purposes.

Appeals are heard internally by the Permanent Secretary or principle officer of the Ministry or the Minister for documents subject to a certificate and then to an Appeal Tribunal.

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[206] Case of Guerra and Others v. Italy (116/1996/735/932), 19 February 1998. http://www.eel.nl/cases/ECHR/guerra.htm

[207] Protection of individuals and other subjects with regard to the processing of personal data Act no. 675 of 31.12.1996. http://www.garanteprivacy.it/garante/prewiew/0,1724,448,00.html?sezione=120&LANG=2

[208] Homepage: http://www2.garanteprivacy.it/garante/HomePageNs

[209] Access to Information Act 2002. http://www.jis.gov.jm/AIU/ATI%20ACT.pdf

Acts done to illegally prevent the disclosure of information can be punished by fine and imprisonment.

The Act will be phased into effect in four phases, starting on October 1, 2003, initially applying to seven bodies. The Access to Information Unit of the Jamaica Archives and Records Department in the Office of the Prime Minister was formed in January 2003 to overseeing the implementation of the Act. It is providing training and guidance to both agencies and the public on the Act and is working with NGOs such as the Carter Center.[210] Beginning in January 2003, the Management Institute of National Development (MIND) began training over 400 employees in the Act.

The Archives Act (1982) provides for access to documents over 30 years old. Minister of Information Colin Campbell announced in June 2002 that the first set of Cabinet Documents from the ten years following independence would be made available at the archives.

The Official Secrets Act 1911 remains in force and applies to the unauthorized disclosure of documents. Minister of Justice AJ Nicholson said in April 2003 that the Government would move to abolish the Act following implementation of the AIA in October 2003.[211]

JAPAN

After a 20-year effort, the Law Concerning Access to Information Held by Administrative Organs[212] was approved by the Diet in May 1999 and went into effect in April 2001. The law allows any individual or company, Japanese or foreign, to request administrative documents held by administrative agencies in electronic or printed form. A separate law enacted in November 2001 extended the coverage of the access law to public service corporations. Departments must respond in 30 days.

There are six broad categories of exemptions. Documents can be withheld if they contain information about a specific individual unless the information is made public by law or custom or is necessary to protect a life or a public official in his public duties; corporate information that risks harming its interests was given voluntarily in confidence; information that puts national security or international relations or negotiations at risk; information that would hinder law enforcement; internal deliberations that would harm the free and frank exchange of opinions or hinder internal decision making; business of a public organ relating to inspections; and supervision, contracts, research , personnel management, or business enterprise.

Information can still be disclosed by the head of the agency "when it is deemed that there is a particular public-interest need." The head of the agency can also refuse to admit the existence of the information if answering the request will reveal the information.

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[210] Homepage: http://www.jis.gov.jm/AIU/index.html

[211] Access to Information Act to be Implemented on October 1, JIS, April 25, 2003.

[212] Law Concerning Access to Information Held by Administrative Organs. http://www.soumu.go.jp/gyoukan/kanri/translation3.htm. For a detailed analysis and comparison with US law, see Lawrence Repeta and David M. Schultz, Japanese Government Information: New Rules for Access - The 2001 Information Disclosure Law, and a Comparison with the U.S. FOIA, http://www.gwu.edu/~nsarchiv/nsa/foia/japanfoia.html

Appeals are referred by the agency to the Information Disclosure Review Board, a committee in the Office of the Prime Minster. The Board reviewed 373 cases in 2002 and recommended full or partial disclosure in 58 percent of the cases.[213] In September 2002, the board recommended the disclosure of the minutes of the meetings between Emperor Hirohito and US General Douglas MacArthur. Denials can be also be appealed to one of eight different district courts.

Interest in the right of access has been high. Four thousand requests were filed in the first week of operation. There were 48,000 requests made in the first year of the law, with over 90 percent of information requests being approved.[214] However, not all agencies have been cooperative. In June 2002, 29 employees of the Defense Ministry were punished after they were found to be maintaining lists on those making information requests and providing that information to superior officers. They also tried to cover up their activities.[215] The Ministry of Public Management, Justice Ministry, National Police Agency, the Agency for Nuclear and Industrial Safety and the Sendai Municipal Assembly were also discovered to be keeping files on requestors. The government admitted in January 2003 that ten ministries had unlawfully delayed the release of 127 files beyond the legal deadlines.[216] The National Archives of Japan reports that they are receiving less files from ministries who fear their disclosure.[217]

Over 900 local jurisdictions also have disclosure laws.[218] The first was Kanagawa Prefecture, which adopted a law in 1982. [219]

SOUTH KOREA

The Constitutional 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." [220]

The Act on Disclosure of Information by Public Agencies was enacted in 1996 and went into effect in 1998.[221] It allows citizens to demand information held by public agencies. A separate Presidential Degree is required in the law to set rules on access by foreigners. Those requesting information must provide their names and resident registration numbers and the purpose for the use of the information. Agencies must decide in 15 days.

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[213] Case Disclosed: A Panel Enforcing the Information Disclosure Law, Asahi News Service, April 30, 2003.

[214] "Foreign Ministry least free with info,"Asahi Shimbun, April 12, 2002. Table of requests available at: http://www.freedominfo.org/case/japan/japan.table.xls

[215] "29 Defense Agency officials punished over lists", Japan Times, June 21, 2002.

[216] Gov't illegally delays 127 document disclosures, Mainichi Daily News, January 22, 2003.

[217] More Open Archives Spook Ministries, Asahi News Service, April 23, 2003.

[218] See Repeta, Local Information Disclosure Laws in Japan. http://www.nbr.org/publications/executive_insight/

[219] Lawrence Repeta, The Birth of the Freedom of Information Act in Japan: Kanagawa 1982. http://www.freedominfo.org/reports/japan.htm

[220] Right to Information (1 KCCR 176, 88 HunMa 22, Sep. 4, 1989). http://www.ccourt.go.kr/english/decision04.htm

[221] Act on Information Disclosure by Public Agencies, Act No. 5242, December 31, 1996.

The Act does not apply to information collected or created by agencies that handle issues of national security. There are eight categories of discretionary exemptions: secrets as defined in other acts; information that could harm national security, defense, unification or diplomatic relations; information that would substantially harm individuals, property or public safety; information on the prevention and investigation of crime; information on audits, inspections, etc. that would substantially hamper the performance of government bodies; personal information about an individual; trade secrets that would substantially harm commercial or public interests; and information that would harm individuals if disclosed, such as real estate speculation or hoarding of goods. Information, however, can be released once the passage of time has reduced its sensitivity.

Agencies must set up an information disclosure deliberative committee to determine release. Those denied can appeal to public agencies; further appeal can also be made to the head of the central agency under the Administrative Appeals Act. Judicial review is provided under the Administrative Litigation Act in cases where an individual's "legal interest is violated due to the disposition or omission of public agencies." The courts have been active in promoting a right of access and have found that disclosure should be the rule not the exception.[222]

The Minister of Government Administration is in charge of oversight and planning for the Act and can inspect and review the activities of state agencies. The Cabinet Legislation Bureau eliminated a provision in the draft bill for an Independent Information Disclosure Commission.

However, other reviews have found problems with frequent improper denials of requests, the failure of government agencies to publish lists of available documents, and a disregard and non-enforcement of the act.[223] Government Administration and Home Affairs Minister Kim Doo-kwan announced in April 2003 that Cabinet Minutes were to made available.[224]

The Military Secrets Protection Act sets rules on the disclosure of classified information.[225] It was revised in 1993 following a decision of the Constitutional Court that the Act was constitutional only if the secrets are marked as classified following a legal procedure, and would create a clear danger to national security.[226]

The Act on Protection of Personal Information Maintained by Public Agencies allows individuals to obtain and correct personal information held by government agencies. The Ministry of Government Administration and Home Affairs (MOGAHA) is responsible for overseeing the Act. The Act on Promotion of Information and Communications Network Utilization and Data Protection provides for a right of access to information held by telecommunications companies, travel agencies, airlines, hotels and educational institutes.

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[222] See Kyu Ho Youm, Freedom of Expression and the Law: Rights and Responsibilities in South Korea, 38 Stan. J Int'l L. 123, Winter 2002.

[223] See Heungsik Park, Reform of Administrative Transparency in Korea: The Case of Korea (Friedrich Naumann Stiftung**.** Also see Transparency International, National Integrity Systems 2001: Republic of Korea.

[224] Korea: Gov't to Open Minutes of Cabinet Meetings to Public, Yonhap (Seoul), April 3, 2003.

[225] Military Secrets Protection Act, Act No. 4616 (1993).

[226] Military Secret Leakage case, 4 KCCR 64, 89Hun-Ka104, February 25, 1992. See The Constitutional Court, The First Ten Years of the Constitutional Court, 2001. http://www.ccourt.go.kr/english/decision.htm See Kyo Ho Youm, Freedom of Expressional and National Security in South Korea in Coliver. *Secrecy and Liberty: National Security, Freedom of Expression and Access to Information,* Martinus Nijhoff Publishers.

The Korean Government has also been active in promoting electronic government as a means of improving access to information and to fight corruption.[227]

LATVIA

The Constitution of Latvia states:

> Article 100. Everyone has the right to freedom of expression which includes the right to freely receive, keep and distribute information and to express their views. Censorship is prohibited.
> Article 104. Everyone has the right to address submissions to State or local government institutions and to receive a materially responsive reply.
> Article 115. The State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment.[228]

The Law on Freedom of Information was signed into law by the State President in November 1998.[229] It guarantees public access to all information in "any technically feasible form" not specifically restricted by law. Bodies must respond in 15 days.

Information can only be limited if there is a law; the information is for internal use of an institution; it is a trade secret not relating to public procurements or information about the private life of an individual; or if it concerns certification, examination, project, tender and similar evaluation procedures.

Appeals can be made internally to a higher body or directly to a court. The Constitution Court ruled in 1999 that a regulation issued by the Cabinet of Ministers restricting access to budget information was void because it violated the FOI Act's requirement that restricted are limited.[230] The law was amended in 2003 to give the State Data Inspectorate oversight authority starting in January 2004.

There are continued problems with implementation. In a 2001 survey of 200 ministries, Transparency International Latvia/Delna found that "the Latvian government has not devoted sufficient resources to ensuring compliance by state institutions to the laws governing access to information."[231] A follow up survey in 2002-03 found continued problems with resources and education. Local government officials were largely unaware of their responsibilities while knowledge among central government institutions and courts had improved. Only one third of all requests received responses in the legal time frame. The World Bank is currently funding an effort for training, education and legislative changes.

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[227] See Government Computerization Centre. http://www.gcc.go.kr/english/sub02/index-2.html; Seoul Open System. http://english.metro.seoul.kr/government/policies/anti/civilapplications/

[228] Constitution of Latvia 1998. http://www.oefre.unibe.ch/law/icl/lg00000_.html

[229] Law on Freedom of Information, Adopted 29 October 1998, Signed 6 November 1998. http://www.nobribes.org/Documents/Latvia_FOILaw.doc

[230] Decision in Case 04-02(99), July 6, 1999. http://www.satv.tiesa.gov.lv/Eng/Spriedumi/04-02(99).htm

[231] Delna, A Survey of Access to Information in Latvia. http://www.delna.lv/

The State Secrets Act sets rules on levels the protection of classified information. It was adopted in 1996 and amended in 2001.[232] It is overseen by the Constitutional Protection Bureau. The Constitutional Court ruled in 2003 upholding the regulations on security clearances.[233] The Center for the Documentation of the Consequences of Totalitarianism was placed in charge of the files of the former KGB that were not destroyed or taken back to Moscow in 1991. The records include 5,000 index cards of informers.[234] The Center was moved in November 2002 to become part of the Constitutional Protection Bureau.[235]

The Law on Personal Data Protection allows individuals to obtain and correct their own records held by public or private bodies.[236] It is overseen by the State Data Protection Inspectorate.[237]

The Law on Archives provides for open access to files held by the state archives after 10 years for most records.[238]

The Law on Environmental Protection requires authorities to publish information relating to environmental matters and authorizes citizens to demand information from agencies.[239] Latvia signed the Aarhus Convention in 1998 and ratified it in 2002. It signed the Protocol on Pollutant Release and Transfer Registers in 2003.

LIECHTENSTEIN

The Information Act (Informationsgesetz) was adopted in May 1999 and went into force in January 2000.[240] It allows any person to obtain files from state and municipal organs and private individuals who are conducting public tasks. Responses must be responded to in a "timely" manner

It does not apply to documents under preparations. There are exemptions for protecting decision making, public security, disproportionate expenditures, privacy, and professional secrets. Documents are released based on a balance of interests test.

Appeals can be made to a court.

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[232] Law on State Secrets. Published in "Vestnesis" 181, 10/29/96. http://faculty.maxwell.syr.edu/asroberts/foi/library/Latvia_secrecy_trans.pdf

[233] Constitutional Court of Latvia, Judgment in case No. 2002-20-0103, April 23, 2003. http://www.satv.tiesa.gov.lv/Eng/Spriedumi/20-0103(02).htm

[234] Latvia Debates Putting Cards On The Table, Wall Street Journal Europe, November 1, 1999.

[235] Law On preserving and application of the documents of former KGB and establishment of the fact of cooperation with former KGB, November 17, 2003.

[236] Personal Data Protection Law 2000. http://www.dvi.gov.lv/eng/legislation/pdp/

[237] Home Page: http://www.dvi.gov.lv/

[238] Law on Archives, March 26, 1991 Amended: October 21, 1993. http://www.arhivi.lv/engl/eng-lvas-law-on-arch.html

[239] Law on Environmental Protection, 22 May 1997, amended 20 June 2000. http://www.ttc.lv/New/lv/tulkojumi/E0042.doc

[240] Gesetz vom 19 Mai 1999 über die Information der Bevölkerung (Informationsgesetz) http://www.gesetze.li/r2000/html/get_lgbl_from_lr.xsql?LGBl=1999159&Searchstring=informationsgesetz

The law also sets rules on the openness of meetings of the Parliament, commissions and municipalities.

Under the Data Protection Act 2002, individuals have a right to access and correct their personal information held by public or private bodies.[241] It is enforced by the Data Protection Commissioner.

Liechtenstein signed the Aarhus Convention in June 1998. Access to environmental information is through the Information Act.

Under the Archive Act 1997, documents are available 30 years after creation. Documents containing personal information are closed for 80 years.

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 Law on the Provision of Information to the Public states: "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."[242] State and local governments must provide the information under the Law on the Right to Obtain Information from State and Local Government Institutions enacted in January 2000.[243] Requests must be in writing and include the name and address of the individual asking for information. Requests must be acted on within 14 days.

Information that is a state, official, professional, commercial or bank secret under another law cannot be disclosed. Also exempted are other information protected by law and whose disclosure would cause damage to interests of state security and defense, foreign policy interests and criminal prosecution. Similarly, information that endangers the territorial integrity of the state or puts public order at risk can be withheld. Information must be released if nondisclosure would result in serious violations of the law or harm human health.

Appeals can be made to an internal administrative commission and then to an administrative court.

The Law on State Secrets and Official Secrets sets rules on the protection of classified information. It was enacted in 1999 to adopt NATO standards, replacing the 1995 Law on

[241] Data Protection Act of 14 March 2002 No. 55 issued on 8 May 2002. http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Data_protection/Documents/National_laws/Liechtenstein.dp%20act.E.asp

[242] Law on Provision of Information to the Public. July 2, 1996 No. I-1418 (as amended by June 20, 2002 No. IX – 972). http://www3.lrs.lt/cgi-bin/getfmt?c1=w&c2=170831

[243] Law on Right to Receive Information from State and Municipal Institutions, No VIII-1524. adopted on 11 January 2000.

State Secrets and Their Protection.[244] It is overseen by the Commission for Secrets Protection Co-ordination. The Constitutional Court in 1996 ruled that several provisions of the 1995 act were unconstitutional.[245]

In November 1999, Parliament enacted the Law on Registering, Confession, Entry into Records and Protection of Persons Who Have Admitted to Secret Collaboration with Special Services of the Former USSR to vet public officials who worked with the Soviet-era secret police.[246] Those who refuse to admit ties with the secret police face having information about their activities under the communist regime made public.

The Law on Legal Protection of Personal Data allows individuals to access and correct personal information held by public and private bodies.[247] It is enforced by the State Data Protection Inspectorate.[248]

The Law on Archives requires that state institutions transfer most documents after 15 years.[249] Secret documents are to be kept for 30 years by the institution and access is regulated by the Secrets Law.

Lithuania signed the Aarhus Convention in June 1998 and ratified it in 2002. Access to environmental information is based on a 1999 order on public access to environmental information.[250]

MEXICO

Article 6 of the 1997 Constitution says in part, "the right of information is guaranteed by the state".[251]

The Federal Transparency and Access to Public Government Information Law was unanimously approved by Parliament in April 2002 and signed by President Fox in June 2002.[252] The law went into effect in June 2003.

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[244] The Law on State Secrets and Official Secrets. No. VIII – 1443, November 25, 1999. (amended as of 20 November 2001. No. IX - 613). http://www3.lrs.lt/cgi-bin/getfmt?c1=w&c2=157736. See NATO, Background information on the Lithuanian National NATO Integration Programme, 1999-2000. http://www.nato.int/pfp/lt/current/ANP/anp2000.html

[245] Case 3/96. 9 December 1996. http://www3.lrs.lt/c-bin/eng/preps2?Condition1=42645&Condition2=

[246] Law on Registering, Confession, Entry into Records and Protection of Persons who Have Admitted to Secret Collaboration with Special Services of the Former USSR. No. VIII-1436. November 23, 1999. As amended by June 13, 2000. No. VIII-1726. http://www3.lrs.lt/cgi-bin/getfmt?c1=w&c2=123807

[247] The Law on Legal Protection of Personal Data, No. IX-1296. 21 January 2003. http://www3.lrs.lt/cgi-bin/getfmt?c1=w&c2=208886

[248] Home Page: http://www.ada.lt/en/

[249] Law on Archives. 5 December 1995 No. I-1115. http://www3.lrs.lt/cgi-bin/getfmt?c1=w&c2=95208

[250] Government Resolution No 1175 On Approval of the Order on Public Access to Environmental Information in the Republic of Lithuania, adopted on 22 October 1999; Order of the Minister of Environment No 273 On the Regulation on Possession of Documentation, Provision of Information Under the Public Requests and Visitor Service in the Ministry of Environment, adopted on 04 July 2000.

[251] http://info4.juridicas.unam.mx/ijure/fed/9/default.htm

[252] Federal Transparency and Access to Public Government Information Law. http://www.freedominfo.org/reports/mexico1/laweng.pdf. For an extensive review, see Kate Doyle, In Mexico, a New Law Guarantees the Right to Know. http://www.freedominfo.org/reports/mexico1.htm

The law allows all persons to demand information from government departments, autonomous constitutional bodies and other government bodies. Agencies must respond to requests in 20 working days.

The law creates five categories of classified information. For these categories, information can be withheld if their release will harm the public interest. These include information on national security, public security or national defense; international relations; financial, economic or monetary stability; life, security or health of any person at risk; and verification of the observance of law, prosecution of crimes, collection of taxes, immigration or strategies in pending processes. There are an additional six categories of exempted information. These are information protected by another law, commercial secrets, prior investigations, judicial or administrative files prior to a ruling, liability proceedings before a ruling, deliberative process prior to a final decision. Information can only be classified for 12 years or less if the reasons for nondisclosure no longer exist. Information relating to "the investigation of grave violations of fundamental rights or crimes against humanity" may not be classified. All departments must produce a regular index of all classified files. Even before the enactment of the transparency law, President Fox ordered a declassification of the files relating to human rights abuses.

Every government body is required to publish an extensive amount of information in electronic form, including structure, directories, aims and objectives, audits, subsidies and contracts. State agencies are also required to set up information committees to review classification and nondisclosure of information.

The National Commission on Access to Public Information provides oversight of the law.[253] It can carry out investigations, order government bodies to release information, and apply sanctions. Individuals and agencies can appeal decisions to federal courts. It has set up an electronic system for requests on the Internet (SISI) for the Executive agencies.[254]

The Parliament is considering a Data Protection Act that would allow individuals to access and correct records held by public and private organizations.[255]

Nine states and one federal district have adopted FOI laws: Aguascalientes, Colima, Durango, Federal District (Mexico City), Jalisco, Michoacán, Nuevo León, Querétaro, San Luis Potosí and Sinaloa. Efforts are pending in another 7 states.[256]

MOLDOVA

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

[253] Instituto Federal de Acceso a la Información Pública. http://www.ifai.org.mx/
[254] http://www.informacionpublica.gob.mx/
[255] See http://www.senado.gob.mx/gaceta/107/107m.html
[256] See Limac Asociación Civil Libertad de Información-México, http://www.limac.org.mx/html/

> (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 citizens or national security.
> (4) The State and private media are obliged to ensure that correct information reaches the public.[257]

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

The Law on Access to Information was approved by Parliament in May 2000 and went into force in August 2000.[258] Under the law, citizens and residents of Moldova can demand information from state institutions, organizations financed by the public budget and individuals and legal entities that provide public services and hold official information. Institutions must respond within 15 working days.

Information can be withheld to protect state secrets related to military, economic, technical-scientific, foreign policy, intelligence, counterintelligence and investigation activities if disclosure would endanger the security of the state; confidential business information submitted to public institutions under conditions of confidentiality; personal data whose disclosure may be considered as intrusions into privacy; information related to the investigative activity of corresponding bodies; and information that represents the final or intermediary results of scientific and technical research. Information providers must prove that the restriction is authorized by law, necessary in a democratic society for protection of rights or legitimate interests of the person or national security and that the damage to those interests would be larger than then the public interest in disclosing the information.

Appeals about refusals, delays, fees and damages can be made to the top management of the department that holds the information or its superior body. If they are not satisfied, they can appeal directly to the courts. They can also appeal to the Ombudsman.[259]

The Administrative Code and Criminal Codes were amended in 2001 to allow for fines and penalties for violation of the Access to Information Act.[260]

Implementation of the law has been limited. The Freedom of Expression and Access to Information Promotion Centre released a report in May 2003 finding that, "the implementation of the Law on Access to Information remains extremely tedious, despite efforts made by non-governmental organizations to hasten the process. Rule of law education

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[257] Constitution of the Republic of Moldova, Adopted on July 29, 1994. http://oncampus.richmond.edu/~jjones//confinder/moldova3.htm

[258] Access to Information Law, No 982-XIV, 5.11.2000. http://ijc.iatp.md/en/mlu/docs/access_info_law.html

[259] Homepage: http://www.iatp.md/cpdom/

[260] Committee for the Protection of Journalists, Attacks on the Press 2001: Moldova. http://www.cpj.org/attacks01/europe01/moldova.html

and enforcement as well as general education about freedom of information are necessary next steps."[261] In a 2001 report, "The Mirage of Transparency," the Centre surveyed 200 national and local public authorities and found that many were either unaware of the law or chose to ignore it. [262] In November 2001, the Centre released a report surveying journalists who described the Act as a "dead letter."[263] The U.S. State Department in its 2001and 2002 Human Rights Reports noted, "few individuals know of this right, and government organizations largely did not comply with the law. Government organizations claimed they did not have the resources to fulfill such requests."[264]

The Law on State Secrets sets rules of classification of information relating to the military, economic, science and technology, foreign affairs and intelligence.[265] It sets three levels of classification for state secrets - "extreme importance", "strict secret", and "secret" and creates an "Inter-department commission for state secret protection" to coordinate.

Moldova signed the Aarhus Convention in June 1998 and ratified it in August 1999,. The Parliament rejected a Draft Law on Access to Environmental Information in December 2002, saying that the general access law was sufficient. The Parliament approved in the first reading an amendment to the Law on Access to include environmental access in March 2003 The 2003 report from the Information Access Center found "national legislation ensures an efficient judicial framework for the achievement and protection of the right to access environmental information."

The Law on Archival Fund sets rules on the retention of documents and their access.[266] Personal information can be kept secret for 75 years.

NETHERLANDS

Article 110 of the Constitution states:

> In the exercise of their duties government bodies shall observe the right of public access to information in accordance with rules to be prescribed by Act of Parliament.[267]

Transparency has been of longstanding concern in the Netherlands. The 1795 Declaration of Rights of Man stated, "That every one has the right to concur in requiring, from each functionary of public administration, an account and justification on his conduct."[268]

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[261] Mass-media and Legislation, 2003. http://www.lexacces.org.md/cuvint_stud_eng.htm

[262] Olivia Pirtac, Reflections on the Implementation of the Access to Information Law in Moldova, Mass Media in Moldova, December 2001, http://ijc.iatp.md/bulmm/offline/2001decrus.pdf

[263] Moldova: Journalists say media censorship continues despite law, FBIS Daily Report, 15 November 2001.

[264] US Department of State, Country Reports on Human Rights Practices – 2001: Moldova, March 4, 2002, Country Reports on Human Rights Practices – 2002: Moldova, March 31, 2003. http://www.state.gov/g/drl/rls/hrrpt/

[265] Law on State Secrets no. 106-XIII of 17.05.94. http://ijc.iatp.md/en/mlu/docs/secret_law.html

[266] Law on the Archival Fund of the Republic of Moldova, no. 880/XII of 22001.92.

[267] Constitution of the Netherlands, 1983. http://www.oefre.unibe.ch/law/icl/nl00000_.html

[268] http://www.uni-kassel.de/~dippel/rmc_web/constitutions/NL-00-1795-01-31/translation_en/nl-nat-1795-I-31-t-en-112.html

Freedom of information legislation was first adopted in 1978. The Government Information (Public Access) Act (WOB) replaced the original law in 1991.[269] Under the Act, any person can demand information related to an administrative matter if it is contained in documents held by public authorities or companies carrying out work for a public authority. The authority has two weeks to respond. Recommendations of advisory committees must be made public within four weeks.

Information must be withheld if it would endanger the unity of the Crown, damage the security of the state or if it relates to information on companies and manufacturing processes that were provided in confidence. Information can also be withheld "if its importance does not outweigh" the imperatives of international relations and the economic or financial interest of the state. Nondisclosure is also allowed if the release of the information would endanger the investigation of criminal offenses, inspections by public authorities, personal privacy and the prevention of disproportionate advantage or disadvantage to a natural or legal person. In documents created for internal consultation, personal opinions shall not be disclosed except in anonymous form when it is "in the interests of effective democratic governance." Environmental information has limited exemptions.

Appeals can be made to an administrative court which has the final decision. The Courts hear an estimated 150 cases each year.

Individuals can obtain and correct personal information held about them by public and private bodies under the Personal Data Protection Act.[270] It is overseen and enforced by the Data Protection Authority (CBP).[271]

The Archives Act requires that, documents are sent to the national and regional archives after 20 years. National security related documents can be kept closed for 75 years.

The Netherlands signed the Aarhus Convention in June 1998. A bill is currently pending in the Parliament to implement it. The WOB was amended in 1998 following an opinion by the European Commission that the legislation did not fully implement the EU 90/313/EEC Directive on Access to Environmental Information.[272]

[269] Act of 31 October 1991, containing regulations governing public access to government information. http://www.minbzk.nl/contents/pages/00012478/public_access_government_info_10-91.pdf. It replaced the Act on Public Access to Information of 9 November 1978.

[270] Personal Data Protection Act of 2000. http://www.cbp-info.nl/bis/subset-1-11-7.html

[271] Homepage: http://www.cbdweb.nl/

[272] Wet van 12 maart 1998 tot wijziging van de Wet openbaarheid van bestuur in verband met de implementatie van de richtlijn nr. 90/313/EEG van de Raad van de Europese Gemeenschappen van 7 juni 1990 inzake de vrije toegang tot milieuinformatie, Stb. 180.

NEW ZEALAND

Section 14 of the Bill of Rights Act states, "Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form."[273]

The Official Information Act 1982 starts from the principle that all official information should be available.[274] Any resident or citizen or company in New Zealand can demand official information held by public bodies, state-owned enterprises and bodies which carry out public functions. Agencies have been required in some cases to take down notes of discussions that contributed to government decision making if no documents are available. The body has no more than 20 days to respond.

There are strict exemptions for releasing information that would harm national security and international relations; information provided in confidence by other governments or international organizations; information that is needed for the maintenance of the law and the protection of any person; information that would harm the economy of New Zealand; and information related to the entering into any trade agreements. In a second set of exemptions, information can be withheld for good reason unless there is an overriding public interest. These exemptions include information that could intrude into personal privacy, commercial secrets, privileged communication and confidences; information that if disclosed could damage public safety and health, economic interests, constitutional conventions and the effective conduct of public affairs, including "the free and frank expression of opinions" by officials and employees.

The decisions of the Ombudsmen have limited many of these categories, requiring agencies to justify their decisions in terms of the possible consequences of disclosure. The focus has shifted from withholding information to setting how and when information, especially politically sensitive information, should be released.[275] As noted by the Secretary of the Cabinet, "virtually all written work in the government these days is prepared on the assumption that it will be made public in time…the focus in the current open style of government is on managing the dissemination of official information."[276] It is common for Cabinet documents and advice to be released.

The Office of the Ombudsmen reviews denials of access.[277] The Ombudsmen's decisions are binding, but there are limited sanctions for noncompliance and some agencies have reportedly ignored their rulings. The ombudsman received 863 requests in 2002, down from an average of around 1,200 complaints.

The Governor General can issue a "Cabinet veto" directing an agency not to comply with the Ombudsmen's decision. The veto, however, can be reviewed by the High Court. Between

[273] http://www.uni-wuerzburg.de/law/nz01000_.html

[274] Official Information Act 1982. http://www.ombudsmen.govt.nz/official.htm

[275] Alastair Morrison, "The Games People Play: Journalism and the Official Information Act," in The Official Information Act: Papers presented at a seminar held by the Legal Research Foundation, 1997.

[276] Marie Shroff, "Behind the Official Information Act: Politics, Power and Procedure" in The Official Information Act: 1997.

[277] Office of Ombudsman Home page: http://www.ombudsmen.govt.nz/

1983 and 1987, 14 vetoes were exercised under a system that allowed individual ministers to issue vetoes. Veto power has not been used since 1987, when it was converted to a collective decision.

The Ombudsmen have regularly commented on the lack of knowledge about the OIA leading to delays. In their 2002 report, they note:

> The significant changes which have taken place since the mid 1980s in the way in which the public sector operates still highlights a lack of an adequate understanding of the requirements of the legislation. Each year for the past several years, we have signaled our concern to Parliament about delays both in the processing of some requests for official information and in responding to our investigations, and about the need for the training of staff within the public sector in the requirements of the official information legislation. We have to report that we have seen no overall improvement in either of these areas during the current year resulting in an increase in frustration by some requesters and in the time taken to complete our reviews of refusals to make information available…As a consequence, the good progress that is being made with the dissemination of a great amount of information into the public domain, both voluntarily and in response to official information requests, is being offset by an inability or unwillingness by some to meet the statutory time lines set by the provisions of the Official Information Act.

The Ombudsmen said the greatest problems that caused delays is a failure to determine who is responsible for answering the request and in cases where "politically sensitive" information is requested and when third parties need to be notified. The Ombudsmen said there was an "urgent need" for better training of public employees and released new Practice Guidelines to facilitate better understanding of the Act. The report also reviewed an effort by the government to create a de facto class exemption for advice to the Prime Minister from the Department of the Prime Minister and Cabinet and stated that decisions would still have to be made on a case by case basis.

An Information Authority was created under the Act, but the law put a fixed term on its existence. The body was automatically dissolved in 1988 after Parliament failed to amend the Act. The Information Authority conducted audits, reviewed legislation and proposed changes. Some of its functions were transferred to the Legislative Advisory Committee and the Ombudsmen.

In the past year, there have been several significant controversies relating to failures to release information. The Immigration Service told the Ombudsman that it did not have a memorandum that stated that the Immigration Service was "lying in unison" regarding the case of Ahmed Zaoui, an Algerian asylum seeker.[278] The memo was subsequently publicly leaked and the Ombudsman has re-opened his inquiry.[279] In the "Corngate" controversy, Prime Minister Helen Clark has been accused of withholding information after it was revealed that the head of the Department of Prime Minister and Cabinet had not released over 100 documents relating to genetically modified foods prior to the 2002 election, some of which undermined the PM's categorical claims that crops had not been contaminated by

[278] Inquiry misled over 'lie in unison' memo, NZ Herald, 30 July 2003.
[279] Lie in unison inquiry strengthened, NZ Herald, 10 September 2003.

GM. The Government released 1,800 pages just prior to the election to rebut claims of GM contamination in a new book and the controversy resulted in the Green Party losing significant power in Parliament.

The Law Commission released a detailed review of the Act in 1997.[280] It found that the biggest problems were large and broadly defined requests, delays in responding to requests, resistance to the Act outside the core state sector, and the absence of a coordinated approach to supervision, compliance, policy advice and education. The review also found that "the assumption that policy advice will eventually be released under the Act has in our view improved the quality and transparency of [policy] advice." The Commission recommended reducing response time to 15 days and making agencies respond before the deadline, requiring bodies that do not appeal Ombudsman's decisions to the court to release information, giving the Ministry of Justice more coordination responsibility (in lieu of creating an Information Commission), providing more resources to the Ombudsman and Ministry of Justice, and adequately funding the Ombudsman's public activities to promote the Act. The proposals have not been acted up yet.[281]

The Local Government Official Information and Meetings Act 1987 provides for access to information held by local authorities.[282] It follows the same framework for access as the OIA. It is also overseen by the Ombudsmen

The Privacy Act 1993 allows individuals to obtain and correct records about themselves held by public and private bodies.[283] It is overseen by the Privacy Commissioner.[284] The Privacy Commissioner and the Ombudsman have an agreement to work together when there is a request that applies to both acts. In 1998, the Privacy Commissioner also recommended more training for government officials to reduce the misapplication of the Privacy Act to justify nondisclosure.[285]

The OIA repealed the Official Secrets Act 1951. Protections for classified information were set by a Cabinet Directive issued in 1982.[286] The levels of protection are Top Secret, Secret, Confidential, Restricted, Sensitive and In Confidence. The classification level is not determinative on the decision to release the information under the OIA.

The Archives Act 1957 sets a 25 year rule on the transfer of documents to the Archive. However, the OIA's requirements on release of information prevail. The NZ Security

[280] Law Commission, Review of the Official Information Act 1982. http://www.lawcom.govt.nz/documents/publications/R40.pdf

[281] See Paul Bellamy, NZ Parliamentary Library, Background Paper No. 27 on Access to Official Information, May 2003. http://www.clerk.parliament.govt.nz/Content/ResearchPapers/BP27_OfficialInformation.pdf

[282] Local Government Official Information and Meetings Act 1987. http://www.ombudsmen.govt.nz/local.htm

[283] Privacy Act 1993. Text and amendments available at http://www.knowledge-basket.co.nz/privacy/legislation/legislation.html

[284] Homepage: http://www.privacy.org.nz/

[285] Private Word, Issue No.20, November 1998, http://www.privacy.org.nz/privword/nov97pw.html

[286] Cabinet Directive on Security Classification. CO (82) 14, 17 December 1982. http://www.security.govt.nz/sigd/sigd4a.html. See Security in Government Departments Manual 1994. http://www.security.govt.nz/sigd/index.html

Intelligence Service has thus far been exempted from providing its archives but is anticipated to develop a policy this year. [287]

NORWAY

The Freedom of Information Act of 1970 provides for any person to have a broad right of access to official documents held by public authorities.[288] Official documents are defined as information which is recorded and can be listened to displayed or transferred and which is created by the authority and are dispatched or are received by the authority. All records are indexed at the time of creation or receipt and some ministries make the electronic indexes available on the Internet or through e-mail.

Requests can be made in any form including anonymously and must be responded to immediately. Internal guidelines issued by the Ministry of Justice say that requests should be responded to in three days. The Ombudsman in 2000 ruled, "It should be possible to decide most disclosure requests the same day or at least in the course of one to three working days, provided that no special, practical difficulties were involved."[289] Release may be delayed, "if the documents then available give a directly misleading impression of the case and that public disclosure could therefore be detrimental to obvious public or private interests."

There is a broad exemption for internal documents when the agency has not completed its handling of the case unless the agency has dispatched the document. Documents are also exempt from release if they are made secret by another law or if they refer to national security, national defense or international relations, financial management, the minutes of the Council of State, appointments or protections in the civil service, regulatory or control measures, test answers, annual fiscal budgets or long-term budgets, and photographs of persons entered in a personal data register.

If access is denied, individuals can appeal to a higher authority and then to the Storting's Ombudsman for Public Administration or a court. The Ombudsman's decisions are not binding but are generally followed.[290] There have been few cases where an appeal has been made to a court in the 30 years of the Act.

An analysis in September 2001 found that "10 out of 17 government ministries are keeping more secrets than four years ago" with the worst being the Foreign Ministry, Defense Ministry and Petroleum and Energy Ministry.[291] Earlier in the year, a survey of employees found that, "one in six Justice Ministry employees believes that issues handled by the central government administration are withheld from public knowledge in breach of the Freedom of Information Act…" and "eight out of 17 ministerial secretaries general confirm that the

[287] They're keeping our secrets, The Dominion Post, 23 May 2003.

[288] Act of 19 June 1970 relating to public access to documents in the public administration (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

[289] Case 2000–0400 *in* Sivilombudsmannen, The Parliamentary Ombudsman – Norway Annual Report 2000.

[290] Home page: http://www.sivilombudsmannen.no/index_en.shtml

[291] More secrecy during election campaign in Norway Daily No. 167/01, 3 September 2001.

public is denied access to information, in breach of the law."[292] The government released a white paper in April 1998 proposing changes in the law.[293] These include changing the subject of the request to information from documents, limiting the internal documents exemption, and making the law consistent with European Union requirements on access to environmental information.

Norway signed the Aarhus Convention in June 1998 and ratified it in May 2003. A committee released a draft Access to Environmental Information bill in December 2000 which was introduced in Parliament in September 2002.[294]

The 1998 Security Act sets rules on classification of information.[295] It creates four levels of classification and requires that information cannot be classified for more than 30 years. The National Security Authority enforces the act. Starting in 1988, Norway began releasing en mass most documents over 30 years old.[296] The Act on Defence Secrets prohibits the disclosing military secrets by government officials and also the collection (sketches, photographs and notes) and disclosure of secrets by others including journalists.[297]

The Personal Data Act allows individuals to access and correct files containing personal information about themselves held by public and private bodies.[298] It is overseen and enforced by the Datatilsynet (The Data Inspectorate).[299]

The Archives Act of 1992 sets a thirty years rule for the release of information.[300] A new Archives Act sets rules for the collection and registration of documents.

PAKISTAN

President Perviz Musharraf promulgated the Freedom of Information Ordinance 2002 in October 2002.[301] The law allows any citizen access to public records held by a public body of the federal government including ministries, departments, boards, councils, courts and

[292] Government secrecy often unlawful in Norway Daily No. 94/01, 21 May 2001.

[293] See Fredrik Sejersted, Norway: The Act on Public Access to Documents: Current Frustrations and Proposals for Reform, European Public Law Journal, Vol 5, No. 1, 1999.

[294] Press release, New Act on the Right to Environmental Information, September 19, 2002. http://odin.dep.no/md/engelsk/aktuelt/pressem/022021-070093/index-dok000-b-n-a.html. Right of access to environmental information. http://odin.dep.no/md/engelsk/publ/rapporter/022051-220008/index-dok000-b-n-a.html

[295] Act of 20 March 1998 No. 10 relating to Protective Security Services (the Security Act). http://www.ub.uio.no/ujur/ulovdata/lov-19980320-010-eng.doc

[296] For information generally on national security issues in Norway and the previous system of classification, see Nils Peter Gleditsch, Freedom of Expression, Freedom of Information and National Security: The Case of Norway, in Security and Liberty: National Security, Freedom of Expression and Access to Information (Coliver et al, Ed), Martinus Nijhoff Publishers.

[297] Lov av 20.03.1998 nr. 10 om forebyggende sikkerhetstjeneste. http://www.lovdata.no/cgi-wift/ldles?doc=/all/nl-19950623-039.html

[298] Act of 14. April 2000 No. 31 relating to the processing of personal data (Personal Data Act). http://www.datatilsynet.no/lov/loven/poleng.html

[299] Home Page: http://www.datatilsynet.no/

[300] Archives Act of 4 December 1992 No. 126.

[301] Freedom of Information Ordinance 2002, No. XCVI of 2002. F. No. 2(1)/2002-Pub. Islamabad. The 26th October 2002. http://www.crcp.sdnpk.org/ordinance_of_2002.htm

tribunals. It does not apply to government owned corporations or provincial governments. The bodies must respond within 21 days.

Public records are limited to policies and guidelines; transactions involving acquisition and disposal of property; licenses and contracts; final orders and decisions; and other records as notified by the government.

There are mandatory exemptions for notings on files; minutes of meetings; any intermediary opinion or recommendation; individuals' bank account records; defense forces and national security; classified information; personal privacy; documents given in confidence; other records decreed by the government. There are also exceptions with a harm test for international relations, law enforcement; invasion of privacy; and economic and commercial affairs of a public body.

Appeals of denials can be made to the Wafaqi Mohtasib (Ombudsman) or for tax-related matters, to the Federal Tax Ombudsman. They have to power to make binding orders. The Mohtasib can fine people who make frivolous requests. Officials that destroy records can be fined and imprisoned for up to two years.

Government bodies are required to appoint an official to handle requests. They also have a duty to publish acts, regulations, manuals, orders and other rules that have a force of law, maintain and index records and computerize those records covered under the Ordinance.

The law says that it does not derogate other laws such as the Official Secrets Act, which is based on the original UK OSA 1911 and sets broad restrictions on the disclosure of classified information. [302]

PANAMA

The Law on Transparency in Public Administration was enacted on 22 January 2002.[303] The law gives the right for any person to ask for information in any form from government bodies. Individual also have the right to access their own files and correct them. Government bodies must respond within 30 days. Fees can only be charged for reproduction.

Information relating to another person's medical and psychological condition, family life, marital and sexual history, criminal records and telephone conversations and other private communications is considered confidential and cannot be released. Restricted information relating to national security, commercial secrets, investigations, natural resources, diplomatic relations, cabinet discussions can be withheld for 10 years.

[302] For a detailed review of the situation of freedom of information in Pakistan, See Article 19, Global Trends on the Right to Information: A Survey of South Asia, July 2001. Available at http://www.article19.org/

[303] Ley No. 6 de 22 de enero de 2002 Que dicta normas para la transparencia en le gestión pública, establece la acción de Hábeas Data y dicta otras disposiciones. http://www.asamblea.gob.pa/legispan/leyes/2002/2002_006.pdf. See also Que dicta Normas para la Transparencia en la Gestión Pública, establece la Acción de Habeas Data y otras disposiciones, enero 2002, http://www.defensoriadelpueblo.gob.pa/Publicaciones/PDF/Ley6.pdf

Government bodies also have the obligation to publish regulations, general policies and strategic plans, internal procedure manuals, and descriptions of organizational structure. A code of ethics requires that all senior government officials publish declarations of their financial holdings, conflicts of interests and other information for anti-corruption purposes.[304]

Appeals can be made to a court under an action of Habeas Data. According the OAS Special Rapporteur for Freedom of Expression, of 65 cases brought in 2002, only 10 resulted in the release of information.[305] There are sanctions for failing to comply with the law or destroying or altering information.

A controversial implementing decree was issued in May 2002 which limits access to 'interested persons".[306] This has been criticized by the ombudsman, civil society groups and the media.[307] The OAS Special Rapporteur has expressed concern that the interpretation of "interested person" would limit the availability of information and has asked the government to clarify.[308] The Ombudsman has filed a complaint with the Supreme Court asking the court to find the regulation illegal.

PERU

Article 2 of the Constitution states:

> All persons have the right:...V. To solicit information that one needs without disclosing the reason, and to receive that information from any public entity within the period specified by law, at a reasonable cost. Information that affects personal intimacy and that is expressly excluded by law or for reasons of national security is not subject to disclosure.[309]

Access to information is constitutionally protected under the right of habeas data. Several cases have allowed the courts to establish their jurisdiction over, and support for, habeas data. In 1996, the Constitutional Tribunal, citing Article 5.2 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.[310] Also in 1996, the Supreme Court sided with the Civil Labor Association against the General Director of Mining and ordered the

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[304] See DECRETO 15 de 19 de julio de 2002 "Por el cual se establece el Código de Ética en el Tribunal Electoral". http://www.tribunal-electoral.gob.pa/codigo-etica/

[305] Report of the Special Rapporteur for Freedom of Expression 2002. http://www.cidh.org/Relatoria/English/AnnualReports/AR02/TableofContent2002.htm

[306] Decreto Ejecutivo 124 de 21 de mayo de 2002. See Ministro de Gobierno y Justicia, Presidenta Reglamentara Transparencia En Gestión Publica http://www.gobiernoyjusticia.gob.pa/noticias.php?idn=40

[307] Opinión en torno al Decreto Ejecutivo que reglamenta la Ley de Transparencia, 5 de Junio de 2002 http://www.defensoriadelpueblo.gob.pa/ComunicadosCuerpo.asp?ComunicadosID=1023312643. See also http://probidad.org/regional/legislacion/2001/024.html

[308] See OAS Report ibid.

[309] Constitution of Peru, 1993. Available at http://www.asesor.com.pe/teleley/biblioteca/constitucional/5000-in.htm (English) http://www.georgetown.edu/pdba/Constitutions/Peru/per93.html (Spanish)

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

release of an environmental impact study submitted by the Southern Peru Copper Corporation.[311]

The Law of Transparency and Access to Public Information was adopted in August 2002 and went into effect in January 2003.[312] Under the law, every individual has the right to request information in any form from any government body or private entity that offers public services or executes administrative functions without having to explain why. Documentation funded by the public budget is considered public information. Public bodies must respond within seven working days which can be extended in extraordinary cases for another five days.

The campaign for the law was led by the Peruvian Press Council.[313] The Parliament amended the law in January 2003 and made numerous amendments to the Act following criticism of the excessive exemptions, especially relating to national security and a law suit filed by the Ombudsman in the Constitutional Tribunal on the constitutionality of the Act.[314]

There are three tiers of exemptions: For national security information that disclosure would cause a threat to the territorial integrity and/or survival of the democratic systems and the intelligence or counterintelligence activities of the CNI; Reserved information relating to crime and external relations; and confidential information relating to pre-decisional advice, commercial secrets, ongoing investigations and personal privacy. Information relating to human rights violations and the Geneva Convention of 1949 cannot be classified. The exempted information can be obtained by the courts, Congress, the General Comptroller, and the Human Rights Ombudsman in some cases.

Appeals can be made to a higher department. Once appeals are completed, the requestor can appeal administratively to the court under Law N° 27444 or under Law N° 26301 for the constitutional right of habeas data.[315]

The Ombudsman can also investigate non-compliance and issue non-binding opinions.[316] The ombudsman is also conducting training and promoting the act. Prior to the act, the office handled many cases informally on access to personal records.

The law also requires government departments to create web sites and publish information on their organization, activities, regulations, budget, salaries, costs of the acquisition of goods and services, and official activities of high-ranking officials. Detailed information on public finances is also required to be published every four months on the Ministry of Economic and Finance's web site.

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

[312] Ley 27.808 de transparencia y acceso a la información pública, A history of the development of the bill is available at http://www.freedominfo.org/news/peru2/

[313] See http://www.freedominfo.org/news/peru2/

[314] see http://www.freedominfo.org/news/peru1/

[315] Ley N° 26301, Aprueban Ley Referida a la Aplicacio de la Accion Constitucional de Habeas Data, May 2, 1994, http://www.asesor.com.pe/teleley/bull505.htm.

[316] Homepage: http://www.ombudsman.gob.pe/

The government has committed to creating a special commission to develop a data protection act but it has not advanced.[317]

PHILIPPINES

The right to information was first included in the 1973 Constitution and was expanded in the current 1987 Constitution. Article III, Section 7, 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."[318]

The Supreme Court as far back as 1948 recognized the importance of access to information[319] and has issued a series of rulings.[320]

There is no freedom of information act per se in the Philippines but a combination of the Constitutional right and various other legal provisions makes it one of the most open countries in the region.[321] The Supreme Court ruled in 1987 that the right could be applied directly without the need for an additional act:

> These constitutional provisions are self-executing. They supply the rules by means of which the right to information may be enjoyed by guaranteeing the right and mandating the duty to afford access to sources of information. Hence, the fundamental right therein recognized may be asserted by the people upon the ratification of the Constitution without need for any ancillary act of the Legislature.[322]

The Code of Conduct and Ethical Standards for Public Officials and Employees[323] mandates disclosure of public transactions and guarantees access to official information, records or documents. The Act sets a policy of "full public disclosure of all its transactions involving public interest." Agencies must act on a request within 15 working days from receipt of the request.

The implementing regulations of the law contain a list of exemptions, including documents related to national security and foreign affairs, information that would cause imminent harm

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[317] Ministerial Resolution No. 094-2002-JUS

[318] Constitution of Philippines, http://www.chanrobles.com/philsupremelaw1.htm

[319] Abelardo Subido, Editor, The Manila Post, petitioner, vs. Roman Ozeta, Secretary of Justice, and Mariano Villanueva, Register of Deeds of City of Manila, respondents. G.R. No. L-1631. February 27, 1948. http://www.aer.ph/projects/infodisc/cases/pdf/subido.pdf

[320] See AER, Selected Cases on Information Disclosure: http://www.aer.ph/projects/infodisc/cases.htm

[321] See Yvonne Chua, The Philippines: A Liberal Information Regime even without an Information Law. http://www.freedominfo.org/case/phil1.htm

[322] Legaspi v. Civil Service Commission, 150 SCRA 530, May 29, 1987. http://www.aer.ph/projects/infodisc/cases/pdf/legaspi.pdf

[323] Republic Act 6713 of 1987. http://www.tag.org.ph/phillaw/law4-RA6713.htm

to an individual, privileged information, drafts or decisions, orders, rulings, policy, decisions, memoranda, and information that would intrude into personal privacy, impede law enforcement and cause financial instability.

The Code also requires that public officials disclose information about their assets, liabilities, net worth and businesses interests. The information is available to the public but use for commercial purposes or "contrary to morals or public policy" is prohibited.

Complaints against public officials and employees who fail to act on an information request can be filed with the Civil Service Commission or the Office of the Ombudsman. The courts can hear cases once administrative remedies have been exhausted.

Even with the comparative openness of the government, there are continuing problems. These include a lack of knowledge about the requirements set by the Supreme Court and the Code, a mindset against releasing information, a poor information infrastructure that causes electronic data to be lost and the low quality of information gathered by government departments on many issues including the environment.[324]

Civil society groups have formed the Access to Information Network and are calling for the adoption of a new law. A number of bills are pending in the Parliament but are not expected to pass before the next election in 2004.

POLAND

Article 61 of the Constitution provides for the right to information and mandates that Parliament enact a law setting out this right.[325]

> (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.
> (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.

The Law on Access to Public Information was approved in September 2001 and went into effect in January 2002.[326] The Act allows anyone to demand access to public information held

[324] See Chua, ibid.
[325] Constitution of Poland, http://www.uni-wuerzburg.de/law/pl00000_.html
[326] Law on Access to Public Information. 6 September 2001 Journal of Laws No 112, item 1198. http://www.ijnet.org/FE_Article/MEdiaLaw.asp?CID=25272&UILang=1&CIdLang=1

by public bodies, private bodies that exercise public tasks, trade unions and political parties. The bodies must respond within 14 days.

There are exemptions for official or state secrets, confidential information, personal privacy and business secrets.

Appeals are made to a court. Parliament is currently discussing amendments that would create an independent commission to enforce the Act.

Public bodies are required to publish information about their policies, legal organization, principles of operation, contents of administrative acts and decisions, and public assets. The law requires that each create a Public Information Bulletin to allow access to information via computer networks.[327]

Poland enacted the Classified Information Protection Act in January 1999 as a condition for entering NATO.[328] The Act covers classified information or information collected by government agencies whose disclosure "might damage interests of the state, public interests, or lawfully protected interests of citizens or of an organization."

A law creating a National Remembrance Institute (IPN) to allow victims of the communist-era secret police access to records was approved by Parliament in October 1998.[329] President Aleksander Kwasniewski vetoed the law, saying that it should allow all Poles, not just the victims, to access the records but his veto was overridden and he later signed the law.[330] The IPN took control of all archives of the communist-era security service and those of courts, prosecutors' offices, the former Communist Party and other institutions. Since February 2001, Polish citizens have been allowed to see their personal files compiled by communist authorities before 1989.[331]

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 its implementation was delayed until November 1998, when the Constitutional Tribunal ruled that the Act was constitutional except for two provisions. In July 2000, the Parliamentary Commission for Special Services determined that the State Protection Office had not violated the Act when it gave a court documents on President Aleksander Kwasniewski. The Commission, however, found that the State Protection Office had improperly concluded that Kwasniewski was a secret agent and delayed release of the documents in order to stall the court's investigation. The Democratic Left Alliance (SLD) said that the documents were released to influence the election.[332]

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[327] Main government BIP page: http://www.bip.gov.pl/

[328] The Classified Information Protection Act of 22 January 1999. http://faculty.maxwell.syr.edu/asroberts/foi/library/poland_secrecy.pdf

[329] Homepage: http://www.ipn.gov.pl/index_eng.html

[330] "Veto Overridden, President Signs Secret Files Bill," Polish News Bulletin, December 21, 1998.

[331] "Airing Dirty Laundry", The Warsaw Voice, February 11, 2001 No. 6 (642).

[332] RFE/RL Newsline Vol. 4, No. 146, Part II, 1 August 2000.

Poland signed the Aarhus Convention on Access to Information in June 1998 and ratified it in February 2002. The Act on Access to Information on the Environment and Its Protection and on Environmental Impact Assessments implements the Convention.[333]

Under the Act on Protection of Personal Data, individuals can obtain and correct records that contain personal information about themselves from both public and private bodies.[334] It is enforced by the Bureau of the Inspector General for the Protection of Personal Data .[335]

PORTUGAL

The Constitution has included a right of access to information since 1976. Article 268 of the 1989 Constitution states:

> 1. Citizens are entitled to be informed by the Public Service, when they so require, about the progress of proceedings in which they are directly interested and to know the final decisions that are taken with respect to them.
> 2. Citizens shall also enjoy the right to have access to administrative records and files, subject to the legal provisions with respect to internal and external security, investigation of crime and personal privacy.
> 3. Administrative action shall be notified to interested parties in the manner prescribed by law; it shall be based on stated and accessible substantial grounds when it affects legally protected rights or interests.
> 4. Interested parties are guaranteed effective protection of the courts for their legally protected rights or interests, including recognition of these rights or interests, challenging any administrative action, regardless of its form, that affects these, enforcing administrative acts that are legally due and adopting appropriate protective measures.
> 5. Citizens are also entitled to object against administrative regulations that have external validity and that are damaging to their legally protected rights or interests.
> 6. For the purposes of paragraphs 1 and 2, the law shall fix the maximum period within which the Public Service must respond.[336]

The 1993 Law of Access to Administrative Documents (LADA) allows any person to demand by written request access to administrative documents held by state authorities, public institutions, and local authorities in any form.[337] Government agencies must respond no later than 10 days after receiving a request. The Act also provides greater access for parties with an interest in a proceeding.

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[333] The Act of 9 November 2000 on Access to Information on the Environment and Its Protection and on Environmental Impact Assessments, http://www.mos.gov.pl/mos/akty-p/dostep_eng.html. For a detailed review of the act, see Access to Environmental Information. http://www.mos.gov.pl/aarhus/dokumenty/Access-to-envir-info.pdf

[334] Act of August 29, 1997 on the Protection of Personal Data. Journal of Laws of October 29, 1997, No. 133, item 883 with later amendments. http://www.giodo.gov.pl/English/Bgiw1220.htm

[335] Web Site of Data Protection Commission. http://www.giodo.gov.pl/English/english.htm

[336] Constitution of the Portuguese Republic, 1997. http://www.parlamento.pt/leis/constituicao_ingles/IND_CRP_ING.htm

[337] Lei nº 65/93, de 26 de Agosto, com as alterações constantes da Lei nº 8/95, de 29 de Março e pela Lei nº94/99, de 16 de Julho http://www.cada.pt/PAGINAS/ladaing.html . See http://www.cada.pt/PAGINAS/acessoing.html for a detailed overview of the Act.

The Act does not apply to documents not drawn up for an administrative activity such as meetings of the Council of Ministers or personal notes and sketches. Access to documents in proceedings that are not decided or in the preparation of a decision can be delayed until the proceedings are complete or up to one year after they were prepared. Documents relating to internal or external security and secrecy of justice are protected under special legislation. Access to documents with personal information is limited to the named individual and can only be used for purposes for which it is authorized. The commission can refuse access to documents that place commercial, industrial or company secrets in danger or violate copyrights or patents.

Those denied can appeal to the Commission for Access to Administrative Documents (CADA), an independent Parliamentary agency.[338] It can examine complaints, provide opinions on access, review practices and decide on classification of systems. CADA's decisions are not binding so if an agency continues to deny access, further appeal can be made to an administrative court. The CADA handed 514 complaints and issued 260 opinions in 2001.

Bodies are required to publish every six month decisions, circulars, guidelines and any references for documents that have an interpretation of enacted laws or administrative procedures.

Portugal signed the Aarhus Convention on Access to Information in June 1998 and ratified it in June 2003. The LADA governs access to environmental information. In 1998, the European Commission issued a reasoned opinion that Portugal was not complying with the 1990 EU Directive on Access to Information. It closed the proceeding in 2000 after Portugal made modifications to the LADA.

The Law of State Secrecy sets rules on the classification on information harmful to the state security.[339] Secrets can be classified for four year periods which can be renewed.

The Act on the Protection of Personal Data allows any person to access and correct their personal information held by a public or private body.[340] It is enforced by the National Data Protection Commission.[341]

[338] Home Page: http://www.cada.pt/

[339] Law of State secrecy no 6/94, of 1994/04/07. http://www.terravista.pt/guincho/3938/Segredo%20de%20Estado.doc (in Portugese).

[340] Act nº 67/98 of 26 October 1998 on the Protection of Personal Data (transposing into the Portuguese legal system Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data). http://www.cnpd.pt/Leis/lei_6798en.htm

[341] Homepage: http://www.cnpd.pt/

ROMANIA

Article 31 of the Constitution guarantees the right of the public to access information of a public interest:

> A person's right of access to any information of public interest cannot be restricted. The public authorities, according to their competence, shall be bound to provide for correct information to citizens on public affairs and matters of personal interest. The right to information shall not be prejudicial to the protection of the young or to national security.[342]

The Law Regarding Free Access to Information of Public Interest was approved in October 2001.[343] The implementing regulations of the law state, "free and unrestrained access to information of public interest shall be the rule and limitation of access shall be the exemption."[344] It allows for any person to ask for information from public authorities and state companies. The authorities must respond in 10 days.

There are exemptions for national security, public safety and public order, deliberations of authorities, commercial or financial interests, personal information, proceedings during criminal or disciplinary investigations, judicial proceedings, and information "prejudicial to the measures of protecting the youth."

Those denied can appeal to the agency concerned or to a court. Public employees can be disciplined for refusing to disclose information.

Authorities must also publish a wide variety of basic information about their structures and activities including their register of "documents in the public interest."

According to the Ministry of Public Information, there were 335, 058 requests in the first year of the Act, of which 72 percent were oral requests and 28 percent were written. Six percent of the requests were denied which resulted in 1,217 complaints and 394 court cases.[345]

The law was developed in cooperation between the Ministry of Public Information (which was eliminated in June 2003), civil society organizations and opposition parties. The government is working in cooperation with civil society groups to train staff and create local offices to implement and monitor the law.[346] Agencies are required to set up specialized divisions to deal with the act.

There is concern about the implementation of the law. The Association for the Defense of Human Rights in Romania-Helsinki Committee (APADOR-CH) sued Prosecutor-General

[342] Constitution of Romania. http://www.senat.ro/ENGLEZA/constitution.html

[343] The Law Regarding the Free Access to the Information of Public Interest, http://www.publicinfo.ro/INITIAT/Legea%20accesului%20engl.pdf

[344] Decision on Methodological Norms of Putting into Force Law No. 544/2001 on Free Access to Information of Public Interest http://www.publicinfo.ro/INITIAT/NormeMetodologiceLegeLiberAccesInformatie-engl.pdf

[345] Raport Privind Aplicarea Legii Nr. 544/2001. http://www.publicinfo.ro/INITIAT/RAPORT%20SINTEZA%20544%20FINAL.pps (in Romanian)

[346] Ministry of Information Homepage: http://www.publicinfo.ro/ENGLEZA.html

Joita Tanase in June 2003 after he refused to follow a court decision to release a report on the number of wiretaps in Romania.[347] APADOR had made a detailed list of recommended changes needed to the Act and other related laws to improve access. Those changes include modifying the Ministry of Information, giving the FOI law primary effect over other laws, limiting exemptions, and revising the Classified Information, Archive and Data Protection Acts.[348]

The 1999 Law on the Access to the Personal File and the Disclosure of the Securitate as a Political Police allows Romanian citizens to access their Securitate (secret police) files.[349] It also allows public access to the files of those aspiring for public office and other information relating to the activities of the Securitate. The law set up the National Council for the Search of Security Archives (CNSAS) to administer the archives.[350] There was an extended crisis in 2002 over the council after it said it would publish the names of the former members of the Securitate. The European Court of Human Rights ruled in 2000 that the Romanian Intelligence Service retention and use of Securitate files that falsely accused a person of being a member of a fascist party fifty years before was a violation of the ECHR.[351]

The Law on Protecting Classified Information was enacted in April 2002 at the behest of NATO.[352] The drafters used an expansive view of classification that will limit access to records under the access to information law. Most egregiously, it creates a level of classification called "office secret", which is defined as any information that could affect the interest of a legal person, be it private or state owned, which cannot be appealed. Employees are now being vetted and those who spied under the communist regime will be denied access.[353] It created an Office of the National Registry of State Secret Information to keep the registers of secret information. The National Authority for Security maintains the controls on NATO information.

The Law on Decisional Transparency in Public Administration was approved in December 2002 and went into effect in April 2003. It requires meetings of government bodies and information about pending activities of government bodies be automatically disclosed and citizens be invited to participate in decisions.[354]

The Law on Certain Steps for Assuring Transparency in Performing High Official Positions, Public and Business Positions, for Prevention and Sanctioning the Corruption was approved in 2003. It includes sections requiring that access to electronic information and government is

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[347] RFE/RL NEWSLINE Vol. 7, No. 115, Part II, 19 June 2003.

[348] See APADOR, Limits of Access to Information in Romania – The Necessity of Certain Legislative Correlations.

[349] Law No. 189/7 December 1999 on the access to the personal file and the disclosure of the Securitate as a political police, http://www.cnsas.ro/legeng.htm. See Ioana Borza, Decommunization in Romania: A Case Study of the State Security Files Access Law http://www.polito.ubbcluj.ro/EAST/East6/borza.htm

[350] Homepage: http://www.cnsas.ro/indexeng.html

[351] Rotaru v Romania (App no 28341/95), 8 BHRC 449, 4 May 2000.

[352] Law no. 182 of April 12th, 2002 on the protection of classified information. Published in the Official Gazette, Part I no. 248 of April 12th 2002. http://www.privacyinternational.org/countries/romania/classified-info-law-02.doc. See Government of Romania, Agenda of Preparations for NATO Membership: Progress and Priorities - Midterm Review-. http://domino.kappa.ro/mae/home.nsf/Toate/nato/$File/annex24.html

[353] RFE/RL NEWSLINE Vol. 6, No. 90, Part II, 15 May 2002

[354] Law no.52 of January 21st, 2003 regarding the decisional transparency in the public administration. http://www.iris.umd.edu/adass/proj/transparency_law.pdf

improved through the creation of a "National Computerized System" and the names of tax delinquents are published.[355]

The Law on Protection of Persons concerning the Processing of Personal Data and the Free Circulation of Such Data allows individuals to access and correct personal information held by public or private bodies.[356] It is enforced by the Private Information Protection Office of the Ombudsman's Office.[357]

The Law on National Archives sets rules on access to information in archives. Information can be withheld for up to 100 years.[358]

Romania signed the Aarhus Convention in June 1998 and ratified it in July 2000.[359] Governmental Decision no. 1115/2002 on free access to environmental information sets rules on access.

SLOVAKIA

The 1992 Constitution provides for a general right of access to information and a specific right of access to environmental information:[360]

> Article 26 (5) State bodies and territorial self-administration bodies are under an obligation to provide information on their activities in an appropriate manner and in the state language. The conditions and manner of execution will be specified by law.
> Article 45 Everyone has the right to timely and complete information about the state of the environment and the causes and consequences of its condition.

The Act on Free Access to Information was approved in May 2000 and went into force on January 1, 2001.[361] Any person or organization can demand information held by state agencies, municipalities and private organizations that are making public decisions. The body must respond no later than 10 days after receipt of the request and must keep a registry of requests. Costs are limited to reproduction and can be waived.

There are limitations for information that is classified as a state or professional secret, personal information, trade secrets (not including environmental pollution, cultural sites or anything related to public funds), information that was obtained "from a person not required by law to provide information" and who declines to release it, intellectual property, and information on the decision-making power of the courts, bodies in criminal proceedings, and habitats that need to be protected.

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[355] Law on Certain Steps for Assuring Transparency in Performing High Official Positions, Public and Business Positions, for Prevention and Sanctioning the Corruption, http://www.publicinfo.ro/INITIAT/lege%20anticoruptie%20en.pdf

[356] Law no. 677/2001 for the Protection of Persons concerning the Processing of Personal Data and Free Circulation of Such Data. http://www.avp.ro/leg677en.html

[357] Home Page: http://www.avp.ro/

[358] Law no. 16/1996 on the National Archives.

[359] Law no. 86/2000.

[360] Constitution of the Slovak Republic 1992. http://www.uni-wuerzburg.de/law/lo00000_.html

[361] Act on Free Access to Information. http://www.info211.sk/zakon_en.php

Appeals are made to higher agencies and can be reviewed by a court. A public official violating the Act can be fined SK50,000.

The law also requires that a variety of information is published by the government bodies including its

The Citizen and Democracy Association conducted four reviews of the implementation of the access and publication provisions in 2002 and found that basic information was usually provided but "problematic information" such as contracts and privatization were often withheld. It also found that information was often arbitrarily withheld or only given when an attorney was involved. The Association also was involved in several court cases including two where the Supreme Court ruled for disclosure and also provides legal assistance in other cases.

The Act on Protecting Classified Information was approved in 2001 as part of Slovakia's bid to join NATO. It sets out a list of 21 categories of classified information and established the National Security Office (NBU). The director of the NBU said in 2001 that "Ministries decide on what is classified information and what is not. The laws contain annexes defining basic information and the degrees of secrecy. It is quite obvious that this has been done by incompetent people."[362] The government is now developing a new law which creates vaguer categories of information that can be classified by regulation. In August 2002, the Parliament approved a law on access to files of the StB, the former communist-era secret police.[363] The law created an Institute for National Memory. Thus far, the Intelligence Service has refused to provide information to the Institute and is requiring that Institute staff must be vetted to obtain access to files.[364]

Under the Act on Protection of Personal Data, individuals can access and correct person information held by public and private bodies.[365] It is enforced by the Office for Personal Data Protection.[366]

The Act on Free Access amended the Environmental Protection Act to provide access to environmental information. The Ministry of Environment is developing a separate Access to Environmental Information Act which will supersede the general Act. However, the draft act creates new exemptions and extends the time frame for responses to sixty days. Slovakia has not signed the Aarhus Convention on access to environmental information.

SLOVENIA

The Constitution of Slovenia states:

[362] Slovak Security Office Director Discusses System of Security Screening, 02 Nov 2001 (translated by FBIS).
[363] RFE/RL, 21 August 2002.
[364] RFE/RL, 4 August 2003.
[365] Act no. 428 of 3 July 2002. http://www.dataprotection.gov.sk/buxus/docs/act_no_428.pdf
[366] Homepage: http://www.dataprotection.gov.sk/

> Article 38. Everyone has the right of access to the collected personal data that relates to him and the right to judicial protection in the event of any abuse of such data.
>
> Article 39. Except in such cases as are provided by law, everyone has the right to obtain information of a public nature in which he has a well founded legal interest under law.

The Act on Access to Information of Public Character was adopted in February 2003.[367] It provides that "everyone" has a right to information of public character held by state bodies, local government agencies, public agencies, public contractors and other entities of public law. The bodies must respond in 20 days.

There are exemptions for classified data, business secrets, personal information that would infringe privacy, confidentiality of statistics information, public archives, tax procedure, criminal prosecutions, administrative or civil procedures, pre-decisional materials that would lead to a misunderstanding, nature conservation, and internal operations.

There is a right of appeal to an autonomous Information Commission that is set up under the act. Its decisions can be appealed to a court. Fines can be imposed for destruction of information or failure to disclose without authorization.

The implementing regulations have not been completed yet but agencies are already receiving requests. The Ministry of the Information Society is in charge of implementation and promotion of the act. The Ministry of Interior, which is in charge of public administration, is also involved in implementation. Public bodies are required to appoint a leading official to receive requests and to create a catalog of the public information and make it available on the Internet along with the current and proposed regulations, programmes, strategies, views, opinions and other documents of public character. They must also publish annual reports on the act. The Citizens Rights Ombudsman also has jurisdiction over the right to information.[368]

The Classified Information Act was adopted in 2001 to implement NATO rules on protection of classified information. It is overseen by the Government Office for the Protection of Classified Information.[369] In April 2003, the security files of the UDBA, the former Yugoslavian secret police were published on a web site in Thailand by the Slovene Honorary Consul for New Zealand Dusan Lajovic. The documents were on over one million people including the officials, collaborators, and targets of surveillance. The current intelligence agency and the national archives claimed they did not have a copy of the files in their archives. [370]

The Personal Data Protection Act provides for individuals to access and correct their personal information held by public or private bodies.[371] It is overseen by the Inspectorate for Personal Data Protection in the Ministry of Justice and the Ombudsman.

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[367] Act on Access to Information of Public Character. http://www.privacyinternational.org/countries/slovenia/foia-2003.doc

[368] Homepage: http://www.varuh-rs.si/

[369] See Classified Information Act, Publicised: 8.11.2001; Official Gazette of the Republic of Slovenia, No 87/2001 http://nato.gov.si/eng/documents/classified-info-act/

[370] REF/RL Balkan Report, 25 April 2003.

[371] Personal Data Protection Act (Ur. l. RS, 59/99); Law amending Personal Data Protection Act Ur. l. RS, 57/01

Slovenia signed the Aarhus Convention in June 1998. Article 14 of 1993 Environmental Protection Act, states that environmental data is public property. [372]

Under the Archives and Archival Institutions Act, most documents are available 30 years after their creation. Documents with data that could harm national security, public order or economic interests can be withheld for 40 years and those containing personal information can be withheld for 75 years or 10 years after the death of the person mentioned.[373]

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 may provide for reasonable measures to alleviate the administrative and financial burden on the state.[374]

The Promotion of Access to Information Act (PAIA) was approved by Parliament in February 2000 and went into effect in March 2001.[375] It implements the constitutional right of access and is intended to "Foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information" and "Actively promote a society in which the people of South Africa have effective access to information to enable them to fully exercise and protect all of their rights."

Under the act, any person can demand records from government bodies without showing a reason. State bodies currently have 30 days to respond (reduced from 60 days before March 2003 and 90 days before March 2002).

The Act also includes a unique provision (as required in the Constitution) that allows individuals and government bodies to access records held by private bodies when it is necessary to enforce people's rights. Bodies must respond within 30 days.

The Act does not apply to records of the Cabinet and its committees, judicial functions of courts and tribunals, and individual members of Parliament and provincial legislatures. There are a number of mandatory and discretionary exemptions for records for both public and private bodies. Most of the exemptions require some demonstration that release of the information would cause harm. The exemptions include personal privacy, commercial information, confidential information, safety of persons and property, law-enforcement

[372] Official Gazette of RS, No. 32/93.

[373] Archives and Archival Institutions Act (Official Gazette of the RS, No. 20/97). http://www.osa.ceu.hu/bridge/archivalregulations/slovenia_AAIA.htm

[374] The Constitution of the Republic of South Africa, Act 108 of 1996. http://www.polity.org.za/govdocs/constitution/saconst.html

[375] Promotion of Access to Information Act, Act 2 of 2000. http://www.gov.za/gazette/acts/2000/a2-00.pdf . For a detailed analysis of the Act, see Currie and Klaaren, The Promotion of Access to Information Act Commentary (Siber Ink 2002).

proceedings, legal privilege, defense, security and international relations, economic interests, and the internal operations of public bodies. Many of the exemptions must be balanced against a public-interest test that require disclosure if the information showed a serious contravention or failure to comply with the law or an imminent and serious public safety or environmental risk.

For public bodies such as national government departments, provincial government departments and local authorities, the internal review is handled by the responsible Cabinet minister. It can then be reviewed by a High Court. Decisions of private bodies are appealed directly to the court. The courts can review any record and can set aside decisions and order the agency to act. The South African History Archive and the Open Democracy Advice Centre have brought a number of successful court cases against both public and private bodies where the courts have ordered the release of information or the public bodies have settled the cases out of court.

There are criminal fines and jail terms for those who destroy, damage, alter or falsify records. The public prosecutor can investigate cases of maladministration. It reports having received six cases.[376]

Public and private organizations must publish manuals describing their structure, functions, contact information, access guide, services and description of the categories of records held by the body. The manuals were to be submitted to the HRC and published in the Government Gazette by February 2003. This was delayed until August 2003. The Commission announced in August 2003 that it was delaying the submission requirements for private bodies that are not public companies until 2005. The National Intelligence Agency was exempted in June 2003 from having to publish a manual until 2008 and the South African Secret Service received a similar exemption. Government bodies must also publish a list of categories of information that is published without requiring an access request.

The SA Human Rights Commission is designated to oversee the functioning of the Act.[377] It is required under the law to issue a guide on the Act and submit reports to Parliament. It can also promote the Act, make recommendations, and monitor its implementation. It received 40 complaints in 2001-02.[378] A major problem has been that the Commission has received little funding for any activities under the Act. In its 2000-2001 Annual Report, the Commission noted that lack of funds prevented it from conducting any work on the Act. The HRC was required to delay the publication of its manual on the Act due to a lack of public and private bodies submitting their manuals.

The expert committee that drafted the Act proposed creating an Open Democracy Commission and specialized information courts, but those sections were removed by the Cabinet before the draft bill was introduced in Parliament. The SAHRC recently commissioned papers on its role and the possible creation of an independent information commission.

[376] South African History Archive, Strengthening the Role of the South African Human Rights Commission in relation to the POTAIA, July 2003.

[377] SAHRC PAIA Home Page: http://www.sahrc.org.za/paia.htm

[378] SAHRC, 6th Annual Report, 2001-02.

There have been problems in the implementation of the Act and its use has been limited. A survey conducted by the Open Democracy Advice Centre in 2002 found, "on the whole, POATIA has not been properly or consistently implemented, not only because of the newness of the act, but because of low levels of awareness and information of the requirements set out in the act. Where implementation has taken place it has been partial and inconsistent."[379] Almost half of the public employees had not heard of the act. A larger problem pointed out by the Centre for the Study of Violence and Reconciliation is the poor records management of most departments.[380]

The Apartheid-era Protection of Information Act of 1982 sets rules on the classification and declassification of information.[381] The government announced the creation of a classification and declassification review committee in March 2003. The Truth and Reconciliation Commission found that there was a systematic destruction of classified documents starting in the period 1990-1994, sanctioned by the Cabinet. There has been considerable controversy over access to the records of the Truth and Reconciliation Commission (TRC) some of which were sent to the National Intelligence Agency. The government is claiming that it can reclassify the "sensitive" documents in the files. In 2003, SAHA won an out of court settlement under the terms of which the files were moved to the National Archives and are being prepared for public access. SAHA also discovered the existence of many thousands of Military Intelligence files that had never been sent to the TRC. SAHA used the PAIA to secure lists of these files and is now systematically accessing the files themselves.

The Law Reform Commission issued a paper on Privacy and Data Protection in August 2003 as part of an effort to enact a law to enforce the constitutional right of privacy.[382]

The National Archives of South Africa Act of 1996 provides for the release of records in the custody of the National Archives after 20 years.[383]

SPAIN

Article 105 of the 1978 Constitution states:

> The law shall regulate…b) access by the citizens to the administrative archives and registers except where it affects the security and defense of the State, the investigation of crimes, and the privacy of persons[384]

[379] Allison Tilley and Victoria Mayer, Access to Information Law and the Challenge of Effective Implementation, in The Right to Know, the Right to Live: Access to Information and Socio-Economic Justice (ODAC 2002).

[380] Dale McKinley, The State of Access to Information in South Africa. http://www.apc.org/apps/img_upload/697261667269636164 6f63756d656e74/CSVR_REPORT_ON_FREEDOM_OF_INFORMATION.doc.

[381] Protection of Information Act No 84 of 1982, 3 June 1982. http://www.nia.org.za/LEGISLATION/PROTECTION%20OF%20INFORMATION%20ACT%2084%20OF%201982.doc

[382] South African Law Reform Commission, Privacy and Data Protection. Issue Paper 24, August 2003. http://wwwserver.law.wits.ac.za/salc/issue/issue.html

[383] http://www.national.archives.gov.za/arch_act.htm

[384] Constitution of Spain, 1992, http://www.uni-wuerzburg.de/law/sp00000_.html

The 1992 Law on Rules for Public Administration provides for limited access to government records and documents by Spanish citizens.[385] It also includes rules for access of persons in administrative proceedings. The provisions on access were included to implement the 1990 EU Access to Environmental Information Directive. The documents must be part of a file which has been completed. Agencies must respond in three months.

Documents can be withheld if public interest or a third party's interest would be better served by nondisclosure or if the request would affect the effectiveness of the operations of the public service. Access can also be denied if the documents refer to government actions related to constitutional responsibilities, national defense or national security, investigations, business or industrial secrecy or monetary policy. Access to documents that contain personal information are limited to the persons named in the documents. There are also restrictions for information protected by other laws including classified information, health information, statistics, the civil and central registry, and the law on the historical archives.

Denials can be appealed administratively. The Ombudsman can also review cases of failure to follow the law.[386] The Ombudsman recommended in 2002 that agencies make access with 15 days for files for with an interest and 30 days for general access and not overuse the exception on effectiveness of the public administration.[387]

Government bodies are also required to maintain a registry of documents and publish acts and decisions.

Spain signed the Aarhus Convention in June 1998. Law 38/1995 on the right of access to information relating to the environment implements the 1990 EU Access to Environment Directive.[388] It was adopted after the European Commission found that the Law on Public Administration was not adequate and started infringement proceedings against Spain in 1992.

The Data Protection Act allows individuals to access and correct records about themselves held by public and private bodies.[389] It is enforced by the Data Protection Agency.[390]

SWEDEN

Sweden has a long history of freedom of information, enacting the world's first freedom of information act - the Freedom of the Press Act in 1766. The Act required that official documents should "upon request immediately be made available to anyone making a request" at no charge.

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[385] 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. Modified by ley 4/99, de 13 January 1999.

[386] Homepage: http://www.defensordelpueblo.es/index.asp

[387] Annual Report 2002.§ 3.3.1.2.

[388] See http://www.mma.es/normativa/legis/138-1995.htm

[389] Organic Law 15/1999 of 13 December on the Protection of Personal Data. https://www.agenciaprotecciondatos.org/ley_15_ingles_v2_pdf.pdf

[390] Homepage: https://www.agenciaprotecciondatos.org/

The current version of the Freedom of the Press Act, part of the Constitution, was adopted in 1949 and amended in 1976. Chapter 2 on the Public Nature of Official Documents,[391] decrees that "every Swedish subject shall have free access to official documents." Public authorities must respond immediately to requests for official documents. Requests can be in any form and can be anonymous.

Each authority is required to keep a register of all official documents and most indices are publicly available. This makes it possible for ordinary citizens to go to the Prime Minister's office and view copies of all of his correspondence. There is currently an effort to make the registers available electronically. There are four exceptions to the registration requirement: documents that are of little importance to the authorities activities; documents that are not secret and are kept in a manner that is can be ascertained whether they have been received or drawn up by the authority; documents that are kept in large numbers which the government has exempted under the secrecy ordinance; and electronic records already registered and available from another ministry.[392] Most importantly, internal documents such as drafts, memoranda and outlines are not considered official documents unless they are filed and registered or they contain new factual information that is taken into account in decision making. There is no obligation to keep nonofficial documents.

Under the Act, there are discretionary exemptions to protect national security and foreign relations; fiscal policy, the inspection and supervisory functions of public authorities; prevention of crime; the public economic interest; the protection of privacy; and the preservation of plant or animal species.

All documents that are secret must be specified by law. A comprehensive list of the documents that are exempted is provided in the Secrecy Act.[393] Most of the restrictions require a finding that release would harm the interest protected. Information can be kept secret for between 2 and 70 years. The Secrecy Ordinance sets additional regulations on some provisions of the Secrecy Act.[394]

Decisions by public authorities to deny access to official documents may be appealed internally. They can then be appealed to general administrative courts and ultimately to the Supreme Administrative Court. Complaints can also be made to the Parliamentary Ombudsman.[395] The Ombudsman can investigate and issue non-binding decisions. The Ombudsman received 300 complaints relating to access to documents and freedom of the press between July 2000 and June 2001 and issued admonitions to government departments in 98 cases.[396]

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[391] See http://www.uni-wuerzburg.de/law/sw03000_.html

[392] Public Access to Information and Secrecy with Swedish Authorities. http://justitie.regeringen.se/pressinfo/pdf/publicaccess.pdf, Ministry of Justice, The right of access to official documents in Sweden. http://justitie.regeringen.se/inenglish/pressinfo/pdf/access.pdf

[393] Secrets Act (1980:100). http://www.notisum.se/rnp/sls/lag/19800100.htm (in Swedish). See Public Access to Information and Secrecy with Swedish Authorities.

[394] Secrecy Ordinance (1980:657). http://www.notisum.se/rnp/sls/lag/19800657.htm (in Swedish)

[395] Homepage: http://www.jo.se/default.asp?SetLanguage=en

[396] Annual Report 2001-2002.

The government ran an "Open Sweden Campaign" in 2002.[397] The campaign was aimed at increasing public-sector transparency, raising the level of public knowledge and awareness of information disclosure policies, and encouraging active citizen involvement and debate. It was coordinated by representatives from the national government, county councils, municipalities and trade unions. The government said that even with the longstanding existence of freedom of information in Sweden, that the rights in the Act were not being upheld properly finding:

> clear signals from the public, journalists and trade unions and professional organizations indicate that inadequacies exist in terms of knowledge about the public access to information principle, and with respect to its application. Examples of such inadequacies include delays in connection with the release of official documents, improper invocations of secrecy and cases where employees do not feel at liberty to exercise the freedom of expression and communication freedom guaranteed them by law. Many citizens have insufficient knowledge of these rights, making it difficult for those citizens to exercise them. The government believes that this type of openness is one of the cornerstones of a democratic society, and that it must continue to be so.

The Government announced a proposal in 2002 to merge the Secrecy Act and the Public Records Act into a single Management of Official Documents Act that would "set all the requirements to be met by public authorities throughout the process of handling official documents."[398]

Sweden signed the Aarhus convention in June 1998. Currently, access to environmental information is under the Freedom of Press Act.

Individuals have a right to access and correct personal information held by public and private bodies under the Personal Data Act.[399] It is enforced by the Data Inspection Board.[400]

The Penal Code makes it a crime punishable up to one year to intentionally release secret information.

THAILAND

The right to information has been recognized by the Constitution since 1991. Section 48 of the 1997 Constitution states:

> A person shall have the right to get access to public information in possession of a State agency, State enterprise or local government organisation, unless the disclosure of such information shall affect the security of the State, public safety or interests of other persons which shall be protected as provided by law.[401]

[397] Homepage: http://www.oppnasverige.nu/html/
[398] http://justitie.regeringen.se/propositionermm/sou/pdf/sou2002_97.pdf
[399] Personal Data Act (1998:204) . http://www.datainspektionen.se/RTF-filer/pul-eng.rtf
[400] Home page: http://www.datainspektionen.se/in_english/start/start.shtml
[401] Constitution of the Kingdom of Thailand, B.E. 2540 (1997). http://www.oefre.unibe.ch/law/icl/th00000_.html

The Official Information Act was approved in July 1997 and went into effect in December 1997.[402] The Act allows citizens to demand official information. The agency must respond within a "reasonable time."

State agencies are required to public information relating to their structure, powers, bylaws, regulations, orders, policies and interpretations. They are also required to keep indices of documents. Historical information is to the National Archives Division.

Information that "may jeopardize the Royal Institution" cannot be disclosed. There are discretionary exemptions for information that would: jeopardize national security, international relations or national economic or financial security; cause the decline of the efficiency of law enforcement; disclose opinions and advice given internally; endanger the life or safety of any person; disclose medical or personal information which would unreasonably encroach upon the right of privacy; disclose information protected by law or given by a person in confidence; other cases prescribed by Royal Decree. Information relating to the royal institution is to be kept secret for 75 years. Other information should be disclosed after 20 years which may be extended in five years periods.

Those denied information can appeal to a Information Disclosure Tribunal whose decisions are deemed final except for appeals to the administrative court by citizens who believe that the decision of the tribunal was unjust.

The Official Information Board supervises and gives advice on implementation, recommends enactment of Royal Decrees, receives complaints on failure to publish information, and submits reports. The Office of the Official Information Commission (OIC), which is part of the Prime Minister's Office, is the secretariat of the bodies.[403] The OIC reported that it handled 150 complaints and 88 appeals in 2001. It has heard over 700 requests since the act came into effect.

The law also sets rules on the collection, processing and dissemination of personal information by state agencies.

There were many requests in the first three years of the Act. In one well-known incident, a mother whose daughter was denied entry into an elite state school demanded the school's entrance exam results. When she was turned down, she appealed to the OIC and the courts. In the end, she obtained information showing that the children of influential people were accepted into the school even if they got low scores. As a result, the Council of State issued an order that all schools accept students solely on merit. Other information requests have resulted in the partial release of the government report on the May 1992 uprising and the release of investigation reports of the National Anti-Corruption Commission. Since then, however, interest appears to be slipping, especially with the media, who appear to use the act very infrequently. A number of problems found include:

- Time frames are not realistic and need to be extended;
- Enforcing decisions of the Tribunals have been difficult due to overlapping laws;

[402] Official Information Act, B.E. 2540 (1997), http://www.oic.thaigov.go.th/eng/statue/Statutedata.htm
[403] Homepage: http://www.oic.thaigov.go.th/eng/engmain.asp

- Several of the ex-oficio members of the Commission frequently do not attend meetings;
- The OIC is part of the bureaucracy while the Board and Tribunal are independent.[404]

The Thai government proclaimed 2002 the Year of Access to Official Information. Prime Minister Thaksin Shinawatra in August 2003 called on citizens to use the Act to fight corruption noting "I believe 95 per cent of government information can be disclosed to the public. I myself have nothing to hide". Deputy Prime Minister Vishanu Krua-ngam said that the largest problem was the opposition of government departments, ""Government agencies tried to buy time instead of answering right away whether the information could be disclosed or not."

TRINIDAD AND TOBAGO

The Freedom of Information Act was approved in 1999 and went into effect in February 2001.[405] Any person may request official documents in any form from public authorities, including public corporations and private bodies that are exercising state power. Response to information requests should be made within 30 days.

There are exemptions for Cabinet documents less than 10 years old, defense and security, international relations, internal working documents, law enforcement, privilege, personal privacy, trade secrets, confidence, and documents protected by another law. There is a public-interest test that allows documents to be released if there is "reasonable evidence" of a significant abuse or neglect of authority, injustice to an individual, danger to the health of an individual, or the unauthorized use of public funds.

The Act does not apply to the President and the judicial functions of the courts. The President may also issue a decree exempting agencies from coverage under the Act.

Those denied can appeal to the Ombudsman who may issue a recommendation which is not binding on the agency concerned.[406] The Ombudsman received four complaints in 2001 and ten complaints in 2002. Appeals can also be made to the High Court for judicial review.

The Act also requires public authorities to publish information relating to the structure and functions of the authority, rules, manuals and other documents on making decisions.

The Act was amended in 2003 to clarify that the minister in charge of the act would be appointed by the government rather than set in the Act after the original ministry was abolished and to clarify which ministry can certify national security documents.[407]

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[404] See Mark Tamthai, Mechanisms to implement legislation on access to information, 2002.

[405] Freedom of Information Act, 1999. Act 26 of 1999. http://www.foia.gov.tt

[406] Homepage: http://www.ombudsman.gov.tt/

[407] The Freedom of Information (Amendment) Act, No. 14 of 2003. 7 April 2003. http://www.ttparliament.org/bills/house/2002/b2002h08.htm

Implementation is overseen by the FOI Unit of the Ministry of Public Administration and Information.[408] Regulations setting fees and other issues have not been finalized.

UKRAINE

The Constitution does not include a specific general right of access to information but contains a general right of freedom of collect and disseminate information and rights of access to personal and environmental information.[409] Article 34 states, "Everyone has the right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice." Article 32 states, "Every citizen has the right to examine information about himself or herself, that is not a state secret or other secret protected by law, at the bodies of state power, bodies of local self-government, institutions and organisations." Article 50 states, "Everyone is guaranteed the right of free access to information about the environmental situation, the quality of food and consumer goods, and also the right to disseminate such information. No one shall make such information secret."

The 1992 Law on Information allows citizens to request access to official documents.[410] The government body must respond in 10 days and provide the information within 30 days unless provided by law.

Documents can be withheld if they contain state secrets, confidential information, information on law-enforcement authorities or investigations, personal information, interdepartmental correspondence for policy decisions, regulatory and legal documents, and information on fiscal institutions.

Denials can be appealed to a higher level at the agency concerned and then to a court.

The Law on the Amendments to the Several Legal Acts on the Safeguards and Unhampered Fulfillment of the Human Right to Freedom of Speech was adopted in April 2003. It amended the Code of Administrative Offences to increase penalties for violation of access of information and also prohibited censorship and limited liability for journalists for the unintentional dissemination of false information.[411]

President Kuchma signed a degree in August 2002 ordering the Cabinet of Ministers to study the implementation of the Act on Information for the years 2000-2002.[412] The order also requires that central and local executive bodies hold online press conferences and regularly update web sites. The study released in January 2003 said that the system of transparency

[408] Home page: http://www.foia.gov.tt

[409] Constitution of Ukraine, 1996. http://www.elaw.org/assets/word/Ukraine%2D%2DConstitution%281996.06.28%29.doc

[410] The Law on Information, N 2657-Xii, October 2, 1992 As amended by the Law N 1642-III of April 6, 2000 and N 3047–III of February 7, 2002. http://www.elaw.org/resources/text.asp?ID=1479

[411] See Article XIX, Statement on the draft Law of Ukraine on the Insertion of Changes to Certain Laws of Ukraine as a Result of the Parliamentary Hearings "Society, Mass Media, Authorities: Freedom of Expression and Censorship in Ukraine", April 2003. http://www.article19.org.ua/laws/april2003e.html

[412] Presidential Decree "On Additional Steps to Ensure Transparency and Openness of the State Bodies' Activities" N.683/2002 of 1 August 2002. http://www.article19.org.ua/laws/683e.html

was improving.[413] The Kharkiv Group for Human Rights Protection found that access to information was generally limited and had been decreasing since 1995.[414]

Article 2 of On the Order of Dissemination of Information on Public Bodies and Local Governments Activity by Mass Media[415] requires public bodies to inform the mass media about their activities."

The Law On State Secrets sets broad rules on information relating to defense, foreign affairs, state security and other areas that disclosure would cause harm to the state.[416] The List of Information that belongs to State Secrets (LLISS) defines what can be classified. It is overseen by the State Committee on State Secrets. Ukraine signed an agreement with NATO in 1995 to harmonize its classified information system with NATO.[417] Under the NATO-Ukraine 2003 Target Plan in the Framework of the NATO-Ukraine Action Plan, the Ukrainian Government committed in 2003 to implement regulations on the protection of NATO classified information while at the same time improve access to information based on recommendations of the Council of Europe, improve the transparency of government procurement and "consider a possibility to declassify maps, satellite imagery, and aerial photography with the aim to use them for civil purposes."[418] The Action Plan was agreed to in November 2002 but was classified by the President. The Ukranian Parliament voted in December 2002 to demand that the government declassify it. A study by the Kharkiv Group for Human Rights Protection found that there was a great deal of overclassification of documents in 2000-2001.[419]

The Law On National Archival Fund and Archival Bodies allows for access to records once they are in the possession of the Archives.[420] Documents containing state secrets can be withheld until they are declassified by the public authority. Personal information can be withheld for 75 years.

Ukraine signed the Aarhus Convention in 1998 and implemented it in 2002.[421] The revised Law on protection of natural environment provides for access to information and citizen participation.

A bill on the Protection of Personal Data is currently pending in the Parliament.

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413 See Article 19 Ukraine Bulletin, December 2002-January 2003. http://www.article19.org.ua/digest/january2003e.html

414 Kharkiv Group for Human Rights Protection, Freedom of Access to Governmental Information. http://www.khpg.org/index.php?au=0322000900

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

416 Law on state secrets no. 3855-XII of 21 January 1994.

417 See NATO-Ukraine Action Plan, 21-22 November 2002. http://www.nato.int/docu/basictxt/b021122a.htm

418 NATO-Ukraine 2003 Target Plan in the Framework of the NATO-Ukraine Action Plan, 24 March 2003. http://www.nato.int/docu/basictxt/b030324e.pdf

419 Kharkiv Group for Human Rights Protection , Analysis of Practice Access to Governmental Information. http://www.khpg.org/index.php?au=0322001000

420 Law On National Archival Fund and Archival Bodies of December 24, 1993 N 3814-XII in the redaction of the Law of December 13, 2001 No 2888-III.

421 The Law On the Amendments to the Several Laws of November 28, 2002 N 254-IV.

UNITED KINGDOM

The Freedom of Information Act was adopted in November 2000 after nearly 20 years of campaigning.[422] The Act gives any person a general right of access to information held by a broad array of public authorities, which will number over 100,000 when it is in full effect. State authorities are required to respond within 20 working days.

There are three categories of exemptions. Under the absolute exemption, court records, most personal information, information relating to or from the security services, information obtained under confidence, or information protected under another law cannot be disclosed. Under the "qualified class exemption," information can be withheld if it is determined to be within a broad class of exempted information. This includes information relating to government policy formulation, safeguarding national security, investigations, royal communications, legal privilege, public safety or was received from a foreign government. The third category is a more limited class exemption where the government body must show prejudice to specified interests to withhold information. This includes information relating to defense, international relations, economy, crime prevention, commercial interests, or information that would prejudice the effective conduct of public affairs or inhibit the free and frank provision of advice. A "public-interest test" applies to the last two categories and provides that information can be withheld only when the public interest in maintaining the class or prejudice exemption outweighs the public interest in disclosure. Decisions on the public-interest test can be made beyond the Act's 20-day limit as long as it is within a time period that is deemed "reasonable in the circumstances."

Public authorities are also required to develop publication schemes which will provide information about their structures and activities and categories of information that will be automatically released.

Under the law, the Information Commissioner oversees and enforces the Act.[423] The Commissioner has the power to receive complaints and issue decisions. When the Commissioner orders the release of information based on the public interest test, the decision can be overruled by the Minister of the Department with a ministerial certificate. Appeals of the Commissioner's decisions are made to the Information Tribunal which can also review and quash certificates on limited grounds. Appeals of the Tribunal's decisions on points of law are made to the High Court of Justice. The Commissioner also reviews and approves publication schemes.

The Department of Constitutional Affairs (formerly the Lord Chancellor's Department) is in charge of implementing the act.[424] It has developed a code of good practice, provides advice and guidance, jointly runs an advisory group with the Information Commissioner, and submits an annual report on implementation to Parliament. In its most recent report, the LCD identified 381 other pieces of legislation that limit the right of access under the FOIA and has committed to repealing or amending 97 of those laws and reviewing a further 201.[425]

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[422] Freedom of Information Act 2000 http://www.cfoi.org.uk/foiact2000.html. See Campaign for Freedom of Information, Briefings on FOI. http://www.cfoi.org.uk/briefingpack.html

[423] Homepage: http://www.informationcommissioner.gov.uk/index.htm

[424] DCA FOI Page: http://www.lcd.gov.uk/foi/foidpunit.htm

[425] LCD, Second Report to Parliament on the Review of Legislation Governing the Disclosure of Information November

Implementation of the Act has been slow. The government announced in November 2001 that the provisions of the Act that allow citizens to demand information will not go into force until 2005. All national and local departments will simultaneously provide access in a "big bang," rather than in phases. The provisions on publication schemes for central and local government bodies have gone into force and are being phased in for other bodies over the next year.[426] Most organizations will adopt model schemes developed with the approval of the Commissioner. The Commissioner admitted in his 2002-03 annual report that standards for the initial schemes were set low but will be raised when the schemes are renewed.

The Hutton Inquiry into the death of a government scientist following controversy over charges that the government had mislead the public regarding Iraq has provided nearly all documents on its web site.[427] The documents have generated considerable interest in FOI as they reveal the inner working of the government and would not likely have been released otherwise.

Until the FOIA goes into effect, a non-statutory "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.[428] In 2003, the Parliamentary Ombudsman threatened to stop all investigations into the code after the government refused to cooperate in one case and in two other cases, including a question on conflicts of interest by ministers, issued a certificate preventing the Ombudsman from investigating on the grounds that releasing information "would be prejudicial to the safety of the State or otherwise contrary to the public interest."[429]

The Official Secrets Act 1989 criminalizes the unauthorized release of government information by officials.[430] It has been frequently used against government whistleblowers and the media for printing information relating to the security services. The House of Lords ruled in 2002 that there is no public interest exemption to the act.

Under the Public Records Act, files that are 30 years old are automatically released by the National Archives.[431]

The UK signed the Aarhus Treaty in June 1998. The Environmental Information Regulations 1992 implement the 1990 EU Directive on access to environmental information.[432] New

2002. http://www.lcd.gov.uk/foi/foidoirpt2.htm

[426] Freedom of Information Act 2000 (Commencement No. 2) Order 2002, 12th November 2002. http://www.hmso.gov.uk/si/si2002/20022812.htm

[427] Homepage: http://www.the-hutton-inquiry.org.uk/

[428] Code of Practice on Access to Government Information, April 4 1994, revised in January 1997. http://www.cfoi.org.uk/coptext.html

[429] Parliamentary Commissioner for Administration, 6th Report – Session 2002-2003. http://www.parliament.ombudsman.org.uk/pca/document/aoi03nj/index.htm

[430] http://www.cyber-rights.org/secrecy/

[431] Public Records Act, 1958. http://www.pro.gov.uk/about/act/act.htm

[432] The Environmental Information Regulations 1992, Statutory Instrument 1992 No. 3240. http://www.hmso.gov.uk/si/si1992/Uksi_19923240_en_1.htm

Environmental Information Regulations which implement the Aarhus Treaty and the 2003 EU Directive are awaiting approval.[433]

Individuals can access and correct files that contain personal information about themselves under the Data Protection Act 1998. Appeals can be made to the Information Commission or the courts. The Lord Chancellors Department held a consultation in 2003 on expanding the exemptions in the act after several prominent figures obtained records under the Act which were embarrassing to the government.[434]

The Freedom of Information (Scotland) Act was approved by the Scottish Parliament in May 2002.[435] The law is considered somewhat stronger than the UK Act. It has a stronger prejudice test for restricting information and Ministers power to veto the Commissioner's decisions is more limited. It will also go info effect in January 2005. The Welsh Assembly has adopted a Code of Practice based on the UK code.[436] It requires disclosure of information unless it would cause "substantial harm" if it were released. However, the Welsh Assembly has limited legislative powers.

The Local Government (Access to Information) Act 1985 provides a right of access to "background papers" about the policies and practices of local authorities.[437] It also extended the number of meetings of local authorities and some other public bodies which are open to the public.

UNITED STATES

The Freedom of Information Act (FOIA) was enacted in 1966 and went into effect in 1967.[438] It has been substantially amended several times, most recently in 1996 by the Electronic Freedom of Information Act.[439] The law allows any person or organization, regardless of citizenship or country of origin, to ask for records held by federal government agencies. Agencies include executive and military departments, government corporations and other entities which perform government functions except for Congress, the courts or the President's immediate staff at the White House, including the National Security Council. Government agencies must respond in 20 working days.

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[433] DEFRA, Consultation on New Draft Environmental Information Regulations on Public Access to Environmental Information. http://www.defra.gov.uk/environment/consult/envinfo/. See also Campaign for Freedom of Information, Response on Draft Regulations, http://www.cfoi.org.uk/pdf/draftEIRresponse.pdf

[434] A Lord Chancellor's Department Consultation Paper Data Protection Act 1998: Subject Access, October 2002. http://www.lcd.gov.uk/consult/foi/dpsacons.htm. See Ashcroft memos may spur data law repeal, The Guardian, 5 February 2002; MP challenges secrecy culture, The Guardian, 27 June 2001.

[435] Freedom of Information (Scotland) Act 2002. http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts2002/20020013.htm. See the Campaign for Freedom of Information in Scotland site for more information http://www.cfoi.org.uk/scotland.html

[436] National Assembly for Wales, Code of Practice on Public Access to Information, 2001. http://www.wales.gov.uk/keypubcodespractice/content/codespractice/contents-e.htm

[437] See CFOI, Access to Local Government Information. http://www.cfoi.org.uk/localgov.html

[438] Freedom of Information Act, 5 USC 552, 1966. http://www.epic.org/open_gov/foia/us_foia_act.html

[439] Electronic Freedom of Information Act Amendments of 1996. http://www.epic.org/open_gov/efoia.html

There are nine categories of discretionary exemptions: national security, internal agency rules, information protected by other statutes, business information, inter and intra agency memos, personal privacy, law enforcement records, financial institutions and oil wells data.[440] There are 142 different statutes that allow for withholding under exemption 3. In 2003, the Homeland Security Act added a provision prohibiting the disclosure of voluntarily-provided business information relating to "Critical Infrastructure".

Appeals of denials or complaints about extensive delays can be made internally to the agency concerned. The federal courts can review and overturn agency decisions. The courts have heard thousands of cases in the 35 years of the Act.

Management for FOIA is decentralized. The US Justice Department provides some guidance and training for agencies.

The FOIA also requires that government agencies publish material relating to their structure and functions, rules, decisions, procedures, policies, and manuals. The 1996 E-FOIA amendments required that agencies create "electronic reading rooms" and make available electronically the information that must be published along with common documents requested. The DOJ has issue guidance that documents that have been requested three times be made available electronically.

In 2002, there were over 2.4 million requests made to federal agencies under the FOIA and the Privacy Act, the highest number ever.[441] Law enforcement and personal privacy were the most cited exemptions for withholding information.

The FOIA has been undermined by a lack of central oversight and in many agencies, long delays in processing requests. In some instances, information is released only after years or decades. The General Accounting Agency found in 2002 that "backlogs of pending requests government wide are substantial and growing, indicating that agencies are falling behind in processing requests."[442] In its 2003 audit of agencies practices, the National Security Archive review found a number of problems:

- Inaccurate or incomplete information about agency FOIA contacts.
- Failure to acknowledge requests.
- Lost requests.
- Excessive backlogs.
- Complete decentralization of agency FOI operations leading to delay and lack of oversight.
- Inconsistent practices regarding the acceptance of administrative appeals.
- Appealing FOIA determinations may delay processing, but also may get the agency's attention.

[440] For a detailed review of the FOI and other open government laws, see Hammitt, Litigation under the Federal Open Government Laws 2002 (EPIC 2002).

[441] Justice Department, Summary of Annual FOIA Reports for Fiscal Year 2002. http://www.usdoj.gov/oip/foiapost/2003foiapost31.htm

[442] General Accounting Office, Update on Implementation of the 1996 Electronic Freedom of Information Act Amendments, GAO-02-4/93, August 2002. http://www.gao.gov/new.items/d02493.pdf

- Conflation of fee categorization and fee waiver standards.[443]

The Bush Administration has engaged in a general policy of restricting access to information. In October 2001, Attorney General John Ashcroft issued a memo stating that the Justice Department would defend in court any federal agency that withheld information on justifiable grounds.[444] Previously, the standard was that the presumption was for disclosure. However, surveys done by the National Security Archive and General Accounting Office found that for the most part the memo had not caused substantial changes in releases.[445] The Bush Administration has also refused to release information about the secret meetings of the energy policy task force; ordered federal Websites to remove much of the information that they had that could be sensitive[446]; issued a controversial memo limiting access to records under the Presidential Records Act in November 2001[447] which allows former Presidents and Vice-Presidents to prevent access to records (bill are currently pending in Congress to reverse that order); and has refused to disclose information on the Patriot Act and the names of those arrested after September 11.

There are a number of other laws that provide for access. The Government in the Sunshine Act requires the government to open the deliberations of multi-agency bodies such as the Federal Communications Commission.[448] The Federal Advisory Committee Act requires the openness of committees that advise federal agencies or the President.[449] The Privacy Act of 1974 works in conjunction with the FOIA to allow individuals to access their personal records held by federal agencies.[450]

The Executive Order on Classified National Security Information requires that all information 25 years and older that has permanent historical value be automatically declassified within five years (since extended until December 2006) unless it is exempted.[451] Individuals can make requests for mandatory declassification instead of using the FOIA. Decisions to retain classification are subject to the Interagency Security Classification Appeals Panel. Between 1995-2001, over 950 million pages out of 1.65 billion pages were declassified, 100 million pages in 2001 alone.[452] The executive order was amended in 2003 to somewhat restrict release. The Information Security Oversight Office, a division of the National Archives, has policy oversight of the Government-wide security classification system.[453] ISOO's 2002 report says that classification by government agencies is increasing while declassification has slowed down.

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443 National Security Archive, The Ashcroft Memo: "Drastic" Change or "More Thunder Than Lightning"?, March 14, 2003. http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB84/index.html;

444 http://www.usdoj.gov/oip/foiapost/2001foiapost19.htm

445 See National Security Archive, The Ashcroft Memo, ibid.; General Accounting Office, Freedom of Information Act: Agency Views on Changes Resulting from New Administration Policy. GAO-03-981, September 3, 2003. http://www.gao.gov/cgi-bin/getrpt?GAO-03-981

446 See OMB Watch, Access to Government Information Post September 11th, http://www.ombwatch.org/article/archive/104/

447 Executive Order 13233 of November 1, 2001. http://www.fas.org/irp/offdocs/eo/eo-13233.htm

448 Government in the Sunshine Act, 5 U.S.C. 552b. http://www.epic.org/foia/21/appendixc.html

449 Federal Advisory Committee Act, 1972, 5 U.S.C. App II. http://www.epic.org/foia/21/appendixd.html

450 Privacy Act of 1974, 5 U.S.C. 552a

451 Executive Order 12958-Classified National Security Information, as Amended. http://www.archives.gov/about_us/basic_laws_and_authorities/appendix_12958.html

452 Information Security Oversight Office 2001 Report to the President, September 2002.

453 Home page: http://www.archives.gov/isoo/

There are also laws in all fifty states on providing access to government records.[454] A number of states have information commissions which review decisions. State laws on freedom of information have also been under threat since September 11 due to terrorism concerns.

UZBEKISTAN

Article 30 of the 1992 Constitution states:

> All state bodies, public associations, and officials of the Republic of Uzbekistan shall allow any citizen access to documents, resolutions, and other materials, relating to their rights and interests.[455]

The Law on the Principles and Guarantees of Freedom of Information was adopted in December 2002 and went into effect in February 2003.[456] It replaces the 1997 Law on Guarantees and Freedom of Access to Information.[457] The law sets a general principle for freedom of information of "openness, publicity, accessibility and authenticity." It also states that, "Information must be open and public except for confidentiality."

Every person has a right to demand information. The right to information cannot be limited based on sex, race, ethnic origin, language, religion, ascription, and personal beliefs as well as personal and social rank. State bodies are given 30 days to respond to written requests. Oral requests must be responded to as soon as possible.

However, the statute sets broad areas where information can be restricted. Confidential information is defined as that for which disclosure can cause damage to the rights and legitimate interests of the individual, community and state. It can also be limited by law to protect the "fundamental rights and liberties of individuals, fundamentals of constitutional regime, moral values of the community," national security, and "the nation's spiritual, cultural and scientific potential."

Information relating to rights of citizens, legal status of government bodies, the environment, emergency situations, or is available in libraries, archives and information systems cannot be made confidential.

Refusals of information can be appealed to the courts. The requester can receive compensation if information is unlawfully withheld or inaccurate information is given.

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[454] See Reporters Committee for Freedom of the Press. http://www.reporters.net/nfoic/web/index.htm

[455] http://www.uta.edu/cpsees/UZBEKCON.htm

[456] The Law on the Principles and Guarantees of Freedom of Information, 12 December 2002. http://www.uza.uz/official/2003/2/4.shtml (in Russian)

[457] The Law on Guarantees and Freedom of Access to Information http://www.ijnet.org/img/assets/1033/Uzbekistan_Access_to_Information_Law.doc

ZIMBABWE

The Access to Information and Privacy Act was signed by President Mugabe in February 2002.[458] The main thrust of the law is to give the government extensive powers to control the media by requiring the registration of journalists and prohibiting the "abuse of free expression."

However, on paper, the law also creates a right of access by any citizen or resident (but not an unregistered media agency or foreign government) to records held by a public body that are generally similar to other FOI laws around the world. There has only been one reported instance of the access to information provision being used by the opposition party.[459]

Under the rules, the body must respond to a request in 30 days. There are exemptions for Cabinet documents and deliberations of local government bodies, advice given to public bodies, client-attorney privilege, law-enforcement proceedings, national security, intergovernmental relations, public safety, commercial information, and privacy. There is a public-interest disclosure provision that allows the government to release information even if there is no request for a variety of reasons, including matters that threaten public order; the prevention, detection or suppression of crime; and national security. It also includes provisions on access and use of personal information.

The Act created a Media and Information Commission which has mostly been used to restrict freedom of expression. Individuals can ask the Commission to review the decisions or actions of an agency. The Commission can conduct inquiries into the Act and order release of documents. Appeals can be made to an administrative court.

The controversial law was opposed by many governments, NGOs, media organizations and the UN Special Rapporteur on Freedom of Opinion and Expression because of the strong restrictions it places on freedom of expression. As of September 2003, the act's primary function has been to repress journalists and newspapers opposed to President Mugabe. The Supreme Court ruled in September 2003 that the Daily News, the nation's only independent newspaper, must register with the Media Commission and it was shut down by police for failing to do so. A number of journalists have also been arrested under the act (many of whom were jailed for the violations), including one from the UK *Guardian,* who was later deported.

[458] Access to Information and Protection of Privacy Act (AIPPA), 15th March 2002 (General Notice 116/2002). Amended in June 2003 by the Access to Information and protection of Privacy Amendment Act, 2003, No. 5 of 2003 http://www.kubatana.net/html/archive/legisl/030611aippaamd.asp?sector=LEGISL

[459] MDC Demands Forex Receipts From RBZ, Financial Gazette (Harare), June 13, 2002.