



## **EU-China Information Society Project**

中国欧盟信息社会项目

### **Access to Government Information**

**in Europe and China:**

### **What Lessons to be Learned?**

欧洲与中国政府信息公开：我们能够学到什么？

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**The EU-China Information Society** project is a joint initiative between the Chinese Government and the European Union. The project started in July 2005 and runs through to the end of June 2009. The project aims to promote economic and social development through Informatization and works closely with the State Council Informatization Office (SCITO) in China. For more information see [www.eu-china-infso.org](http://www.eu-china-infso.org). For information on the regulatory activities within the project, contact Dr Thomas Hart at [thart@eu-china-infso.org](mailto:thart@eu-china-infso.org).

中国—欧盟信息社会项目是中国政府和欧盟之间的合作项目。项目从 2005 年 7 月开始，到 2009 年 6 月结束。通过与国务院信息化工作办公室紧密合作，项目旨在通过信息化推动中国的经济和社会发展。更多详情，请浏览项目网站 [www.eu-china-infso.org](http://www.eu-china-infso.org)。有关项目法规对话部分的活动，请联系 Thomas Hart 博士，电子邮箱 [thart@eu-china-infso.org](mailto:thart@eu-china-infso.org)。



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## **Background to the research**

The EU-China Information Society Project was set up between the EU and the Chinese Government in mid-2005 to support informatization<sup>1</sup> in China. One of the Project's aims is to support the development of a regulatory framework for Information Society that provides for reliable investment, economic and social improvement and the maximization of benefits to Chinese citizens through the new opportunities that Information Society brings about.

The Project is designed to improve the process of knowledge exchange between European and Chinese experts and decision-makers in Information Society regulation. The Project supports Chinese government agencies working on their specific pieces of policy and legislation. While this aspect is driven by the needs and requirements of respective Chinese government agencies, the Project aims at the same time to improve European knowledge about Chinese approaches to Information Society regulation and to commonly approach new challenges that are brought about through social and technological change.

The aims of this research were:

- Support the State Council Legislative Affairs Office (SC-LAO) in the revision of the Access to Government Information Regulation.
- Support SC-LAO in preparing for the implementation period of this regulation after it has received approval by the State Council.
- Identify solutions for the obstacles and difficulties in the revision process for the Chinese regulation and in the implementation process.
- Preparing future government staff handling access to information requests within the administration in acquiring the relevant skills.

### **About Access to Government Information Regulations**

Dozens of countries around the world have already established the right of access to records held by government offices, reversing the burden of proof for access to this kind of information: in these countries, it is the administration that needs to provide evidence why a citizen cannot access a specific piece of information instead of the other way round. This reversal is at the heart of all access to government information laws. Those laws (also "Freedom of Information Laws", "Transparency Laws", or similar) serve various purposes:

- They foster the modernization process of government and the establishment of e-government and e-administration services, because incentives for electronic record management and electronic filing systems are established,
- They improve the protection against corruption and abuse of official power by making the government system more transparent and accountable,
- They create a stronger and more trustful relationship between government and citizen, allowing citizens to get better involved in government procedures,
- They create direct benefits to citizens, enterprises and researchers who get better access to relevant information.

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<sup>1</sup> Informatization in China's context is defined as the transformation of an economy and society driven by ICT, involving the process of investments in economic and social infrastructure to facilitate the use of ICT by government, industry, civil society and the general public. The long-term goal of informatization is to build an information society (source: Jim Adams, VP World Bank East Asia and Pacific Region)

Regional access to information rulings had been enacted in China for some years, for instance in Guangzhou and Shanghai, before a national regulation was announced in 2007 to become effective in May 2008.

### **Project Procedure**

The EU-China Information Society Project established a joint cooperation on research and research-related workshops, seeking to provide specific details to the questions open in relationship to the possible future revision of the Access to Government Information regulation and in particular its implementation. Training measures for the implementation of the findings have been and will further be developed to ensure long-term effects on the administrative culture in China.

For these aspects, a research design including categories to be looked at, objects to be investigated, number of relevant examples etc., was developed and refined in discussions between the State Council Legislative Affairs Office (SC-LAO), the project team, plus the EU and China short-term experts. This has ensured that the report and its structure are most useful to SC-LAO in its task of drafting an Access to Government Information regulation and preparing for its implementation.

The research team consisted of one European expert, Megan Carter, working for the University College in London, and one Chinese researcher, Prof. Lv Yanbin of the Chinese Academy for the Social Sciences (CASS) in Beijing. These researchers were supported by Ma Senshu of SC-LAO and Dr. Thomas Hart from the Project Office. The research team was responsible for compiling EU examples and recommending key elements for an Access to Government Information Regime, whilst providing comments on the applicability of specific aspects in the Chinese context.

The research took place over several months, between Spring and Autumn 2007, with the final results presented and discussed in a workshop held by SC-LAO in December 2007.

## 1. Introduction

### 1.1 About this Report

#### 1.1.1 Purpose of this Report and Acknowledgements

This report describes the current state of information access in the European Union member states and China, focusing on aspects of possible interest to China's State Council Legislative Affairs Office (SC-LAO). Its goal is to draw from the European experience lessons and practices which may be of value during the implementation of the Chinese Access to Government Information Ordinance ("the Ordinance", hereinafter) in May 2008. Therefore this report includes extensive sections on Implementation and Training.

Experience indicates that when governments widen information access, there is a balance sought between adopting the best practices that have been effective elsewhere and developing information access schemes suitable to each country's own institutions and culture. Inclusion of any particular issue in this report does not imply approval by SC-LAO, but only that the subject was of interest for research and study.

This report has been prepared by surveying best practice examples from the EU member states, and by extensive research, including the results of other similar surveys and a questionnaire distributed among all member states responsible executive bodies. While not information from all member states was available, the effort of the authors was to provide examples from a wide range of administrations as interesting and relevant background for those in charge of implementing the Chinese regulation. Research materials were explicitly limited (for purposes of convenience and translation) to documents available online and in English. If any topic is not sufficiently fully explained, the reader is referred to the footnotes and to the extensive Library of Materials compiled for the use of the project.

As this report has been written by a team working in both Chinese and English, some differences in style may be apparent between various sections and chapters. The translation from Chinese to English was led by Dr. Lv Yanbin and included Dr. Song Hualin, Dr. Jiang Jing, and Ms. Yang Li.

#### 1.1.2 Report Structure

The following chapters cover several specific aspects of Freedom of Information (FOI), focusing on implementation issues. The situation in the EU and in China is described, with a view to learning from EU experiences and best practices. Each chapter includes comments that relate the subject of the research to the implementation of the Chinese Ordinance and recommendations based on the research.

This first chapter contains a brief overview of FOI in the EU, with summary tables. It then considers the history of access to government information in China, and describes the legislative history and characteristics of the *Ordinance on Access to Government Information of PRC*.

Chapter 2 covers the areas of **Fees and Charges**. EU experience includes fixed fees that may be required to be paid when a request is filed, or government costs for search time and providing copies in various formats. The relevant provisions of the Chinese Ordinance are discussed, with recommendations as to the best option for fees and charges.



Chapter 3 covers the topic of **Institutional Structures** for managing FOI schemes. It describes several models of structures within and across governments in the EU to manage FOI, including the roles and functions of central agencies and review bodies. In considering Chinese structures it contains detailed sections discussing systems of supervision, dispute resolution, and remedies.

Chapter 4 covers the types of **Training** that need to be developed and delivered both before and after implementation. It considers the best practices from the EU and the current systems of providing training for government officials in China.

Chapter 5 describes **Implementation** issues overall, including the outline of an implementation plan drawing on best practices from across the EU member states and recommending the most suitable options for China.

Chapter 6 has further **Notes on the Chinese Ordinance**, including suggestions for areas where more detail would be helpful, either as supplementary regulations or in policy / procedures manuals.

Annexes to the report contain supplementary reference material to be used wherever additional information is sought.

### **1.1.3 Areas For Future Investigation**

During the preparation of this report, additional questions of interest arose. Where it has been possible to research the requested information and include it in the already-planned chapters, that has been done. However it is clear that there are several matters of interest that will be fruitful areas for future research and reporting. The most notable of these areas that need to be further researched are:

- Detailed consideration of the processes and guidelines used in making FOI decisions, particularly applying the exemptions such as business information and personal privacy
- Consideration of the interaction between FOI and legislation restricting access to information (“Secrecy” laws)
- Mechanisms to co-ordinate between government agencies in handling FOI requests.

It is understood that the present report in its finished form may raise additional questions, and all such additional requests for future investigation will be appreciatively received.

## **1.2 Use of the term ‘FOI’ to cover all types of information access**

This report concerns the general topic of “access to government information”. For convenience this report will use the term “Freedom of Information” or its short form, *FOI*, as a shorthand term for all schemes which give the right of access to government information.

Broadly, FOI concerns itself with access regimes which give citizens the right to make a request to government for documents. The documents may or may not include documents about their own personal information; in some countries this is handled separately under Data Protection. The FOI laws may require the government to publish specified information proactively, which would be available to all people without the need for a formal request.

## 1.3 Overview of FOI in the European Union Member States

There are many methods by which citizens of EU member states can obtain information from government, several which have been established pursuant to an EU Directive. Because they implement these Directives, schemes in these areas are very similar across all the EU member states. The most notable examples of these areas are:

- Data Protection (DP)
- Access to Environmental Information (EIR)
- Public Procurement Information

Details of the most recent directives are in section 1.3.3, below.

In contrast, Freedom of Information (FOI) has not been established under an EU Directive, and its history in various member states ranges from 1766 in Sweden to 2006 in Germany. While the central concept is largely the same in all countries, the details, structures, the rights of appeal and so on are different in most countries. Therefore, a review of FOI in the European Union is first and foremost a review of the varying practices of the EU's member states. These states have only relatively recently begun to be assembled into an overarching administrative system.

As of 2007 there are twenty-seven member states, most of which exhibit some significant differences from each in their FOI practices. According to Banisar's 2006 overview of EU FOI practices, "Today, only Luxembourg, Cyprus and Malta do not have a comprehensive law on access to information while the laws in Italy, Greece and Spain are considered weak by international standards."<sup>2</sup> Although Malta has recently published a White Paper with its proposals for an FOI Act, these three countries will generally be omitted from discussion and from tables.

### 1.3.1 Multiple Administrative Contexts

As they do in China, EU FOI practices and procedures exist in the context of each state's evolving administrative system. The Swedish Statskontoret (Agency for Public Management), study *Principles of Good Administration in the Member States of the European Union*<sup>3</sup> identifies "(at least) four different traditions of administrative law in the EU member states."<sup>4</sup> The four traditions, as described by Statskontoret, are as follows.

- States with an **administration-centred tradition** maintain a specific (and usually separate) body of administrative law, used "as a tool for governments to run an efficient administration". France is the source of this tradition, and there are other EU member states that have looked to France as a model for their jurisprudence.
- States with an **individual-centred tradition** tend to have, in contrast, only one ("common law") jurisdiction for all types of cases, whether or not the cases are administrative. This tradition can be seen in states with Anglo-Saxon origins, such as those in the United Kingdom. (Its effects can be seen in the United States, where some jurists argue that the purpose of laws are to keep government from interfering with individuals. The United

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<sup>2</sup> Banisar, David. *Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws*. Privacy International, 2006.

<sup>3</sup> Statskontoret (Swedish Agency for Public Management). *Principles of Good Administration in the Member States of the European Union*. 2005. Published online at <http://www.statskontoret.se/>

<sup>4</sup> op. cit. page 74 and following

States are outside the scope of this study and are mentioned only to illustrate an extreme example of this tradition.)

- States with **legislator-centred tradition** are those in which elected representatives are actively involved in designing procedures, and administrators simply follow their instructions and carry out the procedures. States with Germanic histories, and some of the newer member states who were formerly part of the Austro-Hungarian Empire, follow this tradition in elevating the role of legislators above administrators.
- An **Ombudsman-centred culture** is one in which a significant role exists for peoples' advocates (called Ombudsmen or any other appropriate name) who are empowered to address administrative problems throughout the levels and bureaux of a state's administration. In Scandinavian countries where such systems have taken root, they are said to prevent "the development of litigation culture".

In discussing the administration of the European Union itself, the Statskontoret study says:

"In reality, none of these traditions can single-handedly represent any singular state. Where one tradition may dominate, the others are likely to be represented in part. This is especially true on the European level where the European Union has generated its own particular blend of traditions. While the administrative system of the European Union was initially modelled on the French system, subsequent developments led to a growing emphasis on individual rights in administrative procedures and lately, after Maastricht, by an independent Ombudsman focused on the fight against maladministration."<sup>5</sup>

So, while studying FOI in the EU member states, one must continually remember that FOI practices exist within each state's governmental culture. Assessment of these practices needs to take into account these cultural issues, and also the demographic reality that many EU member states are, in terms of population, very small when compared to the People's Republic of China. (Recent population figures for EU member states appear in the second of the tables below.)

### 1.3.2. History of Adoption of FOI

The first EU member state to institute FOI practices was Sweden, in 1766, with the *Freedom of the Press Act* (Lamble has demonstrated how the ideas for FOI came in part from Chinese models which influenced Anders Chydenius, the Finnish clergyman who drafted the Swedish legislation<sup>6</sup>). After that, FOI developed at various times in the member states, as shown in the following table. The years given here are the dates the legislation came into effect (as opposed to the year legislation was passed).

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<sup>5</sup> op. cit. page 76

<sup>6</sup> Lamble, Stephen. "Freedom of Information, a Finnish clergyman's gift to democracy," *Freedom of Information Review*, No. 97, February 2002, pages 2-8.

Table 1.1: Implementation of FOI in EU member states<sup>7</sup>

<b>Year FOI Legislation Came Into Effect</b>	<b>Name of EU Member States</b>
1766	Republic of Sweden
1951	Republic of Finland
1970	Kingdom of Denmark
1978	French Republic
1980	Netherlands
1986	Hellenic Republic (Greece)
1987	Republic of Austria
1990	Italian Republic
1992	Kingdom of Spain
1993	Republic of Hungary
1993	Portuguese Republic
1994	Kingdom of Belgium
1998	Ireland
1998	Republic of Latvia
2000	Republic of Bulgaria
2000	Czech Republic
2000	Republic of Lithuania
2001	Republic of Estonia
2001	Romania
2001	Slovak Republic
2002	Republic of Poland
2003	Republic of Slovenia
2005	Scotland (as part of UK below but has separate FOI law)
2005	United Kingdom
2006	Federal Republic of Germany
(not yet)	Republic of Cyprus
(not yet)	Grand Duchy of Luxembourg
(not yet)	Republic Malta

As can be seen from this table, half of the member states have implemented FOI in the past ten years; two of the more populous member states, the United Kingdom and the Federal Republic of Germany, did not fully implement FOI practices at the national level until 2005 and 2006 respectively. In implementing later than the other states they have been able to draw extensively on earlier models, often being able to avoid common mistakes of the past, but their experience is so recent that the culture of FOI in those states has not yet stabilised. On the other hand, their experience of implementation is fresh and their examples in that area can be of great usefulness.

Table 1.2 on the following pages provides current population figures for EU member countries, with the percentages of requests and appeals wherever information is publicly available. Where data exists, the percentages give a rough idea of the extent of use of FOI mechanisms, including requests for one's own personal data, and thus of the development of FOI culture.

One point of interest in these statistics is that several member states have (comparatively) recently disbanded "secret police" forces and permitted public access to records of surveillance by or collaboration with those forces. Where such schemes exist, comparatively

<sup>7</sup> Dates from *Overview of FOIA Countries Worldwide* (2006) by Roger Vleugels

high percentages of the public have asked to consult these records. Caution must be used in interpreting these statistics for this and many other reasons.

Firstly, many jurisdictions do not keep statistics for FOI or for other access mechanisms so any comparisons are necessarily incomplete. (Some columns are largely empty because, interestingly enough, more member states keep track of appeals, than keep track of requests. Perhaps this is because appeal statistics are easy to track at centralised points, whereas the expense of collecting detailed national statistics on requests may be high.)

Secondly, apart from local factors such as levels of the awareness of the right of access, there are a number of other factors in the design of the legislation and its implementation which influence the usage of FOI. Factors which affect the statistics on usage of FOI mechanisms include:

- Amount of information which is routinely available under the proactive publication scheme.
- The definition of “request” under their FOI Act; some require requests to be in writing (not oral); some require requests to refer to the FOI Act.
- Any fees or costs for seeking access. Invariably, higher costs deter citizens from using FOI and the statistics are lower.
- Existence of other access mechanisms. In some countries, use of these alternatives is mandatory. For example, in the United Kingdom, requests for personal data and environmental information MUST be processed under the specific DP and EIR mechanisms and not FOI, whereas in Ireland both types of requests may also be processed under FOI.
- Extent of retrospectivity under FOI: that is, to what extent does FOI permit access to documents created before it commenced. Some countries are fully retrospective, covering their entire history of printed records, and others permit only access to records created after their FOI regime commenced.
- What is excluded from coverage under their FOI Act. Not all public bodies may be covered, either in the original design of the Act (where Parliament and the judiciary are frequently excluded), or because of staged implementation where public bodies are gradually added to the scope of the Act. Counter to this is a trend to exclude public bodies or specific functions of public bodies by later amendments of the FOI Acts themselves or in other statutes. Other factors are the extent of coverage of the private sector, where some FOI regimes include documents in the possession of private sector companies and individuals who provide services for government under a contract.

Table 1.2 : Usage of FOI in the EU (partial)

	Most recent available population	Requests as % of population	Appeals as % of requests	Appeals as % of population	Data of fmr security services?	Notes
Austria	8,316,487					
Belgium	10,511,382			$9.37 \times 10^{-6}$		7,000 Environmental requests in 2003. Requests appealed to CADA: 116 in 2004, 81 in 2005 (10 of these were appealed to courts in those two years)
Bulgaria	7,725,965	.015	(No int or ext rights of appeal)	$3.18 \times 10^{-6}$	No access yet	Total requests in 2003: 67,712 (39% received info, 21% "tacit denial"); in 2004 49,653 (60% received info, 12% "tacit denial"); 38,000 of those were verbal; 123 decisions in Supreme Admin Court in 2001-2005
Czech Rep	10,306,709	"Low"		$1.84 \times 10^{-6}$	Yes	19 appeals to Public Defender of Rights in 2004
Cyprus	855,000					No law
Denmark	5,457,415			$4.58 \times 10^{-5}$		Ombudsman gets 200-300 complaints/year; decisions can be appealed to the courts but this is "rare"
Estonia	1,342,409					
Finland	5,291,517			$9.45 \times 10^{-6}$		Tax records of all citizens published in Nov each year Ombudsman handles 50 complaints each year Supreme Admin Court heard 40 cases in 1999-2002
France	64,102,140			$8.42 \times 10^{-5}$		2004: Appeals to CADA (non-binding) were 5400 (up 10% from 2003): 47.9% recommended to release, 20% settled meanwhile, 10% decisions against requestor; Bodies follow advice 70% of the time, ignore 10%
Germany	82,314,900			$3.28 \times 10^{-6}$	Yes (including Holocaust archives)	In first six months, 135 inquiries and complaints. There have been 2 million requests for individuals' Stasi files and 3 million requests for background checks; researchers & media have used the archives 15,000 times
Greece	11,170,957			$1.97 \times 10^{-6}$		2004: Ombudsman heard 22 cases re "violations of access to information"
Hungary	10,064,000			$1.68 \times 10^{-5}$	Yes	2004: Commissioner received 169 submissions: 71 complaints, 86 requests for consultation (from individuals, journalists, and public bodies)

	Most recent available population	Requests as % of population	Appeals as % of requests	Appeals as % of population	Data of fmr security services?	Notes
Ireland	4,239,000	$3.45 \times 10^{-3}$	2%	$8.49 \times 10^{-5}$		1998-2003: 93,000 total requests 2005: 14616 requests (2% appealed, 13% dealt with outside FOI); of 360 appeals, Information Commissioner heard 285. In a sample of 447 cases reviewed, OIC issued 272 formal decisions, affirmed govt in 75, varied in 18% and annulled in 6.6%. 10% settled. 12 High Court decisions and 2 Supreme Court decisions re FOI.
Italy	59,131,287			$1.42 \times 10^{-6}$		2004: CADA issued 84 opinions
Latvia	2,291,000				Release expected soon	Since 2004, 10-20% of complaints to State Data Inspectorate have been related to FOI
Lithuania	3,575,439			$2.04 \times 10^{-5}$	Yes	2004: Ombudsman reviewed 73 cases
Luxembourg	480,222					No law
Malta	402,000					No law
Netherlands	16,570,613			$6.03 \times 10^{-5}$		Per year: 1000 requests, courts hear 150 cases
Poland	38,518,241				Yes	14,000 people have asked to see their personal files from the former security services
Portugal	10,848,692			$4.86 \times 10^{-5}$		2004: CADA received 527 requests for advice, and issued 330 opinions
Romania	22,276,056	0.032	0.0026	$8.29 \times 10^{-5}$	(Not separated out)	2005: 710,000 requests ("mostly oral"), 2% denied; 1,846 administrative appeals (55% overturned, 33% rejected, 11% settled); there were 424 court cases 2004: 6,154 administrative appeals; Ombudsman received 403 complaints; there were 394 court cases
Slovak Republic	5,447,502					Data not publicly available
Slovenia	2,009,245			$2.51 \times 10^{-4}$		2005: 504 appeals (102 against refusals, 402 against lack of response)
Spain	45,116,894					Data not publicly available
Sweden	9,142,817					Numbers of requests are not recorded
United Kingdom	60,776,238	0.002	2%	$4.27 \times 10^{-5}$		2005: approx 130,000 FOI requests and 2,594 appeals (first 13 months). These figures do not include requests under the Environmental Information Regulations or requests under the Data Protection Act.

### 1.3.3 Progress Towards Harmonisation of FOI Regimes Across the EU

As the research has shown, there is not presently a harmonious FOI regime across the EU member states.

However, three recent and significant European Commission initiatives have attempted to harmonise access to public information across the member states in some partial but very important areas: the environment, public procurement, and the commercial re-use of public information. The description of these three initiatives is drawn from the web site of the European Commission funded project *Barriers to E-Government*<sup>8</sup>:

“In the **environment** domain, the need for harmonization resulted in the adoption of the international Convention of Aarhus (UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters) signed by the European Community on 25 June 1998, and in two European Directives (Directive 90/313 of 7 June 1990 on the freedom of access to information on the environment and Directive 2003/4 of 28 January 2003 on public access to environmental information, repealing Council Directive 90/313/EEC). Rules regarding time, conditions, restrictions and charges for requests in this area have been determined, as well as principles regarding which information should be made publicly available (‘active publicity’), access to justice and determination of the quality of the environmental information.

Regarding **public procurement** matters, the European legislative package consists in the Directive 2004/17 of the European Parliament and of the Council of 31 March 2004, coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors; and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of contracts for public works, public supply and public service.

The question of the **re-use of public sector information** has been addressed in the Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information.”

The implementation of these directives is not yet complete. As recently as 2005, the European Commission censured seven member states for failure to implement the Convention of Aarhus.<sup>9</sup>

In addition, there have been the Data Protection directives previously mentioned, and other administrative and statutory access schemes within each country. Implementation lessons from all of these schemes have been described where appropriate.

## 1.4 Current Status and Development of Access to Government

### Information in China

China first initiated practices related to Access to Government Information in the area of Publicising Government Affairs which took its first steps at village level. In the early 1980’s, when the Villagers’ Self-Government System was eradicated in China, the practice of Disclosure of Village Affairs immediately became prominent across a large area. This rural practice was standardized only after the publication of the *Organic Law of the Village Committee* in 1988. Ten years afterwards, after taking into account various experiences, the General Office of the Central Committee, CPC and the General Office of the State Council clarified the importance of the Disclosure of Village Affairs, and specified relevant requirements accordingly in a joint document entitled *Joint Opinions on Perfecting Systems of*

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<sup>8</sup> <http://www.egovbarriers.org/>

<sup>9</sup> European Commission. *Public access to environmental information: Commission takes legal action against seven Member States*. 11 July 2005.



*Transparency in Village Affairs and a Democratic Administration System.* Since then, Access to Government Information in China has expanded in scale to areas such as urban affairs, police, inspections etc. In 2000 and 2005, the above two General Offices respectively publicized a series of documents on the issue, including *Opinions Regarding Further Steps to Promote Transparency of Government Affairs in Local Government at Town and Village Level* and *Opinions on Further Enforcing Government Administration Publication*. In particular, the later document stressed the significance and imminence of Access to Government Information, which approached the issue from the perspective of promoting social democracy, enhancing social harmony, constructing a rule-by-law based government, preventing and punishing corruption. Besides, the State Council, in its *Guidelines for Building a Government Bye Law 2004*, considered three tiers of information disclosure as crucial to the fulfilment of a law-oriented administration: administrative decision-making, administration, and government information.

With the continuous development of democracy and legality, the upgrading of Access to Government Information has gradually been put on the agenda to meet the requirements of law-based administration, management innovation, information needed for national informatization, and a transparent government. For the general public in recent years, the idea of “disclosure as a general principle with non-disclosure as an exception” has become a broadly recognized concept. As for central and local governments, practices related to Access to Government Information have been successfully implemented, a series of relevant legal documents has been adopted, and valuable experience has been gained. At present, almost all government agencies directly under the State Council have publicized regulations on information disclosure on their own. At local government level, Guangzhou city, a pioneer in adopting local regulations on government information disclosure, promulgated the *Regulation of Guangzhou Municipality on Government Information Disclosure* on 6<sup>th</sup> November, 2002. Soon afterwards, local government in many areas announced particular regulations on this issue. Recently regulations on government information disclosure have been seen not only at provincial or municipal level, but also in many counties. There have even been administrative reconsideration cases and administrative litigations, which have greatly expanded the level of administrative concerning government information disclosure at local government level with effective supervision and administration remedies. Moreover, cities like Shanghai and Wuhan have developed a sound annual reporting system on government information disclosure.

The relevant practices performed by departments under the State Council and local governments have on the one hand improved government’s capacity to disclose government information on its own initiative and gained plentiful experiences, while on the other, they have built up a favourable momentum for the promulgation of the *Ordinance on Access to Government Information of the PRC*.

## **1.5 History of Legislation on Access to Government Information in China**

Chinese legislation on Access to Government Information started from 2002. Guided by a decision from the State Informatization Leading Group (SILG), agencies of the State Council initiated research on Access to Government Information Legislation. In 2003, the Ordinance was put in the legislation schedule of the State Council as a legislative investigation programme, and relative practical legislative issues were arranged under the jurisdiction of the State Council Legislative Affairs Office (SC-LAO).

The Ordinance embodied genuine efforts by the central government: in November 2002, the State Informatization Leading Group (SILG) addressed its strong determination to formulate laws and regulations related to government information disclosure in the *Guiding Opinions on Constructing E-Government*. The State Council, in its *Guidelines for Building a Government by Law 2004*, considered three tiers of information disclosure as crucial to the fulfilment of a law-oriented administration: administrative decision-making, administration, and government information. In March 2005, the General Office of the Central Committee, CPC and the General Office of the State Council presented their consensus on accelerating the formulation of the Ordinance in the *Opinions on Further Enforcing Government Administration Publication*.

In order to ensure the Ordinance is of a high standard in terms of scientific sophistication, integration, and feasibility, SC-LAO convenes agencies and scholars on a regular basis, examining in-depth all kinds of relevant research and analysis. Through the drafting process, SC-LAO has managed to include in the Ordinance integrated knowledge learned from previous national practices. At the same time, it has drawn lessons from experiences of other countries and regions, including the EU member states, making reference to their existing systems, theoretical achievements, and challenges through the legislation and implementation process.

In 2006, SC-LAO promoted and held workshops on government information disclosure under the support of the EU-China Information Society Project. Supported by the EU-China Information Society Project, SC-LAO has collected direct experience through a study tour to European member states with relevant FOI experience.

On 17<sup>th</sup> January, 2007, the Ordinance was finally approved at the 165<sup>th</sup> Executive Meeting of the State Council, at which announced its publication on 5<sup>th</sup> April, 2007 and its effective date on 1<sup>st</sup> May, 2008.

## **1.6 Characteristics of the Ordinance on Access to Government**

### **Information of the PRC**

#### **1.6.1 Legal Nature Description: Administrative Law**

The Ordinance, which was drafted by the State Council as the main legislative body, falls into the scope of Administrative Law and is lower only to the Constitution and laws promulgated by the National People's Congress (NPC) and the Standing Committee in terms of legal hierarchy. There was indeed cautious selection between the National People's Congress and the State Council, and between the form of law and of ordinance. After serious investigation and collecting opinions, the consensus of the State Council held sway since to allow the ordinance to establish a necessary system in a comparatively shorter time period, which could be flexible enough to meet the urgent demand of society at large. Besides, according to the Constitution, the Legislative Law, and the Administrative Litigation Law in China, administrative rules and regulations are inherent components of the Chinese legal system and binding references in court. Therefore, their effectiveness could never be adversely affected by an ordinance addressing Access to Government Information.

On the contrary, ordinance as a legislative form maintains a certain predominance: as the main legislation organ, the State Council can take a top-down approach in the execution process which can better balance the procedural capacity of different agencies, decrease regional or departmental differences, and adjust itself in accordance with the changing situation. In fact, many countries and regions around the world have taken the same legislative models concerning Access to Government Information: promulgating administrative regulation at first, and upgrading it to a law afterwards. In addition, by elevating it to an ordinance, it is easier to expose existing problems in the Access to Government Information system and to make necessary adjustment in further legislative work learning from previous experiences. Thus, experience from other countries can make a significant contribution in the Chinese context, ensuring a high standard of legislation.

### **1.6.2 Defined Individual Rights on Requesting Government Information**

In the early stages of government information disclosure (sometimes referred to “Government Administration Publication”, or “Government Transparency Ordinance”), the general practice was for government to actively disseminate relevant information. Although some regional regulations had articles that required information disclosure upon individual requests, these regulations were at the lower end of the legal hierarchy. The Ordinance fully represents the citizen’s Need to Know and defines individual rights on requesting government information. For government agencies, it means that their obligations under the Ordinance are not limited to active dissemination, but extend to disclosing government information upon individual request without explaining the reason for applying such information. It also presents a practical legal basis for protecting citizen’s Need to Know. In the Ordinance, it is clearly stated on the application form the processing procedures for government agencies, their limitation, legal obligations etc. Particularly, the Ordinance allows citizens to request government information that contains their own personal information and allows further correction to inaccurate pieces of information. It will have a direct benefit on the development of protecting personal information in China.

### **1.6.3 Narrowed Exceptions to Disclosure**

The Ordinance provides a broad scope of disclosure by enumerating situations that permit exception. According to the Ordinance, only information related to national security, business secrets and individual privacy (item 4 of article 14) cannot be withheld from the public. Of course, when exercising Access to Government Information, the government must take into account national security, public security, economic safety and social stability concerns (article 8). This is representative of worldwide trends that China has learned from general practices in other countries and regions. In particular, the Ordinance incorporates an Interest Balance System to deal with disclosure exceptions; that is, once the information subject agrees to disclose, or government agencies decides to disclose certain information for public interest purposes, information related to business secrets and personal privacy is available for public access (item 4, article 14). Thus, the scope of disclosure can be expanded, while agencies’ discretion on Access to Government Information is greatly reduced.

### **1.6.4 A Wide Range of Subjects Covered by Government Information Disclosure**

The Ordinance is promulgated by the State Council, and is intended to guide all administrative organs on government information disclosure. Besides this, it has power upon

related information disclosure conducts performed by organizations that practise administrative functions on the basis of legal authorization. These non-administrative organizations, called organizations authorized by law, exercise State Power and assume administrative obligations only when there is authorization through laws and regulations. They practise specific administrative functions rather than general administration of administrative organs. They generally can be divided into following three categories: a) Social Associations: for example, inner industry associations exercise partial administrative functions within the industry; b) Enterprises and Public Institutions: for instance, schools perform administrative power on the students in accordance with the *Education Law*; c) Self-Governing Mass Organization at Grass-Root, including Villagers' Committee and Residents Committee which function administrative power within its jurisdiction in accordance with the *Organic Law of the Villagers Committees of the PRC* and the *Organic Law of the Urban Residents Committees of the PRC*. Since these organizations are authorized by laws and regulations to administer public affairs within their jurisdiction, they are adopted as subjects of government information disclosure by the Ordinance.

Moreover, the drafters of the Ordinance have noted that currently various activities relating to enterprises and public institutions in China are closely linked to the interests of the general public. Thus, the Ordinance is intended to increase the transparency levels, and states in its provisions that the Ordinance shall be equally applied to information processing and collection throughout public services in enterprises and public institutions related to education, healthcare, family control, supply of water, electricity, gas and heat, as well as environment protection and transportation. Obviously, although the Ordinance cannot be applied to information disclosure of legislative or judicial bodies, it should have as wide a scope as possible.

### **1.6.5 Specific Authorities**

Government Information Disclosure is an innovative concept for managing government administrations, contributing to the transformation of the role of government in a fundamental way. Its fulfilment largely depends on powerful leadership that is applicable in a Chinese context. With careful research, the Ordinance has adopted different approaches: at State Council level, the General Office has been appointed as the top national authority in charge of information disclosure; and at local level, the approach is rather more practical and more flexible as it allows the General Office and other local government agencies above county level to administer own information affairs. Meanwhile, the Ordinance urges government at all levels, including government agencies, to improve their own systems related to Access to Government Information, and to identify certain agencies to take charge of the work. These provisions will have a positive effect on implementation of the Ordinance nationwide.

### **1.6.6 Detailed Provisions on Active Dissemination**

Based on previous efforts, the Ordinance is not only designed to satisfy public demand for requesting government information, but also to adopt detailed provisions on active dissemination and clarify its focus, forms of disclosure, limitations of disclosure and updates. An Active Dissemination Policy may decrease application costs for repeated individual requests on one hand, and speed up the spread of useful information concerning the interests of the general public on the other.

### **1.6.7 Remedial Policy**

The Ordinance leads the way in remedial policy for government information disclosure in China, which means that if government agencies refuse to disclose government information, and such conduct is believed harmful to any citizen, legal person, or organization, the interested parties may protect their personal interests through a re-application or litigation. Typically, remedial policy can effectively discourage refusal to disclose government information, better supervise government practices for information disclosure, and guarantee the citizen's Need to Know.

## 2. Fee Schemes and Exceptions

### 2.1 Fee Schemes and Exceptions in EU Member States

#### Definitions

As described in Section 1, there are many systems under which citizens in the EU member states can seek access to information. Some of these were established under EU Directives (Data Protection, Environmental Information, Public Procurement), while others are under local statutory or administrative access schemes. For the sake of simplicity, this chapter will focus on the fee schemes for the specific Freedom of Information / Access to Government Information laws, though passing reference may be made to the other access schemes for comparison purposes.

Two different types of costs can potentially be related to information access. They may both be called “fees” (especially in legislation which has been translated multiple times) but this report uses the following two terms to clarify the difference between them.

**Fees** are money required to be paid for administrative processing of a request. There may be fees for applying for information, as well as other fees for requesting internal or external review of an unfavourable decision. Such fees are typically paid at the time of making the application and are typically a fixed price “per application”.

Example: An applicant may be able to save money on *fees* by combining several requests into one request. (However this would cause a problem in the UK as requests may be aggregated to assess if the costs threshold has been exceeded.)

**Charges** are money required to be paid to reimburse the costs of providing information. They are usually charged “per item”: per page copied, per document copied, per CD or disc or videotape created, or per hour spent by staff in searching and reviewing material. If charges are going to be extensive it is a common practice to advise the requestor of expected charges and obtain approval and/or a deposit before the work is done. In some states, charges are capped at a maximum amount.

Example: An applicant may be able to save money on *charges* by requesting fewer documents or fewer pages of a single document.

In EU member states, the use of charges is much more common than the use of fees.

#### 2.1.1. Overview of Practices

The subject of fees and charges for FOI is complex and the approaches taken within the EU vary markedly. In general, EU member states’ FOI legislation takes one of four approaches:

- Laws specify actual fees and/or charges, either in the legislation or in attachments, schedules, or associated regulations.
- Laws permit either fees or charges or both, but leave the details of the actual amounts (and whether to charge them) to the discretion of the individual agencies.
- Laws specify that access is at no charge; neither fees nor charges are to be imposed.
- Laws state when and how access can take place but do not mention fees or charges in any way.

Where there are fees, they may be waived for particular types of documents (such as personal information about the applicant) or in specified circumstances (such as financial hardship or public interest).

Because the published laws often contain no detail about fees and charges, we have asked about fees in our survey of central bodies responsible for FOI, and also called upon results of other reviews and surveys as noted in the references. From these sources we have assessed the general practices in regard to fees and charges, by state. (Three member states do not have FOI legislation and so are not included, whereas we have included some sub-jurisdictions for which information is available, such as Länder within the Federal Republic of Germany and Scotland within the United Kingdom.)

An up-front application fee for making an FOI request is not common in the EU although it is common in other parts of the world. Where up-front fees have been introduced at a later date, as in Ireland, the negative impact of this will be discussed in section 2.1.1.4 below. Charges for searching occur in a handful of countries, whereas charges for provision of copies are much more common (see Table 2.1 below).

Table 2.1: Charges for copies of documents (in Euro unless specified otherwise)<sup>10</sup>

State / Country	Cost per page	Cost of other formats
Denmark	10 DKR for the first page and 1 DKR for each additional page	
Estonia	20 pages free, then 3 kroons/page	
France	0.18 per page	
Germany	0.10 per A4 copy	0.15 per A3 copy, 5.00 per A4 colour copy
Berlin	0.50 per page	
Brandenburg	0.50 euro for the first 50 pages, then .15 euro	
Ireland	0.04 per page	0.51 per diskette, 10.16 per CD 6.35 per X-ray
Slovenia	0.60 per page	
Sweden	First 9 pages free; after 1 <sup>st</sup> 10 pages, pay 50 SEK (=5.5 Euro) plus 2 SEK per page	600 SEK per videotape 125 SEK per audiotape

<sup>10</sup> Some actual amounts are not whole numbers, e.g. 18.89 Euro maximum copying charge in Austria, or 2.08 Euro charged for a CD in Slovenia, because they were set by the local law in another currency and then had to be translated into the EU common currency.

## Basis of charges

A majority of countries which charge for access to information do so only for providing copies of documents in the form of paper, disc, CD etc. These costs usually reflect the actual cost of providing the copy. In most cases there is no charge for an applicant to inspect the document in person.

There may also be charges based on the time taken to search for and make a decision about access to the records. In Ireland, the rate is set by legislation at 20.95 Euro per hour. Unlike the USA, the hourly rate is the same regardless of the level of staff member undertaking the work for the request. The Irish legislation also has a specific provision<sup>11</sup> that an applicant can only be charged for the time an efficient search should have taken, in other words, the applicant is not penalised for inefficient records systems or lost files. In Germany, the regulations have a sliding scale of charges up to 500 Euro for the processing of more complex requests, and in the state of Brandenburg, this may cost up to 1022 Euro.

The United Kingdom and Scotland have complex charging schemes which are quite different from the other European countries. In the UK, if the work involved in the request is assessed (using a cost base of £25 per hour) as exceeding "the appropriate limit" (£600 for central government, £450 for local government), the government agency can refuse the request, or charge for the full amount of time taken, at £25 per hour. Multiple requests may be aggregated for the purposes of this assessment.<sup>12</sup> Scotland's charging scheme also has the upper cost limit of £600, using a lower hourly rate of £15. If a request would cost up to £100, there is no charge. If it would cost between £100 - £600, only 10% of the cost can be charged, that is, to a maximum of £50. If it exceeds the £600 limit, the request may be refused or the excess is charged at £15 per hour.

None of the EU countries has followed the US model of having higher FOI charges for commercial use, and lower charges for educational / research purposes or for the news media. However exceptions in Estonia (for research), Germany and Ireland (for public interest) may result in a similar outcome.

A different model which has been suggested in Australia (but not yet adopted), is of a sliding scale of charges depending on the number of pages released. This charge would include reasonable search time but not decision-making time (which is presently included in the charges). If documents are refused, no charge could be made.<sup>13</sup> A possible scale of fees would be:

1 - 20 pages released: \$30

21- 50 pages released: \$45

51-80 pages released: \$60

Outside the scope of this report are the charges applicable to the making of an FOI appeal to the courts. In almost all countries there are costs of lodging such an appeal, apart from the almost inevitable costs of legal representation. These costs are usually at a level which makes this avenue prohibitive for the ordinary citizen to pursue.

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<sup>11</sup> Section 47(3)(a)

<sup>12</sup> The UK scheme is more complex than this brief description portrays. See <http://www.foi.gov.uk/practitioner/feesguidance.htm> for details.

<sup>13</sup> Recommendation 88, Australian Law Reform Commission Report 77: Report 77 Open government: a review of the federal Freedom of Information Act 1982 <http://www.austlii.edu.au/au/other/alrc/publications/reports/77/14.html>



## 2.1.2 Exceptions to Fees and Charges

### Applicant seeking own personal information

In the majority of EU member states, there is no application fee when a person applies for their own information (in Data Protection terms, a “subject access request”). Where there is a fee, it is usually minimal (6.35 Euro in Ireland or £10 in the UK under their respective Data Protection Acts) although there is provision in the UK for up to £50 to be paid for health or education records where there is a large volume. Some countries allow requests for current personal information at no fee but charge when it is for previous years (for example Austria, which charges up to 18.89 Euro). Charges for searching and copying do not apply or can be waived in the case of requests for personal information (for example Austria, Belgium, Ireland).

### Reduction, refund or waiver of fees and charges

In some countries (Ireland) the fees to make a request or seek a review are reduced by 33-66% if the applicant is in financial hardship (as demonstrated by being a holder of a government medical card).

There may also be a waiver of fees based on public interest criteria. In Ireland, charges may be waived if “information in the record would be of particular assistance to the understanding of an issue of national importance”. In Germany charges may be reduced up to 50% on the grounds of public interest. Estonia permits waiver of fees if the information is requested for research purposes.

The Irish legislation provides for a full or partial refund of fees if the requested information is not released to the applicant.<sup>14</sup> Recent proposed amendments to the US FOI Act preclude an agency from charging if they do not meet the statutory 20 day deadline for responding to requests.<sup>15</sup> These same amendments also allow an applicant in certain circumstances to reclaim their attorney’s fees if they file a lawsuit to obtain the release of documents. Similarly in other countries there are provisions for full or partial refund of application fees and costs for appeals if the applicant is successful in their claim.

### Uneconomical to collect

Compared to other common government fees charged by EU member states, such as those for registration of an automobile, issuing of a passport, etc., the typical FOI fees and charges are low. In fact, they are often so low that the administrative inconvenience of collecting them leads to their being waived. Some Acts (e.g. Ireland) explicitly provide for a waiver on the grounds of being uneconomical to collect. In other jurisdictions such as Slovenia, the first 20.86 Euro of copies (at .6 Euro per page) is free and charges are made above this level. Similarly in Estonia the first 20 pages are provided free of charge, and in Sweden the first 10 pages are provided free of charge. In some other countries the first two hours search time are free.

Banisar’s 2006 review states, “In practice, in most jurisdictions that allow for fees, in the majority of requests, fees are not imposed because the nominal costs in providing the information [are] less than the administrative cost in collecting and processing the fee.”<sup>16</sup>

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<sup>14</sup> Section 47(10)

<sup>15</sup> <http://www.freedominfo.org/news/20070806.htm>,

<sup>16</sup> Banisar, David. Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws. Privacy International, 2006, pages 28-29. Updates are online at <http://www.privacyinternational.org/foi/survey>

This analysis suggests that in the future if it were easier to collect fees and charges (for example, if all citizens had an ID card linked to a bank balance) then minimal fees and charges would be more likely to be collected, if the law allows them.

### 2.1.3 How Fees And Charges Are Determined

Many EU governments state in legislation that fees and charges must not hinder access. Charges are therefore limited to “direct costs” (Czech Republic) or “at cost price” (Finland) or “actual costs” (Lithuania). In Slovenia the charges for copying are described as far below the “market rate”. And in practice, as previously mentioned, both fees and charges are frequently waived.

Another principle, stated less often but nevertheless clear in some laws, is that fees and charges should not be used to make profit for the agency holding the information; they should be limited to cost recovery (or recovery of a portion of costs). The benefits of transparency, which are held to be greater trust in government leading to increased cooperation and efficiency, are considered to be worth the cost of providing (appropriate) government information at low cost upon request.<sup>17</sup>

Banisar’s 2006 report states, “The best practice is to limit fees to actual costs for providing information, not for the time taken in deciding on whether exemptions should apply, provide waivers for information of public interest, and not charge for appeals. A general principle adopted in all jurisdictions is that fees should not be used as a barrier or a profit-making device.”<sup>18</sup>

In cases where the costs of providing information begin to be significant, it is good practice to reduce those costs, firstly by negotiating with applicants to assist them to reduce the scope (and cost) of their requests. Another method is to include frequently requested information in a **publication scheme** which is freely publicised in an inexpensive way, such as on the internet. This type of scheme is much in the style of the Chinese Ordinance, which supports the pro-active publication of significant information.

As an example, the UK House of Commons anticipated that as soon as the FOI law went into effect in 2005 there would be numerous requests for details of public money spent by its members. Instead of waiting for individual requests and giving documents to individual journalists, the House published details of all members’ expenses electronically in late 2004. There was public scrutiny and comment but the general verdict from journalists was that the legislators were better value than the average private company director. Staff time and money were saved and the benefits of transparency were gained.<sup>19</sup>

### 2.1.4 Effect of Fees and Charges (Including Where Amendments To The System Have Been Made)

The small amount of research available on the effect of fees and charges suggest that they do present barriers to public use of information access schemes. This effect has been seen in Canada and Australia. The best known example from an EU member state is the Republic of

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<sup>17</sup> Implementation of the EU Directive on the Re-Use of Public Sector Information 2003/98/EC provides a basis for charging for commercial use of government information. Discussion of this Directive is outside the scope of this report.

<sup>18</sup> Banisar *op. cit.* pages 28-29.

<sup>19</sup> <http://politics.guardian.co.uk/commons/story/0,9061,1333214,00.html> / <http://politics.guardian.co.uk/commons/story/0,9061,1333231,00.html>

Ireland, which introduced FOI in 1998 and made significant amendments to its fees and charges scheme in 2003.

The fees introduced in 2003 were as follows:

Application for non-personal documents:	15 Euro
Application for internal review :	75 Euro
Application for external review :	150 Euro

(Reductions on the grounds of financial hardship result in fees of 10, 25 and 50 Euro respectively).

In 2004 the Irish Information Commissioner published a lengthy report<sup>20</sup> on the adverse impact of the fees on the usage of the Act by the media and others seeking non-personal information: such requests were reduced by 75% in the year following the introduction of these fees. The number of appeals for non-personal information lodged to the Commissioner fell by 30 – 50%. Increased fees had a dramatic and negative impact on the usage of the FOI Act.

In 2006 the United Kingdom also reviewed its 18 months' experience with FOI costs and charges. The Department of Constitutional Affairs (the central body for FOI) commissioned a report from Frontier Economics entitled *Independent Review of the Impact of the Freedom of Information Act*.<sup>21</sup> The Report examined the cost to government of the FOI Act and assessed a number of options to reduce the cost, such as introducing an application fee, and including reading time in the calculation of the upper cost limit. The fee proposals were criticized by the House of Commons Constitutional Affairs Select Committee<sup>22</sup> and following a series of public consultations, were not proceeded with. The Prime Minister has since announced that the current fees regulations will not be tightened.<sup>23</sup> The Irish experience outlined above was often quoted in arguments against the introduction of higher fees and charges.

A tougher fees and charges regime is often proposed to deal with issues such as requests which are vexatious (repetitive or time-wasting) or cause substantial workload for the government agencies due to their size. These factors were discussed as reasons for the reviews in Ireland and the UK. However specific provisions to limit such abuses are another option, as was pointed out by critics of the UK fees proposals.

## 2.2 Fee Schemes for Access to Government Information in China

The provisions within the Chinese Regulation are as follows:

Article 27: During the process of releasing Government Information by request, the administrative agency should not charge fees other than searching, copying and mailing costs, and it shall not provide government information through charging profitable services provided by other organizations or persons.

The standards for administrative agency to charge fees or costs, such as searching, copying and mailing, shall be enacted by the price regulation agency together with the financial departments of the State Council.

Article 28: For applications for access to governmental information by persons in economic difficulty and making an application on their own, fees can be decreased or even exempt with

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<sup>20</sup> Review of the Operation of the Freedom of Information (Amendment) Act 2003.  
<http://www.oic.gov.ie/en/Publications/SpecialReports/InvestigationsComplianceReportsSection36/>

<sup>21</sup> <http://www.dca.gov.uk/foi/reference/foi-independent-review.pdf>

<sup>22</sup> <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmconst/415/41502.htm>

<sup>23</sup> <http://www.number10.gov.uk/output/Page13630.asp>

the permission of the head of the relevant section in charge of access to government information.

For applications to access to government information by people with reading, visual or hearing disabilities, the administrative agencies should offer necessary the necessary assistance.

According to the above provisions, fees can only be charged when government agencies provide government information in response to individual requests. The Ordinance forbids agencies authorizing other organizations or individuals to provide paid information services in order to avoid abuse of power which may deter the public from making requests or obtaining information. The Regulation also allows government agencies to decrease fees for applicants who cannot afford them.

Similar policies with detailed fee provisions have been adopted by many regions which promulgated their own regulations on Access to Government Information. Shanghai, for instance, publicized a *Circular of Shanghai on Charge Standards for Government Information Service upon Request*, which prescribed the scope, subject, and standard charges for Access to Government Information. According to the Circular, charges for providing information service is limited to information searching, copy, mail and delivery, but does not apply to information services through fax, e-mail etc. For example, the standard charges for searching particular government information in Shanghai is 5 RMB (equal to 0.5 Euro), and for single-black-ink copy the charge is 0.2 RMB per page (A4) (equal to 0.02 Euro). In practice, government agencies in Shanghai provide free information services for applications that involve a small volume of information, with no fees charged for search, copy etc.

In China, two departments are responsible for fixing administrative fees:, the management department of the State Council (the National Development and Reform Commission (NDRC)) and the Ministry of Finance which is the finance department in the State Council. The Ordinance appoints the State Council management department and the State Council finance department to calculate standard fees.

## 2.3 Recommendations

First, according to the Ordinance, the fees and charges for applying for government information should be strictly limited to costs only. From a perspective of preventing information disclosure being impeded by high fees or charges, the Ordinance has set a standard for agencies to charge fees very strictly (Article 27). In the future, the key challenge is to provide more details to the above-mentioned article. On the issue of fees for applying for information, it is recommended to stick to the following principles:

Above all, government information disclosure is the duty of all government agencies; the corresponding agencies should ensure financial funds to provide government information to the public. This is necessary to avoid non-disclosure of information due to a shortage of funds.

Next, fees and charges for applying for government information should be the same as other administrative fees and charges. It may stick to the principle of “who has the benefits, who will pay for the benefits”. On the other side, this will push more people to use the system. Along with continual improvement of government financing, the amount for such kind for fees or charges may decrease over time.

Following on from this, on the question of fee standards, it is recommended not to disturb current government information disclosure. The practices of some European countries have proved that some types and amount of fees and charges have a dramatic effect on applications from the public and may cause adverse effect on the access to government information system. When the Chinese government sets fee standards, it should take into account the financial capacity and ability of the public to pay for such fees. Furthermore, the government should pay more attention to agencies' attempts to prevent individual officials abusing the government information disclosure system through adopting high fees and charges. During the process for confirming fee standards, the central government should not only apply standards for the whole country, but also think about regional differences and give

the necessary freedom to local governments to adjust the standard according to local economic situation.

In terms of standard for fees and charges, it is relatively straightforward to set copy and delivery costs, but more complex to confirm search charges. In some European countries, search charges are fixed according to the time needed to conduct a search. But in China, it is difficult to set a standard search fee based on the time needed. The reason is that it is not easy to check and ratify civil servants' working cost in terms of time measurement. Even if we measure search costs by a ratio of civil servants' income and work time, search fees might be too high. In different government department in China, the ability to manage information is quite different: information technologies are not used as much as they could; information search time is very different between agencies even when searching for the same amount of information. It is therefore recommended to set search costs for documents on a temporary basis. For each item, the search cost could be fixed, and the search charges are not linked to the time needed to do the search. To some extent, this could encourage government agencies to strengthen their ability to manage information and conduct searches more efficiency. On the whole, it will be beneficial to push government information disclosure and improve the administrative capacity of government agencies.

Secondly, government agencies at all levels should make efforts to reduce the costs of processing government information requests. The implementation of the Ordinance will definitely put more pressure on government agencies and increase their working costs. But for government agencies themselves, it is also an opportunity. They should use this pressure to motivate the workforce to increase their efficiency. On one side, government agencies should use the preparatory period to clear up all their own information. In this way, the key offices in central and local government should make directives, detailed rules and guidelines for specific tasks, direct government at all levels to classify and keep the information to improve their search ability. On the other side and in line with the overall development of e-government in China, government could make more use of advanced computer technologies to increase the number of electronic services and search functions.

Thirdly, government at all levels should constantly expand the scope of information disclosure on their own initiative. According to experiences in European countries, the more information that is disclosed through government's own initiative, the less the public will apply for the government information on their own. Apart from information disclosure through their own initiative - which is regulated by the Ordinance - government agencies need to appraise their own information and data on a regular basis. As long as information is not related to government information disclosure exemptions and does not involves a security threat to human or public property, or if the public apply for certain information on a frequent basis, government agencies should bring such information into the scope of information disclosure through their own initiative. The publication scheme system adopted by UK and other EU member states could be a good reference. Such a system will go furthest in meeting the needs of the public, and at the same time reducing pressure on government agencies and reducing costs of government information disclosure.

## 3. FOI Structures

### 3.1 FOI Structures in the EU

#### 3.1.1 FOI Structures across Whole of Government

##### 3.1.1.1 Structure of Central Bodies

The EU member states have many different models for managing and monitoring FOI and for handling disputes and appeals by citizens against refusals of access. Many countries' structures derive from the various administrative cultural contexts described in section 1.1, but there are hybrids as well, particularly in those who have implemented FOI more recently. The list of central bodies in each country in Table 3.1 illustrates the diversity. Some jurisdictions, such as Ireland, have a central body with a policy/supervision role (Department of Finance), and a separate body with responsibility for dispute resolution (Information Commissioner); others such as France have a single body which combines the policy /supervision role with dispute resolution (Commission d'accès aux documents administratifs (CADA)). In the United Kingdom, which has a separate central policy/oversight body (the Ministry of Justice), the dispute resolution body (the Information Commissioner) also takes a role in policy and oversight.

There is also variety in terms of the functions which have been combined with FOI in a single supervisory or review body. The most common combinations are FOI and Data Protection (found in Germany at national and sub-national levels, UK, Estonia and Hungary), and FOI and Ombudsman functions (found in Denmark, Ireland, Lithuania, Romania).

There are many essential functions which must be performed to give effect to the right of access to government information. For many of these functions, being undertaken by a central body has advantages in terms of cost-efficiency and quality control. During the implementation phase of FOI, having functions such as policy and systems development and training at least co-ordinated, if not provided by a central body ensures a much more effective implementation. In the UK, the House of Commons Select Committee was critical of the delays in the provision of many of these functions by the central body (at the time, the Department of Constitutional Affairs, now the Ministry of Justice).<sup>24</sup>

A number of reviews of FOI in other countries have outlined options for combining various roles and functions for their FOI/ Information Commissioner. See for example the discussions of the Access to Information Review Task Force from Canada<sup>25</sup> and the Law Reform Commission from Australia.<sup>26</sup>

For the list of functions set out below, there is no one single body which performs all of these functions in any jurisdiction; it is merely a compilation of possible functions for FOI central bodies. Throughout the EU, the central and review bodies perform a range of these functions; some perform most of them, some perform only a few.

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<sup>24</sup> Page 42 House of Commons Constitutional Affairs Committee Freedom of Information Act 2000 — progress towards implementation December 2004

<sup>25</sup> <http://www.atirtf-geai.gc.ca/paper-models3-e.html>

<sup>26</sup> <http://www.austlii.edu.au/au/other/alrc/publications/reports/77/6.html>

### **3.1.1.2 Roles and functions of central bodies**

#### **Policy and systems development role:**

- Prepare drafting instructions for initial FOI legislation and any later amendment of it
- Prepare FOI regulations and other subordinate legislation
- Review / participate in review of secrecy provisions (statutory bars) in other legislation and recommend their amendment or removal
- Develop and issue FOI policies, guidelines and procedures
- Obtain / provide legal advice on matters of interpretation of FOI Act and distribute advice to agencies / incorporate into FOI policies
- Develop FOI systems and infrastructure (e.g.: FOI ICT systems for tracking and processing requests)
- Develop / approve templates for agencies' publication schemes
- Co-ordinate review of the operation of the Act (usually at intervals set in the legislation itself, or set by government)
- Co-ordinate information access policies – FOI, Data Protection, Access to Environmental Information and others
- Review impact of FOI decisions by review bodies and courts; assess whether policy or legislative change may be required
- Develop or have input into the overall information policies of the government: how the government manages, provides access to, publishes, and charges for its information, and the impact of technology on these policies
- Develop or have input into policies on records management and archiving of government information
- Assist agencies to identify avenues for providing information routinely, without the need for formal FOI requests

#### **Training and advisory role:**

- Provide advice for FOI decision makers in government departments and agencies
- Develop training syllabus and materials / deliver training courses / accredit providers of training (there are many options for the role of central bodies in training - see section 4 Training, for more detail)
- Facilitate the establishment and maintenance of networks of practitioners to ensure skill levels are maintained
- Provide forums (face to face, online) for discussion of difficult issues or issues which the practitioners have in common
- Analyse and distribute summaries of decisions by review bodies and courts in FOI matters for the guidance of practitioners
- Provide advice /assist in processing difficult or contentious FOI decisions
- Provide mechanisms for consultation on cross-agency issues or ("Round Robin") requests.

### **Supervisory / monitoring role:**

- Collect information / statistics on the operation of the Act
- Monitor and evaluate the operation of the Act
- Research and monitor developments in relation to freedom of information and the protection of privacy
- Identify, develop and promote best practice and achieve greater consistency in FOI administration across whole of government
- Monitor pricing policies of government agencies for documents on sale (and therefore inaccessible under FOI)
- Monitor and evaluate the FOI performance of individual government agencies
- Conduct audits of agencies to ensure that their FOI practices and administration are adequate
- Prepare Annual Report to Parliament on operation of FOI, including statistics and assessments of agencies' performance, results of audits, and highlighting any persistent poor performance.

### **Public awareness / promotional role:**

- Develop materials for promotion of public FOI awareness (brochures, posters, videos, advertising in media, web-based)
- Promote awareness of FOI in the community
- Deal with inquiries from the public about FOI generally
- Provide assistance to the public in preparing FOI requests
- Undertake educational programs to promote public awareness of freedom of information and privacy, including making public statements about relevant legislation matters.

### **Dispute resolution / review role:**

- Approve/review/accept complaints about agencies' publication schemes
- Deal with complaints by the public about agency's FOI decisions including delayed decisions and refusals
- Mediate / facilitate resolution of or investigate FOI complaints and appeals
- Make recommendations or binding decisions on FOI complaints and appeals
- Enforce decisions using penalties, legal sanctions.



Table 3.1: Central bodies<sup>27</sup>

<b>Country</b>	<b>Central Bodies</b>
Austria	Data Protection Commission (for personal information only)
Belgium	Commission d'accès aux documents administratifs
Bulgaria	Commission for the Protection of Personal Data (for personal information only)
Czech Republic	Public Defender of Rights (Ombudsman), Office for Personal Data Protection
Denmark	Minister of Justice, Folkingets Ombudsman, Datatilsynet (Data Protection Agency), Public Disclosure Commission
Estonia	Data Protection Inspectorate (for personal and non-personal information)
Finland	Ministry of Justice and Data Protection Ombudsman
France	Commission d'accès aux documents administratifs (CADA)
Germany	Federal Commissioner for Data Protection and Freedom of Information
Greece	Ombudsman, Hellenic Data Protection Authority
Hungary	Parliamentary Commissioner for Data Protection and Freedom of Information
Ireland	Central Policy Unit in Department of Finance, Information Commissioner (also the Ombudsman)
Italy	Commission on Access to Administrative Documents under the Office of the Prime Minister
Latvia	State Data Inspectorate, Constitutional Protection Bureau

<sup>27</sup> Countries without an FOI law have been omitted from the tables in this chapter. Where there was no data available, the table has been left blank.

Lithuania	Seimas Ombudsman
Netherlands	Data Protection Authority (for personal information only)
Poland	Office of the Commissioner for Civil Rights Protection (Ombudsman), Bureau of the Inspector General for the Protection of Personal Data
Portugal	Commission of Access to Administrative Documents (CADA)
Romania	People's Advocate (Ombudsman)
Slovak Republic	Office of Personal Data Protection (for personal information only)
Slovenia	Information Commissioner (for personal and non-personal information)
Spain	Ombudsman, Data Protection Agency
Sweden	Ombudsman, Data Inspection Board
United Kingdom	Ministry for Justice (formerly Department of Constitutional Affairs), Information Commissioner (also the Data Protection Commissioner)

## 3.1.2 FOI Structures Within and Across Government

### 3.1.2.1 Advisory Groups and Steering Committees

Mechanisms such as Advisory groups and Steering Committees exist in several countries. They are usually established during implementation of FOI but may continue to function beyond that period. For example, in the United Kingdom, the Lord Chancellor's Advisory Group on Implementation of the Freedom of Information Act was set up in 2001. Its terms of reference included:

- Monitoring progress on implementation;
- Identifying best practice in information management and recommending approaches to its dissemination in and between types of public authorities;
- Advising on the needs of users of the Freedom of Information Act, how authorities might best meet those needs, and proposing ways of raising the public's awareness of their rights;
- Receiving reports on, and advising on, the preparations being made by the Information Commissioner to ensure procedures are established and guidance produced in a timely manner;
- Promoting a new culture of transparency in public authorities by assisting in the development of training and education programmes.

Also in the UK an advisory group, the Information Rights User Group with members from within and outside government, was set up in June 2006. Their role is to focus on strategic discussions about how to build on the success of freedom of information. In Ireland there are two advisory groups with representatives from business and the wider community: the Citizen's Advisory Group and the Business Advisory Group.

### 3.1.2.2 FOI Networks

In several countries, networks of FOI practitioners have been established during the implementation phase of FOI to jointly develop useful materials, share knowledge and so on. For example, in Ireland, there have been a number of networks and committees set up since 1998:

- FOI Inter-Departmental Working Group
- FOI Civil Service Users' Network
- FOI Public Sector Users' Network

In addition to the whole-of-government networks, it was found useful to have networks within specific sectors, for example, the local government sector, the health sector, the higher education sector. Because they have issues unique to their sector, this has resulted in more detailed discussion and problem-solving. Most of the networks are able to meet in face-to-face meetings every few months, supplemented by the use of email. In the United Kingdom networks were also established, including mailing lists for discussion of FOI matters<sup>28</sup>,

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<sup>28</sup> One example of an FOI discussion mailing list is conducted by the Joint Information Systems Committee for the higher/further education sector. Details and archives are at: <http://www.jiscmail.ac.uk/lists/freedom-of-information.html>

journals<sup>29</sup> and web-based discussion forums<sup>30</sup>. FOI Networks were set up based not only for different sectors but also on a geographic basis.

The networks discuss problems in interpretation, legal advice, training needs, policy and procedural issues, and the outcomes of decisions of the Information Commissioner and the Courts on FOI matters. They identify common approaches and best practice. From a survey of FOI practitioners in June 2005 in the UK it was found that “formal and informal networks of support were considered valuable sources of advice and support - over half reported subscribing to a support/advice network.”<sup>31</sup> In Ireland the networks also act as a mechanism to deal with requests which affect several government bodies, and “Round Robin” requests which have been sent to more than one body, rather than the more formal mechanism of the Clearinghouse set up in the UK.

### 3.1.2.3 Cross-agency co-ordination: Clearing House

In the United Kingdom, a mechanism for co-ordinating FOI requests was set up just before the commencement of the right of access to documents on 1 January 2005. The principal functions of the Clearing House are:

- To ensure a consistent government-wide position on requests which have gone to more than one department (so-called “round robin” requests), and potentially precedent-setting cases;
- To provide guidance on sensitive cases with a potentially high public profile;
- To align the response to such cases with government policy and guidance;
- To monitor and contribute to the development of information rights case law, particularly at the Information Commissioner and Information Tribunal stages; and
- To revise government guidance in the light of emerging case law and new policy imperatives.

There is a Clearinghouse Toolkit<sup>32</sup> providing detailed procedures, referral forms and a list of triggers (at Annex B) for a request to be referred to them. The triggers include:

- Prime Ministerial and Ministerial Issues
- Royal Household and Honours
- Procurement and Efficiency (including internal audits, complex or high-profile procurement)
- Cross-government issues (including suspected “Round Robin” requests, high-profile cases with media interest, possible vexatious requests)
- Appeals and reviews: internal reviews, appeals to the Information Commissioner and the Information Tribunal

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<sup>29</sup> The Information Rights Journal is published by the Ministry of Justice: see <http://www.foi.gov.uk/maillinglists.htm>

<sup>30</sup> A forum for UK FOI practitioners in central government is at : <http://www.foi-forum.gov.uk/Home.go> (registration required). See also the UK National Health Service FOI Forum at <http://www.foi.nhs.uk/forum/>. Although no longer operative, it was a very active discussion forum in the implementation period.

<sup>31</sup> Holsen, S (2005) “First pulse check on UK FOI community indicates good health.”, Open Government: a journal on Freedom of Information. Volume 1 Issue 3. page 4

<sup>32</sup> Working with the Access to Information Central Clearing House : Toolkit for practitioners November 2006

Given the short statutory timeframes for dealing with FOI requests, any mechanism requiring additional referrals will create delays. Not surprisingly, there have been criticisms of the Clearinghouse as a source of delay and of excessive central control of FOI decisions<sup>33</sup>, as well as for failing to publish information such as their case handling statistics.<sup>34</sup>

### 3.1.3 FOI Structures within Public Bodies

The section on Implementation (Section 5) will deal with the question of structures and resources required during the implementation phase. The comments below refer to the post-implementation or maintenance phase.

The variety of bodies covered by the various FOI Acts is enormous and it is very difficult to generalise about their approaches to determining FOI requests. The most significant factors are the size of the body and the number of requests it has to deal with.

A common structure is for each public body to have a dedicated FOI officer who has responsibility for all aspects of FOI within their agency. This would include:

1. Ensuring that the proactive publication scheme is up to date
2. Ensuring that the clients of that agency are aware of their FOI rights
3. Ensuring information about exercising FOI rights is accessible (on the website, at local offices)
4. Ensuring staff of the agency are aware of the implications of FOI
5. Receiving FOI requests and taking appropriate action on them, including, as required:
  - (i) consult with applicant to clarify their request or reduce its size /scope if unmanageable
  - (ii) identify which areas hold the records requested
  - (iii) estimate any charges payable and advise applicant
  - (iv) consult third parties if required
  - (v) determine whether the documents can be released or whether some contain exempt information
  - (vi) prepare letter giving reasons for decision and details of rights of appeal
  - (vii) prepare documents for access (redact if necessary, make copies, arrange inspection)
6. Dealing with review bodies in the event of an appeal / complaint
7. Collecting statistics and reporting on FOI matters within their agency.

If the size of the public body and the number of requests requires, there could be a dedicated FOI Unit or team to carry out the above functions. Where there are only a small number of requests, the workload may not justify an entire position for FOI, and it may form part of an officer's other duties. Sometimes these duties are linked to FOI, such as a Records Officer, or a Legal Officer, or a Complaints Officer. In some jurisdictions FOI duties are integrated with the duties of all officers of an agency. This may result in FOI matters being given lower priority and deadlines not being met. In France, a 2005 decree (n ° 2005-1755 from December 30<sup>th</sup>

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<sup>33</sup> Alasdair Roberts "What's wrong with coordination?" *Open Government: a journal on Freedom of Information* Volume 1 Issue 1 March 2005 page  
Holsen et al. (2007) "Journalists' use of the UK FOIA". *Open Government: a journal on Freedom of Information*. Volume 3 Issue 1, page 4

<sup>34</sup> page 31 House of Commons Constitutional Affairs Committee *Freedom of Information —one year on* June 2006

2005) provides for a person in each government authority to be designated in charge of access to government information and the re-use of public sector information.

Another model is to have an FOI co-ordinator in each public body who is responsible for many of the duties specified above, but who does not necessarily make the decisions on access, which are made by the line areas responsible for the documents which have been requested. This is common in bodies such as local authorities with a diverse range of functions, where the expertise to understand and assess the documents requested is in each functional area.

In public bodies with very large numbers of clients, where it is likely that there will be high numbers of personal FOI applications, the FOI function is decentralised to each of the local offices and points of contact. For example in the health sector, there may be a FOI Officer in each hospital. This has several advantages. The client's records, which may be in current use, do not need to be transferred to a head office for the FOI decision to be made. The local staff are likely to be more familiar with the client's case which may assist them to make a better FOI decision. The accountability for disclosing the records belongs with those who created the records. While this has greater costs in terms of the FOI training being required for a larger number of staff, it is likely to result in faster and higher quality decisions.

In public bodies with small numbers of applications, or mainly non-personal applications, centralising the FOI function has the advantages of consolidating FOI expertise and the reduced risk of errors. In some agencies, for example, the Department of Social and Family Affairs in Ireland, they use a hybrid approach. The large volume of personal FOI applications are decided by a decentralised network of FOI officers in their local offices; the much smaller volume of difficult non-personal requests are dealt with by the central FOI Unit.

To ensure an appropriate priority is given to FOI matters, one approach (used in the UK) has been to appoint an "FOI Champion" in each public body who is a senior officer responsible for FOI.<sup>35</sup> During the implementation phase the FOI Champion usually chairs the FOI Steering Committee or similar group with representatives from the relevant areas within the public body. The FOI Champion does not carry out the everyday duties described above, but they are responsible for ensuring that FOI is adequately resourced, that the public body is meeting its FOI targets, that the FOI Officer is supported when requiring documents or information from other parts of the public body. They may also carry out the FOI internal reviews, as they have a good understanding of the FOI legislation.

### **3.1.4 Dispute Resolution and Review Structures**

This section uses the following terms to describe the three main levels of review available to an FOI applicant.

*Internal review* occurs within the government agency that made the decision. It means a re-consideration of the matter by an officer, usually more senior, who was not involved in the original decision.

*External review* is by an independent agency or body outside the government agency. The matters which can be complained about to the external body, and its powers, are often prescribed within the FOI legislation. The grounds usually include at least delays, fees and refusals (either on administrative grounds or exemptions).

*Judicial review* is by the courts of the country. The courts may be specialised administrative courts or tribunals or they may be part of the ordinary hierarchy of the judicial system. Such reviews would usually involve decisions about a point of law more so than the merits of the case.

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<sup>35</sup> See the Department of Constitutional Affairs Model Action Plan at <http://www.dca.gov.uk/foi/map/modactplan.htm>

### 3.1.4.1 Internal Review

FOI experience around the world has led to the adoption of procedures for internal review of decisions as a fast and expedient method of resolving disputes before the expense and more elaborate processes of external review by courts or tribunals.

Internal review works best if it is:

- carried out by a person not involved in the first decision (it is preferable if it is carried out by a **more senior** person than made the first decision)
- a fresh look at the case, a decision “de novo”, not merely a review of whether the process was undertaken correctly
- at no charge to the applicant (such charges always act as a deterrent to seeking review)
- seen as an opportunity to correct errors/ omissions made in the first decision by inexperienced decision makers, or made due to the pressure of deadlines
- seen as an opportunity to resolve a dispute before it is escalated to external review bodies.

While the right to internal review is specified in the FOI legislation in some countries, in others it is set out in a Code (UK Code can be found at <http://www.dca.gov.uk/foi/reference/impref/codepafunc.htm#partVI>).

There have been criticisms of systems relying solely on internal review. David Banisar<sup>36</sup> comments on internal review: “Practically, it has mixed results. It can be an inexpensive and quick way to review decisions. However, the experience in many countries is that the internal system tends to uphold the denials and results in more delays rather than enhanced access. In the UK, 77 percent of requests for internal reviews to national bodies were denied in full in 2005.” [This same percentage was maintained in 2006 as well.]

### 3.1.4.2 External Review

Almost all FOI jurisdictions have at least one level of review available outside the agency which made the original decision. In some cases there may be four or more levels of review available. For example in the United Kingdom the levels are:

- Internal review
- Review by the Information Commissioner
- Review by the Information Tribunal
- Review (only on a point of law – s.59 UK FOI Act) by
  - (a) the High Court of Justice in England if the address of the public authority is in England or Wales,
  - (b) the Court of Session if that address is in Scotland, and
  - (c) the High Court of Justice in Northern Ireland if that address is in Northern Ireland
- Review on a point of law to the Court of Appeal, if leave is granted.<sup>37</sup>

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<sup>36</sup> p. 23 Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws

<sup>37</sup> This is in the case of addresses in England, Wales and Northern Ireland. Since this would be a second layer of judicial appeal, the Court of Appeal will only grant leave where: (a) the appeal would raise an important point of principle or practice; or (b) there is some other compelling reason for the Court of Appeal to hear it. For addresses in Scotland, and under the Scottish FOI Act, the appeal process is different.

- Review on a point of law by the House of Lords, if leave is granted.

In some countries there is only one level of external review. The levels of judicial review available depend not only on the structure of the court hierarchy in each country, but, as in the UK, whether or not the right to seek judicial review is automatic or requires the leave of the court. However it is beyond the scope of this paper to examine the various systems of judicial review throughout the EU.

As can be seen from table 3.2, the external review structures in the EU countries are quite varied. A clear majority have either an Ombudsman or Information Commissioner model, and most of the others have a specialised information commission to deal with reviews. Some of the advantages of a specialist external review body in FOI matters are that they gain expertise in the field and provide more consistent interpretations and rulings.



**Table 3.2: FOI Dispute Resolution and Review structures**

<b>Country</b>	<b>Internal Review</b>	<b>External Review</b>	<b>Judicial Review</b>
Austria	By the administrative agency		Administrative Court
Belgium	By the administrative agency	Commission d'accès aux documents administratifs	State Counsel
Bulgaria	No	No	Regional court or Supreme Administrative Court
Czech Republic	Yes	Public Defender of Rights (Ombudsman)	Courts
Denmark		Folkingets Ombudsman	
Estonia		Data Protection Inspectorate	Administrative Court
Finland	To the next highest authority	Chancellor of Justice, Parliamentary Ombudsman, or Data Protection Ombudsman	Administrative Court and Supreme Administrative Court
France	No	Commission d'accès aux documents administratifs (CADA)	Administrative Court
Germany	Yes	Federal Commissioner for Data Protection and Freedom of Information	Courts
Greece	Yes	Ombudsman	
Hungary		Parliamentary Commissioner for Data Protection and Freedom of Information	Courts
Ireland	Yes	Information Commissioner	High Court, then Supreme Court

Italy			Regional Administrative Court, then Council of State
Latvia	To the head of the institution or a higher authority	State Data Inspectorate	Courts
Lithuania	Appeals Dispute Commission	Seimas Ombudsman	Administrative Court
Netherlands	Yes		Administrative Court
Poland	Yes		Courts
Portugal		Commission of Access to Administrative Documents (CADA)	
Romania	Yes	People's Advocate (Ombudsman)	Courts
Slovak Republic	Yes, to a higher agency		Courts
Slovenia		Information Commissioner	Courts
Spain	Yes	Ombudsman	
Sweden	Yes	Parliamentary Ombudsman	Courts and Supreme Administrative Court
United Kingdom	Yes	Information Commissioner, Information Tribunal	High Court of Justice in England / Northern Ireland, Court of Session (Scotland)

### 3.1.4.3 Powers of External Review Bodies

A crucial distinction in terms of their powers is whether the decisions of the review body are binding on the government agency or if they can only make recommendations. ("Binding" is used to mean that the government agency must follow the decision of the review body, subject to its right to appeal on a point of law to a higher, usually judicial review body). The EU review bodies include those with recommendation powers only (such as France and Denmark) and those with binding powers (such as UK, Ireland, Slovenia). Where the review bodies have only power to recommend, in some cases such as the Danish Ombudsman, the recommendations are nearly always followed by government agencies.<sup>38</sup>

In order to carry out a review of a decision, the reviewing body must have the necessary powers to do so, including (but not limited to):

- the power to compel production of documents which are the subject of the appeal
- the power to enter premises of government agencies to search for documents (subject to the agency's security requirements)
- the power to summons witnesses to appear and give evidence
- the power to administer oaths
- the power to enforce sanctions where officials refuse to comply with reasonable directions from the review body or are found to have obstructed the FOI Act (for example by tampering with or destroying documents without approval, or by giving false statements)

In many of the review bodies, emphasis is placed on mediating or negotiating with applicants prior to any formal hearing process in an attempt to settle the case. This is particularly true of the Information Commissioner and Ombudsman type of bodies.<sup>39</sup> Mediation may involve a wide range of processes, mostly of an informal nature, although this may include the preparation of submissions with legal arguments. Depending on workload, the review body may use face-to-face meetings, telephone discussions and exchange of written submissions in its mediation processes. Because it is not permissible to disclose the content of documents claimed to be exempt, full exchange of documents does not occur. In some cases this is made even more difficult because the agency may have decided neither to confirm nor deny the existence of the documents requested, in which case it may be difficult even for submissions to be made available to the appellant. As a rule, legal representation of parties is not encouraged, although this is not prohibited. This is an aspect which decreases the formality and costliness of external review, making it more accessible to the ordinary citizen.

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<sup>38</sup> Stated in the survey response by the Danish Ombudsman's office.

<sup>39</sup> The UK Information Commissioner resolved 45% of cases informally in 2006/2007; the Irish Information Commissioner settled 10% of cases without formal decision notices in 2006.

## 3.2 Supervision and Remedies for Access to Government Information in

### China

#### 3.2.1 Supervising Access to Government Information

Administrative activities in principle come under the supervision of many organisations: the National People's Congress (NPC) and its Standing Committee at all levels exercise counter measures against administrative misbehaviour within their own jurisdiction. The People's courts, while concentrating on individual rights, monitor administrative agencies by performing judicial power on administrative litigations. The administrative agencies themselves have established various internal supervisory systems. These cover top-down monitoring, and professional supervisory organs to inspect corresponding government levels or government at lower level. Another type of internal supervision is approached by way of an administrative reconsideration system, which inspects agency's actions on one hand, and compensates individual damages on the other. Different from other types, administrative reconsideration, as one of the inner-agency supervision methods, depend on corresponding request of citizen, legal person, or other organization to initiate. With the development of a law-oriented administration, the emphasis will more and more be on remedial functions, similar to administrative litigation. For this reason, it will be discussed later in this report as part of "Remedies for Access to Government Information".

In the *Constitution* and the *Organic Law of Local People's Congress and Local Government of the PRC*, it is stated that administrative agencies enjoy the power to alter or annul inappropriate orders, directives and regulations issued by Ministries or commissions; to alter or annul inappropriate decisions and orders issued by local organs of state administration at various levels (article 89, the Constitution). Local People's government at or above county level direct the work of their subordinate departments and the People's governments at lower levels, exercise power to alert or annul inappropriate orders and directives of subordinate departments and inappropriate decisions and orders of the People's governments at lower levels (article 109, the Constitution, article 59, 66, the *Organic Law of Local People's Congress and Local Government of the PRC*).

China promulgated its Administrative Supervisory Law of the PRC and appointed professional agencies to monitor administrative activities. Various levels of supervisory organs exercise supervision over State administrative organs, government officials, and other personnel appointed by State administrative organs as prescribed by the law. State Council supervisory organs have jurisdiction over the nation's supervisory work. Various levels of local People's government supervisory organs at or above county level are responsible for supervisory work in their administrative regions. They shall be responsible for and report to the People's Congress at the same level. Superior supervisory organs take the main lead in supervisory operation. Various levels' supervisory organs exercise supervision over people's government departments and their government officials at the same level, over People's government and other personnel appointed at the same level and over the People's congress and their leading personnel at lower levels. (Article 15, 16 of *the Administrative Supervision Law of the PRC*)

The supervisory organs fulfil the follows functions:

- a) To inspect the problems of the State administrative organs that occur in the course of their observing and enforcing laws and rules and regulations as well as government decisions and decrees;
- b) To accept and handle accusations and expositions against administrative organs or public servants of the State or other persons appointed by such organs that violate rules of administrative discipline;
- c) To investigate and handle violations of rules of administrative discipline committed by administrative organs or public servants of the State or other persons appointed by such organs;

d) To accept and handle complaints presented by public servants of the State or other persons appointed by administrative organs of the State who refuse to accept decisions on administrative sanctions made by the competent administrative organs, and other complaints to be accepted and handled by supervisory organs as prescribed by laws, rules and regulations; and

e) To perform other duties as prescribed by laws, administrative rules and regulations (Article 18 of the *Administrative Supervisory Law of the PRC*).

Supervisory organs may, on the basis of findings from examinations and investigations, make a supervisory decision or recommendation to order relevant administrative organs make corrections on suspected illegal or inappropriate conduct, to impose sanctions on persons directly in charge (Article 23, 24 of the *Administrative Supervision Law of the PRC*). Penalties for suspected civil servants include warnings, demerit, gross demerit, demotion, dismissal from post and expulsion.

The supervision system shares some characteristics with the reconsideration system, yet there are distinct differences. First, although both target monitoring administrative activities and remedying individual or legal personal damages, the supervisory system places emphasis on the former while the other on the latter. Secondly, they have different functional organs. In China, professional supervisory organs exercise supervisory power, but the administrative reconsideration system - which is dependent on administrative agencies at a higher level - does not. Thirdly, the same objects may have a different legal status in terms of administrative supervision and administrative reconsideration. In the context of administrative supervision, citizens, legal persons and other organizations may complain or indict illegal or inappropriate conduct of government agencies or their officials to professional supervisory organs or government agencies at a higher level. Their complaints and indictments are not the only way to push the supervisory process. But in terms of administrative reconsideration, applications made by citizens, legal persons or other organizations is a "must". Moreover, with further reform of the administrative reconsideration system, their roles will become even more important in the administrative reconsideration process.

In the field of Access to Government Information, the Ordinance adopts the following provisions:

- Article 29 All levels of the People's government shall establish and perfect an examination system, social appraisal system and assign responsibilities for release of government information, and should regularly examine and appraise implementation of the release of government information.
- Article 30 Agencies responsible for access to government information and supervisory agencies shall supervise and examine implementation of access to government information in government agencies.
- Article 33, Item 1 When citizens, legal persons or other organizations see government agencies failing to perform their duty in releasing government information in line with the law, they can report to higher level government agencies, supervisory agencies or departments responsible for public access to government information. The agency that accepts this indictment shall investigate and handle the indictment.
- Article 34 If government agencies fail to obey the requirements of this Ordinance, fail to establish and improve secrecy review mechanisms related to government information, it should be corrected by the supervisory agency or the higher level government agency. If the violation is severe, the principal of administrative agencies should be punished in line with the law.
- Article 35 Where any violation below is found in government agencies, the supervisory agencies and the superior government agencies should instruct them to correct it. If the circumstances are serious, government sanctions shall be imposed upon the liable persons in charge and other liable persons within the government agency. If a violation constitutes a crime, it shall be subject to criminal responsibilities as follows:
  - a) Failure to performing the duty of Access to Government Information in line with the law;

- b) Failure to update Access to Government Information contents, the Access to Government Information guide and Access to Government Information index;
- c) Charging unreasonable fees;
- d) Providing government information for profit via other organizations and persons;
- e) Releasing government information classified as secret;
- f) Other actions violating this ordinance.

The Ordinance clearly states its demands on establishing an evaluation mechanism and for improving sanctions. It also clarifies legal responsibilities to deal with possible illegal conduct in government information disclosure. Meanwhile, the Ordinance suggests founding a social evaluation system, which means that, besides an inter-agency supervisory system, a broader social supervisory system will be introduced to Access to Government Information to further promote work on information disclosure.

With regard to government officials responsible for supervising the system, the Ordinance will continue the current supervisory system, and will not take up European practices such as Information Commissioners or the Ombudsman. Those roles are independent from government agencies politically and economically. They are generally nominated by Parliament and are responsible to Parliament. In China, as mentioned above, the Ordinance is part of the government regulatory system, which can only be applied to government activities rather than power exercised by the People's Congress or its Standing Committee. The Ordinance has been designed in a way that makes applying such independent supervisory models hard to apply within the Chinese administrative system.

### **3.2.2 Remedial Measures in Access to Government Information**

In China, citizens, legal persons or other organizations may bring litigation or apply for reconsideration on a particular decision or government official, asking for a review of an administrative decision or to correct damages, whenever their legal rights have been violated. The interpretation reads that, in accordance with Chinese law, legal administrative remedial measures include reconsideration and litigation. Reconsideration of a decision is covered under internal compensation measures, which is under the jurisdiction of relevant government agencies. But litigation depends on a court judgment separate from government power. The Ordinance, which takes international experiences as a reference, allows applicants to protect their rights in information disclosure activities by way of litigation and reconsideration. Item 2 of article 33 states that:

'When citizens, legal persons and other organizations find their legal rights and interests have been infringed by administrative decisions during the process of an Access to Government Information procedure, they can apply for reconsideration or bring litigation according to the law.'

Under the current remedial system, interested parties may apply for reconsideration or bring litigation against administrative decisions. However, cases stipulated otherwise by laws and regulations shall be excluded (article 37, *Administrative Procedure Law of the PRC*). Literally, unless there is a law-based or regulation-based exception, interested parties may choose from two options: to bring a lawsuit, or to apply for reconsideration first and afterwards initiate litigation if officials refuse to accept such decision.

### 3.2.2.1 Current Remedial System in China

Reconsideration refers to the review and supervisory activities performed by certain government organs on the rationale and legitimacy of administrative decisions, and designed to protect the lawful rights and interests of relevant parties. In 1999, China issued the Administrative Reconsideration Law of the PRC (hereinafter Administrative Reconsideration Law), and on 23<sup>rd</sup> May, 2007 published the *Regulation on the Implementation of the Administrative Reconsideration Law of the PRC* by the State Council (hereinafter the *Regulation on Administrative Reconsideration*). It should be stressed that administrative reconsideration is a kind of self-adjustment strategy within an administrative system rather than a lawsuit dealt in a court of law and presided over by a judicial organ.

The *Administrative Reconsideration Law* provides for any citizen, legal person or other organization, who considers that an administrative decision has infringed upon his or its lawful rights and interests. The right to file an application for administrative reconsideration is within 60 days from the day when the decision was announced (article 9). In China, the information reconsideration application is free of charge.

Generally, an application for reconsideration is handled by an authority at the next level up from the department which made the original decision and against which the complaint is levelled. For example:

- a) An applicant who refuses to accept a specific decision from a department under the local People's governments at or above the county level may apply for reconsideration to the People's government at the same level; an applicant may also apply for reconsideration to the competent authority at the next level up. An applicant who refuses to accept a specific decision from a 'vertical' administrative body, such as customs, banking, tax collection, foreign exchange control or a State security organ, shall apply for reconsideration to the competent authority at the next level up (article 12, the *Administrative Reconsideration Law*);
- b) A citizen, legal person or any other organization that refuses to accept a specific decision from local governments at various levels shall apply for reconsideration to the local government at the next level up (article 13);
- c) A citizen, legal person or any other organization that refuses to accept a specific decision act from a department under the State Council, or a provincial / regional government, or a municipality directly under the Central Government, shall apply for reconsideration to the department under the State Council, or the provincial / regional government or the municipality directly under the Central Government that issued the decision. An applicant who refuses to accept the reconsideration decision may bring a lawsuit before a People's court, or apply to the State Council for a ruling; the State Council shall make a final ruling according to the provisions of this Law (article 14);

Applicants may use written or oral form to apply for reconsideration of a decision. Reconsideration shall, in principle, examine the application in written form. Except in circumstances where the applicant makes a request or the department making the reconsideration deems it necessary, the department may organize a hearing (article 33, the *Regulation on Administrative Reconsideration*). The office responsible for the legal affairs of the reconsideration body shall send a duplicate of the application form for reconsideration or a copy of the transcript of the reconsideration application to the respondent of the application within 7 days from the day of acceptance of the application. The respondent of the application shall reply in written form within 10 days from the day of receipt of the duplicate of the application form or the copy of the transcript of acceptance, and provide evidence, grounds and other relevant documents on the basis of which the specific administrative act has been undertaken (article 23, *Administrative Reconsideration Law*).

An administrative reconsideration body shall make a reconsideration decision within 60 days from the day of acceptance of the application, except for circumstances where the time for reconsideration set in laws is shorter than 60 days. If circumstances are complex, the persons responsible for the reconsideration may approve a justified extension of the time limit within 30 days (article 31, the *Administrative Reconsideration Law*).

Decisions for administrative reconsideration fall into following categories:

- a) Decision to uphold a decision, which is applicable in cases where the facts are clearly ascertained by a specific administrative act, the evidence for the act is conclusive, the grounds for application are correct, the procedure is legal, and the content of the act is proper;
- b) Decision to perform duty, which is applied to the applicant who fails to perform the statutory duties deemed by reconsideration organs;
- c) Decision to annul, alter or confirm, which is applied in circumstances where the essential facts are ambiguous, where evidence is inadequate, grounds for application are erroneous, legal procedures violated, authority exceeded, powers abused, or the decision is obviously flawed;
- d) Decision to compensate, which is applied in a situation where an applicant puts forward a request for compensation when applying for reconsideration, and in cases where damages shall be paid in accordance with the relevant provisions of the *State Compensation Law*, simultaneous with a decision to annul or alter the specific decision or to confirm the specific decision as illegal.

Besides the administrative reconsideration system, there is another important protection system for citizens, legal persons and other administrative organizations - the litigation system. In China, administrative litigation, as one of the core procedures, stands side by side with criminal litigation and civil litigation. It follows procedures prescribed by law and is performed by the court upon request of citizen, legal person, or other organization in order to solve administrative disputes by reviewing concrete administrative action.

In 1982, Chinese administrative litigation was first addressed in the *Civil Procedure Law of the PRC*, which states in item 2 of article 3 that this law shall be applied to administrative litigations handled by the People's court. In accordance with this provision, the economic tribunal of the People's court stated their practice on dealing administrative lawsuits. In April 1989, the *Administrative Procedure Law of the PRC* (hereinafter the *Administrative Procedure Law*) was approved by the National People's Congress (NPC), and enacted on 1<sup>st</sup> October, 1990. Since then, administrative lawsuits have been tried by administrative tribunal under the People's court. The Supreme Court of the PRC successively publicized judicial interpretations on the Administrative Procedure Law to guide trials on administrative disputes.

In stark contrast to other countries, China arranges administrative tribunals under the People's court rather than having an independent court for the trial of administrative cases. Chinese courts are arranged on four distinct levels: the Supreme Court, the Higher People's Courts, the Intermediate People's Courts, and the Grassroots People's Courts. Generally, the grassroots People's courts have jurisdiction as courts of first instance over administrative cases. The intermediate People's courts have jurisdiction as courts of first instance over the following administrative cases: cases of confirming patents and intellectual property rights, cases handled by the Customs department; actions initiated against specific administrative decisions taken by departments under the State Council or by provincial or regional governments or municipalities directly under the Central Government; and grave and complicated cases in areas under their jurisdiction.

Where a citizen, a legal person or any other organization chooses to directly initiate an action in a People's court, he or she shall do so within three months from the day when he or she knows that a specific administrative decision has been taken, except as otherwise provided for by law (article 39, Administrative Procedure Law). Where an applicant refuses to accept the reconsideration



decision, the applicant may initiate legal proceedings to a People's court within 15 days from the day of receipt of the reconsideration decision. If the body responsible for the reconsideration fails to make a decision within expiry of the time limit, the applicant may bring a suit before a People's court within 15 days after the time limit for reconsideration expires, except as otherwise provided for by law (article 38, the Administrative Procedure Law).

Similar to other administrative procedure laws, the People's court exercises the Principle of Openness and openly tries all administrative cases, unless such cases involve State secrets or issues of personal privacy or if otherwise provided for by law (article 45, the Administrative Procedure Law). The trial goes through process of court investigation, debate, and etc. Evidence must be verified by the court before being taken as a basis for ascertaining a fact.

As they are addressed by law, all litigations in China apply the system whereby the second instance is final. If a party refuses to accept a judgment of first instance of a local people's court, he has the right to file an appeal with the people's court at the next higher level within given limitation prescribed by law. The judgments and orders of a people's court of second instance shall be final.

Court judgments for the first instance include following different types:

- a) Rule to uphold specific administrative decision if all facts are accurate and the administrative decision challenged is appropriate and lawful;
- b) Rule to cancel or to partially cancel the administrative decision if the decision challenged is found unlawful;
- c) Rule to reject the claim, which means an indirect approval of the decision;
- d) Rule to amend, which equals to a substantial amendment to the concrete administrative action by the court (only applicable to apparently unfair administrative sanctions).
- e) Rule to perform a legally binding judgment within a reasonable time-period. This broadly applies to cases of administrative omission and cases whereby legal applications by citizens, legal persons or other organizations are refused.
- f) Rule to confirm, which refers to the confirmation of the legitimacy of the administrative decision or confirmation of its illegitimacy.

Specifically concerning Access to Government Information, the Ordinance arranged for both possibilities: administrative litigation and administrative reconsideration. Parties may apply for reconsideration or file a lawsuit depending on their choice. It is clearly stated in the Ordinance that the Administrative Reconsideration Law and the Administrative Procedure Law shall be equally applied to administrative disputes caused by government information disclosure activities just as with other administrative litigations. However, it is different from regular cases. For instance, from the perspective of the qualification of the parties involved, applicants in a reconsideration case or plaintiffs in an administrative lawsuit may not be directly confronted with the challenged government information; from the perspective of a trial approach, the principle of openness or the rule of court inquiry and verification cannot simply be copied in the context of information disclosure. If practiced, the dispute about releasing the information would be in vain, as information would be publicly available anyway through the trial procedures. This restriction of openness may also involve the court system, because in cases where national security is involved, not every reconsideration authority or judge is qualified to access the information challenged, even in an "in camera" situation.

### **3.2.2.2 Overall Views on Remedial Measures in Access to Government Information Regionally**

A remarkable number of regional administrative regulations have introduced remedial systems relating to Access to Government Information, allowing parties to apply for administrative reconsideration or file administrative lawsuits. Shanghai has processed significantly more cases and applications related to government information disclosure, and apparently its policy on remedy has showed some impact.

According to the annual report of the Shanghai government information disclosure system, administrative reconsideration has greatly promoted the protection of rights and the motivation to disclose information. Statistics show that in 2004, the total number of accepted administrative reconsideration applications was 21 in Shanghai, among which 13 applications were concluded within the year.

These 13 reconsideration applications ended with a variety of decisions: 6 to uphold the original decision, 3 to confirm its illegality, 1 to compel performing administrative duty, 1 withdrawal and 2 applications dismissed relating to agencies that had already reversed their original decision. In the reporting period, the correction rate reached 46.2%.

In 2005, the total number of accepted administrative reconsideration applications was 62, among which 57 applications were concluded within the year. The 57 reconsideration applications ended as follows: 26 to uphold the original decision, 9 to confirm illegality, 3 to compel performing administrative duty, 3 withdrawals and 1 application dismissed related to agencies that had already reversed their original decision. In 2005, the correction rate was 22.8%.

In 2006, the total number of accepted administrative reconsideration applications was 106, among which 79 applications were concluded within the year. The 79 reconsideration applications include 61 decisions to uphold the original decision, while 18 decisions were overruled; the reversal rate was 17.2%.

From the perspective of administrative litigation – and leaving out statistics for 2006 which are not yet available - reports show that in 2004, 6 administrative litigations concerning Access to Government Information were brought to court, among which 5 were caused by refusal to accept administrative reconsideration decisions, and 1 was caused by refusal to accept the answer from the administrative agency. In 2005, 29 administrative litigations concerning Access to Government Information were brought to court, among which 18 were caused by refusal to accept administrative reconsideration decisions, and 11 were caused by refusal to accept the answers given by administrative agencies.

After interviewing relevant agencies and civil servants in Shanghai (including agencies involved in information disclosure related lawsuits as defendants) it appears that Shanghai has done a better job on disclosing government information because of the powerful drive of administrative reconsideration, and of administrative litigation in particular. It is this policy of allowing individuals to apply for administrative reconsideration or file administrative litigation that promotes disclosure of government information.

### **3.3 Recommendations for Best Practice**

#### **3.3.1 Central Body**

The experience of EU countries would suggest that there are many functions which are best undertaken centrally, not just during the implementation period, but in the maintenance phase of FOI as well. These functions include those listed above in 3.1.2.1 to 3.1.2.4, that is, the policy/systems development role, training/advisory role, monitoring/oversight role and public awareness/promotional roles. The performance of these functions in a central body can save a great deal of time and staff resources, since individual government bodies do not need to develop their own systems and procedures, training, promotional materials and so on. It also leads to greater consistency and quality control, as there is a single source of authoritative guidance, rather than each agency developing their own interpretation of the Ordinance with a corresponding higher margin for error. For training, which is dealt with in more detail in section 5, the central body does not need to actually deliver the training, as long as it has been involved in the development of the materials and has accredited those delivering the training.

#### **3.3.2 Review Body**

The EU experience is strongly in favour of a specialist review body which has expertise in the field of access to government information. It also suggests that the review body is more effective when methods of mediation and informal resolution are employed, not merely formal hearings. However, the review function could be performed within an existing structure, providing that the methods and principles described above are used. It is more likely to achieve the objectives of the Ordinance if an affordable, accessible option is available for applicants who are not happy with the result of the internal review decision. In jurisdictions where appeal to a court is the only option, there is a very low rate of such appeals, due to their complexity and cost factors, with most cases being brought by businesses rather than ordinary citizens.

#### **3.3.3 Other Recommendations**

Any FOI arrangement should look at practices in other countries as a reference, while incorporating characteristics into the Chinese context. It is common in any country with an FOI law that development of the FOI mechanism has been influenced by history, culture, constitutional regime and political systems. Even in the EU, member states share many common structures, although these may differ from each other in many ways. Besides, countries around the globe have developed varied FOI structures through the trend of globalization. With this in mind, every country can learn from successful experiences of other countries, making appropriate recommendations according to their own unique domestic situation. Simply transplanting a legal structure regardless of the domestic context would make the law unworkable, no matter how good the law might be in its original state. Moreover, the legislative bodies should reflect upon whether they have the power to make decisions on certain issues. The Chinese *Ordinance on Access to Government Information* was developed based on the above principle. It is oriented towards a constitutional regime and other Chinese characteristics, and arranged according to a

unique Chinese structure, which consists of the General Office of the State Council as the leading body responsible for FOI affairs, local government at different levels which perform FOI duties within their own jurisdiction, plus supervisory authorities acting as a supervisory body to review practices by government agencies in relation to FOI and in accordance with the Chinese *Administrative Supervision Law*, and for handling disputes in accordance with the Chinese *Administrative Reconsideration Law* or *Administrative Procedure Law*.

Secondly, a central body in charge of FOI is essential for implementing Access to Government Information regulations. One of the European experiences in relation to FOI implementation is to have one central body undertake macro-control on FOI affairs. EU experiences show that a central body may integrate the legislation process, system construction, and training arrangements, co-ordinate between government agencies, and make implementation more efficient. Based on European experiences, the Chinese *Ordinance on Access to Government Information* has a central body responsible for FOI affairs. At national level, the General Office of the State Council leads the campaign, while local governments above county level are appointed as FOI authorities at sub-national levels. The above-mentioned agencies shall perform their duties respectively within own jurisdiction, take charge of FOI promotion, guidance, co-ordination, and supervision. The central body should work together with the Joint Committee to develop specific implementation regulations to integrate experiences from earlier implementation processes and throw lights on a similar dispute settlement process later.

Thirdly, an effective communication system between agencies is important, as it can improve sharing experiences and co-ordination between departments. Experiences in some EU countries highlight a successful network of FOI practitioners in relation to FOI implementation. An FOI platform can be constructed to provide a network between government agencies, through which FOI agencies or FOI practitioners may communicate and contribute their own experiences related to FOI. This system can play a positive role in promoting public awareness of FOI, upgrading the processing capacity of government agencies, and construct a culture of transparency and openness within government circles. Many regions in China have developed a Joint Information Systems Committee during the implementation of FOI, including Shanghai and Hubei province for example. Under the Joint Committee, different government agencies may co-ordinate separate FOI work and discuss difficulties in processing applications. At a later stage, European practices on FOI network, like those in UK or Ireland, can be used as references to improve cross-agency interaction and co-ordination, and to develop FOI mechanisms and culture through face-to-face discussion, or routine/random communication and information sharing by ways of modern information technology (through mail-lists, web-based forum, video conference etc). The *British Clearing House* sets good example as a mechanism for dealing with cross-agency applications and complicated cases. However, it is difficult to apply in the Chinese context. As a substitute, the Joint Committee may be applied in a more active way, where it performs functions close to the Clearing House the UK for processing certain FOI requests.

Fourthly, FOI should be the responsibility of professional organizations or trained practitioners within each government agency to make sure every commissioner is equipped with the necessary knowledge. Practices in some European countries highlight the need for professional commissioners in all types of government, either for efficient implementation or for professional performances which minimize inappropriate conduct. The *Ordinance* requires government at all levels to appoint a specific body inside all government agencies as an FOI authority to handle FOI affairs within respective jurisdictions. They are responsible for FOI issues, including accepting and processing applications. Meanwhile, for agencies that deal with a large volume of FOI information processing or applications, it is more appropriate to assign practitioners specifically for their department's information management and for co-operating on government FOI work. As mentioned before, this practice of assigning high-level officials as 'FOI champions' as performed by many European countries like UK, is also a good solution. Under the current Chinese system, high-level officials could be nominated to take responsibility for FOI affairs within government agencies, and assign leaders to guide and supervise FOI work within their departments, either as full-time or part-time practitioners. Furthermore, the role of experts on FOI

issues should be stressed, and experts from academic and practical fields should participate in FOI related activities to keep FOI work scientific and valid.

## 4. FOI Training

### 4.1 FOI Training in the EU<sup>40</sup>

#### 4.1.1 Trained Staff Essential for Information Access

From research and survey responses, it is widely acknowledged that well-trained staff are essential for carrying out information access schemes effectively. Careful attention to training is essential to ensure all of the following positive outcomes:

- Procedures and policies are followed correctly and consistently, providing a high standard of FOI customer service – helpful, thorough and within time limits
- Appropriate information is given out (and inappropriate information is NOT given out)
- Results of the information access scheme are consistent across agencies, which increases confidence in and respect for government.

To summarise a study of available best practices, effective FOI training requires:

- Timely, appropriate training according to the needs, roles and functions of the staff concerned
- Senior management support
- Sufficient resources to provide training (including allowing staff time, travel costs, dedicating instructor time to course development and delivery, and resources for meeting rooms, physical copies of training materials, and information technology)
- Training that is very practical and “hands-on”: not just lectures, but the opportunity to handle sample case files, practice making the FOI decisions with regard to their release, and then checking of the student’s work by the group or the instructor.

As the following examples illustrate, there are different types of training before and after implementation (some of the EU member states, such as Sweden, implemented FOI so long ago that we could not gather data about their pre-implementation training.)

Some jurisdictions which did not provide any FOI training reported through the survey that this caused problems in staff performance that included failure to recognize FOI requests, failure to meet deadlines, misinterpretation of the legislation, and failure to give proper reasons for refusals. In other words by showing what happens when staff are not trained, they provide additional support for the importance of training.

The best practice is for FOI training to have two distinct phases (although the types of training overlap between the phases), as shown in the following table:

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<sup>40</sup> **Note on scope:** This section addresses the training provided to staff within government bodies. Increasing the awareness of FOI for the public is dealt with in *Section 5: Implementation*.

Training Phase	Topics To Be Covered
During implementation	<ul style="list-style-type: none"> <li>• General FOI awareness for all staff</li> <li>• How to assist citizens seeking information (Publication scheme and making FOI requests) for all staff with public contact duties</li> <li>• Strategic overview for senior staff</li> <li>• “Hands on” practitioner training for FOI decision makers and reviewers</li> <li>• Specialised training for records management staff, legal officers, investigators, and others</li> </ul>
After implementation (the “ongoing maintenance” phase)	<ul style="list-style-type: none"> <li>• Content about the agency’s FOI responsibilities and processes has now been included in standard training such as induction for new staff, customer service courses, records management courses.</li> <li>• Regular FOI updates for all supervisors and managers include tracking of outcomes and reporting metrics</li> <li>• “Hands on” practitioner training for FOI decision makers and reviewers is still required but the nature and content of the training may change depending on the results of FOI decisions by courts and review bodies</li> <li>• Specialised FOI training for records management staff, legal officers, investigators, and others</li> </ul>

Almost all of the FOI material developed for the implementation phase will prove useful for the maintenance phase of FOI. Except for the specialist / practitioner training, most other FOI training will be integrated into the normal curriculum of training for public officials. For example, the Ministry of Justice in the UK is working with the National School of Government (NSG) to include an FOI component in NSG policy and legislation courses to embed a more proactive FOI culture in central government.<sup>41</sup>

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<sup>41</sup> Written evidence Page 49, House of Commons Constitutional Affairs Committee *Freedom of Information - one year on* <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmconst/cmconst.htm>

## 4.1.2 Model For Developing A Training Strategy

The following steps comprise a model for developing a training strategy:

- Identify the business areas or types of records most likely to be subject to FOI requests, or with information for inclusion in publication scheme
- Identify training needs of particular groups of staff
- Identify the numbers requiring each type of training
- Evaluate options for delivery, mindful of constraints in resources (eg: time away from job, travel costs)
- Develop training objectives which are:
  - **S**pecific
  - **M**easurable
  - **A**chievable
  - **R**esults-centred
  - **T**ime-bound
- Develop training curriculum and materials
- Plan timetable for delivery
- Consider variety of options for delivery of training
- Deliver training
- Evaluate effectiveness (at intervals: initially, after 6 months, after 1 year etc)
- Review and modify materials /plan for ongoing training

In addition, lessons from EU member states' experiences with training (those which deliver it best) suggest keeping in mind the following issues:

- Training content must be extremely practical and specific, providing case studies, exercises and even sample documents to work on. The policies and procedures should have been developed in advance of the practitioner training.
- Training material needs to be adapted to each agency's needs. Some core general material should be used (especially if the high level content is flexible and adaptable) to ensure consistent interpretation and policy application, but each agency should target the training content to its own specific needs. The special needs of particular business areas or staff need to be identified and addressed. For example:
  - Staff dealing with procurement matters need training with more detail about business information, trade secrets, the public interest test, confidentiality clauses and consultation with the third party businesses.
  - Staff who undertake investigations and prosecutions need training with more detail about confidentiality (and its limitations), legal privilege and other relevant exemptions.



- Staff dealing with the personal information need training with more detail on data protection principles, the exemptions for personal privacy, consultation with third parties and the public interest test.
- Depending on the organisation and its current records management practices, there may be additional training needs for its specialist records management staff, or all of its staff in records management practices.
- Learners will best accept training content when support for the FOI regime and the training program are demonstrated by the most senior level of each organisation involved.
- Resources must be sufficient to deliver training effectively, including sufficiently detailed “hands on” sessions for staff handling actual FOI requests. An organizational budget for FOI training should take into account such factors as:
  - The likely number of FOI requests the organisation will receive;
  - The business areas affected;
  - The current state of records and knowledge management;
  - The training requirements of staff across the organisation; and
  - The most appropriate delivery mechanism for that training.

Plan ahead to take key elements of the pre implementation training and incorporate them into the standard induction training for new staff.

The following diagram from a Scottish training strategy document (which will also be discussed later in this chapter) “draws attention to three different levels at which the strategy needs to work:

- Knowledge and information - the facts, the legislation and knowledge and information about procedures and processes. This area is particularly important in the short term in the run-up to implementation;
- Skills and behaviours - what individuals need to be able to do to implement the practice and spirit of the regime. It includes technical skills in making decisions about FOI matters but also more general skills in relation to records management and customer service; and
- Culture and commitment - the medium to long term development of attitudes, especially at senior level, which will ensure public organisations are being proactive in implementing the spirit of the legislation. It is important to ensure that organisations do not take a minimalist approach and pigeon-hole FOI as a technical/legal issue.<sup>42</sup>

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<sup>42</sup> Pages 8-9 Freedom of Information Implementation Group, *Training Strategy for Scottish Public Sector* [www.scotland.gov.uk/Resource/Doc/1066/0003833.pdf](http://www.scotland.gov.uk/Resource/Doc/1066/0003833.pdf)

## FoI: Training and Communication Strategy



### 4.1.3 Types of Training

The following are the main types of training that may be developed for FOI implementation.

#### 4.1.3.1 FOI strategic overview for senior staff

This would usually consist of a series of short briefings for the executive group and senior managers of public bodies. It would not attempt to provide details of procedures or exemptions, but rather is a high-level presentation of the overall implications of FOI. It should be delivered as early as possible in the implementation plan, as the senior managers need to be able to assess the likely impact of FOI on their organisation and plan to address it. Figures from Scotland suggest this would be targeted at less than 1% of staff in a public body.

#### 4.1.3.2 FOI awareness for all staff / public contact staff

Every staff member of the public body needs to at least have a general awareness of the right to access government information. All staff who have contact with the public (whether by telephone, mail, face-to-face, including security staff) need to know how to assist them to make a request for information or to access the publication scheme. All staff who create records in the course of their work need to know that these records may potentially be accessible and hence they need to be aware of appropriate records management practices.

Especially where oral requests are permitted under the legislation (as Article 20 of the Ordinance allows), awareness training should extend even to security staff. The results of an evaluation undertaken by the Open Society Justice Initiative found that 22% of the applicants in their study were unable even to submit their oral applications as they were unable to find the location in the public office or the person to whom they could submit them.<sup>43</sup> They recommend:

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<sup>43</sup> page 84 Open Society Justice Initiative *Transparency and Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries* [www.justiceinitiative.org/db/resource2/fs/?file\\_id=17488](http://www.justiceinitiative.org/db/resource2/fs/?file_id=17488)

“Public bodies should ensure that all personnel, including security and reception staff, have a basic understanding of the right of members of the public to approach the institution and to file requests for information.”<sup>44</sup>

All public contact staff should be aware of the FOI rights of citizens and of how to assist them to lodge their FOI requests or seek information from the publication schemes prior to the implementation date.

#### **4.1.3.3 Specialist FOI training**

In all organisations there will be a small number of staff with particular FOI training needs based on the work they do, or the types of records they create. Some examples are:

- Records management staff
- Legal officers
- Investigators
- Procurement officers
- Web masters

Each group would need basic FOI awareness, with additional modules developed to meet their specific needs. Many of these staff would be part of professional networks across government and it would be valuable to link with such networks in arranging this specialised training.

#### **4.1.3.4 FOI practitioner training**

While there are a number of different approaches in the EU regarding who makes decisions on FOI applications, the officials responsible must have a detailed understanding of all the provisions of the legislation. It is easier and more efficient to centralize decision making in one position or a specialized FOI unit, however, the initial training needs are the same whether the official is a part-time or full-time FOI decision-maker. It should be noted however that it is far more difficult to maintain the skill level for an officer who may deal with only a few FOI cases per year, than one who is processing applications every day. Where a public body also has a system for internal review of FOI decisions, the internal reviewers would need to receive the same practitioner training.

Practitioner training would need to cover:

- The citizen’s legal right of access to information
- Proactive publication schemes – how to develop and maintain them (Articles 9 –12 )<sup>45</sup>

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<sup>44</sup> page 53 *op.cit.*

<sup>45</sup> References to the corresponding provisions of the Chinese Ordinance have been used here for convenience.

- How to process a request for information:
  - recognising a request (Art. 20)
  - time limits (Art. 24)
  - procedures to deal with the request
  - co-ordination system (Art.7)
- Searching for relevant records
- Consulting with FOI applicant to clarify request (Art. 21)
- Consulting with third parties (individuals, businesses) about the release of their information (Art. 23)
- Learning about related laws such as: secrecy laws, other laws containing provisions about release or prohibitions on release of information (Art. 14, 17)
- Interpreting/ applying the Ordinance to decide whether to grant or refuse access (Art. 8, 14)
- The meanings of terms such as “national security”, “public security”, “business secrets”, “national secret”, “privacy”, “public interest” etc
- Redacting records – deleting exempt information before release (Art. 22)
- Fees and charges (Art. 27, 28)
- Writing reasons for decision (Art. 21)
- Amending personal records (Art. 25)
- The system of appeal and supervision (Art.33)
- Penalties for not complying with the Ordinance (Art. 34, 35)
- Compiling statistics, annual report (Art. 31-32)
- Use of specialized FOI IT system (if any)

Based on EU experience of practitioner training courses, such a training course could last 2 or 3 days.

Some organisations give responsibility for FOI decision-making to their Legal Officers, who already have a law degree, giving them a strong foundation for interpreting the law. However even Legal Officers can benefit from additional specific FOI training, as their university studies would have only spent a short time on FOI as a small topic amongst many others. The majority of staff of the appeal bodies (CADA, Information Commissioners) require at least some of their staff to have legal qualifications for similar reasons. For legal staff, in many countries there is a wide range of accredited short courses in FOI and related topics which are part of the continuing legal education systems for lawyers. Such training is usually provided by law firms or specialist consultants.

### **University-level programs for practitioners**

Some countries have begun to develop specialist FOI university-level programs for FOI practitioners which are conducted at levels ranging from Certificate, through Diploma to Degree. These are sometimes described as Information Rights courses, and while they may incorporate some units of law, are not the same as a law course. A long-standing model is in Alberta<sup>46</sup>;

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<sup>46</sup> Information Access and Protection of Privacy Certificate Program at <http://www.govsource.net/programs/iapp/index.ncl>

another was recently set up at the University of Northumbria (Information Rights and Practice – post-graduate courses leading to a Certificate, Diploma or Masters in Law<sup>47</sup>.) Even more specialised are the university-level courses for members of administrative tribunals / Information Commissioners' staff, where the focus is on mediation, dispute resolution and appeal procedures of FOI.<sup>48</sup>

#### **4.1.4 Methods of Delivery of Training**

There are many methods which can be used to deliver training, and the application of information communication technology has increased the options. Some methods are effective when used for general awareness raising, but are less effective for specialized or practitioner level training.

##### **4.1.4.1 Methods of delivery for awareness level training**

- In-house briefings to large groups
- Articles in in-house newsletter / magazine / on website
- Distribution of interactive CD/DVD<sup>49</sup>
- Web-based: Frequently Asked Questions (FAQs), quizzes, general information, leaflets, flowcharts
- E-learning: computer-based training
- Video / audio / CD / DVD
- Micro-communications: posters, leaflets, placemats, mouse-mats, screen savers
- Email bulletins to all staff / letters/ mailouts (to each staff member with their payslip);
- Pop-up message when they log on to computer systems

##### **4.1.4.2 Methods of delivery for practitioner training**

- Small group sessions and workshops (in person and video-conferencing)
- Networks of practitioners, special interest groups
- Skills training courses for small groups
- E-learning: computer-based training
- Video / audio / CD / DVD

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<sup>47</sup> <http://northumbria.ac.uk/?view=CourseDetail&code=DTDIRL6>

<sup>48</sup> For example the post-graduate courses in Tribunal Procedures offered by Monash University in Australia: <http://www.law.monash.edu.au/postgraduate/law-tribunals.html>  
<http://www.law.monash.edu.au/postgraduate/units-tribunals.html>

<sup>49</sup> An excellent example of such a CD was issued by the British Council, which has staff in 110 overseas locations, making remote delivery of training essential

- Webcasts, podcasts, interactive satellite broadcast, conferences
- Self-paced learning workbooks including case studies, quizzes, worked examples

Other options for skills development and maintenance as an adjunct to delivery of formal training courses are:

- Interactive options: web-based forums, networks, conferences, online discussion, mailing lists
- Resource material on websites including guidelines, procedures and flowcharts, How-to booklets<sup>50</sup>, publication of summaries of / full text of decisions by Information Commissioners/courts, case studies, quizzes, conference proceedings including audio/video/powerpoint slides from presentations, FAQs, disclosure logs, and sample decision letters.

#### 4.1.5 Examples of Training Material

The Joint Information Systems Committee (JISC) in the UK prepared an FOI awareness training package consisting of a 10 minute video, powerpoint presentation, handouts and speaking notes for the presenter<sup>51</sup>. The case study in the video is set in a college but the lessons are applicable to any public sector body. They also produced a 10 minute video: "Freedom of Information - Essential guide for Further Education and Higher Education Staff"<sup>52</sup> which is useful for Induction and general awareness training.

Approaches which have been successfully used in FOI videos are:

- Inclusion of a filmed statement in support of FOI by a senior figure: Premier, Minister or Chief Executive of the public body
- Following an FOI request from its receipt through various stages of processing, showing relevant paper forms and computer screenshots to demonstrate the procedures
- A dramatised story of a client with a problem who uses FOI to find a solution
- Interviews with internal and external supporters of FOI
- Use of humour, such as in the Video Arts series, or extracts from television programs such as "Yes Minister" (a British comedy series about a government Minister)

Another example of a training manual is that produced by Article 19, a non-government organisation. The "Freedom of Information Training Manual for Public Officials"<sup>53</sup> provides the content for a 2-day training course (including case studies, exercises and role plays), but it can also be used as a self-paced learning workbook. It has been used in a number of European countries, and its content is generic rather than specific to any country or FOI regime.

<sup>50</sup> An excellent example of a leaflet for staff is the one issued by the UK Ministry of Defence: "Hints for Desk Officers handling Freedom of Information and Environmental Information Regulations requests" at: <http://www.mod.uk/DefenceInternet/FreedomOfInformation/PublicationScheme/SearchPublicationScheme/HintsForDeskOfficersHandlingFreedomOfInformationAndEnvironmentalInformationRegulations.htm>. It is short, simple and readable, while covering the essentials, with good use of colour and cartoons, Do's and Don'ts.

<sup>51</sup> It can be downloaded in full from: <http://www.jiscinfonet.ac.uk/records-management/developers-pack>

<sup>52</sup> The video can be streamed or downloaded from: <http://www.jisclegal.ac.uk/publications/foivideoforstaff.htm>

<sup>53</sup> <http://www.article19.org/pdfs/tools/foitrainersmanual.pdf>

#### 4.1.6 Timing of Training Delivery

The timeframe within which implementation training has been delivered in EU countries is quite varied, and relates closely to the amount of lead time prior to implementation.

The strategic level briefings for senior staff should occur as soon as possible in the implementation process. This provides maximum opportunity for the public body to identify the impact of FOI and its specific training needs.

General awareness sessions for all staff should have been completed prior to the implementation of the legislation, although in many places the sheer number of staff to be trained meant that this was not possible. Priority should be given to ensure that all public contact staff have been trained prior to the full implementation date so that members of the public can get advice and make their FOI requests at any contact point.

Training for FOI practitioners cannot occur in advance of at least some of the policy and procedures being developed. Legal interpretation of key terms, and at least an outline of procedures and systems need to have been developed so that the trainees can be made familiar with them. Without these, the training will be much less practical and relevant, more theoretical or academic. There is also a risk of the need to retrain once the detail of the policies and procedures are known. Practitioner training also should not occur too far in advance of the implementation date. Without the opportunity to put their new knowledge and skills into practice quickly, they are likely to lose some of the detail learned during their courses. An ideal timeframe is during the 3 months prior to implementation. However if the training must be provided earlier, the public body should plan for reinforcement using some of the other methods as adjuncts to the formal training.

Training type	Oct 07	Nov 07	Dec 07	Jan 08	Feb 08	Mar 08	Apr 08	MAY 08	Jun 08
Awareness									
Strategic									
Public contact									
Specialist									
Practitioner									
Ongoing									



#### 4.1.7 Delivery of Training

Across the EU, there are many variations as to which bodies provide the training, including:

- Trainers from the central agency responsible for FOI
- Trainers in a central government training academy (Ireland, Slovenia – this is the role played by the Chinese National and local Academies of Administration)
- Staff of the Information Commissioner or other review body, including the Information Commissioner personally (UK, Slovenia)
- Trainers from within each agency, who were trained by the central body or accredited external trainers
- Academics / external consultants / private sector providers / law firms

There are many advantages to the central FOI body taking a strong lead role in the provision of training. It brings greater quality and consistency, and significant cost savings. Criticisms of the

failure of the central body to provide leadership in training on these grounds were made by the House of Commons Constitutional Affairs Committee in the UK.<sup>54</sup>

Some of the possible roles of central bodies in FOI training include:

- Developing the course content and materials
- Overseeing the development of the content
- Training the trainers
- Accrediting the trainers
- Delivering the training directly.

In two of the case study examples below, the central FOI body provided strong and effective leadership in the development and provision of training.

## 4.1.8 Case Studies of Best Practice

### 4.1.8.1 Model for training strategy and materials: Scotland

The Scottish FOI Implementation Group, working to the Scottish Executive (central body for implementing FOI), developed a comprehensive training strategy outlining how to identify the training needs of various groups of staff, and looked at options to meet those needs. The result was the Training Strategy for Scottish Public Sector<sup>55</sup> which is an excellent model for developing a strategy. It has a very useful annex containing a matrix of training needs of various groups of staff. The training plan for the University of Edinburgh is another excellent example.<sup>56</sup>

The decision was made in Scotland to commission the development of a suite of core training materials centrally and to make them available to the public bodies to conduct their own training. The material was developed by Masons (a firm of solicitors), piloted during several workshops and verified by a cross-section group from public bodies. A number of lead officers were trained directly by Masons. The entire suite of training material was made available in March 2004 from the Scottish Executive website, and can be adapted for use within each public body to suit its training needs.

Included in the Scottish suite of training materials are:

1. Trainers' pack for FOI (229 pages)<sup>57</sup>

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<sup>54</sup> page 41-2, House of Commons Constitutional Affairs Committee *Freedom of Information Act 2000 - progress towards implementation*, December 2004

<http://www.publications.parliament.uk/pa/cm200405/cmselect/cmconst/cmconst.htm>

<sup>55</sup> Freedom of Information Implementation Group, *Training Strategy for Scottish Public Sector* at [www.scotland.gov.uk/Resource/Doc/1066/0003833.pdf](http://www.scotland.gov.uk/Resource/Doc/1066/0003833.pdf)

<sup>56</sup> [http://www.recordsmanagement.ed.ac.uk/InfoStaff/Training/Training\\_Strategy.htm](http://www.recordsmanagement.ed.ac.uk/InfoStaff/Training/Training_Strategy.htm)

<sup>57</sup> <http://www.scotland.gov.uk/Publications/2004/04/19245/35887>



This contains guidance on developing and delivering FOI training action plans, training techniques, and additional resources. The appendices consist of a leaflet template which can be adapted for each public body's needs, and three versions of powerpoint presentations:

- An overview presentation (31 slides),
- A strategic view presentation (26 slides), and
- The full presentation (85 slides)<sup>58</sup>

## 2. Open Learning workbook (197 pages)<sup>59</sup>

This self-paced learning workbook consists of 20 modules on various aspects of FOI, including publication schemes, records management, dealing with FOI requests, decision making and exemptions, interface with Data Protection and the Environment Information Regulations, review process. Each module sets out the relevant material, definitions of key terms, web links, and provides self-assessment checklists, case studies and answers as aids to learning.

### 4.1.8.2 Case Study: Provision of training: UK Police

In the UK, the implementation of FOI into the Police Force was co-ordinated by a project group under the Association of Chief Police Officers (ACPO). Their work ensured a high-quality, consistent approach to implementing FOI throughout the police force. They developed comprehensive training and support materials, including a 350-page Manual of Guidance. Particularly impressive was their use of information communication technology to support the training effort and provide mechanisms to develop and maintain FOI skills. The following extract from their presentation to the House of Commons Constitutional Affairs Committee outlines some of their approaches.

"2.3 The creation of a discussion group on FOI on Genesis:

Genesis is a database hosted by Centrex that is accessed via a secure network and logon over the Police National Network. It is a notice board that allows users to communicate through message threads and discussion forums, and to share information and documents through topic areas. .... Around six to eight hundred documents are available for download from Genesis from the following areas: Project Plans; Lessons Learnt from Abroad; Metropolitan Police Experience; FOI Personnel; Training; Dealing with Requests Process Maps; PowerPoint Presentations; FOI National Project; Information Audit Documents; Guidance on Force Policies; Miscellaneous National Documents; National Working Parties; ACPO Disposal and Retention Scheme; Safety Camera Partnership; Procurement Exemption; Manual of Guidance; Written Articles on FOI; Mosaic Attacks; FOI Workflow System & ACPO Standard Letters. The Service will continue to use Genesis post January 2005 to facilitate the continued sharing of best practice and decisions (eg. additional information classes for the Publication Scheme). ...

#### 2.6 The delivery of national training

25 training courses are being delivered, resulting in about 350 trained central decision makers across the country. Central decision makers are the individuals that will be applying the Public Interest Test. The provision of national training ensures a consistent application of this test across

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<sup>58</sup> The three presentations in powerpoint format can be downloaded from <http://www.scotland.gov.uk/Publications/2004/04/19245/35887>

<sup>59</sup> <http://www.scotland.gov.uk/Publications/2004/02/18961/33482>

the country. We note that these central decision-makers will have access to each other via Genesis and the established networking systems. 250,000 leaflets have been issued to all Police Service employees to raise awareness. In addition, posters and a central training website (provided by NCALT which all Police Service employees can access to train on-line) have been provided. Material for one day training courses to be held locally by each force has been issued. These are for the local decision makers within each BCU and department who will supplement and support the central decision makers.”<sup>60</sup>

#### **4.1.8.3 Case Study: Training Delivery: Ireland**

The small size of the country and the relatively small numbers of people involved meant that there could be centralised delivery of FOI training during implementation and afterwards.

Three Australian FOI expert trainers were brought to Ireland for 6 weeks to undertake the strategic and practitioner level training.<sup>61</sup> The strategic briefings for senior management lasted 1/2 day; the decision-maker training lasted 2 or 3 days (an Introductory course plus specialised add-on modules about particular exemptions). Over 1,000 officials were trained in the first month. The training was provided through CMOD (Centre for Management and Organisation Development – now known as the Civil Service Training & Development Centre) which serves central government. Training for local government was provided through a co-ordinating body, the Local Government Management Services Board, initially using Australian trainers. The Institute of Public Administration, which provides a wide range of training on all topics to local government, also provided some FOI training. The health sector engaged Australian trainers to conduct intensive pre-implementation 1 or 2 day workshops and training with focus groups (eg: groups of psychiatrists, child protection staff, human resources management staff) where the issues specific to their areas of work were discussed. These sessions were recorded on video and used to provide further awareness training leading up to implementation. During the months preceding implementation, a series of 2-day training courses were run for FOI decision-makers in each geographic health authority area.

In all cases, local trainers were invited to sit in on and observe the training, gradually gaining the skills and knowledge to present the awareness and introductory training themselves. It proved more difficult to train the trainers to conduct the intensive decision-maker training, and it was found that practitioners with FOI experience were necessary to work with the trainers in presenting these courses. The most difficult topic areas were the interpretation and application of the exemption provisions (such as personal privacy, business information, confidential information) and the application of the public interest balancing test. Detailed case studies, exercises using sample documents, discussion and debriefing was needed to give the trainees sufficient practice in, and confidence in their skills in these topics.

## **4.2 Training in China**

Implementation of the Ordinance largely depends on the civil servants: how they interpret its spirit, how they understand every provision, and how capable they are when processing information

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<sup>60</sup> page 65, House of Commons Constitutional Affairs Committee *Freedom of Information Act 2000 - progress towards implementation: Vol. 2 Written Evidence* December 2004  
<http://www.publications.parliament.uk/pa/cm200405/cmselect/cmconst/cmconst.htm>

<sup>61</sup> Gerry Kearney, “Implementing Freedom of Information” Conference paper October 1998 at  
<http://www.ucc.ie/ucc/depts/law/foi/conference/>

and when dealing with requests. Therefore, it is of utmost importance to carry out training among related personals.

Currently, there is a reasonably advanced training system for Chinese civil servants. Major trainings schemes are (referencing article 61 of the *Civil Servant Law of PRC* and the *Interim Provisions Concerning Civil Servant Training*):

- a) Original training, which is provided to new government employees during their probation period;
- b) On-the-Job training, which targets newly-promoted civil servants: the training period will usually be arranged one year before or after the promotion;
- c) Specialist training, aimed at officials engaged in a particular job that requires specialised know-how;
- d) Capacity building, which is aimed at updating knowledge, supplying additional information and broadening perspectives, applicable to all kinds of civil servants.

The government has arranged a phased training system for civil servants, with the National Academy of Administration at the centre and local academies of administration supporting at provincial, regional or municipal levels to conduct training within their own jurisdiction. Moreover, it is possible to authorize other organizations to perform civil servant training, which means besides the state-run training institutions, there are other training organizations available for civil servants operating outside the government system.

Training concerning Access to Government Information needs to be highly standardized both professionally and technically. It is supposed to fulfil multiple purposes: to broaden acceptance and consensus about Access to Government Information for civil servants at all levels, especially the leadership. On a more practical level, the training needs to increase civil servants' capacity of handling requests and improve efficiency of information management within the administration. Therefore, European training experiences may contribute to the success of the Chinese training schemes by providing information and training materials on practical methods of handling Access to Government Information processes both internally (file management) and externally (information requests).

### **4.3 Recommendations on Best Practices for China**

1. Training is essential to Access to Government Information. How FOI works is largely dependent on practitioners - their awareness of FOI and their capacity to handle cases. European practices highlight the role of timely, appropriate and sufficient training on promoting FOI awareness among a range of practitioners, to ensure accurate interpretation of FOI regulations, and to make correct responses. Otherwise, FOI implementation will be negatively influenced. Therefore, emphasizing better training leads to better FOI implementation. Training can contribute to a culture of openness and transparency among staff members, while ensuring their knowledge and skill levels are suited to their responsibilities.

2. The central FOI body should steer FOI training. The central body should make full use of its authority to assure efficiency of training. From the European experiences, the organization and support to training schedules ensure a successful outcome. The central body in China is the General Office of State Council which has the responsibility to lead training nationwide, to develop training schemes, materials and courses, to accredit and educate training providers, to develop important training activities at national level directly, and to support and guide training activities of other agencies or regions. Moreover, FOI bodies at sub-national levels shall also optimize its role, especially in performing FOI training within its own jurisdiction and coordinating cross-border information sharing and cooperation.

3. High level support to FOI training is necessary. FOI training should be given sufficient national support with human and capital resources. First, training providers' skills should be maintained at a high level. Training providers should include FOI researchers from academia and expert practitioners from FOI agencies. They should be required to go through a selection process and training by FOI bodies. Secondly, the government at all levels should maintain sufficient funding for FOI activities. Thirdly, FOI training should be incorporated into civil servants' training programmes. Furthermore, the period for training should be fixed and evaluated as with other civil servants' training programmes.

4. FOI training should have distinct training phases and training targets. The aims and needs should be different in pre- and post-implementation training. When developing training plans, attention should be paid to which phase is targeted. In the pre-implementation phase, training should particularly emphasize promoting official awareness of FOI and ensuring practitioners are equipped with the relevant knowledge; while in the post-implementation phase, emphasis will be shifted to upgrading knowledge and maintaining skills.

As European experiences further illustrate, a distinction among training targets can promote better outcomes. For senior officials, it is recommended to focus training on FOI strategic overview; for general civil servants, training should target at promoting FOI awareness; while for FOI practitioners, training has to involve capacity building to cover information management, application processing, and dispute resolution. Furthermore, training should be arranged in a manner that combines the horizontal and vertical layers, which means training for officials at the same level and training for officials dealing with similar type of work, since the latter category have many similarities and more focused training is necessary.

5. FOI training requires a detailed schedule, focused material and active delivery methods. When developing training syllabuses or materials, attention shall be paid to maintaining the theory and in particular highlighting the practical elements. Training content should be arranged in close relation to officials' daily work and ability to guide FOI activities directly. With the support of training institutions, FOI agencies can develop a training syllabus targeting at the various FOI phases and requirements. For training content and material, case analysis, PowerPoint presentation, "hands-on" practice, and widespread discussion should be provided. For delivery methods, a trainee-oriented approach is recommended, to make trainees more enthusiastic and promote interactions between trainers and trainees. For the above reasons, it is necessary to collect typical case studies as part of officials' routine work, to manage the volume of training subject matter. FOI bodies in China may still refer to European practices to develop practical training syllabuses and materials with the assistance of training institutions and FOI experts.

## **5. FOI Implementation in the EU**

### **5.1 Approaches to Implementation in EU countries**

This chapter will look at experiences and problems of EU member states during implementation, plus their approaches and responses. It will then describe strategies for implementation that incorporate the best practices known for FOI.

The term “Implementation” is used in this chapter to refer to the date from which the rights under the FOI legislation come fully into effect. It also is used to refer to the preparatory work that must be done when FOI regulations become law. There are a variety of such activities, described below, that EU member states have undertaken during the time (ranging from months to years) between when the regulations are passed and when they come into effect. FOI implementation also frequently leads to agencies making changes in their other policies and practices such as records management, which will be addressed in a separate section below.

Although the survey requested implementation advice from all of the EU member states, some first implemented FOI so long ago that they were not in a position to give helpful answers. Of the member states who have more recently implemented FOI, there has been a wide range of time from the passing of legislation until its full implementation: from 3 months (Poland), 6 months (Germany, Slovakia), 1 year (Ireland) to 5 years (United Kingdom).

In the UK and Scotland, there was a phased-in approach in that the publication schemes were required to be prepared between one and three years before the right to make FOI requests commenced. However, for some years prior to this, many public bodies had operated using an administrative code of access, which was broadly similar to FOI, although without the same rights of review.

In almost all countries, FOI was brought in for all government bodies commencing on a single date. Ireland is unusual in several respects. The scope of its Act extends only to documents created after its commencement (21 April 1998), except for personal documents, where the right of access is completely retrospective. This reduced the volume of documents which are potentially accessible. It is also unusual because its implementation was done in phases: the law commenced for central government departments in 1998, and widened its scope each year thereafter to include local government, the health sector, tertiary education sector and so on, over a period of years. This had advantages in making the scale more manageable and enabling the later sectors to learn from the experiences of the earlier bodies.

Those countries with a greater lead time (United Kingdom and the sub-national jurisdiction in Scotland) before full implementation have developed the greatest volume of material to assist in implementation and this chapter will draw heavily on their experience.

### **5.2 Common Problems During Implementation**

EU member states have experienced a variety of problems during implementation. Both problems and remedies will be reviewed here. Some of the problems are technical, to do with the legislation itself; others relate to resorting, and others concern attitudes. Lord Falconer of Thoroton, the UK Lord Chancellor, said in 2004:

“Some of the lessons from abroad are sobering. Implementation has been beset by three problems in other parts of the world. A lack of leadership. Inadequate support for those who are administering access requests. And a failure to realise that Freedom of Information implementation is not an event: it is a process which demands long-term commitment.”<sup>62</sup>

### **5.2.1 Parameters: What is an FOI Request?**

One common problem under new FOI laws is determining which requests for information are FOI requests and which do not fall under the legislation. Common questions include:

Must every request in writing be treated as an FOI request?

How to distinguish routine (“business as usual”) request, such as “What hours is the library open?” from formal “FOI” requests?

In some jurisdictions, FOI requests can be distinguished because the legislation requires the applicant to refer to the FOI Act in their request; in others, the paying of an application fee distinguishes an FOI request. Where neither of these is a requirement, as is the case under the Chinese Ordinance, policy will need to be developed to identify FOI requests. This is significant for aspects such as: whether the request must be answered within the statutory time limit, whether a refusal creates a right of appeal, and whether it should be counted in statistical systems.

### **5.2.2 Scope of Bodies Covered**

Another common problem is determining which public bodies are and are not covered by FOI, especially if coverage or applicability have not been explicitly stated in the legislation. Frequently it is not clear whether FOI applies to the following:

- Joint public / private ventures (such as a bridge that is jointly built with public and private money)
- Public functions transferred to private sector (for example, a railway sold to a private company)
- Government services performed under contract by private sector (such as a private psychologist providing health services for public patients, paid for by government funds rather than by the patient directly)
- Bodies partly funded by government (such as an opera company or a charitable organization)

Even several years after full implementation there have been disputes at external review level about whether a particular body is subject to the FOI Act.

A helpful solution to this has been to have lists of those bodies covered by FOI on the main government websites, and on the website of the external review body.

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<sup>62</sup> In a speech to the Campaign for Freedom of Information, 1 March 2004, <http://www.dca.gov.uk/speeches/2004/lc010304.htm>

### 5.2.3 Interaction Between FOI and Other Laws

The enactment of FOI legislation creates potential conflict with other laws which give or restrict access to information. An aspect which has created problems is the interaction between these mechanisms.

In most of Europe, there are laws giving the individual citizen a right of access to their own personal information, under Data Protection (DP). Some countries, such as Ireland, permit citizens to choose to use either DP or FOI to seek access to their own information. In others, such as the UK, the decision was made to exclude such requests from FOI and make DP the sole mechanism. The way this was achieved was to respond under FOI to such requests with a refusal, citing the exemption in section 40. However many citizens and officials found this confusing, as it sounded as if it were a refusal of access, instead of merely re-directing them to their rights under the DP Act.

A similar model was followed by the UK with requests for environmental information, under the Environmental Information Regulations (EIR). These cannot be dealt with under FOI and must be dealt with under the very similar (though not identical) provisions of the EIR. This too has resulted in some confusion.<sup>63</sup>

Where there are other avenues granting citizens a right of access, a policy must be developed whether these can continue in parallel with FOI, giving citizens a choice of options, or whether some must be used exclusively. Whatever the answer, officials and citizens must be made aware of the position.

A more difficult problem arises with other legislation which restricts the right of access. Every country has other laws, usually called "secrecy laws" which have existed for many years before FOI is implemented. These secrecy provisions limit the information which officials are permitted to disclose in their everyday work, and there are penalties for breaching them. When FOI is implemented, there is a need to clarify the status of these restrictions and to advise officials who are making FOI decisions so that they can apply the law correctly. Balancing and reconciling the needs for secrecy and openness is discussed by David Banisar<sup>64</sup>, and he suggests various models and principles to achieve this.

Two examples of such a review in the EU:

1. Ireland: Prior to commencement of FOI legislation in 1998, there was a review of which secrecy provisions should be over-riden by FOI law and those which should remain as restrictions. A Schedule to the Act set out those provisions which would not override the FOI Act. The FOI Act contained a process of reviewing the remaining restrictions every five years. Each Minister and the Information Commissioner make submissions about the remaining restrictions to a Parliamentary committee who then report on their findings. One report was issued in 1999, and the most recent report in 2006.<sup>65</sup>

2. UK: A review was undertaken of over 400 pieces of legislation containing prohibitions on disclosure which were considered as overriding the FOI Act (through section 44 of the FOI Act). The review considered whether they should be should be repealed, amended or retained. The process extended over several years and the final report was issued in 2005. The report sets out

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<sup>63</sup> Pages 14-15 House of Commons Constitutional Affairs Committee *Freedom of Information —one year on June 2006*

<sup>64</sup> *Freedom of Information and State Secrets 2005*

<sup>65</sup> Joint Committee on Finance and the Public Service: *Seventh Report : Review under section 32(2) of certain provisions of the Freedom of Information Act 1997* (Ireland); Reports of the Information Commissioner at: <http://www.oic.gov.ie/en/Publications/SpecialReports/ReportstotheJointCommitteeoftheHousesoftheOireachtasSection32/>

their approach to the review, the criteria applied and the findings.<sup>66</sup> One of their approaches was to introduce “sunset clauses” so that over time the prohibitions ceased to apply to information beyond a certain age.

The review of secrecy provisions does not have to be completed before the implementation of the FOI legislation. There are advantages in conducting the review following some experience of FOI, as it becomes clearer which secrecy provisions are no longer needed to protect the information (as the exemptions in the FOI Act are sufficient to do so on their own).

#### 5.2.4 Lack of Central Coordination

In the UK, although a central role was undertaken by the Department of Constitutional Affairs (DCA) in implementation, its focus was primarily on the central government departments rather than the wider public sector affected by FOI. The following criticisms of the DCA were made by the Association of Chief Police Officers (ACPO):

- Failure to establish a process for handling requests for data that might belong to different agencies
- Failure to provide strategic guidance in the establishment of a central referral process to manage requests that are issued to several police forces at the same time.
- Duplication of effort and increased costs: A variety of public sector bodies each had to produce a statement of requirement for a workflow system to log and process FOI requests, rather than this work being carried out centrally by the DCA early enough.
- ACPO was forced to seek legal advice such as on how the public interest test for exemptions would be interpreted because guidance from the Department came so late, with the result that staff training had to be changed.<sup>67</sup>

The UK Information Commissioner expressed concerns about the lack of central co-ordination within the health sector, with over 800 bodies under its aegis.<sup>68</sup> Serious criticisms were also made of the delays in issuing guidance by the central body, as well as its lack of relevance to public bodies outside central government.<sup>69</sup>

#### 5.2.5 Lack of Resources: Staff and Training

An effective FOI regime requires the commitment of adequate resources: sufficient staff to deal with the FOI duties, preferably with designated responsibility for FOI; and sufficient training to ensure FOI is administered in accordance with the law. Several of the German Länder commented that the lack of training during implementation has led to problems such as misinterpretation of the Act, refusal of requests without substantiation, and difficulties in applying the exemptions such as protection for business information.

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<sup>66</sup> Department of Constitutional Affairs, *Review of Statutory Prohibitions on Disclosure* 2005

<sup>67</sup> pages 12-14 House of Commons Constitutional Affairs Committee *Freedom of Information Act 2000 — progress towards implementation*, December 2004  
<http://www.publications.parliament.uk/pa/cm200405/cmselect/cmconst/cmconst.htm>

<sup>68</sup> page 16, *op. cit*

<sup>69</sup> pages 26, 30, 36-39 *op. cit*.



An overall lack of staff resources was noted by Latvia, and in France<sup>70</sup>: this contributes to the failure to deal with FOI requests properly, or within the time limits, or in some cases, at all. In an extensive study comparing response rates of 14 countries in dealing with FOI requests, 38% of all requests received no response at all, while in France and Spain the percentages were 51% and 61% respectively.<sup>71</sup>

Another type of staffing problem is the lack of specific responsibility for FOI being given to a position, such as an FOI Co-ordinator position: this has been a problem in Brandenburg and in France.<sup>72</sup> Having a designated FOI officer is an advantage for the public in making requests, and also for the public body to co-ordinate the timely processing of requests.

In the UK, although there was a degree of central co-ordination in most aspects of implementation, criticisms were made of deficiencies in the role played by the central body (DCA) in FOI training:

“The LGA told the Committee that concern had been expressed about the availability of good-quality training, as some of the commercial training courses could give misleading information. ...

Some local authorities felt that the Information Commissioner or the DCA should have either carried out training or provided a list of recommended/approved trainers.”

“Given that the guidance that was required to structure such training properly was only put on the DCA website on 1 July 2004, it is not surprising that public bodies either did not undertake training or instead formulated their own programmes expecting to have to amend them once the DCA delivered what it had promised. In our view the DCA should have recognised the need for training to start earlier and should have issued relevant advice in a timely way.”<sup>73</sup>

## 5.2.6 Lack of Public Awareness Leading to Low Usage of the Act

In countries where FOI has been implemented recently, it is probably not surprising that there are low levels of usage of the FOI Act, thought in part to be due to public ignorance of their new rights. However, even in countries with a long history of FOI, there are low levels of public awareness. For example, in France, which has had FOI since 1978:

“Lack of awareness of the law and lack of civil society demand do, however, seem to be problems. ... While conducting interviews before and during the study, the Justice Initiative and its partner in France, Réseau Intermedia, found that civil society representatives, journalists, and public officials had a low awareness of the existence of France’s access to documents law and its relatively poor implementation in practice. In interviews for this study, the CADA staff noted the monitoring body has neither sufficient resources nor a mandate to engage in educational work on the law or in efforts to raise public awareness.”<sup>74</sup>

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<sup>70</sup> p.77 Open Society Justice Initiative *Transparency & Silence: A Survey of Access to Information Laws & Practices in 14 Countries* 2006

<sup>71</sup> p. 43 *op. cit*

<sup>72</sup> p. 142 *op. cit*

<sup>73</sup> page 42, House of Commons Constitutional Affairs Committee *Freedom of Information Act 2000 — progress towards implementation*, December 2004

<sup>74</sup> page 78 *Transparency and Silence*

Awareness of FOI takes many years to build in the public mind, and a multi-faceted approach is necessary to commence this long process. Some proposals to promote FOI to the public are dealt with later in this chapter.

### **5.2.7 Records Management Issues**

The requirement to implement FOI often highlights problems with an agency's management of its records, both paper and electronic.<sup>75</sup> Typical problems may include:

- Huge volume of paper and electronic records. Agency practices in disposing or archiving of records may be inconsistent or lacking.
- Poor indexing and retrieval systems. Some agencies still rely on manual rather than automated indexing and tracking systems; some have no thesaurus of standard terms, making searches more difficult and producing incomplete results.
- Problems with electronic information such as email and the need to develop standards for its creation, handling and storage. Version control of electronic documents has also been identified as a problem.

The result of deficiencies in records management systems is that agencies cannot meet FOI deadlines as they cannot locate all relevant information quickly, if at all. In some countries nearly one third of external reviews complain that the agency has not found all of the relevant information. This is sometimes called the "sufficiency of search" issue.

Many countries have recognized the growing challenge of managing electronic records and have responded by developing standards, guidelines and training materials. From an FOI point of view, email is one of the most difficult forms of records to deal with, due to inconsistent retention and storage, lack of appropriate titles or keyword tags, the mixing of multiple topics (often both work and personal matters) and the fact that it is often held at individual rather than corporate level. On the positive side, the introduction of FOI is an excellent opportunity for agencies to improve in these areas. Records management is such an important issue that it will be handled in more detail below.

## **5.3 Experience Dealing with Implementation Problems**

### **5.3.1 Implementation Plans**

One solution to many of the implementation problems outlined above is the establishment of a comprehensive implementation plan, which identifies the work to be done, when, how, and by whom. The implementation plan must be endorsed centrally and by the most senior officials in each public body, and it must be given adequate resources to be carried out.

Implementing an FOI law basically means preparing all affected parts of government to carry out the law. To do this, best practice is to set up a team, located centrally in the government, which is responsible for seeing that implementation goes smoothly.

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<sup>75</sup> pp 18-19 House of Commons Constitutional Affairs Committee *Freedom of Information —one year on* June 2006; page 120 *Transparency and Silence*

Many countries have had a **central project team** that works full-time preparing, supported by a **steering or advisory committee** with powerful members who oversee the activity more remotely. (This team may later delegate to teams lower down.)

As soon as possible, the project team consults with the other stakeholders involved in FOI. In many EU member states, a partial list of stakeholders would include bodies with responsibilities for:

- Government Archives and records
- Data Protection
- Environmental Information Access
- Drafting regulations and legislation and providing legal advice to government
- Information Technology / Informatisation
- Public Relations
- Public Service Training bodies (eg National Academy of Administration)
- Ombudsman and review bodies (such as Ministry of Supervision)
- Plus representatives of the most significant government bodies or sectors (such as health, law enforcement, education, local government sectors)

These stakeholders would usually be represented on a whole-of-government Steering Committee or Advisory Group.

Then, in turn, each agency or sector is encouraged to have its own **project team**, with a **senior steering committee**. These teams take direction from the central project team to understand the effect of FOI legislation in their own contexts, and create and manage sub-plans to ensure they are ready.

The following includes best practices from implementation plans used in the United Kingdom, where there was an unusually long amount of time (five years) between the adoption of the law and the year in which it became valid. This allowed its implementation plans to be very detailed, compared to those in other EU countries. Another helpful circumstance is that the UK government has reviewed the successes and failures of its implementation, and published a number of reports. Further detail can be gained from consulting the full documents from which these paragraphs are taken; for details, see the footnotes.

“The FOI Implementation project will cover all activities leading to the successful implementation of FOI Act and will deliver products including:

- Draft and prepare secondary legislation in collaboration with lawyers (Section 4, 5, 74 and 75 orders as well as others);
- Report on review of Statutory Bars;
- Fees Regulations;
- Guidance on Exemptions for Central Governments departments and Non Departmental Public Bodies (NDPBs);
- Guidance on organisational structures for processing requests;
- Senior Champions for FOI in each main Government department;
- Establishment of FOI Networks;
- Fully functioning Information Tribunal;
- Description of computer software for processing of requests by public authorities;

- Specification for computing software for co-ordination of handling of requests;
- Generic training material;
- Secretary of State's annual report on FOI implementation;
- FOI Roadshows (until September 2003).<sup>76</sup>

One of the best models for FOI implementation is that of the UK Police force. Their excellent achievements in training and implementation were discussed in chapter 4. They recognised the benefits of central development and co-ordination early in their implementation phase:

“It has been recognized by ACPO that it is best value to develop best practice and guidance nationally and then share the results amongst the 44 forces, to prevent repetition of work and duplication of effort.”<sup>77</sup>

Their project team was set up in 2001 to produce the following:

- A Model Publication Scheme, approved by the Information Commissioner
- A Communications Strategy for the Police Service
- FOI Compliance Guidelines: best practice and lessons learnt from overseas public authorities
- A Training Strategy for the Police Service in conjunction with Centrex
- A Manual of Guidance detailing a common interpretation of responsibilities required under the Act and guidelines for action where legislation allows discretion to be applied
- A national template for local administration of FOI legislation, completed under a workflow system
- A single Point of Contact to advise and assist the Police Service on FOI issues and to provide an interface with other organisations (including the Information Commissioner)

A useful booklet for each agency to assess its own readiness<sup>78</sup> was issued in the UK by the National Audit Office. It contains a series of questions, identifies risks, and recommends good practices for agencies to ensure they are fully prepared for implementation.

To sum up, there is typically a high-level implementation plan for the country as a whole, and then there is also a more detailed plan for each affected agency.

Obviously some implementation-related activities are best conducted at the highest level, while others are more appropriate at the agency level. Some activities can be conducted at either level. The following lists summarise these three groups.

### 5.3.2 Activities Best Undertaken Centrally

The following activities are most appropriately undertaken centrally:

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<sup>76</sup> Implementation of FOI Act: High Level Project Initiation document January 2004

<sup>77</sup> page 64, House of Commons Constitutional Affairs Committee *Freedom of Information Act 2000 — progress towards implementation: Vol. 2 Written Evidence* December 2004  
<http://www.publications.parliament.uk/pa/cm200405/cmselect/cmconst/cmconst.htm>

<sup>78</sup> UK National Audit Office *Good Practice Guides: Counting Down: Moving from need to know to right to know* 2004

- Examine the interface between FOI and other legislation / mechanisms providing access
- Examine the interface between FOI and other legislation which restricts access to information, especially secrecy laws
- Establish a central web site with information for the public and for practitioners; typical one-stop-shop websites with FOI information, guidance, links are at [www.foi.gov.uk](http://www.foi.gov.uk), [www.foi.gov.ie](http://www.foi.gov.ie) and others
- Set up networks of practitioners, optionally within sectors (health / local authorities / education / police) or within local geographic areas; on-line forums, discussion groups, and mailing lists can be used
- Set up co-ordination mechanism across agencies to deal with similar and overlapping requests (see chapter 3 for more details)
- Determine the type of statistics which will be required from each agency for the annual report
- Monitor compliance, evaluate and report
- Develop a curriculum of training materials (see chapter 4 for details)
- Oversee the delivery of training, accredit providers of training (and could also deliver training).

### **5.3.3 Activities to be Undertaken either Centrally or in Individual Agencies**

Some aspects of implementation are most effectively done centrally, but if they are not done centrally, would need to be done by each agency:

- Interpretation and policy development
- Develop templates (structure, content, method of publication) for proactive publication scheme
- Develop procedures, forms, template letters for dealing with FOI requests, and systems (including IT systems but perhaps only to the level of specifications)
- Deliver training (see chapter 4 for more detail)
- Develop publicity materials (e.g: in print, web, DVDs, posters) for use to promote FOI awareness for the public

### **5.3.4 Activities in Individual Agencies**

Some aspects of implementation must be done in each individual agency, so they can be customised for the agency's needs:

- Appoint an "Information Champion" at the senior level to support FOI
- Allocate resources for the project team to implement FOI for ongoing functions (publications / website, processing requests etc)
- Begin identifying material for inclusion in the publication scheme
- Develop options for publication (web, print)
- Assess current state of readiness for FOI including records management audit

- Implement improvements to records management if required
- Identify training needs of various groups of staff (in addition to general awareness for all staff)
- Arrange for the delivery of training
- Work with central body to raise awareness of clients

### 5.3.5 Co-ordination Mechanisms and Networks

During implementation in particular, and continuing afterwards, there may be a need for a co-ordinating mechanism between the agencies using a steering committee and various networks. The UK and Ireland both have excellent models of such groups.

In the UK, the high-level group was the Lord Chancellor's Advisory Group, which had the following terms of reference:

"To provide advice to the Lord Chancellor to assist him in preparing his annual report to Parliament in accordance with section 87(5) of the Freedom of Information Act 2000 by:

- Monitoring progress on implementation;
- Identifying best practice in information management and recommending approaches to its dissemination in and between types of public authorities;
- Advising on the needs of users of the Freedom of Information Act, how authorities might best meet those needs, and proposing ways of raising the public's awareness of their rights;
- Receiving reports on, and advising on, the preparations being made by the Information Commissioner to ensure procedures are established and guidance produced in a timely manner;
- Promoting a new culture of transparency in public authorities by assisting in the development of training and education programmes."<sup>79</sup>

A number of networks at various levels were established during implementation in the UK and have continued since that time:

- Senior FOI Champions group with representatives at board level;
- FOI Practitioners Group (later re-named the Information Rights Practitioners' Group) – which meets once a month and has representatives from Whitehall Departments, Non-Departmental Public Authorities and Devolved Administrations. To ensure best possible access to the network, an e-forum was also created;
- Lawyer's network;
- Communication Directors network;
- Press Officers network;
- Records Managers network across government run by the National Archives.<sup>80</sup>

The Department also established sector-based networks, where the particular issues of the sector could be addressed and common solutions shared.

<sup>79</sup> page 30 House of Commons Constitutional Affairs Committee *Freedom of Information Act 2000 — progress towards implementation*

<sup>80</sup> p. 18 *Government's Response to the Department for Constitutional Affairs Select Committee Report Freedom of Information Act 2000 – Progress towards implementation* February 2005

"5.10 Although DCA's remit is central government implementation, the Department has also worked closely with the wider public sector to facilitate the successful operation of FOI. Working with Departments that sponsor different parts of the public sector, DCA established four sector panels covering Health, Education, Criminal Justice, and Local Government and Fire Authorities. ...

5.11 The panels have been used to:

provide Ministers with information about the operation of the FOI Act in each of the four sectors;

provide a mechanism for the DCA to consult the different sectors about the Secretary of State for Constitutional Affairs' statutory responsibilities under the FOI Act in relation to such matters as coverage and codes of practice;

provide a vehicle for the representatives of the above sectors to inform their lead Department and DCA about the operation of the Act in their authorities; and

share good practice within the sectors such as effective FOI logging and tracking systems."<sup>81</sup>

As part of the preparation for FOI, it is also useful to establish a consultative mechanism with representatives of business and the wider community. In Ireland, there are two main consultative bodies: the Business Advisory Group and the Citizens Advisory Group. In the UK, the current advisory body is the Information Rights User Group, which includes representatives from within and outside government, including the media.

Business groups often have high levels of concern about the risks to their members from release of business information under FOI. Working with them to explain the impact of FOI will help allay their fears, as the mechanisms for third party consultation and appeal can be explained. Increasing their awareness of the need to be clear and precise with requests for protection of confidential and commercially valuable information makes it easier for FOI decision makers to separate sensitive from non-sensitive business information. As a selling point, businesses can be made aware that they too can make use of the new rights under the Act to seek information of value to themselves.

### 5.3.6 Application of Information Technology

The UK's implementation plans included discussions of the use of information technology, both for request tracking and processing, and software to help process documents to safely remove portions of them before release.<sup>82</sup> One commercially available product is called Redax, which can be used in conjunction with documents in Adobe Acrobat's PDF format.<sup>83</sup> Another PDF-based product, StampPDF<sup>84</sup>, offers functionality to add page numbers, watermarks and status information, and is widely used by FOI practitioners in combination with Redax to redact exempt segments of information.

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<sup>81</sup> House of Commons Constitutional Affairs Committee *Freedom of Information —one year on* June 2006 DCA Evidence, page 49

<sup>82</sup> The National Archives *Redaction: Guidelines for the Editing of Exempt Information from Paper and Electronic Documents Prior to Release* 2006

<sup>83</sup> [http://www.appligent.com/products/product\\_families/redaction.php](http://www.appligent.com/products/product_families/redaction.php) has a tour of the product, and a paper on the security issues.

<sup>84</sup> [http://www.appligent.com/products/product\\_families/stamping.php](http://www.appligent.com/products/product_families/stamping.php)

It is advisable for agencies at any level to consider how information technology can streamline the handling of information itself (as in the Records Management section below) or the tracking and management of FOI requests. There are several workflow / request tracking systems that can be used specifically for FOI.<sup>85</sup>

The advantages of central co-ordination in developing IT system solutions can be seen in the following comments by the UK police service in their submissions to the House of Commons Constitutional Affairs Committee:

“2.8 The production of a Statement of Requirement for a Workflow System to log and process FOI requests

A framework agreement is being constructed, to allow all Police Forces, all emergency services, all local authorities and the Home Office to select one of the chosen suppliers either now or at a later time. Therefore each public authority that signs up to the framework agreement has not only taken advantage of the large discount available in the framework (up to 33% off) but has also saved on the resources to produce a Statement of Requirement. The Statement of Requirement has taken approximately 750 hours to produce. Therefore the cost savings to organisations are extremely substantial.

A statement of requirement for a Workflow system was promised by the DCA in November 2003 but was actually produced in April–May 2004, and has caused considerable problems to authorities due to the tight timeframe of the procurement process. We believe this is an example of a product that the DCA should have organised to be available to all Public Bodies as the potential savings to the Public Sector could have run into millions of pounds.”<sup>86</sup>

### 5.3.7 Manuals and Guidance Notes

One problem noted during implementation was a lack of understanding of FOI and inconsistent interpretations of it. Part of the remedy for this is adequate training; however training can only be conducted using a firm basis of agreed policies and procedures.

As with any legislation, the meaning and interpretation of the concepts and terms within the FOI Acts are not clear or simple, and need careful explanation to ensure consistent results. Best practice is for a central body to research and develop policies, explain these in a Manual or a series of Guidance Notes, and distribute them to all agencies covered by the Act. This has been done in many countries. Many agencies develop their own Manuals, based on the central guidance, but tailored to their own situation, the needs of their staff, the particular types of documents they hold, their client base etc. A substantial investment of resources is needed to produce such manuals. As an example, the UK police forces attested in 2004 that, “The draft Manual of Guidance is currently around 350 pages long, and has taken approximately 1500 to 2000 working hours to produce.”<sup>87</sup> The public-facing version of the ACPO Guidance (which does

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<sup>85</sup> Joyce Plotnikoff and Richard Woolfson, Management of Freedom of Information requests in other jurisdictions, October 2003; Advisory Group on Implementation of the Freedom of Information Act, Computer Systems for Aiding the Management and Monitoring of Requests Department of Constitutional Affairs 2003; Department of Constitutional Affairs, Generic User Requirements Specification for IT Systems to Manage FOI and EIR Enquiries April 2004

<sup>86</sup> page 65 House of Commons Constitutional Affairs Committee *Freedom of Information Act 2000 — progress towards implementation: Vol. 2 Written Evidence* December 2004  
<http://www.publications.parliament.uk/pa/cm200405/cmselect/cmconst/cmconst.htm>

<sup>87</sup> page 65 ACPO Evidence *op.cit.*



not contain certain sensitive matter) is 274 pages long.<sup>88</sup> The FOI Guidance produced by the Department of Constitutional Affairs and the Information Commissioner would total hundreds of pages, and took many staff-months to produce.<sup>89</sup>

A Manual of Guidance needs to cover all aspects of dealing with FOI, including procedures and systems for processing requests from receipt to decision-making. A large portion of the Manual is usually devoted to detailed explanations of the grounds of refusal and exemption, as these are the most contentious and most frequently misunderstood. Annex D contains a draft outline of the possible contents of such a Manual, based on examples elsewhere.

### 5.3.8 Records Management

Deficiencies in records management have frequently been identified during the implementation phase of FOI. The first step in tackling records management is conducting an “information audit”<sup>90</sup>, assessing topics such as:

- What types of records do we have?
- How many records are there?
- How and where are the records stored?
- For how long are the records stored?
- How are records disposed of?
- How are the records indexed – in what level of detail?

Based on this audit, the agency can then develop guidelines / systems for records management, including creation, retrieval, retention, and disposal, and tackle issues of electronic records management.

There are many resources available to assist with records management. The International Records Management Trust has developed a workbook on Managing Electronic Records and a comprehensive range of materials for training and education in records management.<sup>91</sup> From Australia there is a large range of guidance available (such as: Management of Electronic Records, Email as Records<sup>92</sup>; Email Metadata Standard, Digital Record Keeping and Archiving Web Resources<sup>93</sup>); in the UK, The National Archives (TNA) has issued Guidelines on developing a policy for managing electronic records<sup>94</sup> and email<sup>95</sup>; and many public bodies have issued their

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<sup>88</sup> ACPO *Manual of Guidance: Freedom of Information* 2006 available from: [www.met.police.uk/information/files/acpo\\_foi\\_guidance\\_v3.pdf](http://www.met.police.uk/information/files/acpo_foi_guidance_v3.pdf)

<sup>89</sup> Guidance issued by the UK Information Commissioner is at [http://www.ico.gov.uk/tools\\_and\\_resources/document\\_library/freedom\\_of\\_information.aspx](http://www.ico.gov.uk/tools_and_resources/document_library/freedom_of_information.aspx); Guidance issued by the UK Department of Constitutional Affairs is at <http://www.dca.gov.uk/foi/guidance/index.htm>; Guidance by the Scottish Information Commissioner is at: <http://www.itspublicknowledge.info/Law/FOISA-ElRsGuidance/Briefings.asp>; Guidance on the Irish FOI Act is at: <http://www.foi.gov.ie/decision-makers-manual>

<sup>90</sup> For example the self- assessment workbook developed by The National Archives in the UK to assist public bodies to check their compliance with the Records Management Code: <http://www.nationalarchives.gov.uk/recordsmanagement/code/assessing.htm>

<sup>91</sup> <http://www.irmt.org/downloadlist/education.html>

<sup>92</sup> <http://www.prov.vic.gov.au/records/standards.asp>

<sup>93</sup> <http://www.naa.gov.au/records-management/create-capture-describe/index.aspx>

<sup>94</sup> <http://www.nationalarchives.gov.uk/electronicrecords/advice/guidelines.htm>

own guidance on managing email<sup>96</sup>. TNA produced helpful guidance on implementing the Lord Chancellor's Code of Practice on the Management of Records under section 46 of the FOI Act.<sup>97</sup> Topics covered are:

- What is Records Management?
- Records Management
- Human Resources in Records Management
- Active Records Management: Record Keeping and Record Maintenance
- Active Records Management: Records Creation
- Disposal Arrangements

TNA has also issued a series of Model Action Plans for different sectors (central government, local government, health sector, police etc) to assist them in implementing the Records Management Code.<sup>98</sup>

### 5.3.9 Publication Schemes

Publication schemes, which contain the documents proactively released by public bodies, are one of the first steps begun by public bodies during their FOI implementation. Most bodies have a substantial amount of information already available in either printed or electronic form, which can readily be compiled to put on websites. Given the enormous volume of documents in publication schemes, and the ready availability of web-based technology, placing the schemes on websites is the only practical method for most public bodies. However, options to assist members of the public without web access must be developed.

It is helpful if central bodies issue guidance on the development of these schemes; in the UK, the Information Commissioner approved templates and model schemes which were then used by a majority of public bodies. Model schemes were developed for each sector, due to the commonality of information within each sector.<sup>99</sup> Public bodies could use the model schemes or develop their own.

The types of material required to be included in the publication scheme vary between countries. Some countries, such as Sweden, have a document registration system, which captures all official documents, usually excluding those which are incomplete or in draft form, or those for internal use only. The ease of establishing a document registration system depends on the quality of the current records management system; in many cases, the detailed data is not available and the effort to capture it retrospectively would be prohibitive.

In the UK, Ireland and the sub-national jurisdiction of Scotland, the publication requirement is not as extensive as full document registration. Scotland and the UK require bodies to specify the

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<sup>95</sup> <http://www.nationalarchives.gov.uk/electronicrecords/advice/default.htm>

<sup>96</sup> <http://www.recordsmanagement.ed.ac.uk/InfoStaff/RMstaff/ManagingEmail/ManagingEmail.htm>

<sup>97</sup> The Code itself is at: <http://www.dca.gov.uk/foi/reference/imp/imp/codemanrec.htm>. The material from the National Archives is at <http://www.nationalarchives.gov.uk/recordsmanagement/code/implementation.htm>

<sup>98</sup> [http://www.nationalarchives.gov.uk/recordsmanagement/code/model\\_action\\_plans.htm](http://www.nationalarchives.gov.uk/recordsmanagement/code/model_action_plans.htm)

<sup>99</sup> Information Commissioner (UK) Publication Schemes: Guidance and Methodology April 2003; Publication Schemes: Approval methodology April 2003; Preparing for Implementation: Publication Schemes a Practical Guide: Part I 'Classes' April 2003; Guidance by the Scottish Information Commissioner can be found at <http://www.itspublicknowledge.info/ScottishPublicAuthorities/PublicationSchemes/PublicationSchemeGuidance.asp>

classes of documents to be published (see sections 19 and 20 of the UK FOI Act.) In Ireland, the publication scheme covers a range of general information about each body's structure, functions etc, and their policies, rules and guidelines (sections 15 and 16 of the Irish FOI Act). There is no limit to what an agency may choose to publish in addition. One concept behind the publication schemes is to reduce formal FOI requests by publishing as much information as possible which is of interest to the public. Many agencies therefore also publish material that has been asked for more than once by members of the public. Some also publish Disclosure Logs where they list the FOI requests received, and the results of those requests, on their websites. In the UK, the Campaign for Freedom of Information has published a useful paper with examples of good practice in publication schemes<sup>100</sup>.

### 5.3.10 Promoting FOI to the Public

One crucial aspect of implementation is making sure that citizens are aware of the new law. Methods that can be used to achieve this include:

- Public launch/press releases
- Brochures, application forms, posters – at all public contact points, eg: public reception areas of government buildings, post offices, libraries
- Announcements on each public body's own website and on websites of central bodies
- Mass media – advertising (print, radio, television, web)
- Public meetings, providing speakers for community groups' meetings
- Provision of FOI reading room with access to copies of material in proactive publication scheme (hard-copy or electronic)
- Through information gateways such as libraries, information kiosks, community information centres
- Include reference to FOI in standard charter of rights / leaflets to clients
- Include reference to FOI rights in all correspondence to clients about their entitlements, especially where they are being refused a government benefit or service

Promotional material, for use within agencies and to the public, often features a central logo useful to "build the brand" of FOI across government agencies. The logo increases recognition of FOI when used on websites, brochures, posters etc. Annex B to this report contains examples of FOI posters and logos.

## 5.4 Recommendations

1. Guidelines developed by FOI bodies are essential to lead FOI practices of the practitioners at varied government levels. In order to avoid misinterpretation or misunderstanding to access to government information regulations, FOI bodies should, after in-depth research, develop guidelines, in which definitions of special terms or concepts are stated and explanations of inaccessible information, processing procedures are given. It may take approach of phased-in-

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<sup>100</sup> Campaign for Freedom of Information *Central Government Publication Schemes: Good Practice* February 2004

drafting model, that is, related agencies may draft a guideline to interpret imminent difficulties at first, and enrich the original version through implementation practices.

2. Rearrangement of different documents held by government agencies is required. Since government agencies hold and process large quantity of information, they need to understand comprehensively the information they hold in order to handle information requests in a timely manner. So it is important to devote time and energy to rearrange information held by individual agency, to define their contents, storage details (holding method and place), and to categorize under more scientific standard and compiling rules. Rearrangement may not possibly be finished within before-implementation phase. However, government agencies shall perform constant rearrangement work even during the implementation phase for necessity concern.

3. Many countries have compiled specific information catalogues (or the register of official documents) covering all information that has been processed or collected by government agencies. For example, The Council of the European Union has operated a register of documents since January 1999. These documents are automatically recorded on the Register after processing. The register is published on line (<http://register.consilium.eu.int>) with many documents available for searching and downloading freely. It includes information as Reference number, Title, File number, Subject, Document type, Sender, Addressee, Document date, Meeting date, and Archiving date.

In China, leading agencies should set up standards for compiling an information catalogue and for processing documents considering local situation and current standards. Another aspect to consider with such an Information Catalogue is whether it will only be compiled for new documents from this year forward, or whether it will go back to include all older documents. If it were to go back, one option is to only index certain types of significant documents (policy documents for example) rather than all correspondence in the possession of the agency. The catalogue, in order to fully perform its role as the platform for accessing government information, shall be handled with most recent information technology, tied to advanced search engine technology, and connected to database technology. It is realistic to adopt two processing methods that distinguish the internal and the external. It means that a government agency should first establish its own information registration system to facilitate internal divisions uploading their processed information to professional information division within the agency. The internal division shall have certain information personnel (full-time or part-time) to handle information management. The professional information division is responsible for coordinating various divisions, reviewing secrets with secret departments, deciding the scope of information disclosure and compiling the information into a catalogue. Professional information division shall strictly follow active dissemination policy prescribed by the Ordinance, record information disclosure activities in a timely way and put information that is frequently requested into the information disclosure catalogue. With the popularity of information technology and e-documents, in the future, it is guaranteed that all open information can be found in the on-line information catalogue, and on-line reading as well as downloading will be available. To compensate for the effects of the Digital Divide, agencies shall provide free online service for those that have difficulties with its information division.

4. Varied FOI laws and regulations need to be integrated in accordance with the *Ordinance* implementation. From a perspective of current laws and regulations, some involves FOI provisions, like active dissemination, and dissemination methods. Through integration, interactions between the Ordinance and other regulations can be clarified, the result of which may throw lights on provision selection in practice and benefit provisional consistence to the Ordinance. Besides, some regulations cover secrets, including protection on national secret, business secret and privacy. Under such situation, integration may re-define interaction between the Ordinance and other regulations in relation to openness, revealing conflicting policies which may be improved at later legislation process.

5. Sufficient resources, in terms of human resources and material supply, are necessary guarantee. European experiences present that FOI mechanism contributes to increase government capacity. But a successful implementation of this mechanism consumes money and

energy in large quantity. Either active dissemination or disclosure upon requests requires professional practitioners, matched facilities and money supply by government agencies. The Ordinance already presents its demand to have departmental FOI organizations established. And questions remained are whether certain number of practitioners can be assigned to FOI positions (like technical support, government information management), and whether there is sufficient capital resources to support active dissemination or information disclosure upon requests.

6. Stronger dissemination can promote public awareness to the Ordinance and individual rights. The Ordinance can never fully function under unawareness or insufficient understanding of FOI and individual rights, to some extent, a waste of legal resources. Recommendations are made to relevant agencies that, on one hand, to optimize current legal education programs and promote public awareness of the Ordinance as well as other related regulations nation-wide; in particular, to involve the Ordinance into school legal education activities and ensure FOI have fixed time; and on the other, to spread knowledge about the Ordinance through activities (like FOI questionnaire) organized by mass medias power which integrate print media, broadcasting media and online media, and the efforts of which may promote public awareness of FOI mechanism.

## **6. Recommendations: Aspects of the Ordinance Requiring Clarification**

In addition to the issues (including fees, training, supervision, and remedy) dealt with in previous chapters, the Ordinance, in order to achieve favourable results, requires improvements in the following aspects.

### **6.1. Non-disclosed Information.**

The Ordinance forbids disclosing information that threatens national security, public security, economic safety, and social stability with national secrets, business secrets, and personal privacy as elaboration.

#### **6.1.1 Definition of “Privacy”**

First, none of the contemporary Chinese laws or regulations gives a specific definition of ‘privacy’. Thus it is important to develop a detailed interpretation to solve problems in the process of exercising relevant administrative power.

It is recommended that a definition of “personal information” be developed. The following definition (modified from the Irish FOI Act) could be used as a basis:

“ "personal information" means information about an identifiable individual that -

(a) would be known only to the individual or members of the family, or friends, of the individual, or

(b) is held by a public body on the understanding that it would be treated by it as confidential,

and includes:

- (i) information relating to the educational, medical, psychiatric or psychological history of the individual,
  - (ii) information relating to the financial affairs of the individual,
  - (iii) information relating to the employment or employment history of the individual,
  - (v) information relating to the criminal history of the individual,
  - (vi) information relating to the religion, age, sexual orientation or marital status of the individual,
  - (vii) a number, letter, symbol, word, mark or other thing assigned to the individual by a public body for the purpose of identification or any mark or other thing used for that purpose,
  - (viii) information relating to the welfare entitlements of the individual, their liability to taxation or their property;
- but does not include (where the individual holds or held office as a member of the staff of a public body) the name of the individual or information relating to the position or its functions or the terms upon which it is occupied."

The exclusion at the end ("but does not include...") is very important to ensure that public officials are accountable, and their identities not hidden (unless there is a risk of harm to them – quite a rare situation).

### **Medical information**

In terms of personal information, many countries have a special provision for the situation where health care information may be distressing or damaging to the health of the person themselves if released. They provide for assessment of the possible harm by a health care professional (such as a doctor), and if there could be harm, the information is released indirectly through the health care professional.

### **6.1.2 Definition of "Business secret"**

A definition of "business secret" would be helpful so that the term does not extend too widely and protect business information where there would be no harm in release.

An important source of interpretation is the existing Chinese law. If this guidance is to be given in a policy manual, it should take into account the Chinese laws concerning trade secrets, and any decisions by judges interpreting those laws.

Article 10(3) of the Law of the People's Republic of China Against Unfair Competition defines "commercial secrets" to mean:

"technical information or operating information that is not known by the public, can bring about economic benefits to the rightsholder, has practical utility and about which the rightsholder has adopted secrecy measures."

In addition to this, here are some additional suggestions. Further explanatory material from overseas FOI manuals can be researched and added.

"Business secret" includes a "trade secret" and other information of a commercial value, whose value would be diminished or destroyed by disclosure, or where the release would cause harm to the business owner.

To decide if something is a "trade secret", the following should be considered:

- The extent to which the information is known outside a person's business
- The extent to which the information is known to employees and others involved in the business
- The extent of measures taken to guard the secrecy of the information
- The value of the information to the person and the person's business competitors
- The amount of effort or money expended in developing the information may be a relevant consideration
- The ease or difficulty with which the information could be properly acquired or duplicated by others
- Technicality is not a requirement, but the more technical the information is, the more likely it is that, as a matter of fact, the information will be classed as a trade secret
- The necessity for secrecy, including the taking of steps to confine dissemination of the relevant information to those who need to know for the purposes of the business, or to persons pledged to observe confidentiality
- That information, originally secret, may lose its secret character with the passage of time
- That the relevant information be used in, or useable in, a trade or business
- That the relevant information would be to the advantage of trade rivals to obtain
- That trade secrets can include not only secret formulae for the manufacture of products, but also contain information concerning customers and their needs.

### **6.1.3 Other Grounds for Non-Disclosure**

From an examination of legislative practices in other countries, non-disclosed information, besides the 3 types in the Ordinance, could include information that is still under discussion, research or review, the disclosure to which may disturb social stability or influence decision-making. The above information does not deny public access permanently, but rather under particular conditions.

Some EU countries such as Sweden and France have an exemption similar to this. In other countries, it is based purely on the "harm test" rather than the stage of preparation of the document. That is, rather than excluding "information under discussion", it is required that the decision-maker demonstrate that its release would cause harm (disturb social stability or decision-making). This is also part of the "public interest balancing test" in their FOI Acts: the decision-maker has to balance the amount of benefit from release (eg: to inform the public about a significant proposal which will affect them) against the harm (because people will interfere with government's efforts to pass the legislation.) In many countries this is not an absolute exemption but subject to this test.

In accordance with the Ordinance, in the future, once applicants request this type of information, government agencies may be trapped in a dilemma: to disclose such information, routine work may be influenced; to deny a request, agencies may be challenged in court as defendants since their denials have no legitimate legal basis. So it is necessary for relevant authorities to detail these issues in the Ordinance.

## **6.2 Annual Report on Information Disclosure.**

The Annual Report summarizes agencies' work on government information disclosure in a specific year, and openly evaluates agencies' information activities from the perspective of the public. In order to ensure a consistent annual report policy, it is crucial to establish a sound information gathering system which records agencies' information disclosure activities honestly and accurately, and which guarantees a timely annual report to the public. It is important to design a statistics collection form or IT system for all agencies to ensure that the exact type of information is collected from all of them so it can be collated for the country as a whole.

Examples of statistics collected elsewhere are:

- The number of requests,
- The number which are personal (for one's own personal information) or non-personal
- The results (granted in full, in part, refused),
- The reasons for decisions (including which exemption provisions were used),
- The percentage of documents refused within each request
- The number of internal and external reviews,
- The results of those reviews
- The time taken to make decisions - the days elapsed (ie: how many were decided within the time limit)
- The amount of hours spent on the request.

In addition, there may be a standard set of both open and closed questions in addition to the statistics.

## **6.3 Other Aspects for Clarification**

### **6.3.1 Right to Make a Request for Information**

Article 13 states that: "citizens, legal persons and other organizations can, according to their special needs of working, living and scientific research, to make application for access to related governmental information". This can be interpreted to restrict the right to make a request to those with a special need to know. Commentators have noted this:

"Another respect in which the OGI Regulations appear to depart from prior Chinese as well as international practice is in the narrowly described scope of information that can be requested from government agencies. Article 13 provides that citizens, legal persons and other organizations may request government information that has not already been disclosed on the government's own initiative "in accordance with the special requirements of their own production, livelihood, scientific research, etc." This language suggests that the right to request government information may be subjected to a needs test of some sort, although Article 20, which stipulates the contents of information requests, does not require a showing of need for the requested information."  
(<http://www.freedominfo.org/features/20070509.htm>)



However, according to Chinese experts, this restriction does not appear to be the idea of the Ordinance. Besides the information which is released by the government agencies on their own initiative, any citizens, legal persons and other organizations should be able to submit an information request. Furthermore, Article 20 does not require citizens, legal persons and other organizations to explain their aim or purpose when they submit the request. This is therefore an important point to clarify in instructions to administrators.

### **6.3.2 Relationship between the Ordinance and other Chinese laws**

As discussed in other chapters, there is an urgent need to clarify the relationship between the Ordinance and other Chinese laws, especially secrecy laws. If it is the case that these secrecy laws overrule the Ordinance (as they are at a higher level of the legal hierarchy), then what becomes important is the clear and detailed definition of the matters protected by the Secrecy laws. Again, any Chinese court decisions or legal interpretations of these laws are a good starting point.

### **6.3.3 Other Grounds for Refusing Requests**

The Ordinance currently makes no provision for refusing because a request is vexatious or part of a series of repetitive requests; or because the work involved in dealing with it would substantially divert the resources of the agency. When there are no processing charges as a deterrent, some countries have found that they need provisions to deter requests in these rare circumstances. This could also be considered later in the light of the experience of agencies in working under the Ordinance after one or two years.

## Conclusion

There is no doubt that the Chinese and most European laws and regulations on Access to Government Information, Freedom of Information, Transparency, or whatever name they carry, have been developed with very diverse backgrounds. While some hope to re-establish a strong and direct relationship between the citizen as a principal and the government body as an agent, stressing and demanding more democratic legitimacy of all administrative work, others seek to use the threat of transparency as a mechanism to expose corruption and abuse of office power to the public – or rather to put those who are in danger of falling to the temptation into the glasshouse of public scrutiny and hence to keep office abuse from happening. Some praise the modernisation effect of electronic record management which does not only make it easier to find information requested by an interested citizen, but which makes it much easier in general to distinguish between secret and non-secret information and release the unproblematic content without further ado.

Statistics over the last decades have shown that Freedom of Information Acts are of commercial relevance, because companies use the laws to acquire relevant information about the regulations affecting them, or about the market and policy situation in general. Public sector information that has been collected with great effort can be upgraded and sold as value-added service in some cases (with geographical information as a most prominent example), and there are more and more business models based solely on information government is collecting anyway, but which is hard to compile and interpret for an individual.

Even though there are many interests involved and the case for Access to Government Information regulation (or rather: facilitation) can be made through many lines of argument, they all have in common that a modern record-keeping on part of the administration and a clearly defined interface with the citizen improves government performance: because of more efficient internal processes, because of a better information logistic within the various government departments involved in any decision-making process, or merely (maybe the most important point for some) because the citizens can form their opinions on the basis of more solid information.

This element of the informed citizen is not merely a European argument based on a European understanding of democratic participation. It has also been stressed by the Chinese government in the process of knowledge transfer on the EU regulations and the role these experiences play for the Chinese decision-making process. Without doubt such a regulation can create a bridge for better understanding between a government and the citizens in every country of the world, whatever the form of government may be.

Yet there is a precondition to make this bridge become reality: there must be the willingness on part of the government sector to open up, to facilitate the access to information for the citizens. This willingness does not come automatically – after the regulation is there, it requires explanation to the civil servants about the reasons and the benefits, it also requires extensive training on the mechanisms and processes in order to allow a most smooth integration of the new requirements into the established workflow, or even to grab the chance and create more efficient processes.

This is why in this report, the focus was not only on the planning of a regulation and its possible content, but also on the preparation for implementation, the training measures and adoption of internal processes. This task is huge in any administration, as could be seen from the EU example – in an administration as huge as the Chinese one, it is infinitely larger still. The EU-China Information Society Project seeks to support this effort with the means available, in particular by establishing contact with EU experts who can share their experiences in practical application, and by continuously supporting research on the best possible next steps in policy-making and implementation.

## **Annex A: Detailed Outline of a typical policy and procedures**

### **Manual for Freedom of Information**

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### 5.3 Other relevant legislation

*[List all titles here and put full text or links to the text in Appendix B of this manual]*

*[For each law, follow the pattern of the examples below]*

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5.3.1.3 Guidance on the administration of this law

5.3.1.4 Interaction of this law with the Ordinance

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5.3.2.1 Definitions of terms within this law

5.3.2.2 Decisions by courts about the interpretation of this law

5.3.2.3 Guidance on the administration of this law

5.3.2.4 Interaction of this law with the Ordinance

## Grounds of Exemption

*[Each of the separate grounds of exemption has a section which follows the pattern of the example of "Commercial Secrets" given below]*

### 5.4 Commercial Secrets Exemption

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5.4.3.5 the amount of effort or money expended in developing the information may be a relevant consideration

5.4.3.6 the ease or difficulty with which the information could be properly acquired or duplicated by others

5.4.3.7 technicality is not a requirement, but the more technical the information is, the more likely it is that, as a matter of fact, the information will be classed as a trade secret

5.4.3.8 the necessity for secrecy, including the taking of steps to confine dissemination of the relevant information to those who need to know for the purposes of the business, or to persons pledged to observe confidentiality

5.4.3.9 that information, originally secret, may lose its secret character with the passage of time

5.4.3.10 that the relevant information be used in, or useable in, a trade or business

5.4.3.11 that the relevant information would be to the advantage of trade rivals to obtain

5.4.3.12 that trade secrets can include not only secret formulae for the manufacture of products, but also contain information concerning customers and their needs.

#### 5.4.4 Information of a commercial value

5.4.4.1 How to assess if information has a commercial value

5.4.4.2 Consultation with business owner

5.4.4.3 Would the value be diminished or destroyed by disclosure?

#### 5.4.5 Business information generally

5.4.5.1 Would disclosure of the information have an adverse effect on the business?

5.4.5.2 Assessing an "adverse effect"

- 5.4.6 Contractual undertakings of confidentiality
- 5.4.7 Commercial secrets of government agency
- 5.4.8 Possible public interests in favour of disclosure
  - 5.4.8.1 Public health and safety
  - 5.4.8.2 Accountability for performance of government functions
  - 5.4.8.3 Accountability for expenditure of public money
- 5.4.9 Issues to consider in procurement (tenders)
- 5.5 Neither confirm nor deny the existence of documents

## **Chapter 6: Decision Letters**

- 6.0 Decision letters
- 6.1 Who are the decision-makers under the Act
  - 6.1.1 Principal officer or other delegated officer of the agency
  - 6.1.2 Minister or delegate of a Minister
  - 6.1.3 Internal review officers
  - 6.1.4 Instrument of Delegation
  - 6.1.5 Power to amend or repeal a decision
- 6.2 Legal protection given to an officer or Minister
- 6.3 Describing exempt matter contained in documents
- 6.4 Neither confirm nor deny the existence of documents
- 6.5 Notification of decision and reasons for decision
- 6.6 Decision-maker's name and designation
- 6.7 Documents not held by an agency or Minister
- 6.8 Details of charges
- 6.9 Access arrangements
- 6.10 Public interest considerations on which the decision was based
- 6.11 Rights of review

## **Chapter 7: Access to Documents**

- 7.0 Access to documents
- 7.1 Decision has immediate effect, but what about access?
- 7.2 Access to records containing medical or psychiatric information
  - 7.2.1 Mechanism to obtain views of health care professional
  - 7.2.2 Assess whether direct access to applicant may be harmful to their health
  - 7.2.3 Indirect access via health care professional
- 7.3 Access and third party material
  - 7.3.1 Access when no third party consultation undertaken
  - 7.3.2 Consultation but no response from third party
  - 7.3.3 Third party has no objection, but is it in writing?
  - 7.3.4 Third party objects to release of a document
  - 7.3.5 Delay access until outcome of appeal by third party
- 7.4 Decision to defer access
- 7.5 Forms of access
  - 7.5.1 Reasonable opportunity to inspect documents
  - 7.5.2 Who can inspect the documents?
  - 7.5.3 How many times can the applicant inspect?
  - 7.5.4 What about applicants who do not turn up to inspect documents?
  - 7.5.5 Applicant requests access in a particular form
  - 7.5.6 Access is provided in a different form, but what happens to the charges?
  - 7.5.7 Supervision of applicants and documents during inspection
- 7.6 Preparation of access copies for inspection
  - 7.6.1 Documents released in full
  - 7.6.2 Documents released in part

- 7.6.3 Documents that are fully exempt
- 7.7 Deletion of exempt matter
  - 7.7.1 How to delete exempt matter from partially exempt document
  - 7.7.2 Scalpel method
  - 7.7.3 Cover-up tape
  - 7.7.4 Software to manipulate electronic document (pdf)
  - 7.7.5 Notation of exemption provision in margin
  - 7.7.6 Do not use the following methods
- 7.8 Access to documents that are not paper-based
  - 7.8.1 Transcripts and shorthand
  - 7.8.2 Audiovisual material
  - 7.8.3 Documents stored on computer or electronically
- 7.9 Preparation of documents for collection by or forwarding to the applicant
  - 7.9.1 Use of transparency, watermark or etched photocopier to indicate FOI release
  - 7.9.2 Use of rubber stamps
  - 7.9.3 Providing copies of non-paper documents
- 7.10 Getting copies to the applicant
  - 7.10.1 Use of certified mail for posting of copies to an applicant
  - 7.10.2 Collection in person or by an agent
- 7.11 Proof of identity
  - 7.11.1 Authorisation of solicitors and other agents of a person
  - 7.11.2 Obtain proof of identity at time application is made
  - 7.11.3 Acceptable identification
  - 7.11.4 Proof of identity when making application on behalf of corporate entity for company's own documents
- 7.12 Workright / copyright
  - 7.12.1 What is workright / copyright?
  - 7.12.2 Who owns copyright?
  - 7.12.3 Copyright and independent contractors or consultants
  - 7.12.4 Copyright of government agencies
  - 7.12.5 How long does copyright last?
  - 7.12.6 Dealing with copyright and registration
  - 7.12.7 Licensing use of copyrighted material
  - 7.12.8 Infringement
  - 7.12.9 How does copyright affect access under FOI?

## **Chapter 8: Correction of Personal Information**

- 8.0 Correction of personal information
- 8.1 Who can request correction of personal information?
  - 8.1.1 A person who has had prior access
  - 8.1.2 What if the person has not had prior access?
  - 8.1.3 An agent acting on behalf of another party
- 8.2 How is a request for correction made?
  - 8.2.1 Personal information of the applicant
  - 8.2.2 Application to be in writing
  - 8.2.3 Applicant to provide particulars of information requiring correction
- 8.3 Where does the onus of proof lie?
  - 8.3.1 Onus is on the applicant
  - 8.3.2 What evidence is required?
- 8.4 When should a request for a correction be granted?
- 8.5 What does "inaccurate" mean?
- 8.6 How should an application be dealt with?
  - 8.6.1 Acknowledgment of request
  - 8.6.2 Time within which an agency must notify applicant



- 8.6.3 Decision to be made by authorised person and reasons given
- 8.7 What form should the correction take?
- 8.8 What are the procedures for refusing an application for a correction
- 8.9 Is any notation of documents required if an agency refuses to correct its records?
- 8.10 Who should be informed of the correction?

## **Chapter 9: The Review Processes**

- 9.0 The review processes
- 9.1 Who can apply for internal review?
- 9.2 When is a person not entitled to an internal review?
- 9.3 How are applications for internal review made?
- 9.4 What time periods apply to internal review?
  - 9.4.1 Time period to seek internal review
  - 9.4.2 Time period to deal with internal review
  - 9.4.3 Failure to make internal review decision within time period
- 9.5 Dealing with an application for internal review
  - 9.5.1 How does an agency deal with an internal review application?
  - 9.5.2 Who can deal with an application?
  - 9.5.3 What if the internal review application isn't valid?
- 9.6 What happens with access to disputed documents?
- 9.7 External review
  - 9.7.1 What is the cost of external review?
  - 9.7.2 What is the role of the external review body
  - 9.7.3 What powers do they have?
- 9.8 How is an application for external review made?
- 9.9 What time limits apply when seeking external review?
- 9.10 What procedures are likely to be followed at external review?

## **APPENDIX A**

### **Forms and Pro Forma letters**

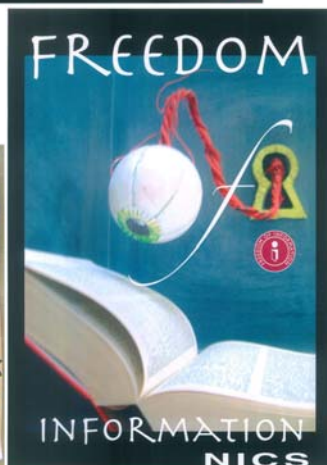
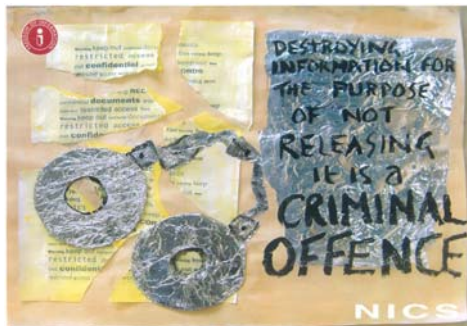
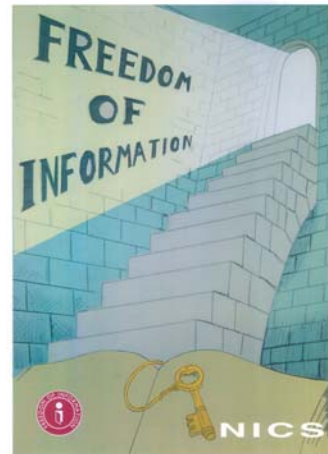
1. Statistics Manual Collection Form
2. Pro Forma Application Form
3. Certification or Located Document Declaration Form
4. Pro Forma Acknowledgment of FOI Application
5. Pro Forma Notice to Applicant - FOI Application transferred to another Department, Agency or Local Authority
6. Pro Forma Instrument of Delegation - Initial Decision-maker
7. Pro Forma Schedule of Documents
8. Pro Forma Decision Letter
9. Pro Forma Consultation with Third party
10. Pro Forma - Documents requiring consultation - Letter informing third party that access is being granted contrary to objections
11. Pro Forma Application for Review of Decision
12. Pro Forma Application for Amendment of Personal Information

## **APPENDIX B**

### **Full text of other relevant legislation**

- Keeping Secrets Law
- Archives Law
- National Security Law
- *[and others]*

## Annex B: Samples of FOI posters and logos



Department of Health


IT'S ALMOST TIME TO BAIL ALL

# THE FOI MONTY

The Freedom of Information Act will allow us to reveal all our freedom records on request. So if you want to know a record or records regarding the 7 or 8 million a business spends, the right one is available for you to see.

**SHOW THEM EVERYTHING**

The Freedom of Information Act is effective 1 January 2004. Find out more about it on our website.



Department of Health



**THE UNACCEPTABLE WORLD**

**CIVILISATION HAD MOVED ON... BUT HE WAS TRAPPED IN TIME**

There's no point blundering around as though we still live in the old, unacceptable world. The Freedom of Information Act is almost upon us. It won't be a disaster - adapt and evolve.




Department of Health

# F.O.I. REVOLUTION

BEING OPEN ISN'T AN ALIEN CONCEPT ANY MORE

YOU'RE GOING TO HAVE TO BE MORE OPENLY AWARE OF SOMEONE WHO'S BEEN OPENING UP AFTER HAVING THEM ALMOST CERTAINLY HAD A RIGHT TO THE FREEDOM OF INFORMATION ACT IS A WHOLE NEW WORLD. MAKE SURE YOU'RE READY FOR IT.



Department of Health

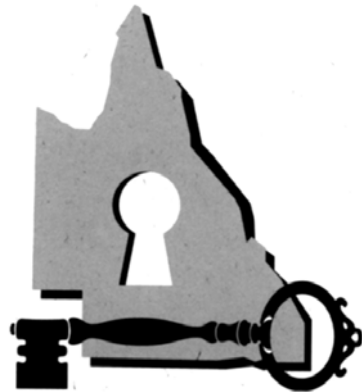
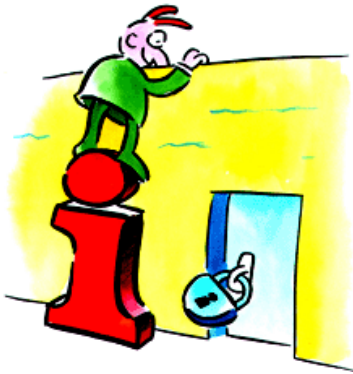
BEING OPEN ISN'T AN ALIEN CONCEPT ANY MORE



**F.O.I.**  
Freedom of Information Act

YOU'RE GOING TO HAVE TO BE MORE OPENLY AWARE OF SOMEONE WHO'S BEEN OPENING UP AFTER HAVING THEM ALMOST CERTAINLY HAD A RIGHT TO THE FREEDOM OF INFORMATION ACT IS A WHOLE NEW WORLD. MAKE SURE YOU'RE READY FOR IT.





## Annex C: EU Country references

### Austria

#### Legislation:

Bundesgesetz über den Schutz personenbezogener Daten  
(Datenschutzgesetz 2000 - DSG 2000)

Full text of the law: [http://www.ris.bka.gv.at/erv/erv\\_1999\\_1\\_165.pdf](http://www.ris.bka.gv.at/erv/erv_1999_1_165.pdf)

[Note for English speakers: The German Title "Datenschutzgesetz 2000" and the abbreviation "DSG 2000" should be used in English texts to avoid confusion. The law's full name and source should be given as "Datenschutzgesetz 2000 (DSG 2000), Austrian Federal Law Gazette part I No. 165/1999".]

Also:

- Article 20 § 3 and 4 of the Austrian Federal Constitutional Law:  
[http://www.ris.bka.gv.at/erv/erv\\_1930\\_1.pdf](http://www.ris.bka.gv.at/erv/erv_1930_1.pdf)
- Federal Framework Act on Information (BGBl 285-286/1987):  
[http://www.ris.bka.gv.at/erv/erv\\_1987\\_287.pdf](http://www.ris.bka.gv.at/erv/erv_1987_287.pdf)
- Federal Act on the duty to furnish information (Auskunftspflichtgesetz BGB1 287/1987).
- Law on access to information on the environment, BGBl. No 495/1993, BGBl. No 137/1999.
- Federal Act on Administrative Procedures (Akteneinsicht BGB1 51/1991).

#### Official Web Sites and Contact Details:

Austrian Federal Chancellery  
Bundeskanzleramt, Bundespressdienst  
Ballhausplatz 2  
A-1014 Wien  
Österreich  
Telephone +43 / 1 / 531 15 – 2340  
Fax +43 / 1 / 531 15 - 2814  
post@bka.gv.at OR [press-info.service@bka.gv.at](mailto:press-info.service@bka.gv.at)  
<http://www.austria.gv.at/>

Austrian Data Protection Commission  
Datenschutzkommission  
Ballhausplatz 1  
1014 Wien  
Österreich  
Telephone +43 1 531 15 / 2525  
Fax +43 1 531 15 / 2690  
dsk@dsk.gv.at  
<http://www.dsk.gv.at> (in English, <http://www.dsk.gv.at/indexe.htm>)  
<http://www.bka.gv.at/datenschutz/>

## Belgium

### **Legislation:**

Article 32 of the Constitution.

Decrees of 23 October 1991, 22 December 1994, 30 March 1995, 16 October 1995 and of 11 July 1996 (at regional and community level).

Loi relative à la protection des données à caractère personnel du 8 décembre 1992.  
Consolidated text of the Belgian law of December 8, 1992 on Privacy Protection in relation to the Processing of Personal Data as modified by the law of December 11, 1998 implementing Directive 95/46/EC -- Unofficial English translation by K. Buyens, updated by Mieke Loncke  
<http://www.law.kuleuven.ac.be/icri/itl/12privacylaw.php>

Act N° 94-1724 of 11 April 1994 on the disclosure of information by the administration (at federal level). (In French): Loi du 11 avril 1994 relative à la publicité de l'administration. Modifiée par Loi 25 Juin 1998 et Loi 26 Juin 2000.  
<http://www.privacyinternational.org/countries/belgium/loi-publicite.rtf>

Federal Act of 12 November 1997 on the disclosure of information by the administration (at municipal level).

Secrecy provisions (in French): Loi relative à la classification et aux habilitations de sécurité, 11 décembre 1998. <http://www.staatsbladclip.be/lois/1999/05/07/loi-999007004.html>

### **Official Web Sites and Contact Details:**

[one of the regional CADA offices]  
Commission régionale d'accès aux documents administratifs  
Boulevard du Jardin Botanique 20  
1035 Brussels  
Belgium  
Telephone 02 / 800 37 34  
Fax 02 / 800 38 08

Commission de la Protection de la Vie Privée  
Président M. Michel Parisse  
Rue Haute 139  
B - 1000 Bruxelles  
Belgium  
Telephone + 32 (0) 2 213 85 79  
Fax + 32 (0) 2 213 85 65  
[commission@privacycommission.be](mailto:commission@privacycommission.be)  
<http://www.privacycommission.be/>

## Bulgaria

### Legislation:

Constitution of the Republic of Bulgaria of 13 July 1991

<http://www.parliament.bg/?page=const&lng=en>

Access to Documents of the Former State Security Service Act and Former Intelligence Service of the General Staff Act, 1997.

[http://www.infotel.bg/juen/klasific\\_informacia/ezd.htm](http://www.infotel.bg/juen/klasific_informacia/ezd.htm)

Access to Public Information Act enacted in June 2000, then amended

<http://www.aip-bg.org/library/laws/apia.htm>

Law for the Protection of Classified Information

Prom. State Gazette 45/30 Apr 2002, corr. SG. 5/17 Jan 2003.

Personal Data Protection Act of 2002, later amended

<http://www.aip-bg.org/pdf/pdpa.pdf>

Environmental Protection Act of 2002

State Gazette No 91, 25 September 2002.

Handbook about the Act: [http://www.aip-bg.org/pdf/env\\_hndbk\\_eng.pdf](http://www.aip-bg.org/pdf/env_hndbk_eng.pdf)

### Official Web Sites and Contact Details:

Ministry of Interior

29, Shesti Septemvri Str.

Sofia 1000

Bulgaria

Telephone +35929825000

[spvo@mvr.bg](mailto:spvo@mvr.bg) is the email of the Public Relations Directorate within the Ministry (the Information and Archives Directorate does not list an email on the website.)

<http://www.mvr.bg/en/default.htm>

Commissioner for Personal Data Protection

Ivo Stefanov

1, Dondukov Blvd.

1000 Sofia

Telephone + 359 2 940 2046

[kzld@government.bg](mailto:kzld@government.bg)

## Czech Republic

### Legislation:

Article 17 of Law No. 2/1993, Charter of Fundamental Rights and Freedoms  
<http://www.psp.cz/cgi-bin/eng/docs/laws/listina.html> (in Czech)

Act 106/1999 Coll. on a free access to information <http://mujweb.cz/www/vaske/informace.htm>  
(English translation)

Act 148/1998 Coll. dated 11 June 1998 on Protection of Classified Information and on  
Amendment to Certain Acts  
<http://www.nbu.cz/en/act148.php> (English translation)

Law on Access to Information on the Environment (1998)  
[http://www.eel.nl/documents/czech\\_act.htm](http://www.eel.nl/documents/czech_act.htm) (English translation)

Personal Data Protection Act 2000  
[http://www.uoou.cz/index.php?l=en&m=left&mid=01&u1=Legislation:&u2=leg\\_101\\_2000&t=](http://www.uoou.cz/index.php?l=en&m=left&mid=01&u1=Legislation:&u2=leg_101_2000&t=)  
(English translation)

Act No. 310/2002 Coll. Regulation 348/2002 concerning Security Eligibility of Individuals  
Act No. 140/1996 Coll. on Disclosure of Files Established by Activities of the Former State  
Security Force.  
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.

### Official Web Sites and Contact Details:

Public Defender of Rights / Ombudsman  
<http://www.ochrance.cz/en/index.php> (in English)  
Údolní 39  
Brno  
PSC 602 00  
Czech Republic  
Telephone (+420) 542 542 888  
Fax (+420) 542 542 772  
[kancelar@ochrance.cz](mailto:kancelar@ochrance.cz)  
<http://www.ochrance.cz/en/>

President of the Office for Personal Data Protection  
Mr. Igor Nemeč  
Office for Personal Data Protection  
Pplk. Sochora 27  
170 00 Praha 7  
Czech Republic  
Telephone +420 234 665 111  
Fax: +420 234 665 444  
[info@uoou.cz](mailto:info@uoou.cz)  
<http://www.uoou.cz/> (click "English" for translated page)



**Legislation:**

The Processing of Personal Data (Protection of Individuals) Law 138(I)2001 as amended by The Processing of Personal Data (Protection of Individuals) (Amendment) Law of 2003 (37(I)2003).  
Unofficial English translation: <http://www.dataprotection.eu/pmwiki/pmwiki.php?n=Main.CY>

**Official Web Sites and Contact Details:**

Michael Kitromilides  
Personal Data Protection Commissioner  
40 Themistokli Derbi str.,  
1066 Nicosia  
Telephone: + 357 2 281 84 56  
Fax: + 357 3 330 45 65  
[roc-law@cytanet.com.cy](mailto:roc-law@cytanet.com.cy)

## Denmark

### Legislation:

The Law on Party Access in Administration 13 May 1964.

Public Administration Act No. 571, 19 December 1985

[http://aabenhedskomite.homepage.dk/07love/forvaltningsloven\\_paa\\_engelsk.htm](http://aabenhedskomite.homepage.dk/07love/forvaltningsloven_paa_engelsk.htm)

Access to Public Administration Files Act No. 572, 19 December 1985.

<http://www.privacyinternational.org/countries/denmark/dk-foi-85.doc>

Also:

- Act on Access to Information on the Environment. No. 292 of 27 April 1994.
- Access to Environmental Information Act (amended 2000)
- Act from the Ministry of Environment and Energy, Amending Certain Environmental Acts. No. 447 of 31 May 2000.
- Act Relating to the Processing of Personal Data (Act No. 429 of 31 May 2000):  
<http://www.datatilsynet.dk/eng/index.html> and then click on the name of the Act, or see  
[http://www.datatilsynet.no/upload/Dokumenter/regelverk/lov\\_forskrift/lov-20000414-031-eng.pdf](http://www.datatilsynet.no/upload/Dokumenter/regelverk/lov_forskrift/lov-20000414-031-eng.pdf)
- Act on the re-use of public sector information, nr. 596, 24 June 2005:  
[http://europa.eu.int/information\\_society/policy/psi/docs/pdfs/implementation/dk\\_act\\_596\\_24-06-05.doc](http://europa.eu.int/information_society/policy/psi/docs/pdfs/implementation/dk_act_596_24-06-05.doc)

### Official Web Sites and Contact Details:

Folkingets Ombudsmand

C/o Parliamentary Commissioner for Civil and Military Administration in Denmark

Gammel Torv 22

1457 Kbh. K.

Denmark

Phone: + 45 33 13 25 12

Fax: + 45 33 13 07 17

E-mail: [ombudsmanden@ombudsmanden.dk](mailto:ombudsmanden@ombudsmanden.dk)

[http://www.ombudsmanden.dk/english\\_en/](http://www.ombudsmanden.dk/english_en/) (in English)

Direktør Janni Christoffersen

Datatsynet (Data Protection Agency)

Borgergade 28, 5th floor

1300 København K

Denmark

Telephone + 45 33 19 32 00

Fax + 45 33 19 32 18

[dt@datatilsynet.dk](mailto:dt@datatilsynet.dk)

<http://www.datatilsynet.dk/eng/index.html> (in English)

Danish Environmental Protection Agency: <http://glwww.mst.dk/homepage/>

### Legislation:

Article 44, Constitution of Estonia: [http://www.oefre.unibe.ch/law/icl/en00000\\_.html](http://www.oefre.unibe.ch/law/icl/en00000_.html) (English translation)

Databases Act, Passed 12 March 1997 (RT I 1997, 28, 423):  
<http://www.legaltext.ee/text/en/X1060K6.htm> (English translation)

Public Information Act, Passed 15 November 2000 (RT I 2000, 92, 597):  
<http://www.legaltext.ee/text/en/X40095K2.htm> (English translation)

Personal Data Protection Act, Passed 12 February 2003 (RT I 2003, 26, 158):  
<http://www.legaltext.ee/text/en/X70030.htm>

Information Society Services Act, Passed 14 April 2004 (RT2 I 2004, 29, 191):  
<http://www.legaltext.ee/text/en/X80043.htm> (English translation)

Also:

- State Secrets Act, Passed 26 January 1999. RT I 1999, 16, 271
- 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. Passed July 1999, RT I 1999, 61, 622.
- Archives Act. RT I 1998, 36/37, 552. <http://www.legaltext.ee/text/en/X2058K5.htm>
- Environmental Register Act, Passed 19 June 2002 (RT I 2002, 58, 361).  
<http://www.legaltext.ee/text/en/X60041.htm>

### Official Web Sites and Contact Details:

Director General Urmas Kukk  
Estonian Data Protection Inspectorate  
Andmekaitse Inspektsioon  
Väike-Ameerika 19  
Tallinn 10129  
Telephone 627 4135  
Fax 627 4137  
[info@dp.gov.ee](mailto:info@dp.gov.ee)  
<http://www.dp.gov.ee/> (in Estonian)  
<http://www.dp.gov.ee/index.php?id=14> (in English)

### Legislation:

Constitution of Finland, 11 June 1999: <http://www.finlex.fi/pdf/saadkaan/E9990731.PDF>  
(unofficial English translation)

Personal Data Act (523/1999): <http://www.tietosuoja.fi/uploads/hopxtvf.HTM> (unofficial English translation)

Act on the Openness of Government Activities, No. 621/99:  
<http://www.finlex.fi/en/laki/kaannokset/1999/en19990621.pdf>

Also:

- Decree on the Environmental Protection Act. No. 86/2000.
- Archives Act No. 831/1994.
- Early "freedom of the press law" or Painovapauslaki 04/01/1919:  
<http://www.finlex.fi/fi/laki/alkup/1919/19190001001> (in Finnish)

### Official Web Sites and Contact Details:

Ministry of Justice (Oikeusministeriö)

P.O. Box 25

FI-00023 Government

Telephone +358-9-160 03

Fax +358-9-1606 7730

E-mail: [oikeusministerio@om.fi](mailto:oikeusministerio@om.fi)

General information: [viestinta.om@om.fi](http://viestinta.om@om.fi)

Central Administration and Law Drafting Departments Eteläesplanadi 10, Helsinki

Judicial Administration Department Kasarmikatu 42, Helsinki

Criminal Policy Department Mannerheimintie 4, Helsinki

<http://www.om.fi/>

<http://www.om.fi/en/Etusivu> (in English)

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Fax +358 10 36 66735

[tietosuoja@om.fi](mailto:tietosuoja@om.fi)

<http://www.tietosuoja.fi/> (in Finnish)

<http://www.tietosuoja.fi/1560.htm> (in English)

## France

### Legislation:

Searchable database of French legislation: <http://www.legifrance.gouv.fr/> (in French)

- 1978 Law on Access to Administrative Documents: Loi n°78-753 du 17 juillet 1978: Loi portant diverses mesures d'amélioration des relations entre l'administration et le public et diverses dispositions d'ordre administratif, social et fiscal; version consolidée au 14 juin 2006: <http://www.legifrance.gouv.fr/texteconsolide/PPEAV.htm> (in French) and <http://www.cada.fr/uk/center2.htm> (excerpts in English)
- 1978 Law on Data Processing, Data Files and Individual Liberties (Data Protection Act): 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/fileadmin/documents/uk/78-17VA.pdf>
- 1998 law on classification of national security information: 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>
- 1979 law (amended in 2000) on the consultation of archives: Acts 79-18 and 2000-321
- 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
- Ordonnance n° 2001-321 du 11 avril 2001 relative à la transposition de directives communautaires et à la mise en œuvre de certaines dispositions du droit communautaire dans le domaine de l'environnement: <http://aida.ineris.fr/textes/ordonnance/text8900.htm>
- 2002 law that allows former adoptees and wards of the state to access their records and find out the names of their parents, relatives and their medical conditions: LOI n° 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>
- Loi No. 2002-303 de 4 mars 2002 relative aux droits des maladies et à la qualité du system de la santé public
- 2004 Code du Patrimoine (revised law in regard to archives)
- Ordonnance n° 2005-650 du 6 juin 2005 relative à la liberté d'accès aux documents administratifs et à la réutilisation des informations publiques: <http://admi.net/jo/20050607/JUSX0500084R.html>

### Official Web Sites and Contact Details:

CADA: Commission d'accès aux documents administratifs  
35, rue Saint-Dominique  
75 700 PARIS 07 SP  
01 42 75 79 99  
01 42 75 80 70  
[cada@cada.fr](mailto:cada@cada.fr)  
<http://www.cada.fr/> (in French)

CNIL: Commission nationale de l'informatique et des libertés  
(French Data Protection Authority)  
Président Alex Türk  
8 rue Vivienne - CS 30223  
75083 PARIS Cedex 02  
Telephone 00 33 (0)1 53 73 22 22  
Fax 00 33 (0) 153 73 22 00  
<http://www.cnil.fr/> (In French)  
<http://www.cnil.fr/index.php?id=4> (English)

## Germany

### Legislation:

Gesetz zur Regelung des Zugangs zu Informationen des Bundes (Informationsfreiheitsgesetz – IFG) or The Act to Regulate Access to Federal Government Information (adopted June 2005, came into force 1 January 2006)

Federal Data Protection Act (1990 and later amendments) (Bundesdatenschutzgesetz, BDSG).  
[http://www.datenschutz-berlin.de/recht/de/bdsg/bdsg01\\_eng.htm](http://www.datenschutz-berlin.de/recht/de/bdsg/bdsg01_eng.htm)

Act Regarding the Records of the State Security Service of the Former German Democratic Republic (Stasi Records Act) of 20 December 1991

Environmental Information Act (1994) (Umweltinformationsgesetz, UIG):  
<http://www.iuscomp.org/gla/statutes/UIG.htm>

Law on the Preservation and Use of Federal Archival Documents (Bundesarchivgesetz - BArchG) of 6 January 1988 (BGBl. I S. 62), as amended at last by the Freedom of Information Law of 5 September 2005 (BGBl. I S. 2722):  
<http://www.bundesarchiv.de/benutzung/rechtsgrundlagen/bundesarchivgesetz/index.html?lang=en>

### Official Web Sites and Contact Details:

Federal Commissioner for Data Protection and Freedom of Information  
Der Bundesbeauftragte für den Datenschutz und die Informationsfreiheit  
Husarenstraße 30  
D-53117  
Bonn  
Telephone +49 (0)228-997799-0 or +49 (0)228-81995-0  
Fax +49 (0)228-997799-550 or +49 (0)228-81995-550  
[poststelle@bfdi.bund.de](mailto:poststelle@bfdi.bund.de)  
<http://www.bfdi.bund.de/>

Also: [http://www.bfd.bund.de/Vorschaltseite\\_EN\\_node.html](http://www.bfd.bund.de/Vorschaltseite_EN_node.html) (English)  
[http://www.bfd.bund.de/EN/Home/homepage\\_node.html](http://www.bfd.bund.de/EN/Home/homepage_node.html) (partial content in English)  
<http://www.bstu.bund.de/> (in German; site for the records of the state security service of the former German Democratic Republic)

Note: Due to the strong federal structure of the German Republic, many of the separate states within Germany also have their own freedom of information and/or data protection laws and agencies, and some of those that do not currently have such laws are working towards enacting them.

### Legislation:

Constitution of Greece (most recently amended 2001)  
(English translation available by clicking on the link at [http://www.synigoros.gr/en\\_law.htm](http://www.synigoros.gr/en_law.htm))

Law No. 1599 on the Relations between citizens and the state and other provisions (1986)

Joint Ministerial Decision N° 77921/1440/1995 of the Ministries of the Presidency of the Government, the Interior, the National Economy and the Environment, Planning and Public Works about access to environmental information

Law No. 2472 on the Protection of Individuals with regard to the Processing of Personal Data (1997) (as amended; English translations):  
[http://www.dpa.gr/Documents/Eng/2472engl\\_all2.doc](http://www.dpa.gr/Documents/Eng/2472engl_all2.doc) (also available from [http://www.dpa.gr/legal\\_eng.htm](http://www.dpa.gr/legal_eng.htm))

Law No. 2690/1999 Ratification of the Administrative Procedure Code and other provisions (especially Article 45):  
<http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN001820.pdf> (in English)

Law No. 3094, 22 January 2003: The Ombudsman and other provisions and PRESIDENTIAL DECREE No. 273: Regulations of the Ombudsman (available by clicking on the link at [http://www.synigoros.gr/en\\_law.htm](http://www.synigoros.gr/en_law.htm))

Law No 3448-2006. <http://www.poeota.gr/download/N.3448-2006.pdf> (in Greek)

### Official Web Sites and Contact Details:

Hellenic Data Protection Authority  
Kifisias Av. 1-3  
PC 115 23

Ampelokipi  
Athens Greece  
Telephone +30 210 64 75 600 or +30 210 64 75 696  
Fax +30 210 64 75 628  
Email [contact@dpa.gr](mailto:contact@dpa.gr)  
<http://www.dpa.gr/> (In Greek)  
[http://www.dpa.gr/home\\_eng.htm](http://www.dpa.gr/home_eng.htm) (in English)

The Greek Ombudsman ("Independent Authority")  
5 Hadjiyanni Mexi Street  
115 28 Athens  
Fax (0210) 729 2129  
[http://www.synigoros.gr/en\\_index.htm](http://www.synigoros.gr/en_index.htm) (pages in English)

## Hungary

### Legislation:

Act XX of 1949: The Constitution of the Republic of Hungary:  
[http://abiweb.obh.hu/dpc/legislation/1949\\_XX.htm](http://abiweb.obh.hu/dpc/legislation/1949_XX.htm)

Act LXIII of 1992: on the Protection of Personal Data and Public Access to Data of Public Interest: [http://abiweb.obh.hu/dpc/legislation/1992\\_LXIIIa.htm](http://abiweb.obh.hu/dpc/legislation/1992_LXIIIa.htm)

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

Act IV of 1978: on the Criminal Code:  
[http://abiweb.obh.hu/dpc/legislation/1978\\_IV.htm](http://abiweb.obh.hu/dpc/legislation/1978_IV.htm)

Act XLVII of 1997: on the Handling of Medical and Other Related Data

Act LXVI of 1992: on the Name and Address Records of Citizens ("the Records Act")

Act LXV of 1995: on State Secret and Service Secret (or "State and Official Secrets")

Act LXVI of 1995: on Public Records, Public Archives, and the Protection of Private Archives:  
[http://www.th.hu/html/en/acts/Act\\_LXVI\\_of\\_1995.doc](http://www.th.hu/html/en/acts/Act_LXVI_of_1995.doc)

Act No. III of 2003: On the Disclosure of the Secret Service Activities of the Communist Regime and on the Establishment of the Historical Archives of the Hungarian State Security:  
[http://www.th.hu/html/en/acts/ABTL\\_4\\_2003\\_evi\\_III\\_tv\\_e.pdf](http://www.th.hu/html/en/acts/ABTL_4_2003_evi_III_tv_e.pdf)

Act XXIV of 2003: Amending Certain Acts on the Use of Public Funds, the Public Disclosure, Transparency and Increased Control of the Uses of Public Property (The "Glass Pockets Act")

Act XC of 2005: on the Freedom of Information by Electronic Means:  
[http://abiweb.obh.hu/dpc/legislation/2005\\_XC.htm](http://abiweb.obh.hu/dpc/legislation/2005_XC.htm)  
[http://www.freedominfo.org/documents/hu\\_trans\\_2005tvy90.doc](http://www.freedominfo.org/documents/hu_trans_2005tvy90.doc)

### Official Web Sites and Contact Details:

Dr. Attila Péterfalvi  
Parliamentary Commissioner for Data Protection and Freedom of Information  
H-1051 Budapest,  
Nádor u. 22, Hungary  
Telephone +36 1 475 7186  
Fax +36 1 269 3541  
[adatved@obh.hu](mailto:adatved@obh.hu)  
<http://abiweb.obh.hu/dpc/index.htm>

Parliamentary Commissioners' Office of Hungary  
<http://www.obh.hu/> (in Hungarian)  
[http://www.obh.hu/index\\_en.htm](http://www.obh.hu/index_en.htm) (in English)

Historical Archives of the Hungarian State Security  
1067 Budapest  
Eötvös u. 7, Hungary  
Telephone (06-1) 478-6020  
Fax (06-1) 478-6036  
[info@abtl.hu](mailto:info@abtl.hu)  
<http://www.th.hu/> (in Hungarian)  
[http://www.th.hu/index\\_e\\_start.html](http://www.th.hu/index_e_start.html) (some pages in English)



## Ireland

### Legislation:

Official Secrets Act 1963: [http://www.bailii.org/ie/legis/num\\_act/1963/zza1y1963.1.html](http://www.bailii.org/ie/legis/num_act/1963/zza1y1963.1.html)

National Archives Act 1986: [http://www.bailii.org/ie/legis/num\\_act/1986/zza11y1986.1.html](http://www.bailii.org/ie/legis/num_act/1986/zza11y1986.1.html)

Data Protection Acts 1988 and 2003:

<http://www.dataprivacy.ie/viewdoc.asp?Docid=70&Catid=47&StartDate=1+January+2006&m=!>

Freedom of Information Act 1997, amended 2003:

[http://www.foi.gov.ie/foi.nsf/\\_v85mm2r37c5mm2t35cgsje9hg6c\\_?OpenFrameSet](http://www.foi.gov.ie/foi.nsf/_v85mm2r37c5mm2t35cgsje9hg6c_?OpenFrameSet) (or, 2003 version only: <http://www.gov.ie/bills28/acts/2003/a903.pdf>)

Statutory Instrument S.I. No. 279 of 2005, European Communities (Re-Use of Public Sector Information) Regulations 2005:

[http://europa.eu.int/information\\_society/policy/psi/docs/pdfs/implementation/ire\\_si\\_for\\_directive\\_2003-1-98.pdf](http://europa.eu.int/information_society/policy/psi/docs/pdfs/implementation/ire_si_for_directive_2003-1-98.pdf)

### Official Web Sites and Contact Details:

Freedom Of Information Central Policy Unit

Department of Finance

73/79 Lower Mount Street

Dublin 2

Telephone +353 1 6318258

Fax +353 1 6045750

[cpu@finance.gov.ie](mailto:cpu@finance.gov.ie)

<http://www.foi.gov.ie/>

Office of the Information Commissioner

18 Lower Leeson Street

Dublin 2

Telephone +353 1-6395689

Fax: +353 1-6395674 or +353 1-6395676

[info@oic.ie](mailto:info@oic.ie)

<http://www.oic.gov.ie/en/>

Data Protection Commissioner

Canal House

Station Road

Portarlinton

Co. Laois

Telephone +353 57 868 4800

Fax +353 57 868 4757

[info@dataprotection.ie](mailto:info@dataprotection.ie)

<http://www.dataprivacy.ie/>

### Legislation:

Law No. 801 of 24 October 1977: Establishment and regulation of the intelligence and security services and discipline of State secrecy

Chapter V of Law No. 241 of 7 August 1990: <http://www.parlamento.it/leggi/050151.htm> (in Italian)

Decree No. 352 of the President of the Republic of 27 June 1992

Law No. 39 of 24 February 1997: Attuazione della direttiva 90/313/CEE, concernente la libertà di accesso alle informazioni in materia di ambiente

Law No. 196 of 30 June 2003, Personal Data Protection Code:  
<http://www.garanteprivacy.it/garante/document?ID=311066>

Law No. 36 of 27 January 2006: *Attuazione della direttiva 2003/98/ce relativa al riutilizzo di documenti nel settore pubblico*: <http://www.cnipa.gov.it/site/files/riusodatipub.pdf> (in Italian)

### Official Web Sites and Contact Details:

Segretaria della Commissione  
Commissione per l'accesso ai documenti amministrativi  
Via della Mercede, 9  
00187 Roma  
Telephone 06.6779.6711 or 06.6779.6716  
Fax 06.6779.6684  
[commissione.accesso@governo.it](mailto:commissione.accesso@governo.it) or [commissioneaccesso@governo.it](mailto:commissioneaccesso@governo.it)  
<http://www.governo.it/Presidenza/ACCESSO/>

President Prof. Francesco Pizzetti  
Garante per la Protezione dei Dati Personali  
Piazza Monte Citorio, n. 121  
00186 Roma  
Italia  
Telephone + 39 06 696 771  
Fax + 39 06 696 777 15  
[garante@garanteprivacy.it](mailto:garante@garanteprivacy.it)  
<http://www.garanteprivacy.it>

**Legislation:**

Law on Archives 1991, amended 1993:

<http://www.arhivi.lv/engl/eng-lvas-law-on-arch.html>

State Secrets Act of 29 October 1996

Law on Environmental Protection 1997, amended 2000:

<http://www.ttc.lv/New/lv/tulkojumi/E0042.doc>

Constitution of Latvia 1998: [http://www.oefre.unibe.ch/law/icl/lg00000\\_.html](http://www.oefre.unibe.ch/law/icl/lg00000_.html)

Law on Freedom of Information 1998

Law on preserving and application of the documents of former KGB and establishment of the fact of cooperation with former KGB 2003

Personal Data Protection Law 2000, amended 2002:

<http://www.dvi.gov.lv/eng/legislation/pdp/>

**Official Web Sites and Contact Details:**

Director Signe Plumina

State Data Inspectorate

Kr. Barona iela 5-4

Riga, LV-1050

Telephone + 371 722 3 131

Fax + 371 722 3 556

[info@dvi.gov.lv](mailto:info@dvi.gov.lv)

<http://www.dvi.gov.lv/eng>

## Lithuania

### Legislation:

Article 25 of the Constitution of the Republic of Lithuania (25 October 1992):

<http://www3.lrs.lt/home/Konstitucija/Constitution.htm>

Law No. I-1115 on Archives (5 December 1995)

Law No. I-1338 on Declaration of the Property and Income of Residents (16 May 1996, amended 2000)

Article 6 of Law No. I-1418 on Provision of Information to the Public (2 July 1996, amended 2002)

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

Law No. VIII-1436 on Registering, Confession, Entry into Records and Protection of Persons who Have Admitted to Secret Collaboration with Special Services of the Former USSR (23 November 1999, amended 2000)

Law No. VIII-1443 on State Secrets and Official Secrets (25 November 1999, amended 2001)

Law No. VIII-1524 on the Right to Receive Information from State and Local Authorities (11 January 2000, substantially revised in November 2005)

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 4 July 2000

Law No. IX-1296 on Legal Protection of Personal Data (21 January 2003)

Law No. X-383 of 10 November 2005 (related to Public Sector Information Implementation Status)

### Official Web Sites and Contact Details:

Director Ona Jakstaite  
State Data Protection Inspectorate

Zygimanty str. 11-6a

LT-01102 Vilnius,

Lithuania

Phone (370 5) 279 1445,

Fax (370 5) 261 9494

[ada@ada.lt](mailto:ada@ada.lt)

<http://www.ada.lt/index.php?lng=en>

### **Legislation:**

“There is no general right of access to documents. Some rules are contained in the Act of 1 December 1978 governing non-contentious administrative procedures, that contain the right of a person affected to be heard and to obtain access to the administrative file. The Grand Ducal implementing Regulation of 8 June 1979 relating to the administrative procedure to be followed by State and local authorities recognises the right of a person concerned to full access to the files relating to their administrative situation and to items of information on which administrative decisions likely to affect their rights or interests are or may be based.” (Banisar 2006)

### **Official Web Sites and Contact Details:**

Président Gérard Lommel  
Commission nationale pour la protection des données  
68, route de Luxembourg  
L-4221 Esch-sur-Alzette  
Luxembourg  
Telephone + 352 26 10 60 1  
Fax + 352 26 10 60 29  
[info@cnpd.lu](mailto:info@cnpd.lu)  
<http://www.cnpd.lu/>

**Legislation:**

Data Protection Act ACT XXVI of 2001, as amended by Act XXXI of 2002.

<http://www.dataprotection.gov.mt/dbfile.aspx/DPA.pdf>

Legal Notice 16 of 2003, Processing of Personal Data (Telecommunications Sector) Regulations as amended by L.N.153 of 2003, L.N. 522 of 2004, and L.N.109 of 2005

Legal Notice 154 of 2003, Notification and Fees (Data Protection Act) Regulations, 2003 as amended by L.N.162 of 2004

Legal Notice 155 of 2003, Third Country (Data Protection Act) Regulations, 2003

Legal Notice 125 of 2004, Processing of Personal Data (Protection of Minors) Regulations, 2004

Legal Notice 142 of 2004, Data Protection (Processing of Personal Data in the Police Sector) Regulations, 2004

Malta has published a White Paper on planned freedom of information legislation.

**Official Web Sites and Contact Details:**

Paul Mifsud-Cremona

Commissioner for Data Protection

2, Airways House, High Street

Sliema SLM 16

Telephone + 356 2328 7100

Fax + 356 2328 7198

[commissioner.dataprotection@gov.mt](mailto:commissioner.dataprotection@gov.mt)

<http://www.dataprotection.gov.mt>

## Netherlands

### Legislation:

Article 110 of the Constitution of the Kingdom of the Netherlands, 2002:

[http://www.minbzk.nl/contents/pages/6156/grondwet\\_UK\\_6-02.pdf](http://www.minbzk.nl/contents/pages/6156/grondwet_UK_6-02.pdf)

Act of 31 October 1991, containing regulations governing public access to government information: [http://www.minbzk.nl/contents/pages/5306/public\\_access\\_government\\_info\\_10-91.pdf](http://www.minbzk.nl/contents/pages/5306/public_access_government_info_10-91.pdf)

General Administrative Procedural Act of 4 June 1992 (Algemene wet bestuursrecht)

Personal Data Protection Act of 2000

[http://www.dutchdpa.nl/documenten/en\\_wetten\\_wbp.shtml?refer=true&theme=purple](http://www.dutchdpa.nl/documenten/en_wetten_wbp.shtml?refer=true&theme=purple)

The Archive Act

The Criminal Code

### Official Web Sites and Contact Details:

Ms Dr G. ter Horst

Minister of General Affairs, and Minister of the Interior

<http://www.minbzk.nl/bzk2006uk/>

Chairman Jakob Kohnstamm

College Bescherming Persoonsgegevens (Data Protection Authority)

Postbus 93374

2509 AJ Den Haag

Netherlands

Telephone + 31 70 888 85 00

Fax + 31 70 888 85 01

[mail@cbpweb.nl](mailto:mail@cbpweb.nl)

<http://www.cbpweb.nl/> (in Dutch)

<http://www.dutchdpa.nl/> (in English)

**Legislation:**

Article 61 of the Constitution of Poland (2 April 1997)

The Classified Information Protection Act of 22 January 1999

Act of 6 September 2001 on access to public information, Journal of Laws No 112, item 1198:  
[http://europa.eu.int/information\\_society/policy/psi/docs/pdfs/implementation/po\\_tra\\_%20dz-u-01-112-1198\\_21-03-05.doc](http://europa.eu.int/information_society/policy/psi/docs/pdfs/implementation/po_tra_%20dz-u-01-112-1198_21-03-05.doc) a

Act of 27 April 2001 Environmental Protection Law

**Official Web Sites and Contact Details:**

Office of the Commissioner for Civil Rights Protection  
Aleja Solidarno ci 77  
00 - 090 Warsaw  
Phone (+ 48 22) 55 17 700  
Fax (+ 48 22) 827 64 53  
e-mail [rzecznik@rpo.gov.pl](mailto:rzecznik@rpo.gov.pl)

Ombudsman (contains the preceding)  
<http://www.brpo.gov.pl/index.php?e=1&poz=430> (in Polish)  
<http://www.rpo.gov.pl/index.php?s=3> (in English)

Biuletyn Informacji Publicznej  
<http://www.bip.gov.pl/>

Dr. Ewa Kulesza  
Generalny Inspektor Ochrony Danych Osobowych  
Komunikat Generalnego Inspektora Ochrony Danych Osobowych  
ul. Stawki 2  
00-193 Warszawa  
Poland  
Telephone + 48 22 860-70-81  
Fax + 48 22 860-70-90  
[sekretariat@giodo.gov.pl](mailto:sekretariat@giodo.gov.pl)  
<http://www.giodo.gov.pl/en/>  
[http://www.ipn.gov.pl/index\\_eng.html](http://www.ipn.gov.pl/index_eng.html)



### Legislation:

Article 62 of the Code of Administrative Procedures (Act Decree N° 442/91 of 15 November 1991), which regulates the right of access to administrative information based on a specific interest in the document

Law of State Secrecy no 6/94, of 7 April 1994:

<http://www.terravista.pt/guincho/3938/Segredo%20de%20Estado.doc> (in Portuguese)

Lei no 65/93, de 26 de Agosto, com as alterações constantes da Lei no 8/95, de 29 de Março e pela Lei no 94/99, de 16 de Julho; Law number 65/93 on access to administrative documents of 26 August 1993

Article 48 and 268 of the Constitution of the Portuguese Republic (1997):

[http://www.parlamento.pt/leis/constituicao\\_ingles/IND\\_CRP\\_ING.htm](http://www.parlamento.pt/leis/constituicao_ingles/IND_CRP_ING.htm)

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)

### Official Web Sites and Contact Details:

Comissão de Acesso aos Documentos Administrativos (CADA)

Rua de São Bento, 148 - 2º

1200-821 Lisboa

Portugal

Telephone: 213 933 570

Fax: 213 955 383

[geral@cada.pt](mailto:geral@cada.pt)

<http://www.cada.pt/>

Comissão Nacional de Protecção de Dados (CNPd)

Rua de São Bento, 148, 3º

1200-821 Lisboa

Portugal

Telephone (+ 351) 21 392 84 00

Fax (+ 351) 21 397 68 32

[geral@cnpd.pt](mailto:geral@cnpd.pt)

<http://www.cnpd.pt/>

## Romania

### Legislation:

Constitution of Romania: <http://www.avp.ro/consten.html> (excerpt in English)

Law No. 16/1996 on the National Archives: [http://www.apador.org/en/legi/lege\\_16\\_1996\\_e.rtf](http://www.apador.org/en/legi/lege_16_1996_e.rtf)

Law No. 35/1997 On the Organisation and Functioning of the Institution of the Advocate of the People: <http://www.avp.ro/leg35en.html>

Law No. 189/1999 on the access to the personal file and the disclosure of the Securitate as a political police: <http://www.cdep.ro/legislatie/eng/vol44eng.pdf>

Law No. 544/2001 Regarding the Free Access to the Information of Public Interest

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>

Law No. 182/2002 on the protection of classified information

Law No. 52/2003 regarding decisional transparency in the public administration

Governmental Decision no. 878/2005 on public access to environmental information, 28 July 2005: [http://www.apador.org/en/legi/hot\\_1115\\_2002\\_e.rtf](http://www.apador.org/en/legi/hot_1115_2002_e.rtf)

Law on Certain Steps for Assuring Transparency in Performing High Official Positions, Public and Business Positions, for Prevention and Sanctioning the Corruption: <http://www.sigmaweb.org/dataoecd/34/15/35015795.pdf>

### Official Web Sites and Contact Details:

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People's Advocate  
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Telephone + 40 21 312 7134  
Fax + 40 21 312 4921  
[avp@avp.ro](mailto:avp@avp.ro)  
<http://www.avp.ro/indexen.html>

Valeriu Guguianu-Tincu  
Responsabil Acces Informatii Publice/Relatia Cu Societatea Civila  
[valeriu.guguianu@publicinfo.ro](mailto:valeriu.guguianu@publicinfo.ro)  
<http://www.publicinfo.ro/pagini/contact.php>

Consiliul National Pentru Studierea Arhivelor Securitatii  
Strada Dragoslavele nr. 2-4  
Sector 1 cod 011024  
Bucharest, Romania  
Telephone: 021 319 09 35 or 021 319 09 36  
Fax: 021 319 09 32 or 021 319 09 56  
[office@cnsas.ro](mailto:office@cnsas.ro)  
<http://www.cnsas.ro/main.html>

National Supervisory Authority for Personal Data Processing  
[http://www.dataprotection.ro/index.php?lang=en\\_GB](http://www.dataprotection.ro/index.php?lang=en_GB) (in English)

**Legislation:**

Article 26 of the Constitution of the Slovak Republic 1992:

[http://www.oefre.unibe.ch/law/icl/lo00000\\_.html](http://www.oefre.unibe.ch/law/icl/lo00000_.html)

Act 211/00 on Free Access to Information (approved May 2000, went into force on 1 January 2001): [http://www.info211.sk/zakon\\_en.php](http://www.info211.sk/zakon_en.php)

Act 553/2002 of 19 August 2002 on Disclosure of Documents Regarding the Activity of State Security Authorities in the Period 1939 - 1989 and on Founding the Nation's Memory Institute (Ústav pamäti národa) and on Amending Certain Acts (Nation's Memory Act):

[http://www.upn.gov.sk/data/pdf/553\\_2002\\_en.pdf](http://www.upn.gov.sk/data/pdf/553_2002_en.pdf)

Act No. 428/2002 on Protection of Personal Data (amended through 2005):

[http://www.dataprotection.gov.sk/buxusnew/docs/act\\_428.pdf](http://www.dataprotection.gov.sk/buxusnew/docs/act_428.pdf)

Act No. 215/04 on the Protection of Classified Information and on the amendment and supplementing of certain acts

Act No. 205/2004 on assembling, storing and spreading environmental information

**Official Web Sites and Contact Details:**

Nation's Memory Institute

<http://www.upn.gov.sk/>

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[statny.dozor@pdp.gov.sk](mailto:statny.dozor@pdp.gov.sk)

<http://www.dataprotection.gov.sk/>

### Legislation:

Articles 38 and 39 of the Constitution of Slovenia (1991): [http://www.us-rs.si/en/index.php?sv\\_path=6](http://www.us-rs.si/en/index.php?sv_path=6)

Archives and Archival Institutions Act (Official Gazette of the RS, No. 20/97): <http://www.arhiv.gov.si/fileadmin/arhiv.gov.si/pageuploads/razno/AAIA.pdf>

Access to Public Information Act (2003, revised 2005): <http://www.ip-rs.si/index.php?id=520>

Information Commissioner Act No 113/2005: <http://www.ip-rs.si/index.php?id=519&type=98>

Classified Information Act, 8 November 2001; Official Gazette of the Republic of Slovenia, No 87/2001: <http://nato.gov.si/eng/documents/classified-info-act/>

Personal Data Protection Act:

[http://www.ip-rs.si/fileadmin/user\\_upload/doc/PDPA\\_-\\_consolidated\\_23.03.06.doc](http://www.ip-rs.si/fileadmin/user_upload/doc/PDPA_-_consolidated_23.03.06.doc)

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<http://www.ip-rs.si/>  
<http://www.ip-rs.si/index.php?id=149>

### Legislation:

Article 105(b) of the Constitution of Spain, 1992

Article 37 of Ley 30/1992, de 26 de Noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común (modified by ley 4/99, de 13 January 1999) ("law on rules for public administration and administrative procedures"):

[http://noticias.juridicas.com/base\\_datos/Admin/l30-1992.html](http://noticias.juridicas.com/base_datos/Admin/l30-1992.html)

Ley 38/1995, de 12 de diciembre de derecho de acceso a la información en materia de medio ambiente: <http://www.siam-cma.org/lexislacion/doc.asp?id=89>

Organic Law 15/1999 of 13 December on the Protection of Personal Data:

[https://www.agpd.es/upload/Ley%20Org%E1nica%2015-99\\_ingles.pdf](https://www.agpd.es/upload/Ley%20Org%E1nica%2015-99_ingles.pdf) (extracts in English)

Act 34/2002 of 11 July on Information Society Services and Electronic Commerce:

[https://www.agpd.es/upload/Ley\\_34-2002\\_LSSI\\_ingles.pdf](https://www.agpd.es/upload/Ley_34-2002_LSSI_ingles.pdf)

Act 41/2002, of 14 November 2002, basic regulating Act on the autonomy of the patient and on the rights and obligations in matters of clinical information and documentation:

[https://www.agpd.es/upload/English\\_Resources/LEY%20DE%20AUTONOM%CDA%20DEL%20PACIENTE.pdf](https://www.agpd.es/upload/English_Resources/LEY%20DE%20AUTONOM%CDA%20DEL%20PACIENTE.pdf)

Act 32/2003 of 3 November (State Telecommunications Act):

[https://www.agpd.es/upload/Ley\\_32-2003\\_LGT.pdf](https://www.agpd.es/upload/Ley_32-2003_LGT.pdf)

Act 62/2003 of 30 December on fiscal measures, administrative measures and measures of a social nature: [https://www.agpd.es/upload/ACT\\_62\\_2003.pdf](https://www.agpd.es/upload/ACT_62_2003.pdf)

### Official Web Sites and Contact Details:

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Calle Zurbano, 42

28010 Madrid, España

Telephone 91 432 79 00

[registro@defensordelpueblo.es](mailto:registro@defensordelpueblo.es)

<http://www.defensordelpueblo.es/>

[http://www.defensordelpueblo.es/web\\_ingles/](http://www.defensordelpueblo.es/web_ingles/) (in English)

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[ciudadano@agpd.es](mailto:ciudadano@agpd.es)

<https://www.agpd.es/index.php>

**Legislation:**

1766 Freedom of the Press Act, last amended in 1994:

[http://www.riksdagen.se/templates/R\\_Page\\_6313.aspx](http://www.riksdagen.se/templates/R_Page_6313.aspx)

The Instrument of Government (Chapter 2 in English includes the Freedom of the Press Act):

[http://www.riksdagen.se/templates/R\\_PageExtended\\_6319.aspx](http://www.riksdagen.se/templates/R_PageExtended_6319.aspx)

Secrecy Ordinance (1980:657): <http://www.notisum.se/rnp/sls/lag/19800657.htm> (in Swedish)

Personal Data Act (1998:204):

[http://www.datainspektionen.se/in\\_english/personal\\_data.shtml](http://www.datainspektionen.se/in_english/personal_data.shtml)

SOU 2003:99. <http://www.regeringen.se/sb/d/108/a/412>

**Official Web Sites and Contact Details:**

Riksdagens ombudsmän – Justitieombudsmannen (Chief Parliamentary Ombudsman - JO)

(mail) Box 16327, 103 26 Stockholm

(office) Västra Trädgårdsgatan 4 Stockholm

Telephone 08-786 40 00

Fax 08-21 65 58

[justitieombudsmannen@riksdagen.se](mailto:justitieombudsmannen@riksdagen.se)

<http://www.jo.se/default.asp?SetLanguage=en>

Data Inspection Board / Datainspektionen

(mail) Box 8114 SE-104 20 Stockholm Sweden

(office) Fleminggatan 14, 9th floor Stockholm Sweden

Telephone +46 8 657 61 00

Fax +46 8 652 86 52

[datainspektionen@datainspektionen.se](mailto:datainspektionen@datainspektionen.se)

[http://www.datainspektionen.se/in\\_english/start.shtml](http://www.datainspektionen.se/in_english/start.shtml)

Ministry of Justice

Rosenbad 4

103 33 Stockholm Sweden

Telephone: + 46 8 405 10 00

Fax: + 46 8 20 27 34

## United Kingdom

### Legislation:

Official Secrets Act 1911 (Section 1); OSAs 1920, 1939, 1989 (c.6)

Public Records Act 1958: <http://www.pro.gov.uk/about/act/act.htm>

Local Government (Access to Information) Act 1985

Data Protection Act 1998

Freedom of Information Act 2000

Official version: <http://www.opsi.gov.uk/acts/acts2000/20000036.htm>

Single page version: <http://www.cfoi.org.uk/foiact2000.html>

Freedom of Information (Scotland) Act 2002:

<http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts2002/20020013.htm>

The Environmental Information Regulations 2004: Statutory Instrument 2004 No. 3391:

<http://www.legislation.hmso.gov.uk/si/si2004/20043391.htm>

Environmental Information (Scotland) Regulations: Scottish Statutory Instrument 2004 No. 520:

<http://www.hmso.gov.uk/legislation/scotland/ssi2004/20040520.htm>

Statutory Instrument 2005 No. 1515: The Re-use of Public Sector Information Regulations:

<http://www.opsi.gov.uk/si/si2005/20051515.htm>

### Official Web Sites and Contact Details:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire SK9 5AF

Telephone 020 7025 7580

Fax 01625 524510

<http://www.ico.gov.uk/>

Ministry of Justice (launched 9 May 07)

<http://www.justice.gov.uk/whatwedo/freedomofinformation.htm>

<http://www.justice.gov.uk/>

<http://www.foi.gov.uk/index.htm>

Department for Constitutional Affairs (responsible for FOI until 9 May 07)

<http://www.dca.gov.uk/>

<http://www.dca.gov.uk/rights/dca/foidcaintro.htm>

List of public authorities covered by the FOI Act 2000:

<http://www.dca.gov.uk/foi/yourRights/publicauthorities.htm>

Directgov (information for the public)

[http://www.direct.gov.uk/en/RightsAndResponsibilities/DG\\_4003239](http://www.direct.gov.uk/en/RightsAndResponsibilities/DG_4003239)

The Information Tribunal

<http://www.informationtribunal.gov.uk/>

Formerly known as the Data Protection Tribunal, the Information Tribunal hears appeals from notices issued by the Information Commissioner under:

- The Freedom of Information Act 2000 (FOIA)
- The Data Protection Act 1998 (DPA)
- The Privacy and Electronic Communications Regulation 2003 (PECR)
- The Environmental Information Regulations 2004 (EIR)

Scottish Information Commissioner

<http://www.itpublicknowledge.info/>

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Department of Constitutional Affairs *Managing Information and Training: A Guide for Public Authorities in implementing the FOI Act and the EI Regulations*



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Guidance by the Scottish Information Commissioner on Publication Schemes is at: <http://www.itspublicknowledge.info/ScottishPublicAuthorities/PublicationSchemes/PublicationSchemeGuidance.asp>

Guidance issued by the UK Department of Constitutional Affairs is at <http://www.dca.gov.uk/foi/guidance/index.htm>

Guidance issued by the UK Information Commissioner is at [http://www.ico.gov.uk/tools\\_and\\_resources/document\\_library/freedom\\_of\\_information.aspx](http://www.ico.gov.uk/tools_and_resources/document_library/freedom_of_information.aspx)

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