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Training Programme on the Right to Information for Jordanian Information Officers

Participants' Manual

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INTRODUCTION

Jordan was the first country in the Arab World to adopt a right to information law when it adopted Law No. 47 for the Year 2007 Guaranteeing the Right to Obtain Information (the right to information law or Law). This was an advantage inasmuch as Jordan started the process of opening up earlier than other Arab countries, but it was also a challenge inasmuch as there was no regional experience or models to follow.

It is widely accepted that the Law is relatively weak compared to other laws, earning a score of just 53 out of a possible 150 points on the RTI Rating,[1] putting it in 98th place globally out of 103 countries. In part this is due to insufficient detail in the Law in certain areas, such as procedures, and in part due to features such as the lack of independence of the oversight body, the Information Council.

Despite being the first Arab country to adopt right to information legislation, it has taken public authorities in Jordan some time to move forward in terms of implementing the Law and some still have a long way to go in terms of this respect. Each public authority needs to appoint an official with dedicated responsibilities for implementing the Law internally, and then to provide training and put in place the needed implementation systems.

This Manual is part of the broader effort to address implementation needs in Jordan, in particular through enhancing training capacity. It is primarily designed to be used as a resource for training courses for information officials. It should, for this purpose, be used in conjunction with the accompanying exercises and the presentation slide deck. However, it might also be used to inform a self-study course and as a reference tool.

The Manual is divided into eight sessions, each one corresponding to a session in the training course, as reflected in the agenda, which is included in the Manual. Before session one, the Manual starts with a very brief introductory session, where participants get to know each other, and the goals and expectations of the course, as well as the style, are introduced.

The first session presents a number of key benefits associated with the right to information and then provides an overview of international trends relating to this right over the last 25 years, looking at the adoption of laws globally as well as other key developments. This session also outlines the key drivers for these trends and, in particular, the growth in the number of right to information laws globally. Finally, it provides an overview of the RTI Rating, a tool to assess the strength of right to information laws.

The second session provides a closer look at the legal foundations for the right to information. This includes an overview of developments leading to the recognition of

[1] See www.RTI-Rating.org.

the right as a human right under international law, as well as the key legal features a strong legal regime should have. This is followed by an overview of the Jordanian Law, including a description of the extent to which it conforms to international standards and its main strengths and weaknesses.

The third session provides an overview of the key steps which are required to implement the Law. The aim is to give participants a sense of the entire range of actions that are needed, before getting into different action areas.

The fourth session is the first one to address a specific implementation issue, namely proactive disclosure. These sessions are designed more to raise participants' understanding about what they need to do, and to present them with various general options, than to provide specific instructions. The latter would be impossible not only due to the brevity of the course, but also due to the wide range of different types of public authorities involved. Session 4 outlines the importance and challenges of proactive disclosure, and also gives participants a sense of what they need to think about to ensure that their own public authorities are able to meet their proactive publication obligations.

The fifth session addresses a key issue for information officers, namely how to process requests for information. This session takes participants through the stages of receiving and responding to requests for information, highlighting challenges they can expect to face on the way, as information officers, including resistance from their colleagues and difficulties responding consistently within the time limits established by the Law.

The sixth session addresses the important question of restrictions on the right to information or exceptions. It starts by outlining general principles relating to exceptions, including the three-part test for restrictions under international law. It then takes participants through a step-by-step procedure for analysing whether or not specific, requested information falls within the scope of the regime of exceptions, including an analysis of the harm test and public interest override.

The seventh session focuses on the issue of appeals against refusals to disclose information and other actions by public authorities that may breach the rules. It again provides practical advice to information officers about how these systems should work, albeit in a somewhat overview fashion given that it is not information officers themselves who will be responsible for this process.

The eight and final session provides an opportunity to review a number of outstanding issues which are relevant to information officers, including preparing annual reports on implementation, reviewing promotional measures and developing a system for monitoring and evaluation.

Overall, the course aims to provide participants, who are primarily information officers or trainers who will train information officers, with a robust overview of what their new tasks involve. Participants should come out of the course feeling challenged,

as they start to realise, often for the first time, the real scope of their new roles. At the same time, they should at least have a positive understanding of the scope of their duties, so that they can start to move forward to deliver them. And, very importantly, they should also have a number of useful tools and ideas about how to do that.

Agenda

Training Programme on the Right to Information for Jordanian Information Officials

DAY 1

08:30 – 09:00	Registration
09:00 – 09:30	Opening, Introductions and Welcome
09:30 – 11:00	Session 1: Importance of the Right to Information and Recent Global Trends in this Area
	Exercise A: The Benefits of the Right to Information
11:00 – 11:15	Tea/coffee Break
11:15 – 12:45	Session 2: Legal Foundations for the Right to Information: International Law and the Jordanian Legal Framework
	Exercise B: Constitutional Interpretation
12:45 – 13:45	Lunch Break
13:45 – 15:15	Session 3: Overview of Key Implementation Steps
	Exercise C: Mapping the Key Steps
15:15 – 15:30	Tea/coffee Break
15:30 – 16:45	Session 4: Proactive Disclosure of Information by Public Authorities
	Exercise D: Proactive Disclosure
16:45 – 17:00	Closing

Day 2

09:00 – 09:15	Review of Day 1
09:15 – 10:30	Session 5: How to Process Requests for Information

	Exercise E: The Form for Requests for Information
10:30 – 10:45	Tea/coffee Break
10:45 – 11:45	Session 6: How to Interpret the Exceptions
11:45 – 12:45	Exercise F: Role Play on Exceptions
12:45 – 13:45	Lunch Break
13:45 – 14:45	Session 7: How to Process Appeals
14:45 – 15:30	Session 8: Reporting, Promotional Activities and Monitoring and Evaluation
15:30 – 15:45	Tea/coffee Break
15:45 – 16:30	Exercise G: Developing a Plan of Action
16:30 – 16:45	Conclusions and Presentation of the Certificates
16:45 – 17:00	Closing Words

Opening, Introductions and Welcome

This is an informal introductory part of the course which allows participants to introduce themselves to each other and for a brief discussion about the purpose of the course, participants' expectations and the agenda.

It will start with a round of introductions, starting with the course facilitator and then going around the room and having participants introduce themselves briefly. Participants should indicate which organisation they work for and what they do there, especially in relation to information. They should also indicate one expectation they have for the course (only one so that space is left for others to indicate their expectations). This will be come back to at the end of the course for a review of the extent to which these were in fact met.

Following this, the facilitator will introduce the purposes of the course. These are, broadly:

- To raise awareness about international standards and developments regarding the right to information (RTI).
- To raise awareness about the Jordanian legal framework for the right to information.
- To help participants – who should mostly be information officers from public authorities – to understand better their responsibilities under the Law (i.e. all of the activities that the Law requires them to do in terms of implementation).
- To help participants think about how they will discharge those responsibilities, including in terms of what their priorities are.

Discussion Point

Are there any other purposes that you feel are important and that should be added? Does this largely conform to your expectations?

The facilitator will then provide an overview of the way in which the course will be conducted. Key points here include:

- That the course will be **interactive** in nature. Participants should always feel free to interject queries, comments or observations, regardless of what is happening at that particular point in the training. While the facilitator is leading the course, the idea is that everyone should participate. Among other things, this will help ensure that the course is as responsive as possible to participants' needs and that participants understand the material being covered.
- That the course will employ various **methodological approaches**. These will include: presentations, open discussions and different sorts of exercises.

- That the course will include a number of **exercises**. The purpose of exercises is to allow participants to work together in smaller groups to discuss the material and thereby to obtain a greater understanding of it. In most cases, the exercises will ask participants to work in groups of two or three people to work out a response to the question posed in the exercise. In most cases, there will be a plenary discussion about these responses, so each group should appoint someone who will be ready to provide feedback on their discussions to the whole group. One exercise – on exceptions – is more involved and consists of a role play, with different members of the group playing different roles.

The facilitator will then introduce the agenda briefly and participants will be given an opportunity to provide feedback and comments on it.

Session 1: Importance of the Right to Information and Recent Global Trends in this Area

Discussion Point

When you hear the term 'the right to information', what do you think of? What are its main characteristics and features (its essence)?

1. What is the Right to Information (RTI)

The core concept behind the right to information is that public authorities do not hold information just for themselves. Instead, they hold it on behalf of the public as a whole, which, at least in democracies, has given them a mandate to do this work and to whom the funds which support public authorities (i.e. public funds) ultimately belong. As a result, the public has a right to access this information (of course subject to certain exceptions). In other words, everyone has a right to access information held by public bodies or authorities.

As a matter of practice under most RTI laws, there are two main ways of exercising this right:

- Reactive or responsive provision of information: Anyone can make a request to a public authority for information that he or she wants, and that authority should provide the information to the requester within a set timeframe.
- Proactive provision of information: Public authorities should publish key types of information even without a specific request for that information, so that everyone can access it.

It is universally recognised that the right to information is not absolute and that certain types of information should not just be disclosed to anyone who asks for it. This includes, for example, sensitive information relating to the security of the nation and private information about individuals. The core idea behind the right to information is that access is the default or presumed position, and that any refusal to provide information is exceptional in nature (so that we call the rules on withholding of information 'exceptions'). One of the important consequences of the creation of a presumption in favour of access is that public authorities must justify any refusal to make information public.

It is easy to talk about this idea in theoretical terms but as a matter of reality it is important to recognise that creating a presumption in favour of openness is a radical change in most countries. Indeed, it represents an almost complete reversal from the historical situation, which was that governments and public authorities operated for

the most part in secret, and that they treated the information they held as belonging to them, and not something they needed to share with the public.

It is often difficult for officials to implement right to information laws, due to the radical nature of the changes these laws bring in. In essence, these laws turn officials whole world upside down, from a situation where they could assume secrecy of 'their' information to a situation where now they have to share information with anyone who happens to ask for it. Even you, as information officers or specialists, may find this a difficult adjustment. And you can certainly expect some resistance from your colleagues when you are pressing them to provide information to the public.

Example

Imagine someone makes a request for a document that you have in your possession and which is not covered by an exception (which is the case for most of the documents you hold). Previously, you would have treated the information as confidential, perhaps as a professional secret. Now you have to give that information to the requester. This clearly takes some getting used to.

Discussion Point

What do you think of this? Do you think this has been or will be a problem in Jordan? Do you think that this depends on the underlying culture of the country, or do you think that in most countries officials have a similar culture of secrecy?

Another aspect of the right to information is the idea of proactive disclosure of information. Although people often do not even see this as part of the right, in fact it is a very important means of providing information held by public authorities to the public. The number of individuals who actually make requests for information will in most countries be very low indeed. Even in a developed country like Canada with a long-standing right to information law (since 1982), only five percent of all citizens has ever made a request for information. For the rest of the public, the main means of accessing information held by public authorities is via proactive disclosure.

There is also a very close relationship between the two types of disclosure: proactive and reactive. The more information that is made available on a proactive basis, the less need there is for citizens to make requests to get this information. So, as the amount of information made available proactively increases, the number of requests for information naturally decreases. In practice, it is far quicker and easier to make information available proactively than to process a request for the same information, due to the fact that the latter must be registered, a receipt must be sent to the requester, the information must be found and then assessed for exceptions and so on. As a result, most countries are moving forward very strongly in terms of making information available on a proactive basis.

Another idea has emerged in recent years which is very closely related to the right to information, namely the idea of open data, sometimes referred to more generally as open government. At its heart, this is really a form of proactive disclosure, since it involves public authorities making information available on a proactive basis. However, it has a few added features, as follows:

1. Information, especially numerical or statistical data, is made available in formats which can be processed by computers and other digital devices. For example, information might be provided in excel format rather than as a .pdf file. As a result, users can manipulate the information electronically. A particular advantage of this is that they can combine it with other information or databases to create new products.

Example

The website http://www.fixmystreet.com *is an interactive website that combines information about potholes and other paving problems in streets with geo-location data so that people can report problems to the authorities. There is also a discussion forum so that people can discuss the problem and find out about problems faced by others in their neighbourhoods.*

2. Information and data are made available for free instead of for a fee. While governments once used to sell most higher value data, the trend now is simply to give it away for free. This means that even high value data becomes accessible to everyone, and this has resulted in very innovative and commercially beneficial products being developed.

Example

In the United Kingdom, the government used to sell very detailed maps, known as ordinance survey maps. These maps are now available in electronic formats for free and they have been used by numerous app developers to create useful products for the public.

3. Finally, information produced or owned by public authorities is provided without being subject to any copyright restrictions (i.e. free of any intellectual property constraints). Usually, this is done by attaching an open licence to the information, allowing individuals to use the information for whatever purpose they may wish. This is also key to the commercial reuses noted above.

2. The Importance of the Right to Information

Discussion Point

What are the general benefits associated with the right to information? Can you think

of reasons why it might be important in a democracy? What about the specific reasons why it might be important in Jordan?

A number of benefits are normally associated with putting in place an effective regime governing the right to information. Some of the more important of these are discussed below.

1. Sound Development

The participation promoted by right to information laws also extends to development initiatives, which can lead to greater ownership over these initiatives. This, in turn, can help improve decision-making processes around development projects and also improve implementation of those projects fostering the involvement of beneficiaries. For the same reason, greater transparency can also help ensure that development efforts reach the intended targets.

Examples

In South Africa, local groups have used the RTI law to obtain water delivery benefits that they were due. In one example, villagers in Emkhandlwini had no water, whereas neighbouring villages were receiving water deliveries from municipal tankers. With the help of a local NGO, the villagers filed an RTI request for minutes from the council meetings at which water programmes had been discussed and agreed, for the council's Integrated Development Plan (IDP) and for the IDP budget. This information showed that there were plans to deliver water throughout the region, but that somehow Emkhandlwini had been left out. Armed with this information, the villagers were able successfully to reassert their claims for water.

Every year, UNESCO hosts World Press Freedom Day on 3 May and the main event usually adopts a declaration on some key theme. The main event in 2014 was in Paris and the title of the declaration was: "Paris Declaration: Post-2015 Agenda: The right of access to information, independent media, and safety for exercising freedom of expression, are essential to development".

2. Democracy and Participation

Information is an essential underpinning of democratic participation. A core characteristic of democracy is that individuals have the ability to participate effectively in decision-making about matters that affect them. Democracies put in place a large number of different participatory mechanisms, with regular elections for parliament at the top of the pyramid, as it were. Other democratic participatory mechanisms which are in place in many countries include citizen oversight bodies for public services such as education and health, and mechanisms for commenting on proposed government programmes, activities, policies or laws.

It is not possible to participate effectively in any of these mechanisms without having good access to information, including information held by government. Voting is not simply a technical function but is, under international law, described as ensuing that "[t]he will of the people shall be the basis of the authority of government". For this to be possible, members of the electorate must have access to information, for example to assess the performance of the current government and to assess the validity of the proposals of all of the competing candidates and parties. The same is essentially true of participation at all levels. For example, if a citizen wishes to provide feedback on a proposed policy or development project, he or she will need access to the proposal, as well as the background information policy-makers have relied upon to develop the policy.

Example

Slovak law requires companies that wish to harvest trees to prepare forest management plans, which must then be approved by the Ministry of Agriculture. Historically, these plans were classified documents but, with the adoption of a new right to information law, a local NGO, the Vlk (Wolf) Forest Protection Movement, managed to access the plans. Based on the information in the plans, Vlk managed to campaign successfully for larger areas of forest to be protected as nature reserves. Significantly, in 2005, amendments were introduced to forestry legislation to ensure that the information and background material used to develop forest management plans are made public so everyone can access them without needing to make a request. The amendments also set a precedent for public participation by allowing representatives of NGOs to be present at official meetings where the plans are discussed.

3. Relations with Citizens

When governments become more open and share information on a formal basis (i.e. under the right to information law rather than just informally through personal contacts), this can help control rumours and build a more solid basis for the information that circulates in society. This, in turn, helps build better overall relations between citizens and the government, which are based more on trust than on the rumours that can circulate in the absence of solid information.

4. Accountability

Accountability and good governance are also core values of democracies. The essence of accountability is that members of the public have a right to scrutinise and debate the actions of their leaders and to assess the performance of the government. This is possible only if they can access information about matters of important public concern, such as the economy, social systems, unemployment, environmental performance and so on. Once again, the right to information is key to ensuring this.

Example

When the new medical system based on the medical reforms introduced by President Obama was first launched publicly, the online systems experienced major problems. All of the information about this was made publicly available, essentially in real time, so that the problems were tracked and reported on in the media and on social media. As a result, President Obama personally apologised directly to the public for the problems, in a sort of direct form of accountability.

5. Dignity and Personal Goals

Although issues such as corruption and accountability tend to attract more attention, the right to information also serves a number of other important more private goals. The right to be able to access information about oneself that is held by public authorities, for example, part of one's basic human dignity. It can also be useful to help individuals make personal decisions. For example, individuals may not be able to make decisions about medical treatment, financial planning and so on if they cannot access their medical records. It may also be necessary to access information to correct mistakes, which can lead to serious problems. There has, for example, been a growing problem of individuals with the same names as actual suspects being put on no fly lists.

Example

In India, individuals have made very effective use of the right to information law to obtain information of personal value. There is more robust implementation of the right to information law than of other rules, including rules relating to benefits or entitlements owed to individuals (for example regarding the processing of applications for licenses or permissions, or the provision of social benefits). This has led to a situation where individuals often resort to requests for information where they are facing problems such as delay, obstruction or failure to apply the rules in relation to service delivery. A study on this by students at Yale involved three groups applying for benefits to which there were entitled, such as a passport or food rations. The first group simply applied for the benefits and did nothing else. The second group applied for the benefits and paid a bribe to get the benefit. The third group applied for the benefit and then followed up with an application under the right to information law for information about their claim. While the second group had the highest success rate, the third group was not far behind. This is significant, among other things, because the cost of a right to information application is just about US$0.15 whereas the average cost of the bribe was about US$25.

6. Business Benefits

The right to information also generates a number of business benefits, something that is often overlooked. In many countries, commercial businesses are a significant user group. Public authorities collect and hold vast amounts of information on a wide

range of issues, much of which relates to economic matters or social trends, which businesses can put to good use. This is an important benefit, which also helps respond to the concerns which are often voiced about the high cost of implementing right to information legislation.

One aspect of this is that openness helps ensure that tenders and other public spending procedures are conducted in a fair and competitive manner. For example, businesses that were unsuccessful in a tender can make a request for information about the scoring and where they did poorly. This not only helps expose any biases or wrongdoing, but it also helps the business improve their bidding for next time.

Example

The World Bank has put in place strict requirements regarding the openness of tender processes, which is done on a proactive basis. All successful bidders must provide information about the points they were awarded under each category of the tender assessment process and the overall value of their tender award on their websites.

As noted above, the open data that is now being released by many governments has been used by both commercial businesses and many other social actors to create different types of benefits for society. The economic value of all of this activity has been assessed at many billions of dollars.

Example

In the United Kingdom, there have been efforts to get doctors to prescribe generic rather than brand name drugs. Someone has created an application using public information whereby citizens can look up their location and see how well their doctors are doing in terms of prescribing generics. The same tool also allows policy makers to target efforts to get doctors to change their prescription practices in areas where the use of generics is too low, thereby creating efficiencies and saving money.

7. Combating Corruption

One of the most high profile benefits associated with the right to information is its power to combat corruption and other forms of wrongdoing in government. Different social actors – including investigative journalists, watchdog NGOs and opposition politicians – can use the right to information law to obtain information which would not otherwise be available to them and to use it to expose wrongdoing. Once wrongdoing is exposed, this normally helps root it out. As U.S. Supreme Court Justice Louis Brandeis famously noted: "A little sunlight is the best disinfectant."

There are many examples of right to information legislation being used successfully to combat corruption. Indeed, this benefit is so clearly recognised that one of the

measures in the UN Convention Against Corruption is to call on States to adopt right to information laws.

Examples

In the 1990s, the Ugandan education system used to provide significant direct capital transfers to schools via local public authorities. A public expenditure tracking survey (PETS) in the mid-1990s revealed that 80 percent of these funds never reached the schools because they were being siphoned off on the way. To address this problem, the central government starting publishing data in local newspapers and at schools about the amount of the monthly capital transfers that had been made. This meant that both officials at the schools and parents of students could access this information and therefore know if it was getting 'lost' along the way. A few years after the programme was first implemented, the rate of capture had dropped to 20 percent.

A few years ago in Canada, the then Defence Minister called the search and rescue service to provide him with a helicopter to transport him back from a fishing trip, even though these helicopters are supposed to be used only for emergency situations (and not as taxis for senior officials). The official at the search and rescue service realised this was problematical and responded by saying: "If we are tasked to do this, we of course will comply. Given the potential for negative press though, I would likely recommend against it, especially in view of the fact the air force receives regular access-to-information requests specifically targeting travel on Canadian Forces aircraft by ministers." It is significant that the official did not respond by saying that the helicopter was not supposed to be used as a taxi. Instead, he referred to the right to information law, which illustrates what a powerful tool it is to combat corruption. Sure enough, in due course there was a media request for the information, and the Minister's wrongdoing was the subject of extensive public debate.

In the United Kingdom, after a long fight, the records relating to the way Members of Parliament had spent the funds they are allocated for different purposes such as housing were released under the right to information law. They revealed extensive corruption and wrongdoing in relation to those expenses, in many cases relating to the housing allowances given to MPs for housing if their primary residence was not in London. As a result of the revelations, the Speaker of the House of Commons was forced to resign, the only time this has ever happened in the 300 years since that institution was first created. In addition, several MPs were charged with criminal offences and dozens were unable to run at the next election.

8. Respect for Human Rights

In the same way as corruption, human rights violations can remain hidden and therefore flourish in a climate of secrecy. Many of the worst human rights violations, such as torture, are almost by definition something that takes place in secret. While openness rules will not often expose these sorts or problems directly, they can at least

lead to the indirect exposure of problems, for example, by requiring bodies which have conducted investigations into human rights violations to publish their reports.

Example

In a number of countries, including Tunisia and Mexico, information relating to human rights violations or war crimes is given special treatment in the sense that none of the exceptions apply when information relating to these issues is requested.

Discussion Point

Are there examples in Jordan where access to information, either under the Access to Information Law or obtained in other ways, has provided some of these benefits? Have other benefits been obtained as a result of openness around information?

Exercise A

The Benefits of the Right to Information

Working in Small Groups

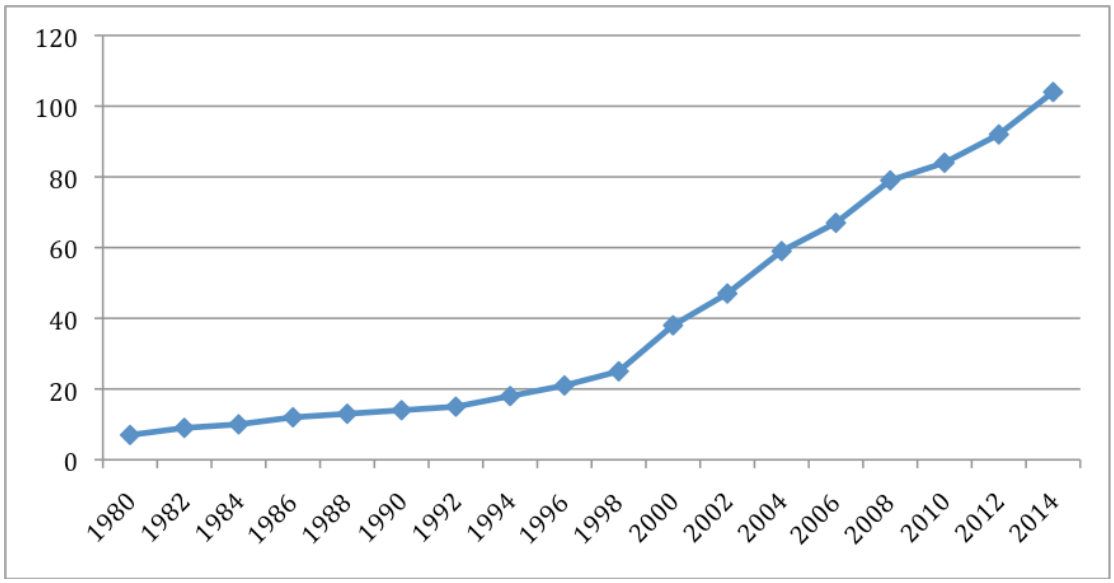
3. Recent Global Trends

There are now well over 100 countries around the world which have adopted right to information laws (108 as of April 2016), up from just 14 25 years ago in 1991. The rate of growth of these laws is shown graphically in Figure 1. That graph also shows that the rate of adoption of these laws has increased sharply over the last 20 years. Until around 1997, the rate of adoption was only about one per year, but that increased after that to around four per year as the chart below illustrates.

Example

Sweden was the first country in the world to adopt an RTI law, which it did as far back as 1766 (so 2016 is the 250th anniversary of this). As of 25 years ago, in 1991, only 14 countries had adopted such laws, and all but one of them was a Western democracy. Today, these laws have been adopted by countries in all regions of the world, including Asia, Africa, North and South America, Europe, the Pacific and the Middle East.

Figure 1. Chronological Development of RTI Laws



Source: RTI Rating by the Centre for Law and Democracy and Access Info Europe

As Figure 2 shows, the first region of the world to adopt right to information laws was the developed countries, starting with Sweden, and now there is only one developed country – Luxembourg – which has not yet adopted a law. The next regions to engage heavily in this process, starting around 1995, were countries in Eastern and Central Europe and Asia. As of today, with a few exceptions such as Belarus, almost all of the countries in Eastern and Central Europe have adopted such laws, while the rate of penetration in Asia is around 50 percent.

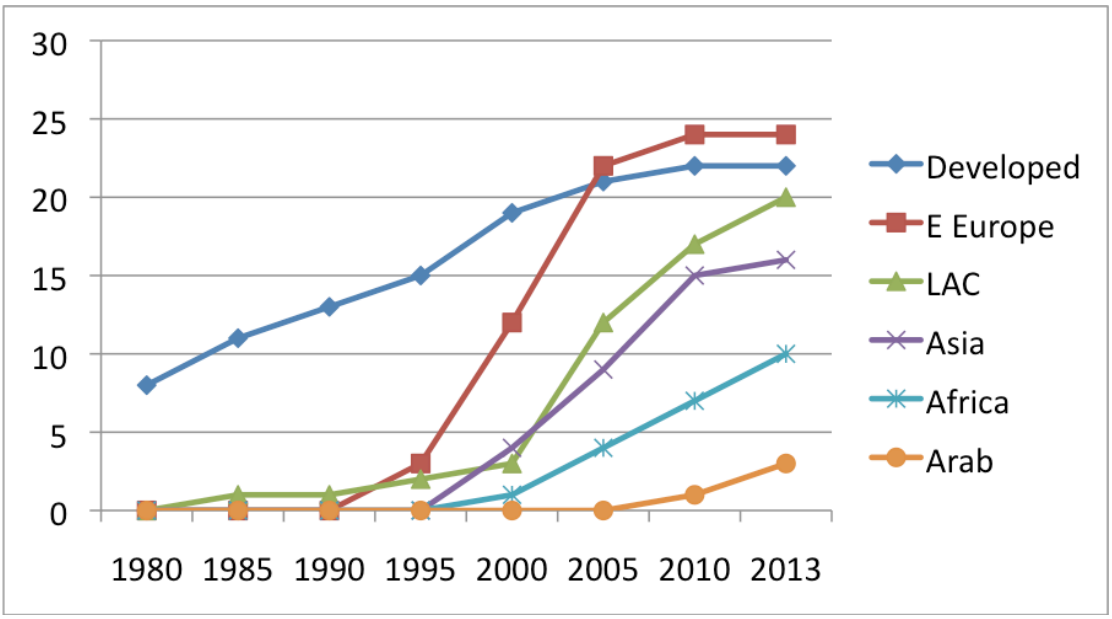
This was followed by laws being adopted in Latin America and the Caribbean (LAC), starting around 2000, and now around one-half of the countries in this region have adopted such laws. Countries in sub-Saharan Africa started adopting laws at around the same time, but the rate of penetration in this region is much lower, at only about 30 percent.

Finally, since 2007, led by Jordan, countries in the Arab World have started to adopt laws. As of today, only four countries in the Arab World have adopted right to information laws: Jordan (2007), Tunisia (2011), Yemen (2012) and Sudan (2015). At the same time, several Arab countries – including Egypt, Morocco and Tunisia – have guarantees of the right to information in their new constitutions and a number of Arab countries – including Egypt and Morocco – are developing right to information laws. Nearby, both Afghanistan and Iran have adopted laws.

Discussion Point

Does this picture of the spread of RTI laws around the world surprise you? Would you have expected other regions to be ahead? If so, which ones?

Figure 2. Development of RTI Laws Broken Down by Region



In parallel to these national developments, there has also been some movement among inter-governmental organisations (IGOs) to adopt rules in this area. Given that these bodies are not able to adopt laws, in most cases they adopt RTI policies. This development has been most pronounced among the international financial institutions (IFIs), with bodies such as the World Bank and Asian Development Bank having adopted RTI policies many years ago. However, the rest of the IGO community has been slow to move on this issue and this is reflected in the fact, for example, that very few UN bodies have adopted RTI policies.

Example

The World Bank was the first IFI to adopt an access to information policy, which it did in 1994. The policy was revised a number of times over the years and the current policy was adopted in December 2009 came into force in July 2010. With this new policy, the World Bank has been recognised as one of the more open inter-governmental bodies, although there are still a number of ways in which the policy could be improved.

Growing from a small base in the early days, there is today a very large global community of civil society organisations and experts working on the right to information at the both the international level and nationally.

Example

FOIAnet (http://www.foiadvocates.net) is the largest global network of right to information experts and organisations and has over 270 member organisations and over 850 individual members. There are also regional networks focusing on this issue

in many parts of the world.

Running somewhat in parallel to pure right to information developments is the creation of a number of international bodies promoting greater openness. The most well-known is the Open Government Partnership (OGP), of which Jordan is the first Arab member. Facilitating access to information is one of the four main pillars of the OGP. In its first OGP Action Plan, Jordan made a commitment to: "[Improve] access to information through adopting amendments to the existing Access to Information Law in view of further improving it and ensuring that it is consistent with international best practices." The Plan is available at: http://www.opengovpartnership.org/country/jordan/action-plan. Some amendments were adopted by Cabinet in 2012, but these have not yet been passed into law (see: http://www.opengovpartnership.org/sites/default/files/OGP%20first%20progress%20report%202012%20feb%202013%20%20final.pdf).

Other similar movements include the Extractive Industries Transparency Initiative (EITI), the International Aid Transparency Initiative (IATI) and Publish What You Fund (PWYF).

Example

The OGP (http://www.opengovpartnership.org) was founded to support member countries to make commitments in three areas, namely openness, participation and government accountability. Each member is required to adopt an Action Plan every two years, which is supposed to be done in consultation with civil society. There is then a process for assessing whether or not members have implemented the commitments in their Action Plans, including through an independent reporting mechanism.

A final global development which should be mentioned (and which is discussed in more detail below) is the fact that the right to information has, over the last 15 years, been recognised under international law as a fundamental human right.

4. Key Drivers for the Growth in RTI Laws

The rapid pace of adoption of right to information laws over the last 25 years is without a doubt a remarkable phenomenon. And there are a number of possible explanations for it.

Several commentators have noted that the popularisation of this issue has been facilitated by the fact that the idea that public authorities do not own the information they happen to hold but, rather, are holding it on behalf of the public is a very natural idea which most people easily grasp and accept. The government derives its mandate from the people through the electoral process and the funding that pays for

government to create or collect information in the first place also comes from public sources. As a result, at least in a democracy, it seems both natural and logical to conclude that it is the public that owns the information, and that it should, normally, be given access to it.

Discussion Point

Do you agree with this assessment (i.e. do you think that the idea of the right to information is a natural one)? Do you think this might vary from country to country? Would you say that most Jordanians would naturally be drawn to the idea if you presented it to them?

Another important factor is the fact that people's expectations around participation are continuously changing. Previous generations felt that the right to vote every four or five years was essentially sufficient in terms of participation. Today, however, it is common for people to have much higher expectations and even demands around participation. These expectations extend to the idea that we should be consulted on more-or-less every development which has an impact on us and that we have a right to be involved in the governance of key social institutions such as schools and hospitals. Obviously one needs information to participate effectively at all of these levels.

Example

In Canada, when public authorities undertake an activity such as building a road in a city, everyone living in the area which will be affected by the road is given a chance to participate in public discussions about the proposed road. Town hall meetings are held and everyone affected receives an invitation to them through their private mailbox. Importantly, all of the information the government has used to plan the development of the road – such as its expected environmental impact or the way it will affect traffic in the area – is made available publicly online. This means that when ordinary citizens go to these meetings, they are often as well informed about the proposals as the government is.

A third key factor is that information technologies have completely revolutionised the relationship we now have with information. The small phones most of us carry around in our pockets contain far more information than people have in physical form in their homes, or could have had in any form just 20 years ago. The Internet multiplies the information resources available to us by many orders of magnitude, while powerful searching tools and electronic filing systems put all of these information resources essentially at our fingertips. All of this has created a fundamentally different relationship with information. Whereas previous generations saw information as a valuable and hard to get resource, young people today treat it as a right.

Example

As recently as 30 years ago, the Encyclopaedia Britannica was the very best

information resource one could possibly have in one's own home. It was a 12-15 volume set that might have a few paragraphs on the historical developments at Petra. Even that was, however, far too expensive for most people to afford. Vastly more people can, today, access the Internet from their homes, where they can find 100s, perhaps 1000s, of pages about Petra, and about almost anything else that might interest them.

Globalisation is a fourth factor which has spurred on popular support for the right to information. Globalisation is itself driven in part by information technology due to the fact that people in every country can today easily access information about developments in other countries (except in the few countries where the government controls the Internet). When people become aware that people in other countries benefit from right to information legislation, they want it for themselves, creating a virtuous circle of demand for this right.

Finally, one should not underestimate the importance of the fact that the right to information has been recognised internationally as a human right in terms of promoting recognition of this at the national level. Different civil society organisations or citizens' groups often call for the adoption of one or another governance reform but this takes on a very different quality when the reform they are calling for is a human right.

The factors above operate globally in the sense that they apply everywhere. There are also a number of more specific drivers for the adoption of right to information legislation that may apply at the national level, depending on the country. One of these is the fact that rapid processes of democratic change have taken place in many parts of the world, including the Arab world, over the same 25-year period of that has witnessed rapid growth in RTI laws. The changes in Eastern and Central Europe are perhaps the most obvious in this regard, but democratisation has progressed in very important ways in many other regions. For fairly obvious reasons, processes of democratisation create a positive window of opportunity for adopting right to information legislation.

Rapid political change, including revolutions, has been witnessed in many countries and indeed regions of the world over the last 25 years, including in South Africa, Eastern Europe, Indonesia, East Timor and some Arab countries as well. Where old dictatorships and repressive regimes are thrown off and replaced with more democratic governments, it is normal for a process of rapid democratisation to follow. In these change processes, the adoption of right to information legislation is almost always a key demand.

Myanmar represents another process of democratic change whereby a profoundly undemocratic regime took it upon itself to bring about a process of rapid democratisation, as opposed to being overthrown by force. In Myanmar, as well, the adoption of right to information legislation has become a priority.

Another opportunity for the adoption of RTI legislation is where a country witnesses major political change after a long period without such change. In Mexico, for example, the end of a 65-year period of rule by one party led to the new government immediately promising to introduce a right to information law, which it did. In the United Kingdom, as well, the Labour Party was out of power for a 17-year period. During this time, it had consistently promised to adopt RTI legislation and, when it finally did gain power, in 1997, it immediately put in place a process for adopting this long overdue legislation. An analogous process of political change in Thailand in 1997 also led to the adoption of right to information legislation.

The international community has also created both pressure and support for the adoption of right to information legislation in many countries. This was very much the case in Tunisia, for example, where a number of international actors, led by the World Bank, put pressure on the interim government in the immediate post-revolutionary context to adopt right to information legislation, which it did. The role played by inter-governmental actors is often supplemented by support from civil society. This can involve both international and local groups. These groups can play a very important role in both mobilising support and providing expertise.

Discussion Point

Do you think any of these factors contributed to the adoption of the RTI Law in Jordan? Or were there other factors at play?

5. Measuring the Quality of RTI Laws

Two civil society organisations with very established track records in working on the right to information – the Centre for Law and Democracy and Access Info Europe – developed a methodology for assessing the strength of legal frameworks for the right to information, known as the RTI Rating (www.RTI-Rating.org). The RTI Rating has now become accepted as the gold standard methodology in this area and is relied on regularly by organisations like the World Bank and UNESCO.

The core standards in the RTI Rating are drawn from two sources, namely international standards on the right to information and established better national practice as reflected in national right to information laws. As Figure 3 shows, the RTI Rating looks at the quality of RTI laws broken down into seven main categories: the Right of Access, Scope, Requesting Procedures, Exceptions and Refusals, Appeals, Sanctions and Protections and Promotional Measures.

Figure 3. The RTI Rating Categories

Section	Max Points
1. Right of Access	6
2. Scope	30

3. Requesting Procedures	30
4. Exceptions and Refusals	30
5. Appeals	30
6. Sanctions and Protections	8
7. Promotional Measures	16
Total score	**150**

The four main categories – Scope, Requesting Procedures, Exceptions and Refusals and Appeals – are each allocated 30 points while other categories are worth less points, based on the idea that they are not as important. In turn, each category is broken down into indicators, for a total of 61 separate indicators. Each indicator assesses whether or not a key feature of a strong right to information framework is present in the legal system. A large majority of the indicators have a maximum score of two points, although some have higher values. The maximum score possible in the Rating is 150 points.

Discussion Point

Does this seem to capture the main issues and give them appropriate weight? Can you think of issues that do not seem to fit into this framework?

In addition to preparing the methodology, the two organisations have assessed every national legal framework for the right to information (because the Rating looks for features which are or are not present in the legal system as a whole, not just whether they are present in the right to information law).

Figure 4. Number of RTI Laws per 10-point Score Ranges

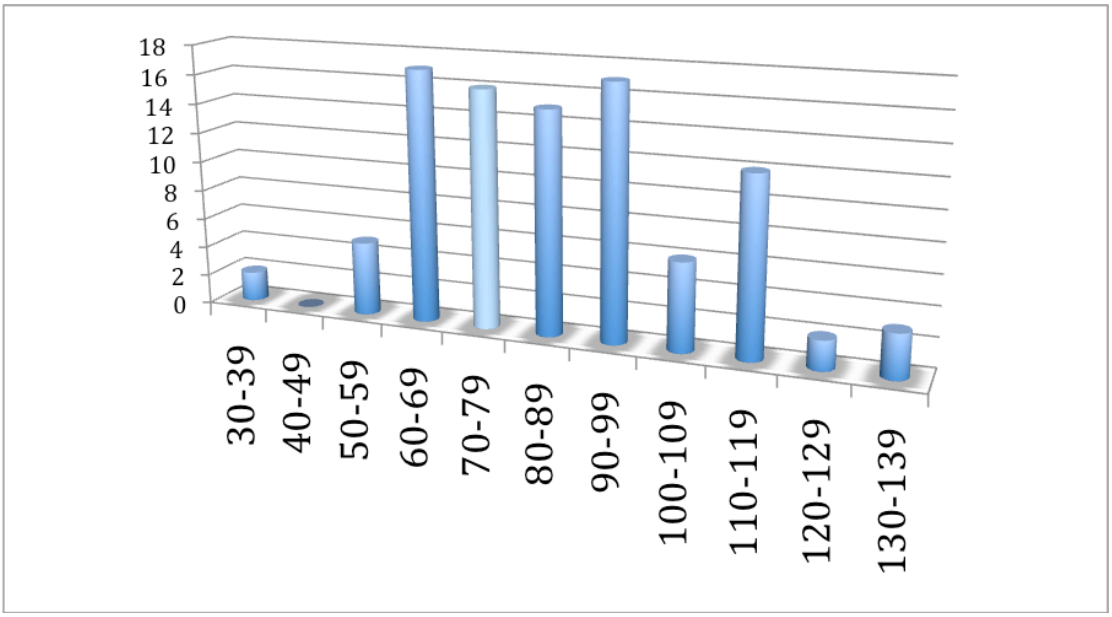


Figure 4 shows the distribution of the scores of all of the national legal frameworks which have been assessed. Perhaps unsurprisingly, this falls into a Bell Curve, or normal distribution, which suggests that the Rating methodology is sound, since this is the most natural distribution for this sort of phenomenon (hence the use of the term 'normal' in relation to it). The distribution also shows that some countries have managed to achieve very high scores. In what may be a surprise for most people, the top scoring country is Serbia, with a score of 135 points out of 150, followed by Slovenia with 129 and India with 128. This shows that the standards of the Rating are reasonable in the sense of not being impossibly strict (i.e. it shows that countries can realistically achieve very high scores).

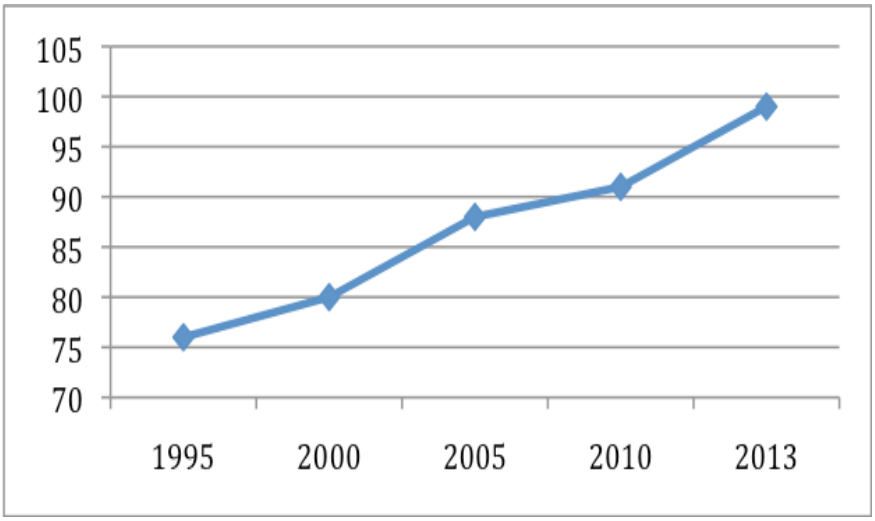
The same is true at the other end of the scale and some countries have only managed to achieve very low scores. Austria and Liechtenstein are at the very bottom of the Rating, with scores of 32 and 39 points, respectively, leading some people to suggest that these countries should not be counted as having right to information laws at all.

Jordan scores just 53 points on the RTI Rating, putting it in 98th place globally out of the 103 countries which have been rated, or almost at the bottom of the list with only five countries behind it. It does very well in terms of the scope of the Law, scoring 25 out of 30 points or 83 percent, but it does not score above one-third in any other category.

Discussion Point

Does this surprise you? Would you have thought that Jordan would do better?

Figure 5. Average Score of RTI Laws by Year



Source: RTI Rating by the Centre for Law and Democracy and Access Info Europe.

Figure 5 shows the average scores of all national right to information laws, grouped into five-year ranges (all of the laws adopted before 1995 are grouped together and then the scores run in five-year ranges, i.e. 1995 to 2000, 200 to 2005 and so on). It is immediately obvious from Figure 5 that the quality of laws has increased quite dramatically and steadily over time. A number of reasons for this can be posited:

- Global understandings of what makes a strong law have grown steadily over time, based in part on a growing body of experience with drafting and implementing laws.
- There is today a fairly large number of international statements setting out standards for the right to information, to which those responsible for drafting laws today can refer.
- The global community which advocates in favour of strong laws is much larger and stronger today than in the past. This community – which involves both local and international civil society groups, as well as inter-governmental organisations such as the UNDP and World Bank – can put pressure on governments to adopt better laws.
- There is a lot of expertise now in the international right to information community, often matched by local expertise. This can be made available to assist governments which are drafting right to information laws, which again improves the quality of the laws.

Key Points:

1. The right to information refers to the right of everyone to access the information which is held by public authorities or government, which is realised in practice both through proactive disclosure and by processing requests for information.

2. The right is important for a number of reasons, including to facilitate democratic participation, to control corruption, to hold governments to account, and to foster sound development.

3. 108 countries worldwide, in all regions of the world, including Jordan in the Arab world, have adopted laws to give effect to the right to information.

4. There are a number of reasons for the rapid growth in the number of right to information laws, of which a key one is that the idea behind it is a very natural one which most people can easily understand.

5. The quality of these laws, as measured by the RTI Rating, has been increasing strongly over time.

Further Resources

1. FOIAnet, a global network of groups working on RTI: http://www.foiadvocates.net/ (links to individual groups available at: http://www.foiadvocates.net/en/members)

2. UNESCO's *Freedom of Information: A Comparative Legal Survey* (on RTI laws in different countries): http://portal.unesco.org/ci/en/ev.php-URL_ID=26159&URL_DO=DO_TOPIC&URL_SECTION=201.html

3. *RTI Legislation Rating Methodology* (Centre for Law and Democracy and Access Info Europe, 2010). Available at: http://www.RTI-Rating.org

4. Some websites:

    a. with news on RTI issues and developments: http://freedominfo.org/;
    b. with RTI laws and legal information: http://right2info.org/; and
    c. about the OGP: http://www.opengovpartnership.org.

Session 2: Legal Foundations for the Right to Information: International Law and the Jordanian Legal Framework

1. International Law and Freedom of Expression

Under international law, the right to information as a human right is founded in the wider international guarantee of the right to freedom of expression, which includes the right to seek and receive, as well as to impart, information and ideas.

Under international law and almost every constitution, the right to freedom of expression is not an absolute right. It is legitimate for States to prohibit certain types of expressions such as inciting others to crime, disclosing private information about others, or making false and defamatory statements. International law starts with an extremely broad *prima facie* guarantee of freedom of expression which protects any activity which seeks to communicate information or ideas among people. And it then allows States to limit or restrict the right.

This does not, however, mean that States have a free hand in deciding when and under what conditions they can restrict freedom of expression. If that were the case, international protection for the right would be meaningless, because every government could limit or restrict freedom of expression as it wished and nothing would in fact be protected. International law does allow States to restrict the right to freedom of expression, but it establishes a strict test which restrictions must meet.

Discussion Point

Can you think of standards or conditions that any restrictions on freedom of expression should meet?

The test for restrictions on freedom of expression is established by Article 19(3) of the ICCPR which reads as follows:

Quotation

Article 19(3) of the ICCPR

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;
(b) For the protection of national security or of public order (ordre public), or of public health or morals.

In practice, this establishes the following three part-test which all restrictions on freedom of expression must meet:

a. they must be provided by law;

b. they must aim to protect one of the interests listed in paras. (a) and (b); and

c. they must be necessary for the protection of the interest.

Provided by Law

There are a number of reasons why the 'provided by law' part of the test is important:

a. Freedom of expression is a cherished human right and only elected officials, working collectively through parliament, should have the power to restrict it. This allows for a degree of accountability and citizen oversight that does not apply to decisions made, for example, by individual ministers, policemen or judges.

b. It is only fair that citizens know if advance what they can and cannot say. Otherwise, there will be a chilling effect because when it is not clear in advance what is prohibited, you are likely to limit what you say to make sure that you do not breach the rules.

c. There is a risk of abuse if restrictions may be established by too many different actors and this also gives rise to a risk that such restrictions will be used for private political or commercial reasons.

Discussion Point

Does this seem reasonable? Can you think of some situations where it would be too onerous to require this?

It is not enough just to pass a law; the law must also meet certain conditions:

a. The law must be sufficiently clear because passing a vague law effectively gives officials too much discretion, which effectively undoes the rule that only parliament can create restrictions.

b. The European Court of Human Rights has indicated that a rule will only pass this part of the test if the rule is clear enough to let individuals know in advance what is prohibited.

c. The law must also be accessible to individuals. If a law is secret or hidden, the purpose behind rationale (b) above will not be achieved.

d. A law will also fail this part of the test if it allocates too much discretion to officials in applying it. This is because if officials have broad discretion, they can effectively define the scope of the restriction, meaning that it is them and

not parliament which really creates the restriction. This has a similar effect to the situation in the first point, where a law is too vague.

Example

A law which made it illegal to disseminate statements that "violate Arab values" would not pass this part of the test because it would be too vague (everyone might have a different view of what Arab values were). A law which was not published in the official gazette or online would not be sufficiently accessible. A law that allowed the police to stop demonstrations whenever they considered them to be against the public interest would grant too much discretion to the police.

Legitimate Aim

The second part of the test is that restrictions must aim to protect one of the interests listed in Article 19(3). According to this part of the test, this list is exclusive and a restriction which protects another interest would not pass the test. The interests listed in Article 19(3) are:

a. respect of the rights or reputations of others;

b. national security or public order; and

c. public health or morals.

Discussion Point

Can you think of any other interests that may need to be protected? Might they fall under one of the items above?

The reasons for this part of the test are as follows:

a. Freedom of expression is a fundamental right and only very important interests should be allowed to override it.

b. Absent this requirement, governments will make up all sorts of claims about the need to limit freedom of expression.

Examples

Public authorities in some countries have claimed that they cannot release the air pollution index because that will introduce fear among the general public: this sort of paternalistic attitude towards the public cannot be justified by reference to any of the interests listed in Article 19(3)

In other countries, officials have claimed that critical reports about how the country is managed may discourage tourism, thereby undermining the economy: the economy is not a protected interest.

In one country, an activist was fined for calling on people not to vote in elections, in breach of a law that prohibited "public appeals to boycott elections": the restriction did not serve any of the legitimate aims listed.

It is not enough for public authorities simply to claim that a restriction protects a legitimate interest. A clear and direct connection must be established between the restriction and the interest (and the burden of doing this always rests with the public authority claiming the restriction).

Examples

In South Korea, a painting showing the South as dominated by foreign capitalists and the North as being idyllic and peaceful was banned on the basis that it constituted an "enemy-benefiting expression": there was no clear link between this sort of expression and the protection of national security in the South.

In a case from Belarus, the government claimed that it had been necessary to ban a leaflet for national security reasons but only argued that the leaflet had not been authorised as required under the law: no specific link to national security had been established and so the restriction could not be upheld.

Necessity

The third part of the test is that restrictions are only legitimate if they are necessary to protect the legitimate interest. This seems obvious: if it is not necessary to restrict the fundamental right to freedom of expression, how could that be justified. In practice, however, this part of the test is the most complex and a large majority of international cases are decided on this basis.

The term 'necessary' includes a number of specific requirements:

a. **Pressing need**: There must be a pressing need to protect the interest which means that the threat to the protected interest must be significant; minor threats do not pass a threshold test for restricting freedom of expression.

b. **Least restrictive**: When protecting a legitimate interest, the government should choose those measures which, while being effective in terms of protecting the interest are also the least intrusive or harmful to freedom of expression.

Example

Licensing newspapers may be used to prevent undue concentration of media ownership but this objective can be achieved in ways that are far less harmful to freedom of expression so it is not legitimate.

c. **Not overbroad**: The restriction should only affect or apply to harmful speech and not go beyond this and also prohibit legitimate expression.

Example

A law which prohibited all criticism of officials to protect reputations would be excessive because a lot of criticism is legitimate, while a law which prohibited telling lies about officials would be permissible.

d. **Proportionate**: Limitations should be proportionate in the sense of not causing more harm than good. Sometimes discussion of a certain subject poses risks to society, but the discussion is so important that it should take place anyway. This also applies to sanctions, which may be disproportionate even if some sanction is warranted.

Examples

A newspaper story about problems in the way the police investigate crimes may expose how investigations are done and thus help criminals in the short run, but to prohibit it would not be proportionate because if such criticism were not allowed, the police would become unaccountable.

In a case from the United Kingdom, a £1.5 million fine had been imposed for a defamatory statement; this was held to be disproportionate and likely to exert a chilling effect on legitimate reporting in the country.

2. International Guarantees of RTI

Perhaps to the surprise of some, it is over the last 15 years that the right to information has become recognised under international law as being a fundamental human right. Although there are several potential sources for this right, the core basis for its recognition is as part of the wider right to freedom of expression. The *Universal Declaration of Human Rights* guarantees the right to freedom of expression in Article 19, which reads as follows:

Quotation

Article 19 of the UDHR

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Recognition of the right to information is, from a jurisprudential perspective, based on the words bolded in red above, namely the rights to seek and receive information and ideas, which complement the right to impart them. These words reflect the fact that the right to freedom of expression under international law not only protects speakers but also listeners and, in a more general sense, those who wish to receive information. This provides a grounding for the right to information.

Perhaps surprisingly, prior to 1999 there was very little recognition of the right to information in international law but authoritative bodies started to make some clear statements about the right starting around that time.

Quotations

Special Rapporteurs on Freedom Expression

In 1999, the (then) three special mechanisms on freedom of expression at the UN, OAS and OSCE stated:

> Implicit in freedom of expression is the public's right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people's participation in government would remain fragmented.

In 2004 the three special mechanisms stated:

> The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions.

There have also been regional statements about this right.

Quotations

Regional Statements

The 2000 Inter-American Declaration of Principles on Freedom of Expression:

> 3. Every person has the right to access information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.
>
> 4. Access to information held by the state is a fundamental right of every

individual. States have obligations to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.

The 2002 Declaration of Principles on Freedom of Expression in Africa states, in Principle IV(1):

Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.

The Council of Europe's Recommendation No. R(2002)2 on access to official documents states, in Principle III:

Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including national origin.

Despite the fact that Western countries led the way in adopting right to information laws, and the fact that the European Court of Human Rights is often in the forefront of recognising and expanding human rights, significantly that did not happen in this case. Indeed, the Inter-American Court of Human Rights was the first international court to hold in a clear decision that access to information held by public authorities was a human right.

A key reason for this is that, in the West, access to information is seen more as a matter of governance reform than as a human right. It is useful in a functional sort of way to improve governance, to bolster accountability and to facilitate good relations between citizens and their government. In many other parts of the world – and especially in countries where citizens have had recent experience of the harms that flow from excessive government secrecy – the idea of access as a human right is far more natural and accessible. For people in these countries, access to information is a foundational requirement for democracy, not just a governance reform.

Example

In Egypt, there was no question but that the right to information would be included in the constitution following the 2011 revolution and this was something that was insisted on by civil society and the wider public from the beginning. As a result, the right was included in both the 2012 'Morsi' Constitution and then again in the more recent 2014 Constitution.

Discussion Point

Do you agree with this analysis? Or do you think there were other reasons why the

right to information was included in these Egyptian constitutions?

The issue was first raised before the European Court of Human Rights in a case in 1985. While the Court did not totally rule out the idea of a right to information, it refused to recognise it in that case, saying that the right to receive information and ideas primarily protected the exchange of information between private parties rather than the right to access information held by public authorities. It continued to hold this position in a number of other cases where a right to information was claimed.

In a case in 2006 – *Claude Reyes et al. v. Chile* – the Inter-American Court of Human Rights clearly recognised the right to information as part of the right to freedom of expression, as is clear from the quote below:

Quotation

Inter-American Court of Human Rights

Article 13 of the Convention protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention. Consequently, this article protects the right of the individual to receive such information and the positive obligation of the State to provide it…. The information should be provided without the need to prove direct interest or personal involvement in order to obtain it.

The Court recognised that the right to information, as an element of the right to freedom of expression, was not an absolute right and could be restricted. However, any such restriction would need to meet the same three-part test as any restriction on freedom of expression. It would need to be set out clearly in law and serve one of the legitimate interests recognised in Article 13 of the Inter-American Convention (which are identical to those recognised under Article 19 of the ICCPR). Importantly, the Court also held the following in relation to any restrictions on the right to information:

Quotation

Inter-American Court of Human Rights

Lastly, the restrictions imposed must be necessary in a democratic society; consequently, they must be intended to satisfy a compelling public interest. If there are various options to achieve this objective, that which least restricts the right protected must be selected. In other words, the restriction must be proportionate to the interest that justifies it and must be appropriate for accomplishing this legitimate purpose, interfering as little as possible with the effective exercise of the right.

Pushed by the Inter-American Court of Human Rights, the European Court of Human Rights finally recognised the right in a case decided in 2009, *Társaság A Szabadságjogokért v. Hungary*. The UN Human Rights Committee also recognised the right in 2011 in its General Comment No. 34 on Article 19 of the ICCPR, as indicated in the quote below.

Quotation

UN Human Rights Committee

Article 19, paragraph 2 embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production.

Discussion Point

Do you think of the right to information as a human right? What difference does this make?

3. Constitutional Guarantees for RTI

It is essential to have legislation guaranteeing the right to information and setting out the modalities by which this right will be exercised. Constitutional guarantees are also important as they give overriding status to the right and make it clear that it is a human right, not simply a right guaranteed by law. About 60 national constitutions include guarantees for the right to information and in some countries courts have also found this right to be implicit in wider guarantees of freedom of expression. Within the Arab world, constitutional guarantees for the right to information are found in the constitutions of Egypt, Morocco and Tunisia.

Discussion Point

Do you agree that it is important to have a constitutional guarantee of the right to information? Why or why not?

Exercise B

Constitutional Interpretation

Working in Small Groups

4. Basic Principles Governing RTI

Broadly speaking, seven main principles underlie right to information laws:

1. Presumption in Favour of Access

The key principle underpinning a right to information law is that it establishes a broad presumption in favour of disclosure. Better practice is for this presumption to be a rights-based notion ("… everyone has a right to…") but in many cases it is set out more as a procedural right (everyone can make a request for information). Ideally, this should be supported by a set of purposes or objectives in the law. These should not only emphasise aspects of the right of access – for example that it should be rapid and low cost – but also point to the wider benefits of the right to information that were discussed above – such as fostering greater accountability, encouraging participation and combating corruption. This can provide an important basis for interpreting complex parts of the law, such as the exceptions.

Quotations

The Indian Right to Information Act states:

> Subject to the provisions of this Act, all citizens shall have the right to information.

This is a rights-based statement.

The South African Act states:

> A requester must be given access to a record of a public body" if that requester complies with the procedural rules.

This is more of a procedural rights statement.

Both the Indian and South African laws include clear statements of purposes/objectives.

This presumption should apply to all public authorities, defined broadly. This should include all three branches of government (executive, legislative and judicial), all levels of government (central but also governorates or provinces, districts and so on), all bodies which are owned or controlled by public authorities, including State owned enterprises, bodies which are created by law or by the constitution, such as an information commission, and bodies which are funded by the State or which undertake public functions.

The law should also apply to all of the information held by public authorities. Better practice is to make it clear that the law applies not only to documents but also to information (which may be contained in a document).

Example

As an example of the breadth of the definition of information, a Swedish request for information was for the 'cookies' on the Swedish Prime Minister's computer. The authorities decided that 'cookies' were included indeed 'information' under the law and the request was granted. As it happened, the information disclosed revealed that there were in fact no cookies on his computer; in other words, at that time, the Swedish Prime Minister did not use the Internet.

Finally, the right should apply to everyone, not just citizens. This should include legal persons (such as corporations) as well as individuals.

Quotation

Article 4(1) of the Indonesian law states: "Every person has the right to obtain Public Information pursuant to the provisions of this Law."

Discussion Point

Can you think of any reasons why the law should not apply to foreigners? Do you think these are realistic?

2. Proactive Disclosure

The law should place an obligation on public authorities to publish, on an automatic or proactive basis, a range of information of key public importance. Although the right to request and receive information is at the heart of a right to information law, automatic disclosure is also a very important means of disclosing information. It helps ensure that all citizens, including the vast majority of citizens who will never make an access to information request, can access a minimum platform of information about public authorities.

The movements mentioned above that can be seen as parallel movements to the right to information movement, including such initiatives as the open data or open government movement, as well as formal initiatives such as the OGP, EITI, IATI and PWYF, are essentially proactive publication efforts.

Example

Article 4 of the Indian RTI law sets out 17 categories of information that public authorities must publish proactively, including the monthly remuneration received by each of its officers and employees, the manner of execution of subsidy programmes, including the amounts allocated and details about the beneficiaries of such programmes, and the procedure followed in decision making processes, including channels of supervision and accountability.

3. Requesting Procedures

The law should set out clear procedures for how requests for information may be made and processed. This is fundamental to the successful functioning of the system. As part of this, the law should make it easy to make a request for information. The other part is that strict rules should be established for responding to requests.

The following are the key procedural rules that should be included in a right to information law:

- Requesters should not be required to provide reasons for their requests.
- It should be simple to make a request, which should be permitted to be submitted by any means of communication (including electronically). A request should only be required to contain a clear description of the information sought and some form of address to deliver it to the requester.
- Public officials should be required to provide assistance to help requesters where they need it either to formulate their requests or to submit a request in writing due to special needs, for example because they are illiterate or disabled.
- Requesters should be provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed five working days.
- There should be clear rules for cases where the public authority does not have the requested information, including a requirement to inform the requester that the information is not held and to transfer the request to another public authority where the first public authority knows of another one which has the information.
- Public authorities should be required to comply with requesters' preferences regarding how they access information (for example getting a paper or electronic copy, inspecting documents, etc.), subject only to clear and limited overrides (for example to protect the record).
- Public authorities should be required to respond to requests as soon as possible and in any case within clear and reasonable maximum timelines (i.e. of 20 working days or less). There should also be clear limits on timeline extensions (also of 20 working days or less).
- It should be free to file requests and there should be clear and centrally set rules relating to fees, with these being limited to the cost of reproducing and sending the information (i.e. inspection of documents and electronic copies should be free). Fee waivers should be established for impecunious requesters.
- There should be no limitations on or charges for reuse of information received from public authorities, except where a third party (which is not a public authority) holds a legally-protected copyright over the information.

Discussion Point

Do these rules seem reasonable or rather excessive? If the latter, what would you suggest cutting?

4. Exceptions

A key goal of right to information laws is to establish clearly those cases in which access to information may be denied, the so-called regime of exceptions. On the one hand, it is obviously important for the law to protect legitimate secrecy interests. On the other hand, this has proven to be the Achilles heel of many access to information laws.

Example

The UK Freedom of Information Act 2000 is in many ways a very progressive piece of legislation. At the same time, it has a vastly overbroad regime of exceptions, with 22 different exceptions and exclusions, which fundamentally undermines the whole access regime.

The relationship of right to information legislation with secrecy legislation poses a special problem. If the right to information law contains a comprehensive statement of the reasons for secrecy, it should not be necessary for other laws to go beyond this (i.e. to extend these exceptions). In this case, the right to information law should, in case of conflict (i.e. where a secrecy law goes beyond the right to information law), override secrecy legislation. This is particularly important given that secrecy laws are in most cases not drafted with openness in mind and that a plethora of secrecy provisions are often found scattered among various national laws. It is, however, fine for secrecy laws to elaborate upon exceptions that are set out in the right to information law (such as national security or privacy, which is often elaborated upon in more detail in a data protection law).

Examples

There are many laws in Jordan which include overbroad secrecy rules, including the Protection of State Secrets and Documents Provisional Law and the Penal Code. These are described on pages 51-54 of UNESCO's Assessment of Media Development in Jordan: Based on UNESCO's Media Development Indicators.

Quotation

Article 5 of the South African RTI law provides: "This Act applies to the exclusion of any provision of other legislation that— (a) prohibits or restricts the disclosure of a record of a public body or private body; and (b) is materially inconsistent with an object, or a specific provision, of this Act.

It is also very important for the legal system to make it clear that mere administrative classification of documents cannot defeat the access law (unless a particular classification is deemed by oversight bodies, including the courts, to be correct). It is worth noting that classification is often simply a label given by the bureaucrat who happens to have created a document, or his or her superior, and that this cannot possibly justify overriding the right to information. At the same time, classification can provide useful guidance to civil servants as to whether or not a document may be sensitive (which is very different from saying that it should represent a final decision about this in light of a request for information).

As with all restrictions on freedom of expression, exceptions to the right to information must meet the strict three-part test. This has been 'translated' into a similar but slightly different three-part test in the context of the right to information. First, the law must set out clearly the legitimate interests which might override the right of access. These should specify interests rather than categories. For example, it should refer to privacy rather than personal records, the latter being a category but the former an interest which needs to be protected. Another example is that the law should refer to national security rather than the armed forces.

Second, access should be denied only where disclosure of the information poses a risk of harm to a legitimate interest. The harm should be as specific as possible. For example, rather than harm to internal decision-making, which is too vague for officials to apply properly, even if they are acting in good faith, the law should refer to impeding the free and frank provision of advice, a much clearer standard of harm.

Example

The RTI law of El Salvador requires that all exceptions be justified on the grounds that the harm that would result from disclosure would outweigh the public benefit of access.

Finally, the law should provide for a public interest override in cases where the overall public interest would be served by disclosure, even where releasing the information would cause harm to a legitimate interest. This might be the case, for example, where a document relating to national security disclosed evidence of corruption. In the long term, the benefit to society of disclosing this information would outweigh any short-term harm to national security. Under international law, the public interest override only works one way – to facilitate greater openness and not as a ground for secrecy – although in some laws it works both ways.

Quotation

Section 12(2) of the RTI law of Sierra Leone provides: "Notwithstanding subsection (1), information shall not be exempt where the public interest in accessing the information outweighs the harm which the exemption in subsection (1) seeks to prevent."

Discussion Point

Do you think it is reasonable to have a public interest override in the context of Jordan? Would officials be able to apply something like that?

Better practice right to information laws include a number of other important measures in their regimes of exceptions so as both to protect all legitimate interests while ensuring that the exceptions are not unduly large. The law should include a severability clause so that where only part of a document is confidential, that part should be removed and the rest of the document disclosed. There should also be presumptive overall time limits on confidentiality, for example of 20 or 30 years, after which documents become public absent a special and overriding need for secrecy (which should be decided through a special procedure). Finally, right to information laws should provide for consultation with third parties where information is requested which was provided by them. In this case, they may either consent to the disclosure of the information or put forward reasons why it should not be disclosed, which should be taken into account by the information officer.

5. Appeals

A fifth key element of a strong system for the right to information is the right to appeal any refusal of access to an independent body. If this is not available, then the decision about whether or not to disclose information is essentially at the discretion of public officials, which means that it is not really a right. At the same time, an internal appeal (i.e. within the same public authority) can be useful as it provides the authority with a chance to reconsider its original position and experience in many countries has shown that this can often lead to the disclosure of information.

Ultimately, in most countries, one can appeal to the courts in relation to matters regarding the application of a law, but experience has shown that courts take too long and cost too much for all but the very most determined requesters to bother making an appeal to them. As a result, it is very important to have an independent administrative body to provide requesters with an accessible, rapid and low-cost appeal. The role of this body is particularly important in terms of interpreting exceptions to the right of access, given the complexity and sensitivity of applying the regime of exceptions.

It is essential that any oversight body is robustly independent of government and public authorities, since its main job is to review the decisions of those public authorities to refuse to disclose information. It also needs to have sufficient powers, in terms both of investigating complaints and of ordering appropriate remedies in cases where it finds a breach of the law. The grounds for appeal to this body should be broad: not just refusals to provide access but any failure to respect the rules relating to requests, including delays, charging too much or refusing to provide information in the format requested. Finally, the burden should always be on the public authority to

show that it acted in conformity with the law, given that its decision represents a restriction on a human right (i.e. the right to information).

The right to appeal the decisions of the administrative oversight body to the courts should be also available.

Examples

It can be difficult in practice to guarantee the independence of the administrative oversight body. In India, the President appoints the members who are nominated by a committee consisting of the Prime Minister, the Leader of Opposition and a Minister.

In Mexico, the President appoints the members but this is subject to veto by the Senate or the Permanent Commission, a body that reviews senior appointments in the civil service.

In Indonesia, members are nominated by parliament and appointed by the President.

6. Sanctions and Protections

It is very important that sanctions are available which can be imposed on those who act wilfully to undermine the right to information, including through the unauthorised destruction of information. Experience suggests that administrative sanctions (i.e. fines or disciplinary measures) are far more likely to be used (and hence to be effective) than criminal sanctions, which are very hard to apply. Sanctions should also be available at the institutional level, i.e. to be imposed on public authorities which systematically fail to respect the right to information.

In addition to sanctions, there need to be protections, for example for officials who disclose information in good faith pursuant to the law. Otherwise, officials will always be worried about making mistakes and attracting the sanctions in secrecy laws, leading to access being undermined in practice. It is also good practice to provide protection to those who, again in good faith, release information so as to expose wrongdoing (whistleblowers).

Quotations

Article 48(1) of the Antiguan RTI law provides:

> A person shall not wilfully – (a) obstruct access to any record contrary to Part III of this Act; (b) obstruct the performance by a public authority of a duty pursuant to Part III of this Act; (c) interfere with the work of the Commissioner; or (d) destroy records without lawful authority.

Article 31 of the Bangladeshi RTI law provides:

> No, suit, prosecution or other legal proceedings shall lie against the Information

Commission, the Chief Information Commissioner, the Information Commissioners or any officers or employee of the Information Commission, or officer-in-charge of any authority or any other officer or employee thereof if any body is affected by any information made public or deemed to be made public in good faith under this Act, or rules or regulations made there under.

Article 44 of the Ugandan RTI Law provides:

(1) No person shall be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or information which would disclose a serious threat to health, safety or the environment, as long as that person acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.

(2) For purposes of subsection (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or maladministration regarding a public body.

Discussion Point

Do you think these sorts of protections and sanctions could work in Jordan? If not, what would be the main challenges in applying them?

7. Promotional Measures

For implementation of a right to information law to be a success, it needs a little bit of support, in the form of promotional measures. Some of the key measures are as follows:

a. Public authorities should be required to appoint officials (information officers) or units with dedicated responsibilities for ensuring that they comply with their information disclosure obligations.

b. A central body, such as an information commission(er) or government department, should be given overall responsibility for promoting the right to information.

c. Public awareness-raising efforts (for example producing a guide for the public or introducing RTI awareness into schools) should be required to be undertaken.

d. A system should be put in place whereby minimum standards regarding records management (how public authorities manage their documents and other records) are set and enforced (this is important both so that officials are able to respond to requests but also so that they can to do their jobs in general).

e. Public authorities should be required to create and update lists or registers of the documents in their possession, and to make these public, to facilitate the making of requests.

f. Officials should be required to be provided with appropriate training on the right to information.

g. Public authorities should be required to put in place tracking systems for requests for information and to report annually on the actions they have taken to implement the law. This should include statistics on requests received and how they were dealt with.

h. A central body, such as an information commission(er) or government department, should be under an obligation to present a consolidated report on implementation of the law to the legislature.

Quotation

The following provisions from the Serbian RTI law refer to promotional measures:

Article 35: The Commissioner shall:

(4) Undertake necessary measures to train employees of state bodies and to inform the employees of their obligations regarding the rights to access information of public importance with the aim of their effective implementation of this Law;

(6) Inform the public of the content of this Law and the rights regulated by this Law;

Article 36: The Commissioner shall lay with the National Assembly an annual report on the activities undertaken by the public authorities in the implementation of this Law and his/her own activities and expenses within three months from the end of the fiscal year.

Article 37: The Commissioner shall without delay publish and update a manual with practical instructions on the effective exercise of rights regulated by this Law in the Serbian language, and in languages that are defined as official languages by law.

Article 38: A public authority shall appoint one or more official persons (hereinafter: authorized person) to respond to request for free access to information of public importance.

(2) Take measures to promote the practice of administering, maintaining, storing and safeguarding information mediums.

Article 39: A state body shall at least once a year publish a directory with the main data about its work, notably:

(6) Data on the manner and place of storing information mediums, type of information it holds, type of information it allows insight in and the description of the procedure for submitting a request;

Article 42: With the aim of effectively implementing this Law, a state body shall train its staff and instruct its employees on their obligations regarding the rights regulated by this Law.

Article 43: A state body authorized person shall submit an annual report to the Commissioner on the activities of the body undertaken with the aim of implementing this Law, which shall contain the following data:

Discussion Point

Do you think that the approach set out above makes sense for Jordan? In what ways might it need to be changed to adapt to local circumstances?

5. The Strengths and Weaknesses of The Jordanian Legal Framework for the Right to Information

The main element of the Jordanian legal framework for the right to information is of course Law No. 47 for the Year 2007 Guaranteeing the Right to Obtain Information. The framework also includes secrecy provisions in other laws, as well as legal rulings by the courts on the right to information.

The scores of the Jordanian Law according to the seven categories of the RTI Rating are set out below. The main strength of the Law is that it covers a wide range of information and public authorities, so that it does very well in the Scope category of the RTI Rating. At the same time, and as noted above, it does not do so well in terms of the other categories, failing to score above 33 percent on any of them. This part of the Manual focuses on the main strengths and weaknesses of the Jordanian Law.

The RTI Rating Scores for Jordan

Section	Max Points	Jordanian Score	Percentage
1. Right of Access	6	0	0%
2. Scope	30	25	83%
3. Requesting Procedures	30	5	17%
4. Exceptions and Refusals	30	10	33%
5. Appeals	30	8	27%
6. Sanctions and Protections	8	0	0%
7. Promotional Measures	16	5	31%
Total score	**150**	**53**	**35%**

Right of Access

Strengths:

- Unfortunately, the Jordanian Law does not score any points in this category of the Rating so no strengths can be identified.

Weaknesses:

- There is no constitutional guarantee for the right to information.
- The legal framework does not create a clear presumption in favour of access to information, subject only to the regime of exceptions; instead, requesters need an interest in the information to be able to request it.
- There is no statement of the wider benefits created by the Law or a call to interpret the Law so as to give effect to those benefits.

Scope

Strengths:

- All information, defined broadly, is covered.
- The whole of the executive branch of government, understood broadly, including State owned enterprises and bodies which are created by statute, is covered.

Weaknesses:

- Only citizens, and not foreigners, are covered.
- The Law does not clearly establish a right to make requests for either documents or information.
- Private bodies which perform public functions are not covered and it is not entirely clear whether private bodies that receive significant public funding are covered.

Requesting Procedures

Strengths:

- It is free to file requests as the Constitution prohibits charging for this.
- No extensions are permitted to the time limits.

Weaknesses:

- It is envisaged that requesters would be asked for their reasons for making requests, so as to show that they have an interest in the information.
- The Law does not limit the information that needs to be included on a request to a description of the information and an address for delivery, and official forms must be used for requests.

- There is no requirement for officials to provide requesters with assistance.
- There is no requirement to provide requesters with receipts acknowledging their requests, although some public authorities do this in practice.
- There are no rules on transfer of requests where the public authority does not hold the information.
- There is no requirement to provide information in the format preferred by requesters, although the form for making requests does include a section on this.
- There is a 30-day time limit for responding to requests but there is no requirement to respond to requests as soon as possible (i.e. so that public authorities may delay until the maximum time limit).
- There are no central rules for charges for requests or rules limiting charges to the actual costs incurred (apart from photocopying, which is set centrally). Also, there are no fee waivers for poor requesters.

Exceptions

Strengths:

- Many of the exceptions conform to international standards regarding the interests that may override the right to information although some exceptions are overly broad (see below).
- The Law has a severability clause.
- Reasons must be provided when refusing a request.

Weaknesses:

- Exceptions in other laws override the right to information law, rather than the other way around.
- Some exceptions are too broad including information that incites to discrimination, the exception to protect intellectual property rights (which is not limited to privately held rights) and the exception on "confidential correspondence".
- Several exceptions – including the ones in favour of agreements with other States, defence, foreign policy and judicial investigations – are not harm tested.
- There is no public interest override.
- There are no overall time limits – for example of 20 or 30 years – for exceptions.
- The Law does not include any procedures for or requirements to consult with third parties.
- Although requesters must be given reasons if their requests are refused, there is no requirement to notify them of their rights of appeal.

Appeals

Strengths:

- There are options for both administrative and judicial appeals.
- There are time limits on how long the administrative oversight body – the Information Council – can take to decide appeals although otherwise procedures before this body are not clear.

Weaknesses:

- The main problem with the system of appeals is that the Information Council is not independent and, instead, is composed largely of government officials.
- There is no internal appeal.
- The powers of the Council in terms of both investigations and remedies are not clear and its decisions do not appear to be formally binding.
- The right of appeal only arises when a request has been refused, and not where other rules relating to requests have been breached.
- The burden of proof is not clearly placed on public authorities in appeals.
- The administrative oversight body does not have the power to impose sanctions on public authorities which systematically fail to implement the Law.

Sanctions and Protections

Strengths:

- Unfortunately, the Jordanian Law does not score any points in this category of the Rating so no strengths can be identified.

Weaknesses:

- There are no sanctions for those who wilfully obstruct access or implementation of the Law.
- There are also no sanctions for public authorities which systematically fail to implement the right to information properly.
- The Law fails to provide any protection to officials who disclose information pursuant to the Law in good faith.
- Finally, the Law fails to provide protection for those who, again in good faith, disclose information that reveals wrongdoing of one sort or another (whistleblowers).

Promotional Measures

Strengths:

- The Information Council has general central authority for ensuing proper implementation of the Law.
- There are rules on records management but these are very general and do not involve the setting of binding minimum standards in this area.
- The Information Council is required to prepare an annual report for the Prime Minister, but this document is not made public.

Weaknesses:

- There is no requirement for public authorities to appoint information officers (the head of the authority is responsible for implementation and he or she may delegate these powers but is not required to).
- There is no clear obligation on any body to conduct public awareness-raising activities.
- Public authorities are required to index the information they hold but these indexes are not made public.
- There is no obligation on public authorities to train their staff on the right to information Law.
- Public authorities are not required to report annually on what they have done to implement the Law.

6. Obligations on Public Authorities

The Law places a number of obligations on public authorities to take measures to ensure proper implementation of the Law. These are dealt with in more detail in other parts of this Manual, but they include the following general obligations:

- Generally to facilitate the obtaining of information without delay, in accordance with the Law.
- To process requests for information in accordance with the Law, which is the primary obligation of public authorities under any right to information law.
- To index and organise the information they hold in accordance with professional standards, as well as to classify it in according to secrecy rules in laws that are in force.

Discussion Point

Are there any other obligations on public authorities which are not listed here? If so, what are they?

Key Points:

1. Freedom of expression, as guaranteed under international law, may be restricted but any restrictions must meet a strict three-part test of legality, protecting a legitimate interest and necessity.

2. The right to access information held by public authorities is a fundamental human right, protected as part of the right to seek and receive information and ideas as part of the right to freedom of expression under international law.

3. The right has seven key attributes, including that it establishes a presumption in favour of access to information, that access should be delivered both through proactive disclosure and the right to make requests for information, that there should be clear and simple procedures for making and processing requests, that exceptions to the right should be clear and narrowly drawn, that there should be a right to appeal against any refusals to provide access, that there should be a system of protections and sanctions for behaviour relating to information, and that public authorities should undertake a number of promotional measures to implement the law.

4. In general, the Jordanian legal framework for the right to information is rather weak, albeit with a number of both strengths and weaknesses, apart from in the area of scope, where it does well.

Further Resources

1. *The Public's Right to Know: Principles on Freedom of Information Legislation* (London: ARTICLE 19, 1999). Available at: http://www.article19.org/pdfs/standards/righttoknow.pdf

2. Model Law on Access to Information for Africa. Available at: http://www.achpr.org/files/news/2013/04/d84/model_law.pdf

3. Model Inter-American Law on Access to Information. Available at: http://www.oas.org/en/sla/dil/access_to_information_model_law.asp

4. Recommendation No. R(2002)2 of the Committee of Ministers of the Council of Europe to member states on access to official documents, adopted 21 February 2002: http://www.coe.int/T/E/Human_rights/rec(2002)2_eng.pdf

5. Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression of 6 December 2004. Available (along with their other Joint Declarations) at: http://www.osce.org/fom/66176

6. *Transparency Charter for International Financial Institutions: Claiming our Right to Know* (Cape Town: Global Transparency Initiative, 2006). Available at: http://www.ifitransparency.org/doc/charter_en.pdf

Session 3: Overview of Key Implementation Steps

1. Overview of the Main Areas for Action

It is possible to classify the actions that public authorities need to take to implement the rules in a right to information law into five main areas, as follows:

1. Core Activities

This mainly refers to the need for public authorities to adopt a plan of action or some sort of plan setting out how they are proposing to implement the law, if they wish to do this in a logical and orderly manner. Ideally, such plans should be adopted both centrally, by whatever body is taking overall responsibility for this within government, and at the level of each public authority.

2. Institutional Structures

Various institutional structures need to be put in place to ensure proper implementation of the right to information law. The most important aspect of this for individual public authorities is to appoint information officers to lead their implementation efforts.

3. Systems

A number of systems need to be developed for public authorities to implement their obligations under the right to information law on a consistent basis. An obvious example of this is the need to develop a system for processing requests. Without this, it is very unlikely that requests will get processed in a regular way in accordance with the rules, and especially in line with the strict time limits set out in the law.

4. Training

Extensive training is needed to ensure proper implementation of a right to information law. Indeed, this Manual represents an example of that. Training needs to be prioritised so that those who need it most – i.e. information officers – receive it first, but over time a plan should be in place to ensure that everyone receives at least some sort of training.

5. Communications

There are a number of important both internal and external communications needs relating to the right to information law. Perhaps the most important part of this is communications designed to raise awareness among citizens about the right and how to use it.

Discussion Point

Do you think that meeting these obligations is realistic for public authorities in Jordan? Which seem to be more of a priority and which less?

2. Core Activities

As noted above, it is very useful for public authorities to adopt an action plan. Implementing a right to information law is very complex and, without an action plan, it is likely that public authorities will not roll out implementation actions in a planned and coherent manner. An action plan will set priorities and put in place an approach to realising all of the many obligations under the law over time. It is also the main instrument against which any monitoring and evaluation should take place (i.e. it provides the framework for any monitoring and evaluation).

Ideally, an action plan should include three main elements:

- It should set out the main activities that will be undertaken over the timeframe covered by the plan (for example of two or three years).
- It should also indicate who is responsible for undertaking the activity. In many cases, this will be the information official, but this will not be the case all of the time (for example, proactive disclosure will require cooperation from all staff). And even where the information official leads, he or she will often need the support and cooperation of other officials.
- It should provide a timeline for the delivery of each activity, so that success can be measured (i.e. where the activity has been completed properly within the timelines).

Some other key attributes of an action plan include the following:

- In most cases, the information officer is responsible for taking the lead in developing the action plan. But this will require consultations with other staff, since many actions will require the support and agreement (in terms of timelines, for example) of other staff. For example, publication of information via a website cannot take place without the support of the IT team.
- Ideally, action plans should be adopted both by the body that is centrally responsible inside government for implementing the right to information law, and by each individual public authority.
- An action plan is essentially a master plan for what the public authority is going to do. It requires those responsible for developing it to think about priorities and how to sequence them. For example, it is important to put in place some sort of system to process requests sooner than later because otherwise, as requests are received, it may not be possible to deal with them and this can be a very public failure. Putting in place a system for appeals or improving records management systems may be less urgent.

- In addition to prioritising, the plan needs to provide a schedule for activities (i.e. timelines for delivery of different actions).
- The plan should also include a section on monitoring and evaluation. Even though the monitoring and evaluation will focus on achievement of the action plan, it is also part of that plan.

Discussion Point

Do you think it is realistic to expect your public authority to adopt an action plan or would this take too long or be too complicated?

Another core activity, to be undertaken by a central body, is the need to review other laws to ensure that they are in line with the right to information law. At present, as noted above, there are a number of legal provisions in the Jordanian legal framework that do not conform to international standards relating to openness. In some cases, there are apparent inconsistencies in the legal framework and officials may find themselves in the position of being required, under the right to information law, to disclose information while they are also prohibited from disclosing that information pursuant to another law.

Formally, legal rules of interpretation provide a basis for resolving inconsistencies between laws, but it is far better to resolve at least the main inconsistencies through law reform for two main reasons:

- First, officials are not legal experts and they cannot be expected to be able to engage in difficult legal interpretation exercises.
- Second, in many cases this can be very complex. For example, in many countries the rules provide that, in case of conflict, later laws dominate while another rule provides that more specialised laws dominate. What if the more specialised law is the earlier law?

In the end, reviewing and amending other laws so that the rules are coherent is the best way to resolve the problem of potential inconsistencies in the legal framework.

There are a number of things that need to be done to mainstream the right to information into the organisational systems and culture of different public authorities. Mainstreaming is, among other things, a key mechanism for addressing the culture of secrecy which prevails in most public authorities in the early days after a new right to information law is adopted.

Some of the key mainstreaming activities are as follows:

- Providing incentives for good performance in terms of implementing the right to information law. This can include incorporating performance in this area into the regular evaluations that take place (or should take place) for officials.

There are other potential ways to do this, including informal ways, such as awards for good performance.

- Sanctions are the flip side of incentives. The Law does not provide for sanctions for obstruction of access to information, but respecting laws should always be considered part of the job duties of staff and an intentional failure to do so might be the subject of disciplinary proceedings. For this to happen, the rules relating to discipline would need to make it clear that obstruction of access will be considered a disciplinary matter and those responsible for applying disciplinary procedures also need to be made aware of this. There will also be a need to raise awareness among those responsible for applying disciplinary rules of what exactly might attract a disciplinary sanction in this area (i.e. what is an intentional breach of the right and what is simply unprofessionalism or ignorance).
- Just as the legal framework needs to be reviewed to ensure that it is in line with the right to information law, so it may be necessary to review internal rules for the same purpose. In many cases, internal rules establish various types of secrecy or place obstacles in the way of disclosing information. Even the contracts which are concluded with employees (i.e. contracts of employment or personal rules of service) may need to be amended to ensure that they do not impose personal obligations of secrecy on officials, in breach of the right to information law.
- Finally, the right to information needs to be integrated into central planning systems, just as this would be needed for any other type of activity. A public authority cannot deliver any major project without budgetary and staffing allocations, and the same is true of the right to information. At a very minimum, time and resources need to be allocated to this work.

3. Institutional Structures

A key institutional structure for public authorities is the appointment of information officers. These individuals bear key responsibilities within public authorities for delivering implementation of the right to information law.

Some key points about information officers:

- Ideally, they should be more senior officers who have the knowledge/experience and the authority both to move the public authority forward in terms of implementation efforts and to disclose information when it is not covered by an exception.
- This is a very different role than a press officer. The primary role of press officers is to create a positive image of the public authority through the press, what might be termed a propaganda role without suggesting that there is anything negative about this. The role of the information officer, on the other hand, is to ensure that all information which is not exempt is made available,

even if it is not very complimentary or positive for the public authority. The tension between these functions is obvious.

It is very important that the appointment of information officers be done in an official manner (i.e. through a formal letter of appointment). A number of other elements are needed to recognise this role properly within the public authority:

- First, there should be a clear set of Terms of Reference (ToRs) associated with the position. Information officers have a number of official duties to implement the law, and these should be clearly established through ToRs.
- Second, there needs to be an official allocation of time for this position. The post of information officer can be quite a demanding one. Individuals cannot be expected to continue to deliver all of their ongoing duties and also take on this extra burden any more than they could be expected to deliver a new project on top of their regular work.
- Third, there needs to be a clear understanding that other officers at the public authority are required to cooperate with the information officer. Information officers cannot possibly do their jobs (i.e. providing information in response to requests) if other officials (for example those who are responsible for the information which has been requested) do not cooperate with them. Ideally, this should be part of the ToRs for the position, but there also needs to be a communication from a higher official about this, preferably something formal. In most cases information officers do not hold any formal power over other officials, so someone higher up in the system of management of the public authority needs to make it clear that all officers are required to cooperate with the information officer where this is necessary to implement the Law properly.

Discussion Point

To what extent has the appointment of an information officer at your public authority included the different steps noted above? Are there barriers to this happening based on the bureaucratic rules in place in Jordan?

Information officers have a range of functions, both internal and external. Some of these include:

- Preparing a simple guide for the public about their rights under the Law and how to exercise them. This can be quite simple – just a couple of pages – and there are a number of existing examples which can be used as models.
- Making sure requests for information are processed in line with the rules in the Law.
- Making sure that the public authority undertakes appropriate proactive publication (this should be done by every public authority, even though it is not formally required under the Law).

- Taking the lead in preparing an annual report, or section in the organisation's general annual report, on implementation of the right to information law (once again, reporting along these lines should be done by every public authority, even though it is not formally required under the Law).
- Taking the lead in preparing the public authority's action plan.

In many countries, information officers are linked together through a formal network. Such networks can serve a number of important purposes, including as a place to share information, discuss problems and solutions, exchange experiences and share tools. Networks can also organise formal events from time-to-time, such as workshops or conferences to discuss issues and concerns. And they can even serve a support function for information officers within the civil service more generally.

Discussion Point

What do you think about the idea of a network for information officers in Jordan? Do you think it would be useful or just another formal body to join?

Another very important institutional arrangement, albeit a central one rather than one for each public authority, is the identification or establishment of a central internal nodal point to deal with right to information issues. This should be a body which operates inside of government. This body plays a very different role from the oversight body (i.e. the information commission), which is in most countries an independent body that operates outside of the administration. However, in Jordan, the Information Council could serve as this body because it is essentially an internal government body.

Examples

In India, the Department of Personnel and Training serves this role. This body was given that function because training was identified early on as a key implementation need.

In Canada, in contrast, it is the Ministry of Justice which serves this role. This is because, in Canada, the main implementation systems and structures are already in place and the main ongoing need is for expert legal advice about the application or interpretation of exceptions, something which the Ministry of Justice is well positioned to provide.

In Tunisia, there is currently a Pilot Committee which is serving a broad coordination role on the right to information.

This body should serve as the central internal government coordination body for implementation of the right to information law. It can serve a number of particular roles:

- It can help develop models to assist public authorities with various implementation issues. It is not necessary for every single public authority to reinvent the wheel each time it designs an implementation system. In most cases, models developed centrally or by one public authority can easily, and with little effort, be adapted for use by different public authorities. By helping to develop and disseminate models, the central nodal body can promote enormous efficiencies in terms of implementation.
- Training, almost by definition, is something that needs to be done centrally. This is at least true for information officers, of which there will only be one or two in most public authorities, so that expecting each public authority to design its own training course is simply not realistic. On the other hand, some training needs, for example raising the awareness of ordinary officials within the public authority, can be dealt with internally, including by the information officer.
- Many countries have put in place central electronic request tracking tools. These are essentially central online electronic databases which information officers use to register requests for information as they come in. Information officers are required to fill in various fields, such as the date of filing of the request, the name of their public authority, etc., and then they are required to update the file as steps are taken to process the request (for example filing information on such things as the time of notification of the decision on the request, any fees charged, any exception relied upon to refuse the request and so on). These sorts of databases are an extremely efficient way of tracking requests centrally and they can be used to analyse how requests are being processed. They also make the job of preparing annual reports much easier, since most of the information required for the report will be available at the click of a button. For obvious reasons, only a central authority can develop something like this for the whole civil service (although there is nothing to prevent an individual public authority from creating one for its own internal use). In some countries – notably Mexico – a central tracking tool has been created by the oversight body, but it makes more sense for this to be done by a central, internal, nodal body.
- Improving records management standards and systems is one of the most difficult challenges in terms of implementing right to information legislation. It is not an easy task either to develop (central) standards or to implement those standards within each public authority. Implementation clearly needs to be done separately by each public authority but there are important advantages to setting standards centrally. This will avoid a patchwork of different standards across public authorities and will also relieve public authorities of the burden of doing this themselves. It therefore makes a lot more sense for this to be done centrally.

4. Systems

A number of systems are needed to promote proper and effective implementation of a right to information law. Basically, the main deliverables under these laws will not just happen by themselves, especially on a consistent basis over time, so systems are needed to ensure that these obligations are met.

A basis system is needed to ensure that proactive disclosure is done, not only once but over time (i.e. that information is updated regularly). This is more difficult than it might seem and is the subject of the next session.

Another, more sophisticated, system is needed to ensure that requests for information are dealt with consistently, and within the strict time limits that are established for this. This is also quite complicated and Session 5 is devoted to it.

It would also be useful to put in place some system for dealing with internal appeals. Once again, this is better practice and not required by the Jordanian Law. However, there is nothing to prevent public authorities from offering internal appeals to requesters as a service.

Records management is a complex area that requires not only the setting of standards (as noted above) but also systems to ensure that is done properly and in a manner that enables officials to retrieve documents that have been requested (and also to be able to retrieve documents for purposes of their work). A first step is for clear records management standards to be set, preferably at the central level. The Jordanian Law requires each public authority to classify all of its records, and this process could also be built into the records management system. Ideally, classifications should be reviewed regularly to reflect anything that has happened which would warrant changing the classification.

Another basic system may be needed to ensure that public authorities can undertake annual reporting on their implementation efforts. To do this successfully, public authorities need to collect at least certain types of information – most importantly relating to requests – on an ongoing basis, since this will be very difficult or impossible at the end of the year. As noted, a central, electronic tracking tool is the best way to do this, but if one has not yet been put in place then at least some sort of physical database (i.e. a manual where requests are logged on paper) should be maintained.

Finally, some sort of simple monitoring and evaluation system should be put in place. At its most basic, this would involve a regular, perhaps semi-annual, review of progress in implementing the action plan (which public authorities should develop, as noted previously). Some of the information gathering systems that are used for the annual report, in particular in relation to requests, will also be useful here.

Discussion Point

How far has your public authority gone in terms of putting in place these systems? Do you feel this is realistic or a bit excessive?

5. Training

Training for implementation of the right to information law is a huge task since, over time, all public officials should receive some training. Absent at least some awareness raising or training, officials will not understand their responsibilities, even if this only extends to an obligation to cooperate with information officers. And absent this cooperation, there will always be challenges in terms of implementing the law.

Given the magnitude of this task, there is clearly a need to prioritise. It makes obvious sense to start by providing training to information officers, given that they are tasked with leading on most implementation efforts. Furthermore, these officers need to receive far more intensive and detailed training than other officers. Once they have been trained, information officers can then play a role in providing less detailed training to other staff.

In most cases, it makes obvious sense to start with a training of trainers approach to training, especially during the early phases of implementation. External expertise may need to be brought in for this training of trainers, given that there is unlikely to be a lot of expertise inside the country. These trainers can then provide specialised training to information officers, which should at the very least consist of a dedicated two or three day training programme on the right to information.

Ultimately, as noted above, all civil servants and officials should receive some type of training or at least awareness raising on the right to information. Because this is such a large task, some sort of plan will be required to make sure that every official is covered, say within a period of three to five years. This plan should be part of the broader action plan that each public authority should adopt, with clear milestones (such as to reach one-third of all staff by the end of the second year). Some approaches to consider in terms of reaching out to all staff:

- It is useful to build modules on the right to information into any ongoing training programmes of different types that may be offered to officials. Such training may include initial training for new officials, all of whom should receive training on this issue, upgrade training for officials who are already in post and training for more senior officials.
- Information officers can provide some internal awareness raising within their own public authorities. This could be more or less formal. For example, it could include informal discussions at lunchtime or more formal workshops.
- For most ordinary officers, a relatively modest amount of training should suffice. A two-hour module is probably sufficient, at least at the beginning, in an attempt to try to reach as many officials as possible.

Discussion Point

Do you feel you could provide a short awareness-raising or training session (say of two hours) to other staff at your public authority after receiving this training? If not, what more would you need?

Efforts should also be made to introduce the right to information into wider training forums. This could be introduced as a topic for school children, for example of between 14 and 16 years old, perhaps are part of a wider programme of civic education. Efforts could also be made to include in university courses, for example in law and journalism, and perhaps also in broader human rights courses.

6. Communications

Communications are an extremely important way of ensuring that relevant sets of stakeholders remain or become informed about the right to information law and are motivated to do their best to implement it. There are two different types of communications, internal and external.

Internal communications have two main purposes:

- To keep staff informed about developments, such as the adoption of new regulations on the right to information or the putting in place of new records management standards.
- To provide working level staff with statements of support for implementation of the right to information law from senior officials, among other things to show them that management supports the Law, which can help to address the culture of secrecy.

Internal communications can take place in many different ways. An obvious one is via email. But sometimes other forms of internal communications may be important, such as live talks by senior officials to staff.

External communications are mainly about informing the public about the right to information and how it may be exercised. The Law does not impose any obligations in this area, but there are obvious reasons why the public sector should do this and why it makes sense for them to do this (including because of the extensive outreach to the public that at least some public authorities have, such as the police and the Ministries of Health and Education). Public authorities share this responsibility with a number of other social actors, most importantly civil society groups and the media.

This is to some extent a central responsibility (i.e. for the central nodal point and also formally the Information Council). But it is an efficiency, indeed a need, for all public authorities to be involved in this. Different public authorities reach out to wide parts

of the public – for example via schools, health care facilities and local government officers – and these provide important opportunities to raise awareness about this important issue.

There are a number of ways that this can be done:

- Information officers should produce simple guides for requesters which should be made available in both physical format and via public authorities' websites.
- Public authorities can celebrate key events, such as International Right to Know Day, which takes place on 28 September each year. These can be done via public conferences, outreach activities (such as videos or plays) and so on.
- There are a number of other ways that public authorities can reach out to citizens. For example, if every public office of every public authority in Jordan were to display a poster with information about the right to information, that would catch the attention of an enormous number of citizens over the period of a year.

As noted, there is also a role here for civil society, the oversight body and the media. Indeed, it can be very useful for all of these bodies, and for public authorities, to partner together when conducting outreach activities.

Exercise C

Overview of Key Implementation Steps

Working in Small Groups

Key Points:

1. Action in the following key areas is required to implement a right to information law: Core Activities, Institutional Structures, Systems, Training and Communications.

2. The development of an overarching action plan both by each public authority and at the central level is key to ensuring planned, coherent implementation.

3. Information officers bear responsibility for leading on many implementation actions but this will often take place in collaboration with other officials, and some actions will be led by other actors.

4. In addition to information officers and the oversight body (Information Council), it is important to identify or establish a central, internal nodal point to take the lead on implementation (which in Jordan might again be the Information Council).

5. A number of systems need to be put in place to ensure proper implementation of a right to information law, such as systems to ensure that proactive disclosure takes place and that responses are provided in a timely fashion to requesters.

6. Training is a major need which will require a degree of prioritisation, probably focusing first on information officers.

7. Effective both internal and external communication systems are an important way of advancing the implementation of a right to information law.

Session 4: Proactive Disclosure of Information by Public Authorities

Discussion Point

Do you think public authorities should be legally obliged to publish certain types of information or should they be free to do this at their own discretion? What kinds of information do you think are most important for them to publish proactively?

1. International Standards

International standards place a clear obligation on public authorities to publish information proactively.

Quotations

In his 2000 Annual Report, the UN Special Rapporteur on Freedom of Opinion and Expression stated:

> Freedom of information implies that public bodies publish and disseminate widely documents of significant public interest, for example, operational information about how the public body functions and the content of any decision or policy affecting the public.

The Declaration of Principles on Freedom of Expression in Africa supports this, stating:

> Public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest.

Principle XI of the Council of Europe's (COE) Recommendation of the Committee of Ministers to Member States on access to official documents also calls on every public authority, "at its own initiative and where appropriate", to disseminate information with a view to promoting transparency of public administration, administrative efficiency and informed public participation.

The COE Recommendation also calls on public authorities to, "as far as possible, make available information on the matters or activities for which they are responsible, for example by drawing up lists or registers of the documents they hold".

Some of the key attributes of this obligation under international law are:

- To ensure that information of significant public interest is published.

- To ensure that this information reaches those who need it (for example, if a project affects local people, it is not enough to publish information about it on the Internet, it should also be posted on local notice boards).
- To update this information regularly, as necessary.
- To ensure that the most important types of information are provided in forms that local people can understand (for example, so that financial information is not presented in excessively technical terms).
- To increase the scope of information subject to proactive disclosure over time.

2. Key Proactive Disclosure Obligations

The Jordanian right to information law does not include any proactive disclosure obligations, contrary to the practice in most countries. Indeed, according to recent trends, the extent of proactive obligations has been growing in recent years. However, as has already been noted, and to respect international standards, it is good practice to publish information on a proactive basis.

If information is published proactively, then there will be no need for individuals to make requests for this information. It may be noted that it takes far longer to respond to a request for information – which requires providing the requester with a receipt, registering and tracking the request, and providing a formal response in line with the requirements of the law – than to publish information on a proactive basis – which simply requires uploading it to a website. It thus makes sense to extend proactive publication to any information which may be the subject of general public interest rather than waiting for a request for this information.

Example

In India, the law requires public authorities, in addition to meeting the minimum proactive publication requirements, to publish as much information as possible on a proactive basis so as to minimise requests (since there is no need to make a request if the information is already available).

In practical terms, some of the key considerations to keep in mind are as follows:

- For certain types of information, especially information that changes over time, it is important to make sure that the information remains up-to-date. This can be a challenge in relation to proactive publication.
- For the most part, it is sufficient to make sure that the information is published electronically (i.e. via the website). As of mid-2015, according to the *Assessment of Media Development in Jordan: Based on UNESCO's Media Development Indicators*, just over 75 percent of Jordanians had access to the

Internet. This is a relatively high percentage, but clearly not enough to reach everyone. In certain cases, more effort is needed to make sure that people who are especially concerned with certain information can access that information. For example, if a development project is being undertaken in a certain area, it may be important to make sure that people in that area know about it. In this case, in addition to posting information online, it may be necessary to post information on local bulletin boards or in public offices in the area.

- Again, for the most part it is enough simply to provide access to the information in the way in which it was originally produced. However, it is essential that the public can understand certain key types of information, such as the budget, and yet this is often too technically complicated for ordinary citizens, or even relatively educated citizens, to understand. In some cases, then, it will be necessary to provide the information in a style that people can understand. In the case of the budget, for example, it has become common practice in many countries to present a citizens' budget, a simplified version of the budget that ordinary citizens can understand. Such simplified versions may also be appropriate to explain the nature of a development project taking place in a certain part of the country, or a programme to extend benefits to people.

Discussion Point

What do you think about proactive publication via other means than online? Do you think the cost-benefit calculations work for this or is it just too time consuming?

The policy practice gap challenge: experience in many countries has shown that where right to information laws are very ambitious in terms of proactive publication, it can be difficult for public authorities to meet these obligations quickly. This can lead to a policy-practice gap (i.e. a situation where the legal or policy requirements are regularly not being met). This cannot, by definition, happen in Jordan, since there are no firm legal requirements in this regard. But there may be a gap between the aspirations of public authorities in terms of proactive publication and what they can achieve in the short term.

Example

In India, a major study conducted five years after the law came into force showed that only 5 percent of all information subject to proactive disclosure obligations was actually being published. The Indian law has very strong proactive disclosure obligations and public authorities simply could not meet them.

A solution to this is to allocate a longer time to meet proactive publication obligations that the periods, usually of less than one year, found in right to information laws. This is a reasonable strategy for public authorities to think about if they are having trouble meeting their full proactive disclosure aspirations in the short term.

Example

In the UK, a different approach was taken to this issue. There, instead of setting out a long list of categories of information subject to proactive publication, the law requires every public authority to develop and implement a publication scheme, setting out the classes of information which it will publish. Importantly, the scheme must be approved by the Information Commissioner. The Commissioner may put a time limit on his or her approval or, with six months notice, withdraw the approval. This system builds a degree of flexibility into the obligation of proactive publication, so that public authorities may adapt implementation in this area to their specific needs. It also provides for oversight by the Commissioner without placing too great a burden on him or her, taking into account the very numerous public authorities. Importantly, it allows for the levering up of proactive publication obligations over time, as public authorities gain capacity in this area. Basically, this system ensures that, over time, the amount of information that needs to be published will increase.

Discussion Point

Proactive publication will not happen by itself. Do you have systems for this in place? Do you think that there is an efficient flow of information that is published on a proactive basis?

3. The Main Types of Proactive Disclosure

The information that is subject to proactive disclosure obligations can be divided into two main categories.

The first category is information that is provided or updated periodically. An example of this is the budget, which is normally updated annually. The key challenge with this type of information is to make sure that it is updated on a periodic basis on the website. In many cases, public authorities make an effort to get information online once, but then forget to keep it updated. This requires some sort of system, as well as the active support of those officials who are responsible for producing these categories of information, since they are the ones who need to make sure that it is updated. Ideally, the system would involve the producers of this information communicating directly with the individuals who are responsible for the website without necessarily involving the information officer. There is no need to involve him or her and doing so simply places a greater burden on him or her and can lead to further delays.

The second category is information that is produced on an ongoing basis, which needs to be uploaded as it is produced.

Example

Examples of information that is produced on an ongoing basis are contracts, policy

decisions, licences, statistical information and programme documents. These are produced from time-to-time and should be uploaded soon after they are finalised.

It may be noted that it is far more difficult to keep this sort of information flowing to the website because it is *ad hoc* in nature and is not produced at regular intervals. Also, the number of officials within the public authority that are responsible for producing these categories of information is normally quite large, and so the risk that some of them will forget to present the information for proactive publication is higher.

Systems are needed for this that will work in the context of each particular public authority, taking into account the number of people involved in producing this sort of information, the way that final approvals of these types of documents are obtained and so on.

4. Dissemination of Information Disclosed Proactively

By far the easiest and cheapest way to publish information proactively is to disseminate it electronically, via a website, and for most information this is sufficient. However, as noted above, Internet penetration in Jordan was just above 75 percent by the middle of 2015, so that at least in some cases other means of distribution of information will be needed.

Discussion Point

Can you think of some other practical ways to disseminate information on a proactive basis? Do you think this will be different for different public authorities? Do you already have some systems for this in place? What types of information is it particularly important to disseminate offline?

5. Minimum Requirements for the Website

By now, almost every public authority in Jordan already has a website to disseminate information publicly. Ideally, the website should have a link on the front page to another page – a dedicated right to information page – which has information about the right to information. This is both a practical way for individuals to figure out how to make requests for information and a useful way of raising public awareness about this right.

Better practice is to make the following information available on the right to information page:

- Information about the legal framework for the right to information. This includes the Law and any internal policies or binding rules relating to the right

to information. For example, it would be better practice to include here the Terms of Reference for the information officer.

- The annual and other reports which should be produced on a regular basis by public authorities should also be provided here.
- This part of the website should also provide electronic access to the form for making requests for information, as well as any other forms which may be available.
- Ideally, a link to a guide for the public on the right to information should also be made available on this page.
- Finally, it is better practice to include some other key information here. An example would be the action plan of the public authority for implementing the right to information. An organigram of the structure of the organisation, perhaps annotated to give a sense of what types of information the authority holds, would also be useful to include here.

Exercise D

Proactive Disclosure

Working in Small Groups

Key Points:

1. Proactive disclosure is a very important means of delivering the right to information to the public and indeed, for most citizens, it will represent the only way that they access information from public authorities because they will never make a request for information.

2. International law establishes key minimum standards for proactive disclosure, including that key categories of information should be disclosed in this manner.

3. It also makes sense to publish any information that may be of general interest on a proactive basis, since it is much easier and quicker to do this than to process even one request for that information.

4. It can be a challenge to get all of the information which public authorities should be making available via proactive publication online, and an even greater challenge to make sure that this information remains up-to-date both in the sense of updating information that changes over time and in the sense of making sure that categories of information that are produced on an *ad hoc* basis get uploaded regularly and consistently.

5. Providing information electronically via a website is very efficient and important, but certain key categories of information also need to be made available in other ways, so as to ensure that they reach the people who need to access them.

6. A number of types of information should be available via the right to information page on the websites of public authorities, to which there should be a link on the front page of the website.

Session 5: How to Process Requests for Information

The Law requires all information held by public authorities to be made accessible to the public in response to a request, apart from exempt information. This session outlines the procedures for receiving and processing requests for information.

1. Receiving Requests

Formally, under the Jordanian Law, requests for information must be submitted on the form, but it is better practice to provide assistance to requesters who submit requests orally. Forms should be available in physical format at all public offices of the public authority and ideally they should be made available electronically via the access to information page of the website (with a link to this from the front page).

It is also better practice for public authorities to receive requests electronically. In this case, the public authority would need to transfer the request onto the form. If a request is submitted orally, the information officer should also transfer it onto the form and provide a signed copy to the requester. The public authority should also put in place a system to ensure that requests do not get lost or misplaced or ignored.

Anyone may submit a request for information. It is not clear from the Law whether this includes legal persons, but better practice is to include them. The Law does not extend to foreigners but there is no reason why public authorities could not also process requests from foreigners (i.e. the Law does not prohibit this). Under international law, foreigners should also be covered by RTI laws.

Discussion Point

Do you think public authorities should provide information to legal entities? What about foreigners? Why or why not?

An initial question is where requests can be received. If a public authority accepts electronic requests, this is easy: it simply needs to establish a dedicated email address for this purpose. It is also ideal to provide an online system for submitting requests via the website.

Receiving physical requests is more difficult. There should be a dedicated address for mailing requests. But better practice is also to receive requests delivered in person, ideally via any of the public offices of a public authority throughout the country. If this is the case, the public authority will need some system for ensuring that requests lodged in various places are somehow transmitted to the centre for processing by the information officer. An alternative is to enable the processing of requests where they

are received, but this depends on having staff at that location who know how to do this, as well as the availability of the information there.

According to international standards, only limited information needs to be provided when lodging a request, namely a description of the information being sought and an address for delivery of that information. Under the Law, however, requesters need to provide their name, residential address, work and any other details that may be required by the Information Council. The Law is not clear on whether the reasons for a request may be asked. Better practice is not to do this, but the Law suggests that this may be needed because requesters should have a legitimate interest in the information, which means that the reason for the request needs to be known.

The information officer should check requests to make sure they are not missing certain required information and, where they are, he or she should go back to the requester for clarification (providing assistance where needed). The request may also include certain other information, such as the preferred format for receipt of the information (for example, electronically or a physical copy).

The Law fails to impose an obligation on public authorities to provide assistance to requesters. However, better practice is to provide assistance in the following cases:

- The requester needs assistance to complete the written form due to disability or illiteracy.
- The requester needs assistance to complete the form due to an inability to identify with sufficient precision the information he or she is seeking. This may seem like an odd situation but in practice it often happens.
- The first type of assistance would normally need to be provided in person.
- The second type could also be provided by mail or electronically.

Discussion Point

Do you think it is reasonable to expect public authorities to provide these sorts of assistance to requesters? Do you think this would be a big burden or not too large?

Better practice is to register requests at the public authority so as to keep track of them. There are different options for this:

- The most efficient way of registering requests is through an electronic system since this can be done from different locations and allows for simple updating and entering further information (for example the date of responding to the request, any fee charged, etc.).
- If an electronic database for requests is designed properly, it can also be used to generate the information that is required for the annual report (how many requests were received, how long it took to process them, etc.).

- Best practice is to have a central electronic register of requests, rather than requiring each public authority to design their own system. But each public authority could also design its own database for this.

Example

A good example of a central online register for requests is Mexico, where the oversight body (the information commission) developed a central electronic registry of requests which can also be used to make requests; this is hugely efficient for both requesters and public authorities and generates a significant part of the annual report almost automatically.

- Even if there is no electronic system, it is still just as important to register requests.
- Registration requires each request to be given a unique file number as a request for information.
- Part of the system of registration should also involve providing requesters with a receipt, which should indicate the unique file number of their requests. Normally, this would be provided to the requester in the same way as the request was lodged (i.e. electronically, via mail or directly in person).

Exercise E

The Form for Requests for Information

Working in Pairs

2. Responding to Requests

Discussion Point

Responding to requests for information is complex and public authorities need clear protocols or guidelines on how to do this to make sure they respond within the strict deadlines and to ensure proper coordination and cooperation within the public authority. Has your public authority adopted a protocol for responding to requests yet? If not, do you have plans to do so shortly? Do you have any system for verifying if requests have been dealt with in time?

The process of responding to requests must start with an understanding of the timelines for responding, which are as follows:

- Requests need to be responded to within 30 days.

- Unlike under many right to information laws, there is no possibility of extending this period in Jordan. This means that even if the request is more time-consuming, for example because finding the information requires a search through a large number of documents or consultation with third parties, the public authority will still need to complete the request within the 30 days.

Although 30 days may seem relatively relaxed, in practice it is quite a tight deadline and public authorities need good systems if they are going to be able to respect it. There are a number of ways in which the deadlines can come under pressure:

- It may be necessary to search through a number of documents to find the information.
- The official at the public authority who is responsible for the information may not get back to the information officer for some time.
- The information may need to be compiled from various different sources.
- Time may be needed to consult with third parties.
- Time may be needed to sever confidential information.

Example

The Six Question Campaign asked six questions about budget information in 80 different countries. One of the questions was how much money had been spent on midwives during the previous five years. At a minimum, this required compiling the information over the five-year period. But in many cases, this information was not held centrally, but was held in documents at the regional or sometimes even the hospital level and it took some time to bring all of this information together.

The first step in responding to a request for information is determining whether or not the public authority even has the information. While this sounds obvious, it may not be as easy as it seems. It is easier if the information officer knows exactly where to find the information, but this is often not the case. Where the information officer does not know where the information is, he or she needs some way of sending out a request to others to help him or her find it. An approach needs to be developed for this.

Where the information officer knows approximately where within the public authority the information should be, he or she can simply approach the relevant unit. Where this is not known, one approach would simply be to email everyone at the public authority, but this could be annoying and time-consuming, especially if there are a lot of requests. Another approach would be to develop an email distribution list of more senior staff to which requests of this sort could be circulated.

In addition to the technicalities of the system, other officers at the public authority need to know and understand that they have an obligation to cooperate with the information officer. Part of the answer to this is training. But part is also having a clear set of rules about cooperating with the information officer

Even if the information officer is a senior official within the public authority, he or she will not be the direct supervisor of other officers (or most other officers). Better practice is for the law to require other officers to cooperate with the information officer, but this is not the case in Jordan, so some other system is needed to ensure their cooperation. The precise nature of this will depend on the specific public authority but one option is for the head of the public authority to issue a binding instruction (for example a directive or order) calling on all officers to cooperate with the information officer. Regardless of the precise form, some sort of rule or instruction along these lines is needed if information officers are to be able to do their work effectively.

Even if all of these systems are in place, there can still be major challenges in terms of getting the information. Some of the more common challenges are:

- Other officers say they do not have the information but the information officer knows or suspects that they should have it. In this case, it might be useful to remind other officers of their obligations under the Law and also the potential consequences (and sanctions) for non-compliance.
- In many cases, other officers delay in responding to the information officer, putting pressure on the time limits. They sometimes do not see this as part of their core work and often do not see it as a priority. Awareness raising among staff about the legal requirements of the right to information and about how this is a core part of the work of a public authority can help here.

Discussion Point

Are these problems likely to occur in Jordan or do you think that most officials will cooperate well? What measures would you suggest to overcome a lack of cooperation if it did occur?

Once the information is located, there needs to be an assessment of the applicability of any exceptions. This is the subject of detailed consideration in the next session.

There also needs to be a system for severing exempt information, if only part of a document is exempt (i.e. so that the rest of the document can still be provided). The public authority will need a system for doing this. It is relatively simple for electronic documents, but even here it at least requires some thought (for example is the system to black out the exempt text or simply to cut it out of the document, which can have unintended effects, such as altering the formatting). And the appropriate system for this is less immediately obvious than for paper documents (at least it requires a special pen which can reliably blacken out exempt information).

Better practice when severing information is to indicate how much information has been removed. Here, the situation is reversed. It is normally pretty easy to do this with physical documents (through a combination of physical blacking out and page

numbers where whole pages are removed) but less obvious for electronic documents, at least where the exempt text is cut out of the document (this would require leaving a marker indicating the material that has been cut out).

When access is being provided, better practice is to require the public authority to provide the information in the format preferred by the requester, such as an electronic or physical copy or an opportunity to inspect the document. This is not provided for in the Jordanian Law, but there is nothing to prevent public authorities from doing this and the form for making requests does include a section on this. This can raise a number of issues:

- If the requester wants to inspect the documents, does the public authority have a location (i.e. a room) where this can happen and the facilities for this (for example a chair and desk)? If not, this will need to be arranged.
- Providing a physical or electronic copy is normally simple enough but what if the requester asks for an electronic copy of a physical document. The public authority needs to determine whether it will go to the effort of scanning a document for a requester.
- In some cases, a requester may want to receive a transcript from an audio or audiovisual record (for example a tape recording). This can be quite difficult and time consuming and, once again, systems and rules need to be developed for this. For example, how long of a tape will the public authority transcribe? If the format is one that is commonly available (for example an electronic audio file that can be read by commonly owned devices, such as a mobile phone), will the public authority insist on providing it in that format to the requester or will it still transcribe the content?

Notice needs to be provided to the requester once decisions about exceptions and format of access have been made. Notice is normally communicated to the requester in the same way as the request was made (by mail, electronically, by phone if the request was made in person). If the information or part of the information is being disclosed, the notice needs to specify any fees that will be charged, the format of access and, where this is inspecting the documents, when and where this will take place. If the information or part of the information is being withheld, the notice needs to specify the exact reasons for this (including the provision in the Law which is being relied upon to justify the refusal), as well as the right of the requester to lodge an appeal against this, first to the Information Council and then to the courts.

Systems are also needed to assess and collect fees. International standards suggest that fees should only be levied for the reasonable cost of reproducing and sending the information to the requester. Furthermore, no fee should be charged for: access to personal information about the requester; inspections; provision of information electronically (which does not cost anything); and where the requester can demonstrate that he or she is eligible for poverty benefits (i.e. for poorer requesters).

The Law is not very clear about what exactly may be charged but this appears to be just the cost of photocopying. For this, a central schedule of fees is supposed to be adopted by the Council of Ministers upon the recommendation of the Council. If this has not yet been done, the public authority will need some other system for calculating fees.

The public authority will also need some sort of system for actually collecting fees, preferably in different ways (cash, cheques, credit cards). Receipts will need to be issued and there will need to be some system for entering the fee into the books and making sure that it is processed in accordance with the general rules relating to collection of fees. Some public authorities will already have systems for this in place while others, which do not normally collect fees from the public, may not. Where the request is likely to cost a lot, the public authority may wish to consult with the requester in advance to make sure he or she is willing to pay that fee, before it actually goes ahead with copying the documents.

Discussion Point

Do you have a system in place for collecting fees? Do you think this is likely to be a problem?

3. Challenges

Even with the best systems in place, there are almost certain to be various challenges in terms of processing requests in accordance with the rules, including the time limits, on a regular basis. While some 'slippage' is almost inevitable, the goal should be to process a large majority of requests in a timely and appropriate manner.

One of the most common problems is processing requests within the time limits.

Example

In the Six Question campaign where six questions were lodged in 80 countries, the average time taken to respond to requests was 62 calendar days, significantly longer than the 10-20 working days (30 calendar days) period established as a maximum in most right to information laws. Only nine countries responded to all six questions in, on average, 30 days or less, and only three managed to meet this timeline for each of the six requests.

There are a number of reasons why it can be difficult to meet the time limits:

- Other work priorities take precedence over responding to requests.
- Other officials upon whom the information officer depends do not cooperate or delay. This can be the officials who are responsible for the information or

more senior officials who need to make final decisions about release of information.

- It can take some time to find the information (either because of poor records management or because this simply is difficult) or it can take time to compile the information from different documents.
- It can be difficult to decide whether or not an exception applies. In more complicated cases, this may require referring the matter to a more senior official and inquires may need to be made.
- It may be necessary to consult either with private third parties who provided the information or with other public authorities which have some interest in the information. Where these third parties do not see this as a priority, it can take some time.

Discussion Point

Do you think public authorities in Jordan will have problems meeting the timelines for responding to requests or do you feel this will not be a particular problem? Why or why not?

An extreme variety of the issue of delay is a mute refusal, which is a complete failure of the public authority to respond to the request. Although this should never happen, in practice it is all too common.

Example

In the Six Question campaign, the level of mute refusals (a complete lack of response from the authorities) was very high, representing 38 percent of all requests, even after up to three attempts to get a response. Fully 55 of the 80 countries covered by the exercise provided at least one mute refusal, and 15 responded to five or six requests with administrative silence.

Another common problem is providing wrong or incomplete information. Once again, this can happen for a number of reasons:

- The official responsible for the information does not do a good job in identifying the information.
- The request is not as clear as it could be, or the officials processing the request do not read it carefully.
- There is bad faith and some information is deliberately hidden or withheld.
- It is complicated to find all of the information responding to a request and so shortcuts are taken and only part of the information is provided.

Where it really is difficult to respond fully to a request, it is legitimate to discuss this with the requester and ask if they would be satisfied with only parts of the information or whether there are certain parts that are more important for them to receive more urgently.

Attempting to charge excessive fees is a problem in many countries, although hopefully this would not be such a serious problem in Jordan. Tracking requests is often done poorly, in most cases because no system is in place, although this can also happen where care is not taken to enter each request into the system or where requests are processed in different locations by different people and the tracking systems are not properly integrated. Having a sophisticated, central tracking system can really make a huge difference here.

Key Points:

1. Any individual can make a request for information and this should also include legal bodies. Foreigners are not covered by the Law, but there is also no prohibition, at least in the right to information law, on providing information to them.

2. Requests should be made in writing, delivered in person or by mail. Better practice is also to receive requests or orally or electronically. Assistance should be provided where necessary to this end and requests should be registered and the requester should be provided with the registration number.

3. The information officer is required to respond to requests in 30 days which cannot be extended, even for complex requests.

4. Public authorities need to put in place systems or protocols to ensure this happens, including instructions to all officials to cooperate with the information officer. This should include systems for finding information where its location is not obvious.

5. Requesters may indicate a preference for different ways of accessing information, such as inspecting documents or getting copies of them. Public authorities should try to respect these preferences and will need to have in place appropriate facilities for this (especially providing a place to inspect documents).

6. Fees should be limited to the cost of copying the information, in accordance with a central fee schedule for this, and public authorities need systems for assessing and collecting fees.

7. Meeting the time limits is a particular challenge in many countries, as well as avoiding mute refusals. Other challenges include avoiding providing incomplete or wrong information and poor tracking of requests.

Session 6: How to Interpret the Exceptions

1. International Standards

Interpreting the exceptions to the right of access to information is probably the most difficult issue facing information officers. The right to information is part of the general right to freedom of expression under international law which, as noted above, protects the rights to seek and receive, as well as to impart, information and ideas. As such, exceptions to the right to information are subject to the three-part test for restrictions on freedom of expression, which requires any restrictions to:

- be provided by law;
- protect one of the interests listed under international law; and
- be necessary to protect this interest.

The second part of the test means that restrictions on freedom of expression must have the purpose of protecting one of the aims listed in Article 19(3) of the ICCPR. This list, which is exclusive so that governments may not add to it, includes the following interests:

a. the rights or reputations of others;
b. national security;
c. public order; and
d. public health and morals.

In the context of the right to information, this is generally understood as requiring exceptions to meet an analogous three-part test:

a. The restriction must aim to protect one of a limited number of interests set out in the law which conform to the list of protected interests noted above.
b. Information may be withheld only where disclosure would cause harm to one of the protected interests (as opposed to information which merely relates to the interest).
c. Information must be disclosed unless the harm to the protected interest outweighs the overall benefits of disclosure (the public interest override). It may be noted that, under international law, the public interest override only works one way: to mandate the disclosure of information where this is in the overall public interest.

Discussion Point

Does this seem like a reasonable way of assessing the legitimacy of exceptions? Do you think it is fair to disclose even private information where this is in the overall public interest? Are there other areas of life where that happens?

Quotation

Principle IV of the Council of Europe's (COE) Recommendation of the Committee of Ministers to Member States on access to official documents, titled "Possible limitations to access to official documents", reflects the test outlined above and also provides an indication of what sorts of interests might need to be protected by secrecy. It reads as follows:

1. Member states may limit the right of access to official documents. Limitations should be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:
   i. national security, defence and international relations;
   ii. public safety;
   iii. the prevention, investigation and prosecution of criminal activities;
   iv. privacy and other legitimate private interests;
   v. commercial and other economic interests, be they private or public;
   vi. the equality of parties concerning court proceedings;
   vii. nature;
   viii. inspection, control and supervision by public authorities;
   ix. the economic, monetary and exchange rate policies of the state;
   x. the confidentiality of deliberations within or between public authorities during the internal preparation of a matter.

Under international law, the fact that information has been classified is not relevant to whether or not it is exempt. Otherwise, administrative action could defeat the law (i.e. anyone could put a classification mark on a document which would render it secret and the right to information would have no meaning).

Example

In some countries – for example Mexico – there are procedures that help to ensure that classification is correct; these include oversight of initial classification, including by the oversight body, as well as regular review of classification to make sure it is still current. At the same time, this is still not better practice and, in most countries, classification is used as an internal procedure for indicating that information is sensitive but not as a rule for non-disclosure.

The issue of the relationship of the right to information law with other laws is complex. Better practice is to protect all important confidentiality interests in the main right to information law and then there is not need for other laws to extend these exceptions. This means that, in case of a conflict, the right to information law should

prevail. At the same time, there is no reason why exceptions recognised in the right to information law may not be elaborated on or clarified by other laws. In many countries, for example, the right to information law protects private information but the details about what is included within the scope of privacy are set out in another law (such as a privacy law or a data protection law).

At a minimum, only laws which conform to the standards set out above (i.e. the three-part test) should be preserved. In some countries only specific secrecy laws are preserved. For example, in Sweden, all secrets must be contained in one law, the secrecy law. In Canada, the right to information law contains a list of secrecy provisions in other laws which are to be preserved.

Discussion Point

Do you think that this approach – i.e. whereby the right to information law would override secrecy laws in case of conflict – would be acceptable in Jordan? Why or why not?

2. Underlying Principles for Exceptions in the Jordanian Law

The main principle under Jordanian Law is that information is generally presumed to be open and accessible to the public and that exceptions to this are limited. However, the Jordanian right to information law actually requires public authorities to classify their documents. It is not entirely clear, however, what the effect of classification is. What if, for example, an official has wrongly classified a document? Will it still be protected against release under the right to information law? This would not make sense since it would reward officials for over classifying.

Discussion Point

How do you understand the process of classification under the Jordanian right to information law? What happens if classification is not done properly?

Under the Jordanian right to information law, other laws are generally preserved and there is a specific exception which provides for this (Article 13(a)). This is problematical because many other laws have secrecy provisions which do not meet the standards contained in the three-part test for exceptions under international law, noted above.

The main list of exceptions is in Article 13 of the Law, as supplemented by Article 10. For the most part, these exceptions conform to international standards (in the sense that the aims listed in Article 13 are mainly legitimate). At the same time there are a few exceptions which are overbroad:

- Article 10 rules out requests relating to information which promotes religious, racial or ethnic discrimination. While this information is certainly to be avoided, it must be kept in mind that we are talking here about information which is already held by a public authority, not something that a private individual might say. If a public authority did hold such information, it would be far preferable to expose this than to keep it secret.
- Article 13(f) refers to confidential correspondence but this is not a recognised exception under international law (as opposed to privacy, which is). This could be used, for example, to render secret internal government communications even though there was nothing particularly sensitive about them.
- Article 13(i) broadly renders secret material which is protected as intellectual property without distinguishing between private or public property. International standards mandate the publication of public documents, regardless of whether or not they are considered to contain (public) intellectual property.

Discussion Point

Do you agree that these exceptions are problematical or do you feel that they are legitimate? Are there other exceptions that you feel are problematical?

Several of the exceptions in the Law are harm tested, but quite a few are not. This includes the exceptions in favour of agreements with other States (Article 13(b)); national defence and state security (Article 13(c)); foreign policy (Article 13(c)); and judicial investigations (Article 13(h)).

One of the more serious weaknesses of the Law is that it does not contain any public interest override. Under international law, the public interest override is recognised as a key means of ensuring an appropriate balance between secrecy interests and the right to information. Essentially, where the overall public interest favours openness, information should not be kept secret.

Better practice is to provide for a general public interest override (i.e. one that is not limited to a specific list of public interests) and then to list some examples of important public interests which are likely to override secrecy, such as exposing corruption or fostering participation. This is both comprehensive, since it covers all public interests, and relatively clear, since it points to a number of specific important public interests. In some countries, there is no general public interest override and only information relating to a list of examples of public interests triggers the public interest balancing. The problem with this approach is that it is likely to leave out some important interests because it is nearly impossible to define all possible public interests.

In some countries, there are also absolute public interest overrides, usually for information which is needed to expose human rights or war crimes, and sometimes

also corruption. In this case, if information about these issues is requested, none of the other exceptions apply. In other words, these interests override all of the exceptions so that there is no need for a balancing to be done.

Discussion Point

What do you think about the idea of a public interest override? Are Jordanian officials qualified to apply such a test or is this too complicated for them? What if they were given some support in this, for example from the Ministry of Justice, for difficult cases?

Example

In the United Kingdom, the Information Commissioner and courts have held on several occasions that the interest of people being able to engage in policy dialogue with government, and to hold government to account, even in a fairly general way, are public interests that may override exceptions in the access to information law.

In Tunisia, there are absolute exceptions in favour of human rights and war crimes, and then a balancing approach is used when the information is needed to provide evidence of a serious risk to health, security or the environment, or of a criminal act, corruption or poor management in the public sector.

The Jordanian Law also includes a severability rule. This means that if only part of a document is exempt, that part should be removed from the document and the rest of the document should be provided to the requester. This is a very important tool because it is almost always possible, by removing certain information, to render a document non-sensitive.

The Law also requires notice to be provided to requesters when refusing a request, specifically setting out the reasons for the refusal (refusals must be "grounded and justified"). At the same time, this still does not conform to best practice inasmuch as there is no requirement to list the specific provision in the Law being relied upon to refuse access, or to inform the requester of his or her right of appeal, but of course there is nothing to prevent public authorities from engaging in these better practices.

There are a couple of better practices which are not reflected in the Law, as follows:

- The Law does not establish an overall time limit for exceptions, for example of 20 years. Better practice is to provide for such overall time limits, in recognition of the fact that most information becomes much less sensitive over time. At the same time, many countries provide for a special procedure to extend confidentiality even beyond the 20-year limit in highly exceptional cases where this really is necessary (for example, this might apply to extremely sensitive national security information).

- Where information has been provided to a public authority on a confidential basis by a third party, better practice is to consult with that third party when a request relating to that information has been received. In some cases, the third party may consent to the release of the information, and this makes the whole process very simple (the authority just provides the information). In other cases, the third party may object to the release of the information. In this case, the consultation provides him or her with an opportunity to give reasons why the information should not be disclosed, and the public authority should then take these into account when making the final decision about this.

3. Procedural Issues in Appling Exceptions

Applying exceptions is a sensitive matter and public authorities need to agree on how this will be done. It should be clear who decides on whether exceptions are applicable and the way this is done should be designed in such a way as to ensure that it can be done within the timelines.

This can be tricky because the person who is responsible for the information will normally be in the best position to determine whether or not an exception is applicable, but this person may also have conflicting incentives regarding whether or not to release the information. For example, the author of a document may have a sense of ownership over the document and not necessarily want to release it publicly. If the document exposes weaknesses or inefficiencies or worse within the public authority, these may reflect badly on the author or person responsible.

Ideally, the official responsible for the information would work with the information officer to determine whether or not an exception applies. Where these two officials cannot resolve the matter between themselves, there needs to be a way to resolve the matter (for example by giving the information officer final say or by providing for the matter to be considered by a superior officer).

There may also be cases where, due to the sensitivity or difficulty or implications of making a decision about disclosure, the matter needs to be referred to a more senior officer. At the same time, it should be noted that as the seniority of the person who makes this decision increases, so does the complexity of the decision-making process and this takes time. More senior officers tend to be very busy and are also often more concerned about political implications than less senior officers. It is of fundamental importance that the decision be made on an objective basis (i.e. an objective consideration of whether or not the exceptions apply) rather than a political basis.

Discussion Point

Where should responsibility for making decisions relating to the applicability of exceptions lie in Jordan? Is it realistic to expect the author and the information officer to work together on this? If not, how else could this be done?

4. Substantive Issues in Applying Exceptions

In assessing the applicability of an exception, the burden always rests with the public authority seeking to justify the refusal to disclose information, both as to the harm that would be caused by this and the non-applicability of the public interest override. This is based on the fact that access to information is a human right, and it is always for the State to justify limitations on rights.

The key initial consideration is whether making the information public poses a risk of harm to one of the interests protected in the Law. When considering this, rational reasoning based on the standards in the Law must be applied rather than relying on preconceptions and previous practices/assumptions/prejudices.

This involves three key elements. First, the officials should identify the specific interests protected by the exception that would be affected by the release of the information, beyond a general sense that the exception applies.

Example

The fact that information relates to a business or even to the competitive activities of a business is not of itself relevant; the issue is what specific harm would result from the disclosure of the information. Would the business lose clients? Would a competitor be able to steal the business secrets of the business?

This is perhaps particularly important in relation to national security where assumptions can be wrong unless tested. In many countries there is reluctance to disclose information about weapons but the performance capacity of most weapons systems is well known and one's enemies can often easily find this out so refusing to disclose only prevents one's citizens from knowing what one's enemies already know.

Second, the official must establish that there is a causal relationship or a direct link between the disclosure of the information and the risk of harm and that the risk is not based on other factors.

Example

If a country has a weak army, it will be insecure. This risk does not come from being open about the army but from the fact that that army is weak. The same applies to a business that is failing. Secrecy should not be used to prop up weak institutions or businesses.

In assessing the causal relationship, the imminence of the risk upon disclosing the information is an important consideration. If the risk would only materialise a long

time after the information had been disclosed, it is likely that the causal relationship between the disclosure of the information and the realisation of the risk is low. As part of this, the official should consider whether or not the risk can be limited by removing/severing information. Put differently, the official should consider what, specifically, within a document is sensitive and remove only that part of the document. In most cases, refusals to disclose the whole of longer documents cannot be justified because it is very unlikely that the whole document is sensitive.

The third element is that the risk should be real, and not just speculative. It is not appropriate to deny a fundamental human right on the basis that something might result, if this is very unlikely. Otherwise, it would almost always be possible to refuse to disclose information. Once again, one way of ensuring this is to look at the imminence of the risk. If the harm would only materialise a long time after the information had been disclosed, then the risk probably not only depends on other factors (so that the second element is not met) but is also rather speculative in nature (the third element).

Discussion Point

Does this seem reasonable or just a bit too complicated for information officers to apply? If the former, how would you propose to apply this part of the test for exceptions?

Example

In some countries, officials have claimed that when requests are made for the bills for meals paid for on the public purse, the specific meals that they ordered should not be disclosed because this is an interference with their privacy. This is not a real risk, but simply a speculative one since it would only be by putting together many pieces of such information that one could possible start to determine private information about the individual, and even then it would be speculative (for example that the person was a vegetarian because they did not eat meat or a Hindu because they did not eat beef).

After determining whether or not disclosure would pose a real risk of harming a legitimate interest, according to international standards the official must conduct a public interest assessment to see whether the larger public interest warrants disclosure or withholding of the information (although, as noted above, this is not reflected in the Jordanian Law). The first step here is to identify the various public interests that may be served by disclosing the information. It is useful to make a list of them to make sure that all of them are captured.

The potential public interest benefits should then be compared with the harm posed to the protected interest, to see which is more weighty. Note that this can be difficult because it often involves comparing very different types of considerations. In particular, the harm is often a specific harm to a specific individual (such as the exposure of their privacy or a risk to their business). In contrast, the benefit is often

much more general, and public, in nature, and may also involve longer-term considerations (such as the exposure of corruption). In most countries, more weight is given to a general public benefit than to a private harm, especially taking into account that the right of access to information is a human right.

In general, as noted above, it is not legitimate to ask requesters for the reasons for their requests. However, their reasons may be quite important in the context of assessing the public interest override. For example, where a media outlet is requesting information which may disclose corruption with a view to publishing it, this may have a very important positive impact in terms of exposing and hence addressing the problem of corruption, whereas if the request is from a private business which simply wants the information for commercial purposes, this balancing would be very different. As a result, where this seems likely to be relevant to the assessment of the public interest override, it is appropriate to ask requesters what they want the information for, but only if it is made quite clear to them that they are under no obligation to provide this information (i.e. that providing it may help them get the information but that they do not need to do this).

Key Points:

1. International law establishes a three-part test for assessing whether exceptions to the right to information are legitimate as follows:
    a. Does the information relate to one of the protected interests listed?
    b. Would disclosure of the information cause harm to that interest?
    c. Does the overall public interest still mandate disclosure of the information?

2. Administrative classification of information should be irrelevant to the applicability of an exception, although this is not entirely clearly within the Jordanian legal framework.

3. Ideally, the right to information law should override secrecy laws in case of conflict, but this is not the case under the Jordanian Law.

4. Under international law, the test for applying exceptions involves assessing whether disclosing the information would harm a protected interest and, if it would, undertaking a public interest balancing. Some, but not all, of the exceptions in the Jordanian Law include a harm test but there is no public interest override.

5. Clear procedures need to be agreed for how to apply exceptions (i.e. who makes the decision and how this is done).

6. The assessment of the risk of harm should not be based on assumptions or prejudices but on clear evidence of a specific risk to a legitimate interest which is

not speculative. The risk also needs to be directly causally related to the disclosure of the information.

Exercise F

This is the most involved and lengthy exercise in the course and it involves a role-play. The participants should break into groups and each group should be broken into three sub-groups (which could be just one or two people), with one sub-group representing the requester, one the public authority and one the judge who has to decide on the matter. Participants should be prepared to act out their roles in front of all of the other participants, in a sort of mini-play.

Exercise F
Role Play on Exceptions
Working in Small Groups to Prepare a Role Play

Session 7: How to Process Appeals

1. The Three Levels of Appeals

It is clear under international law that one must have access to a decision-maker outside of the public authority when access to information is refused or other breaches of the law may have occurred. Better practice is to provide for three levels of appeal: internally, to an independent administrative body and to the courts.

In many countries, the law provides for an internal appeal to the same public authority which originally refused the request. This can be useful in terms of helping public authorities to resolve matters internally and quickly. It can also be useful because more junior officials are often nervous to disclose information, whereas senior officers are sometimes less so.

In most countries, one can ultimately appeal to the courts. This is an important level of appeal because, in the end, one does need the courts to decide on more complicated and difficult questions, especially relating to exceptions. The more involved and probing examination of issues that takes place before the courts is necessary to resolve these issues in ways that are broadly acceptable within society.

Experience has shown that an independent administrative level of appeal, before an administrative body (i.e. an information commission) is essential to providing requesters with an accessible, rapid and low-cost appeal. The courts are simply too expensive and complicated, and take too long, to be accessible to or useful for most requesters. The role of this body is particularly important in terms of interpreting exceptions to the right of access, given the complexity and sensitivity of this aspect of the system. But it is also important to resolve the often far too common procedural failures to apply the law properly (such as delays or refusing to provide information in the format requested).

Under the Jordanian Law, there are only two levels of appeal, since it does not provide for an internal appeal:

- The first appeal is to the Information Council via the Information Commission. The Council has 30 days to decide such appeals.
- The second appeal is to the courts, and must be made within 30 days of the case arising, albeit with extensions when an appeal has previously been lodged with the Council. The courts then process appeals in accordance with their own rules.

Although the Law does not provide for an internal appeal, there is no reason why a public authority should not offer this as a service to requesters given that it always has the option to change its mind about its original decision regarding a request. This is something that could be considered by public authorities in Jordan.

Discussion Point

Do you think it would be beneficial to have an internal appeal in Jordan or would this just add another layer of bureaucracy to the system?

2. Various Considerations

The law should provide for broad grounds for appeals, basically for any violation of the rules in the law relating to the processing of requests. This should clearly include refusals to provide information (i.e. application of the exceptions) but also the provision of wrong or incomplete information and procedural breaches, such as a failure to respond to a request within the established time limits. The Jordanian Law only provides for appeals in cases of refusals to provide the information (i.e. where the application has been rejected).

In practice, appeals can broadly be divided into two groups: those that involve procedural issues and those that involve the application of the regime of exceptions. In most cases, procedural issues are relatively easy to resolve. These cases are often the result of an administrative error rather than a specific decision (for example, a failure to respond at all or to respond within the time limits). These cases can also involve contentious issues such as the levying of excessive fees or a refusal to provide information in the format sought. At the same time, these sorts of cases rarely involve the sometimes very difficult issues that come up in relation to exceptions.

Disputes about exceptions, on the other hand, can be very difficult indeed to resolve. Furthermore, substantive issues relating to exceptions can be expected to keep coming up basically on an ongoing basis, even decades after the law has been adopted. These are complex issues and new claims regarding exceptions keep coming up.

One can also talk about a third type of appeal, which essentially involves complaints to the effect that the wrong information has been provided (or incomplete information). These tend to be more akin to procedural complaints (i.e. based on administrative error as opposed to a really contentious matter), but they can also be based on the interpretation of exceptions.

Mediation can be a very good way to resolve issues, especially for the first category of appeals. There is no need to go into a formal process of adjudication, with both sides presenting their views and a hearing, if the problem is simply that a public authority has failed to process a request or has taken too long to do so. The resolution of this is simple, at least in theory: the public authority must move forward and process the request in a timely manner. There is no need for legal authorisation to conduct mediation, at least of an informal nature, and many oversight bodies around the world do this without any specific legal mandate. To do this, oversight bodies normally contact both parties unofficially and provide them with an informal sense of how the matter should move forward. If the parties accept that and agree on a

resolution of the case, then it will be dropped. Otherwise, it may need to move forward to a formal adjudication process.

Discussion Point

What do you think about the idea of mediation? Would this work in Jordan or would most cases need to go to a more adjudicatory system of resolution?

3. Guaranteeing the Independence of the Oversight Body (Information Commission)

Under international law, the oversight body or information commission should be independent of the government. The reasons for this are fairly obvious. Its role is to review the decisions of the government (i.e. of public authorities). If it is not independent, it cannot adjudicate cases in a fair, unbiased, manner, and so would be a waste of time for requesters (and ultimately a waste of money for the public). At the same time, protecting the independence of such a body is not necessarily an easy task, especially in countries where there is not a strong tradition of establishing such independent bodies. In terms of independence, the manner in which members of the body are appointed is key.

Examples

In India, information commissioners are appointed by the President upon the recommendation of a committee consisting of the Prime Minister, Leader of the Opposition and a Cabinet Minister appointed by the Prime Minister. While this is weighted towards the government, it at least ensures that the opposition has a seat at the table and can protest against any non-independent appointments. In practice, very independent individuals have, for the most part, been appointed to these positions.

In Japan, the Prime Minister appoints the Commissioners upon the approval of both houses of parliament. Once again, there is some weighting towards government, but the process is open and there is plenty of opportunity for the opposition, not to mention civil society and the media, to make a fuss if there are problems.

In Mexico, appointments are made by the executive branch, but are subject to veto by the Senate or Permanent Commission. This is somehow similar to the system in Japan.

In the United Kingdom, appointments to the post of Information Commissioner, like all senior appointments within government, are made on a competitive basis. Anyone interested in holding the post can apply, and will go through a selection process, ultimately overseen by an independent civil service body and then ratified by parliament.

In addition to the appointments process, there are a number of other important ways to protect the independence of the body, as follows:

- Members, once appointed, should enjoy security of tenure so that they are guaranteed a fixed time in the post and it is difficult to remove them once appointed. Better practice in terms of the latter is to allow members to be removed only where they fall foul of certain basic rules (failing to attend meetings without reason, incapacity, criminal behaviour) and with certain protections (i.e. that they can appeal any removal to the courts).
- Better practice is to prohibit individuals with strong political connections from being members. Common exclusions in this regard include elected officials, civil servants and employees or officers of political parties, or anyone who has held such a post during the last couple of years.
- As the corollary of the prohibitions, there should also be some positive requirements, namely of relevant expertise for the position, for example in areas such as law, information management, journalism, and so on.
- If the government controls the budget, it also controls the body, so an independent budget process is key to the independence of the oversight body. Ideally, the body should have its budget approved by parliament, instead of by a minister or other senior government official.

In Jordan, the Law does not attempt to make the oversight body, the Information Council, independent. Instead, most of the members represent government bodies or official bodies (most of which are not, themselves, properly independent of government). There is no attempt to involve the opposition or parliament or civil society in the process. And none of the measures noted above are present.

Discussion Point

Do you think it is possible to create an independent body in Jordan? Would the measures noted above achieve this or would more be needed? If the latter, what else?

4. The Powers of the Oversight Body

If it is to be effective, the oversight body needs to have certain powers. These can be roughly divided into two categories: powers to investigate and decide on appeals, and powers to award remedies in cases where it decides that there was a breach of the rules. The following powers are necessary if an oversight body is to be able to investigate complaints properly:

- The body must have the power to review the information which is the subject of the complaint, whether or not it is classified or claimed to be exempt. Absent this power, the body cannot properly discharge its responsibility to

decide complaints. Knowing what is actually in the documents is essential to being able to determine how sensitive they are.

- Better practice is thus to give the oversight body access to all information and documents it may request. At the same time, while it should have the power to order disclosure of the information, it should itself also respect the confidentiality of that information (i.e. not disclose the information on its own).
- It is not enough for the oversight body simply to be able to access the information. It must also be able to hear witnesses and, for this purpose, to compel witnesses to appear before it. It may need to hear witnesses, for example, to gain an understanding of the sensitivity of a certain issue (whether this is a security issue a business competition issue or a privacy issue) or to understand better the claims made by the public authority or the requester.
- Finally, better practice is to give the oversight body the power to inspect the premises of public authorities. While this is a more extensive power, which would not often need to be used, in some cases inspections are needed to find out whether or not public authorities really do hold information which they claim they do not. Inspections may also help the oversight body to understand, and thus resolve, more structural problems at public authorities in terms of complying with the law.

The powers of the Information Council are not clear from the Law. No specific powers to call witnesses, review documents or inspect the premises of public authorities are spelt out in the Law. On the other hand, the body has a number of very senior government members, including from the Ministries of Culture, Justice and Interior, so they would presumably have some influence in this regard.

Quotation

Article 18(3) of the Indian RTI law provides:

> The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, in respect of the following matters, namely:—
>
> (a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
> (b) requiring the discovery and inspection of documents;
> (c) receiving evidence on affidavit;
> (d) requisitioning any public record or copies thereof from any court or office;
> (e) issuing summons for examination of witnesses or documents; and
> (f) any other matter which may be prescribed.

Once the oversight body has considered an appeal, and if it decides that the complaint is justified, it needs to have adequate powers to order remedies. Better practice is that

the orders of the oversight body should be binding. This is necessary because if the oversight body can only make recommendations, many public authorities will simply ignore them and the requester would need to go to court to enforce them, thereby undermining the whole point of having an oversight body.

Once again, the situation in this regard is not clear in Jordan. The Law says nothing about this, but the Council is empowered to 'resolve' complaints, which seems to suggest binding powers.

Better practice is for the oversight body to have the following specific remedial powers:

- For the requester, to order release of the information but also other remedies, such as access in a certain format, a reduction in the fee and perhaps even compensation where a delay in the release of the information has caused the requester hardship or loss of funds.
- The body should ideally also have the power to order the public authority to undertake structural reforms in certain cases, namely where it is experiencing systemic problems in meeting its obligations under the law. An example of this might be to order the body to provide training to its officials where they are failing to meet their obligations due to a lack of understanding of the rules, or to order it to manage its record better, where poor information management results in it being unable to locate documents sufficiently quickly or perhaps at all.

Again, the situation is not clear under the Jordanian Law. The Law says nothing specific about this, but there is language in the Law which suggests that the Council can at least order the release of information, although it seems unlikely that it has the power to impose general remedies on public authorities.

Discussion Point

Does it make sense in the Jordanian context for the oversight body to be able to impose structural remedies on public authorities or would there be significant resistance and/or possible legal obstacles to this? If it would not be possible, what could be done to try to ensure that all public authorities were meeting their obligations under the Law?

Quotation

Article 19(8) of the Indian RTI law provides:

> In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—
>
> (a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—
>
> i) by providing access to information, if so requested, in a particular form;

ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
iii) by publishing certain information or categories of information;
iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
v) by enhancing the provision of training on the right to information for its officials;
vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;
(c) impose any of the penalties provided under this Act;
(d) reject the application.

Key Points:

1. Under international law, requesters should have the right to appeal against claimed breaches of the law to an independent body.

2. Better practice is to provide for three different levels of appeals: an internal one to a superior officer within the public authority; to an independent oversight body (information commission); and to the courts.

3. The information commission should resolve disputes both through mediation and through an adjudication procedure.

4. It is very important that the information commission be as independent from government as possible and that it have the power both to investigate complaints and to order appropriate remedies where it finds that the Law has been breached.

Session 8: Reporting, Promotional Activities and Monitoring and Evaluation

1. Annual Reports

Under the Jordanian Law, there is no formal obligation on public authorities to produce an annual report about what they have done to implement the right to information law. However it is better practice to do this, so as to provide a public record of progress in this area. In most countries, the information officer is the one who is responsible for producing these reports.

These reports serve a number of important purposes. They provide invaluable information about what is happening under the right to information law, absent which even simple questions like how many requests are being made cannot be answered. They also provide a picture of the variances in terms of implementation between different public authorities, including such things as which ones are getting more requests, which have taken more steps to implement the law, which are relying more heavily on certain types of exceptions. They thus provide a basis for assessing how well the system is working and whether certain types of adjustments need to be made to improve implementation.

Public authorities will have difficulties in producing decent reports if they wait until the end of the year to start collecting the information. So if they want to produce an annual report, they should think in advance what is needed and try, as far as possible, to put in place systems to collect it on an ongoing basis. The most important part of these reports is the detail on the requests that have been received. The following considerations should be taken into account in the way this should be treated:

- If the number of requests is very low – say only one or two per year – then it may not make sense to put in place a sophisticated system for reporting. But as the number of requests increases, which can be expected over time, then it makes sense to have a more sophisticated, i.e. automated, system.
- In relation to requests, the annual report should ideally contain the following types of information, much of which is statistical: the number of requests received, the number of times assistance was provided, the types of responses to requests (for example provided the information in full or in part, refused the request, directed the applicant to already published information, transferred the request to another public authority), the time taken to respond to requests, including the average time, any fees charged, the exceptions relied upon to refuse requests and how many times each was used, and any complaints and appeals.
- It is clear that this is an enormous amount of information and that having a simple automated system for tracking requests and how they are being dealt with is a great asset in terms of producing the report. A central tracking system

is also very useful in terms of managing requests internally (for example to notify the information officer when the time limit for responding is approaching and so on).

Discussion Point

Do you think public authorities in Jordan should be required to produce annual reports on implementation of the right to information law or would this take too much effort? In the latter case, how will the government be able to assess progress in this area?

Example

In some countries – such as Mexico and Canada – there are central tracking systems for all requests within the national public service. Having such a central tracking system requires some set-up costs (for example developing the software and making sure information officers know how to use it) but once such a system is in place, it is a very powerful tool for tracking requests not only within each public authority but also over the whole of the civil service.

Annual reports should also contain a number of other types of information:

- The steps that have been taken to develop a protocol for processing requests (it was noted earlier in the course that this is a necessary step to ensure that public authorities can process requests properly and in a timely fashion).
- The plan of action: this is another step that should be taken by each public authority to make sure they are implementing all of their obligations under the law. The plan of action could even include the protocol on processing requests (although the latter should eventually take the form of an instruction from a senior official).
- Steps taken to prepare a guide for requesters. This is another measure that all public authorities should put in place. However, it is not necessary to prepare a guide from scratch. It is perfectly possible to use a guide that has been prepared by another public authority, and just adapt it for each public authority. The guide should be quite simple and does not need to be more than a few pages. This should be made available on the website and also in physical format at each public office of the public authority.
- The measures taken by the public authority to meet its proactive publication obligations. This should include a description of the steps taken to make sure the website includes the required information, a list of the types of information made available on a proactive basis, any systems that have been put in place to ensure that proactive publication continues to take place over time and that information is maintained in an up-to-date form, and other means of disseminating information (i.e. in addition to on the website, taking into account that only 75 percent of Jordanians are online).

- A description of the main problems the public authority, or the information officer, has encountered in terms of implementing the Law. This is important to help ensure that attention is brought to bear on these problems and that measures are taken to address them.
- Finally, a list of any recommendations for reform that the public authority wishes to make. These might be of a legal or of a practical nature. Public authorities are a key stakeholder in the right to information system and, collectively, they are likely to have an enormous amount of information about how the system works and so on. It is very important for the government to receive their recommendations about how to improve the system.

2. Promotional Measures

Right to information laws are not self-executing in the sense that they can be implemented without some promotional measures being taken. The public needs to be informed about their new rights, officials need to be trained, and so on. The annual reports just discussed are one such promotional measure, which as noted provides invaluable information about overall implementation efforts.

Appointing an information officer is an important first step. In the Jordanian system, the head of the public authority bears responsibility for implementation. While he or she is allowed to appoint an information officer, this is not required. In practice, the head cannot be expected to take on these duties personally because he or she will be too busy. As a result, it is important that an information officer is appointed because absent this step, little progress in implementing the Law can be expected.

It may be noted that, in most countries, the information officer is central to the whole delivery of public authorities' obligations under the Law. Although this officer does not do all of the work of implementation he or she does organise almost all of that work and bears responsibility for making sure it happens. Unless and until the information officer is appointed, it is almost impossible for a public authority to have a good record in terms of implementation of the Law.

It is not enough simply to appoint an information officer. The person needs to be allocated enough time to do the work that this entails. This implies that this officer is relieved of some of his or her other duties, so as to be able to fulfil the information officer duties.

The appointment of the information officer should be formal in nature and he or she should have a clear set of responsibilities or terms of reference, based on the duties in the Law. Furthermore, for the information officer to be successful, he or she will need the cooperation of other officials working at the public authority. This should be made clear to the other staff through a formal statement along these lines (for example an instruction from the head of the public authority).

Public authorities also have a general responsibility to educate the public or raise general public awareness about the new right to information law. This is not a legal obligation under the Jordanian Law, although it is under many laws, but there is no reason why public authorities should not do it. Some of the key ways to engage in public education are as follows:

- In many countries, public authorities are required to prepare a guide for the public on how to use the law and how to make requests from that authority. This can be quite simple – two or three pages – but it should be clear and be made available on the website and in physical format at the public authority.
- The other measures that should be taken will depend on the nature of the public authority and the extent of its interaction with the public. Some public authorities – like the ministries and health and education and the police – interact extensively with the public while others, like finance, may have less direct interaction.
- One simple measure is to place posters advertising the right to information in every public office or waiting room at each public authority. If this were done by all public authorities, it would not be long before everyone had at least some idea about the right to information.
- There is no limit to other possibilities here, except for limits based on the imagination of information officers. Some common activities include holding public workshops and other events, hosting some activity annually on International Right to Know Day (28 September), and holding events to inform the private companies that interact with the public authority about the right to information and the possible implications for them.

Discussion Point

Has your public authority undertaken any activities to raise awareness among the general public about the right to information? Do you think this is a reasonable activity to expect public authorities to undertake?

Another very important promotional measure is to improve the records management practices at public authorities. This is important to give effect to the right to information; if you cannot find a document, you cannot provide it to the public in response to a request. But it is also important simply as a management tool. If you cannot find documents, then you cannot do your work properly. Put differently, good records management is an important tool for delivery of all work in the public sector (as well as in the private sector).

A key element of good records management is to develop clear standards for managing records and then to put those standards into place. Ideally, standards should be developed at the central level and all public authorities should be required to comply with those standards. This has several advantages:

- It ensures that all public authorities are held to the same records management standards.
- It is efficient inasmuch as each individual public authority does not need to make the effort and build the expertise required to develop standards.
- It avoids a situation where smaller public authorities have less developed and less sophisticated or practical records management standards.

Records management is a HUGE task that will undoubtedly be quite taxing for public authorities. It might make sense mainly to look forward on this issue. In other words, it might make sense to set strong standards for the new documents and records which are being created rather than spending too much time trying to reorganise the large volume of past records which most public authorities hold.

There is also a digital-paper issue here. In some respects, such as filing and organising, the digital world is much more powerful and efficient than the paper world. But there are also challenges with digital records, such as ensuring their preservation and integrity over time and ensuring their authenticity, including in terms of final copies. In the digital world, it is all too easy to mix up drafts and final copies and to replace, overwrite or otherwise destroy records. At the same time, digital is clearly the way of the future and it makes sense to think about leapfrogging directly into digital records management systems.

Discussion Point

Are the official records of your public authority paper or digital? Do you have any plans to move to digital? What do you see as some of the challenges?

Another obligation on all public authorities is to create and maintain an up-to-date list of all of the documents they hold, most particularly in digital format but ideally more broadly than that.

- This list should be made available on the website.
- For purposes of this list, public authorities need to define what they consider to be a 'document', which will clearly be a more limited idea than 'information' under the right to information law (which would even include emails).
- An initial effort will be required to create this list, which will need the participation of almost all staff (all of whom might be aware of different documents held by the public authority).
- And an ongoing effort will be required to maintain this list in an up-to-date fashion. Ideally, an online tool would be available for entering a document into the list as soon as it was created.

Public authorities need to put in place both internal and external communications systems. The latter are aimed at raising public awareness, addressed earlier. The former have a dual function, both to raise awareness among officials about the nature and importance of the right to information, and to make it clear that this is something that is taken seriously by the public authority and that officials are expected to adapt their behaviour so as to meet the obligations of the right to information regime.

- There are a number of ways that senior officials such as the minister or Director General (or senior civil servant at the public authority) can communicate messages about the right to information to staff. One is via email and different public authorities will have other ways of doing this (for example, bringing staff together for an in-person meeting).
- One of the key messages to be disseminated should be to inform staff about the right and to make it clear that senior management view this as a matter of some importance. These messages can also inform staff about their obligation to cooperate with the information officer and otherwise to collaborate on the main implementation systems. They can also be used to inform staff about changes that are being or have been introduced, such as the adoption of new legal rules or the establishment of new systems, for example for creating lists of documents or undertaking proactive publication.

Another important and challenging promotional measure is providing training to officials. This has a number of aspects:

- In principle, all officials need to receive some training/sensitisation on the right to information. The goal should be to move forward with this training in an efficient manner.
- The action plan needs to include a section detailing how the public authority intends to provide training to its entire staff and especially how it will train its information officer(s).
- While the responsibility for training staff ultimately lies with each public authority, it is obvious that different public authorities need to cooperate with each other, and with central training bodies, to ensure the provision of training (i.e. this is not something that can be done internally by each public authority on its own).
- There is a need to prioritise training aimed at information officers, given that they bear a significant part of the burden of implementation. This training also needs to be significantly more in-depth than the training provided to 'ordinary' officials. Indeed, information officers can help provide the second type of training one they have been trained themselves. For information officers, dedicated training courses of two or more days, will be needed.
- There are a number of ways that training can be expanded to cover all staff. One way is to integrated modules on the right to information into any ongoing training programmes that are being provided to officials. Depending on what is offered, this could be the initial training provided to new staff, in which case the right to information part of the training might be delivered over a couple of

days as part of a much longer course. It could also include modules in upgrade training for existing staff (including ongoing training provided to senior staff), in which case the modules might be a couple of hours.

- Information officers can also offer less formal training for staff at the premises of the public authority. This could range from very informal information sharing sessions (for example over lunch) to more formal presentations and training workshops.
- In due course, modules on the right to information should be included in school curricula, for example for children in the 13-15 year age range. This way, over time, all citizens will become aware of this right.
- Consideration should also be given to incorporating modules on the right to information into university courses, such as general courses on human rights for law students, or courses for students of public administration, journalism and so on.

Better practice is for each public authority to adopt an action plan setting out what it will do to implement the right to information law over the following years, say over the coming two or three years. This should be the main template or map for the organisation as to what it will do over the stipulated time period to implement the Law. The action plan should, in particular, address the following key issues:

- Set out the key priorities for the public authority over the time period. In other words, it should indicate clearly what activities the public authority will undertake during the time period, based on what it has prioritised. As this course has made clear, public authorities have quite a few obligations under the Law and it is necessary to set priorities regarding what will be done first.
- Provide a clear timeline for the achievement of each of the activities that have been identified as priorities. In some cases, these may be expressed as percentages. For example, a public authority may indicate that it will provide training to 50 percent of its staff during the first two years. Such timelines are very important as a yardstick against which progress in implementing the action plan should be measured.
- Make it clear who will be responsible for undertaking each priority action. In many cases, the information officer will be the lead person, but in most cases he or she will also need the support and cooperation of other officials. This should be listed clearly in the plan, which should also serve as a means of defining responsibilities. In allocating tasks, especially to the information officer, it is important for there to be a realistic assessment of the amount of time that each task will take, and to make sure that the person responsible actually has the time available to accomplish the task (otherwise, it will not get done and the action plan becomes merely aspirational as opposed to a proper planning document).

Discussion Point

Do you think it is reasonable to expect public authorities in Jordan to prepare action plans? What if these are just expected to be quite simple in nature?

Some of the key priorities that should probably be included in the initial action plan include the following:

- The measures to be taken to meet the proactive publication obligations. This should include what will be done to develop the website as the key tool for proactive disclosure, what information will be made available proactively and what will be done to create a list of documents that are published and that are available electronically.
- The measures to be taken to ensure that requests are dealt with in accordance with the rules, including the time limits. This should include any protocols and systems that will be put in place to ensure the proper processing of requests.
- Any measures to be taken to improve records management.
- The training plan.
- Any other measures to be taken (for example regarding public education, internal communications, systems for tracking requests and so on).

3. Monitoring and Evaluation

It is very important to monitor and evaluate progress towards achieving the action plan, because otherwise it can become simply a statement of aspirations as opposed to a real planning tool. If progress is good, the action plan may need to be amended and a more ambitious programme adopted, while if progress is weak, it may be necessary to adjust the goals so that they responds more closely to what can realistically be achieved. Note that the monitoring and evaluation should, therefore, take place as against the action plan.

It is important to think carefully about how to measure progress against commitments, as it is not always obvious how to do this. While it is easy enough to assess whether training has been provided to 50 percent of the staff, other types of assessments may be more difficult. For example, it may not be obvious how far along preparation of a protocol for processing requests is or how significant steps vis-à-vis proactive publication which fall short of the initial commitments in the action plan are.

The approach towards monitoring and evaluation should be action oriented rather than theoretical. It should contain recommendations that can be acted on, and not a report about what happened (or this part should be limited to what is needed to support the recommendations). Put differently, this is about looking forward, not looking backward (except as needed to plan forward).

When thinking about recommendations flowing from a monitoring and evaluation exercise, it is important to be aware of cases where senior management support may be needed to implement the recommendations (and, in this case, support from that quarter should probably be sought before the recommendations are made).

Thought also needs to go into what support and systems are needed to monitor progress. For example, the IT team may need to monitor progress on development of the website and the training team may need to monitor training activities. This should not be done at the end of the process, as it will be much harder to collect information afterwards than on an ongoing basis as tasks are being done.

Discussion Point

Does your public authority undertake monitoring and evaluation in relation to many of its other activities? Do you think it would be possible to do this in relation to the right to information? What are the drawbacks, if any?

Key Points:

1. Right to information legislation needs active steps to be taken to support implementation if this is to be successful.

2. A key measure is the preparation of the annual report, for which lead responsibility normally falls on the information officer, but he or she will need support from other officials as well.

3. A number of other promotional measures are needed including: public education and outreach; records management systems; preparation and publication of a list of documents held; an internal and external communications strategy; and training.

4. To set priorities and time limits for completing actions, each public authorities should to develop an action plan setting out what it will do to implement the Law, for example over a two year- or three-year period.

5. The action plan should include a monitoring and evaluation plan, which will indicate whether and to what extent the commitments it includes are being met.

Exercise G

Exercise G

Developing a Plan of Action

Working in Small Groups

Conclusions and Presentation of the Certificates

During this part of the training, the facilitator should bring back the sheet where the expectations were recorded at the beginning and foster a discussion among participants about whether and the extent to which they were met. Ideally, this should feed into a process of improvement of the training course, whether that involves revision of the Manual or simply a change in the way the material is presented by the facilitator.

At this point, participants should also be given an opportunity to make any other observations they might wish to. And the facilitator might present some concluding remarks on the course.

Finally, this session allows for the presentation of certificates, if these are being awarded to participants.

Closing Words

This part of the programme provides an opportunity for senior officials, whether or not they have taken part in the training programme, to give short presentations on the training, the importance of the right to information and related topics. The facilitator might also make some final remarks here.

--ENDS--