

Analysis of Law No. 47 for the Year 2007 Guaranteeing the Right to Obtain Information

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Executive Summary

Jordan was the first country in the Arab world to adopt a law giving individuals a right to access information held by public bodies, or a right to information (RTI) law, when it adopted Law No. 47 for the Year 2007 Guaranteeing the Right to Obtain Information (RTI Law). Although this was a breakthrough achievement, the Law is weak in comparison to international standards, as assessed using the RTI Rating developed by the Centre for Law and Democracy (CLD) and Access Info Europe, coming in 98th place out of 103 countries on the Rating. Being ahead of the pack also meant that there was little civil society or media engagement in the early days, inhibiting good implementation of the Law.

Jordan does not have a constitutional guarantee of the right to information, which can be a useful supplement to legislation, in particular inasmuch as this makes it clear that the law should be interpreted in a manner which is consistent with the fact that it gives effect to a constitutionally protected right. The guarantees of the right in the Law are themselves also weak inasmuch as they require individuals to have a “legitimate interest” in the information before they may make a request for it. Better practice is to protect the right of anyone to request any information.

The Law is generally broad in scope, covering a wide range of public authorities, although it does not cover private bodies that receive substantial funding from public sources. Only Jordanian citizens have a right to make requests, meaning that both foreigners and legal entities are excluded, although amendments currently before parliament would extend the right to foreign citizens on a reciprocal basis. In many countries, legal entities are an important requester group and there is also no reason to exclude foreigners.

One of the general weaknesses of the RTI Law is that it fails to include any rules relating to the proactive disclosure of information by public authorities (i.e. the obligation to publish information of key public interest even in the absence of a request). This has taken on increasing importance in recent times and modern RTI laws usually include detailed provisions on this. It is also an efficiency inasmuch as it takes a lot less time and effort to publish information proactively than to respond to a request for information.

The Law includes only limited rules relating to the procedures for receiving and processing requests, although this is a very important element in better practice RTI laws, which include fairly detailed procedural provisions. In terms of making requests, the Law requires requesters to provide information that is not strictly

relevant to the request, such as their workplace and address. Due to the “legitimate interest” requirement, they also have to indicate why they want the information, although international standards suggest that this should never be the case. It fails, however, to indicate how requests may be lodged, whereas better practice is to allow requests to be made in person, by mail, by fax or electronically. It also does not place any obligation on public authorities to provide assistance to requesters who need it, to provide requesters with a receipt acknowledging their request or to transfer requests to another public authority if they do not hold the information.

In terms of processing requests, there is no obligation on public authorities to comply with requesters’ preferences as to the format in which they receive the information, contrary to better practice. It would also be useful for the Law to make it clear that it is free to file a request and that requesters are free to reuse public sector information as they might wish, a key open data principle.

The regime of exceptions is central to the whole functioning of an RTI law inasmuch as it sets the dividing line between information which is and is not open. The RTI Law preserves existing secrecy provisions in other laws, although some of these date from a long time ago and signally fail to conform to international standards regarding secrecy. Better practice is to set out the main framework of exceptions, including all protected interests, in the RTI law, and then allow other laws to elaborate on but not expand this list. The RTI Law also provides for classification to be the main means by which confidentiality of a particular document is established. This has the advantage of requiring public authorities to identify the confidentiality interest in advance of a particular request, but it also fails to take into account the fact that the sensitivity of documents normally declines over time or the risk that documents will not be classified properly in the first place.

Better practice is to allow for information to be withheld only if the disclosure of that information would harm a legitimate interest protected by the law. A few of the exceptions in the Law go beyond what is recognised as legitimate under international law, either in their substance or breadth, while quite a few of the exceptions are not harm tested. The Law also fails to include a public interest override, whereby information should be disclosed notwithstanding that this would harm a protected interest, where this would serve the overall public interest, for example because the information provides evidence of corruption. The Law also fails to provide for consultations with third parties who provided information which is the subject of a request.

The system of appeals against refusals of requests is key to the right to information given that, absent a right of appeal, access essentially remains within the discretion of the public authority. The RTI Law establishes the Information Council as the body

to which appeals may be directed, in addition to court challenges. Having an administrative level of appeal along these lines is very important because the courts are simply too expensive and time-consuming for the vast majority of requesters. At the same time, a serious weakness of the system is that the Council is composed entirely of government and other official representatives. The proposed amendments to the Law would add some independent individuals to the Council, but it would remain dominated by officials. It is very important that oversight bodies be independent of government, essentially for the same reasons that judicial independence is key.

The appeals process could also be improved by broadening the grounds for an appeal beyond simply refusals to provide the information (to include, for example, cases where the time limits were not respected or excessive fees were charged), by formally allocating adequate both investigatory and order-making powers to the oversight body and by making it clear that, on an appeal, the public authority bears the burden of proof.

It is important, among other things to signal that this will not be tolerated, to provide for sanctions for officials who wilfully obstruct access to information, for example by destroying or hiding information. Experience from other countries suggests that administrative or disciplinary sanctions are more likely to be applied, and hence to be effective, than criminal sanctions. It is also useful to grant the oversight body the power to require public authorities to put in place structural measures to address problems, such as by training their staff or appointing an information officer.

In parallel to sanctions, two types of protections are important. The first is for officials who release information, in good faith, pursuant to a request. Otherwise, officials will always be worried about the possibility of being sanctioned for this, making them reluctant to disclose information. The second is to provide protection for whistleblowers, individuals who, again in good faith, release information that exposes wrongdoing. Neither protection is found in the RTI Law.

Finally, a number of promotional measures are important to ensure the proper implementation of right to information laws. Requiring public authorities to appoint information officers is one such measure (at present, this is permitted but not required under the Law), and also to undertake public awareness raising activities, so as to broaden awareness about, and hence use of, the Law. The Law does require public authorities to manage their records in accordance with professional practices, but it fails to put in place a clear system for this, which would involve having a central body set and enforce minimum standards, and also provide assistance to public authorities to meet those standards.

Introduction¹

Jordan was the very first Arab country to adopt a law giving individuals a right to access information held by public bodies, or a right to information law, in the form of Law No. 47 for the Year 2007 Guaranteeing the Right to Obtain Information.² While this trail-blazing was warmly welcomed by right to information advocates and development organisations, it also meant that Jordan did not have the chance to learn from its neighbours, as those that have followed it have been able to do.

Being the first Arab country to adopt a right to information law has had a number of consequences for Jordan. One is that the Law, while very welcome, remains weak in comparison to international standards and other right to information laws around the world. It performs well in terms of scope, covering a wide range of bodies and types of information, but less well in other areas, including the procedures for making requests, exceptions to the right of access, appeals against refusals to provide access, the system of sanctions and protections for officials and the promotional measures it puts in place.

A second consequence of being ahead of the pack in the Arab World was that few Jordanian citizens or even local civil society organisations were very aware of the right to information as a human rights or development issue. This meant that there was very low demand for information, especially in the early years after the Law was first adopted. Experience in countries around the world demonstrates clearly that strong demand is essential for successful implementation of a right to information law.

This Analysis provides an assessment of Law No. 47 for the Year 2007 Guaranteeing the Right to Obtain Information, highlighting strengths and weaknesses, and making specific recommendations for reform as needed to bring the Law more fully into line with international standards and better practice right to information laws. The Analysis refers to the RTI Rating,³ an internationally recognised methodology for assessing the strength of right to information legislation developed by the Centre for Law and Democracy (CLD) and Access Info Europe.⁴ According to the RTI Rating, the

¹ This Analysis is based on a translation of the Law provided by UNESCO.

² Published in the Official Gazette No. 4831, p. 4142, 17 June 2007. Available in Arabic at: <http://www.lob.gov.jo/AR/Pages/AdvancedSearch.aspx>.

³ Available at: <http://www.RTI-Rating.org>.

⁴ For example, the World Bank often relies on the RTI Rating in its dialogue with countries which are drafting right to information legislation, the Open Government Partnership (OGP) Secretariat often consults the Rating to see if countries have adopted right to information laws and the Millenium Challenge Corporation formally relies on the Rating for the same purpose.

Law scores just 53 out of a possible total of 150 points, which places it in 98th position globally from among the 103 countries that are present on the RTI Rating.⁵ The scores of the Law according to the seven RTI Rating categories are provided in the table below:

Category	Max Points	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 %

It is clear from the scores noted above that Jordan could do better and that there are a number of areas where reform of the Law should be considered. These are discussed in more detail below.

It may be noted that the National Guidance Committee at the Lower House of Parliament has started to discuss amendments to the Law, which were submitted by the Government in 2012. As relevant, the Analysis will refer to these as yet still draft amendments.

1. Guarantees of the Right of Access and Scope

Ideally, the right to information law would be grounded in a constitutional provision entrenching the right as a fundamental human right. This not only signals the importance of access to information as a social value but also has important legal implications. In particular, where a right to information law can be seen as giving effect to a constitutionally protected right, this would mean that it would be more likely to prevail in case of a conflict between that law and any other law. The current Constitution of Jordan does not guarantee the right to information.

Article 7 of the Law provides that every Jordanian has a right to obtain information pursuant to the Law, "if he has a legitimate interest or reason therein". There are

⁵ See <http://www.rti-rating.org/country-data>.

two problems with this formulation. First, in terms of principle, and given that the right of access is a human right, individuals should not have to demonstrate any particular interest or reason for wishing to exercise that right. The mere fact that they are requesting information should be sufficient to engage their right to access it. Second, at a practical level, a provision of this sort places an additional burden on officials, who are then required to obtain and assess the reasons that individuals wish to access information (and ultimately to decide whether or not they are legitimate). This can also turn into an exercise of official discretion which may be abused to deny the right to information. Better practice is not to place this sort of condition on whether or not a request for information is legitimate.

Better practice is for right to information laws to describe the benefits of the right to information, either in a section on objectives or purposes, or in a preamble. Then, an operative section of the law can require those tasked with interpreting the law – whether this is the “responsible official”, the Council or the courts – in the manner that best gives effect to those benefits (or objectives or purposes). This has the dual advantages of spelling out the benefits of the right to information and of promoting positive interpretation of the law. The Law does not include any provisions along these lines.

Another consequence of Article 7 is that the right of access is limited to Jordanians, to the exclusion not only of foreigners but also of legal persons, such as corporations and non-governmental organisations. Neither exclusion makes practical sense and both limit the scope of the right to information. If information is sensitive, for example on national security grounds, it should not be provided to either citizens or foreigners. Furthermore, this opens the door to Jordanians acting as mediators, potentially for a profit, for foreigners to get information. There is, therefore, no need to exclude non-citizens from the ambit of the law simply to protect confidentiality interests. Experience in other countries also demonstrates that the volume of requests by foreigners tends to be low, so that it does not place an undue burden on the civil service. Furthermore, such requests are often made by foreign researchers undertaking useful research into the country or by companies wishing to invest, both of which are broadly in Jordan’s public interest. Finally, legal persons are an important requester group in many countries and in that way contribute to the benefits associated with the right to information.

Amendments to the Law currently being considered provide that non-Jordanians will have a right to request information if they have a legitimate interest in the information and based on the idea of reciprocity (i.e. if the country of nationality of the non-Jordanian allows Jordanians to make requests). This is positive but, as noted above, the right of access should not be conditioned on having an interest in the information. The issue of reciprocity would also be impractical for public bodies,

because they do not in practice have the tools to find out whether or not the country of nationality allowed Jordanians to make requests. It would, therefore, be preferable simply to allow all foreigners to make requests.

The right to information, as an internationally recognised human right, should apply to all types of information held by all public bodies. Article 2 defines information as including a wide range of types of material, however it is stored, which is “under the administration or jurisdiction of the responsible official”. That official, in turn, is defined as the “Prime Minister, Minister, chair or director general of the department”. This is probably fine, although most right to information laws define information as being under the jurisdiction or control (or simply held by) a public body, rather than a specific individual.

Ideally, a right to information law should make it clear that requesters may either request information, such as the overall amount that the country intends to spend in 2016, or a specific document, such as the 2016 budget. While the definition of information in Article 2 may be read so as to include both of these, there is also a possibility that it might not, and it is better practice to make this aspect of the right clear. At the same time, some laws provide that the obligation of public bodies to provide information may be limited to cases where the costs of compiling that information (i.e. gathering it from different documents where it is spread among them) is not excessive.

Article 2 of the Law defines a public body (‘department’) broadly to include any “Ministry, Department, authority, body, any public institution, public official institution or the company which undertakes the management of that public facility”. This is understood to cover the entire executive branch of government as well as the legislative and judicial branches, State owned enterprises and other public bodies. It might be useful to make it explicit that it covers constitutional and statutory bodies and any (private) bodies that are significantly funded by public resources. It should also be extended to cover private bodies that undertake public functions, even if they do so without receiving public funds.

Recommendations:

- In due course, consideration should be given to incorporating a guarantee of the right to information into the Jordanian constitution.
- The phrase “if he has a legitimate interest or reason therein” should be removed from Article 7 of the Law, which should simply guarantee the right of individuals to access information upon request.
- Consideration should be given to including a section either in the body of

the Law or in the preamble setting out the benefits of the right to information and then, in the body of the Law, to including a provision requiring those tasked with interpreting the Law to do so in the manner that best gives effect to those benefits.

- The Law should grant both legal persons and non-citizens the right to file information requests.
- Consideration should be given to whether it might be preferable to define information as being under the control of a public body rather than the responsible official.
- The Law should provide that requesters have a right to request both information and documents, although consideration might be given to placing a limit on the amount of time public bodies are required to spend to compile information from different documents.
- Consideration should be given to clarifying in the definition of a public body ('department') that it includes constitutional and statutory bodies, any bodies that receive significant public funded and private bodies that undertake public functions.

Right of Access

Indicator		Max	Points	Article
1	The legal framework (including jurisprudence) recognises a fundamental right of access to information.	2	0	
2	The legal framework creates a specific presumption in favour of access to all information held by public authorities, subject only to limited exceptions.	2	0	7
3	The legal framework contains a specific statement of principles calling for a broad interpretation of the RTI law. The legal framework emphasises the benefits of the right to information.	2	0	
TOTAL		6	0	

Scope

Indicator		Max	Points	Article
4	Everyone (including non-citizens and legal entities) has the right to file requests for information.	2	0	7
5	The right of access applies to all material held by or on behalf of public authorities which is recorded in any format, regardless of who produced it.	4	4	2
6	Requesters have a right to access both information and records/documents (i.e. a right both to ask for information	2	0	

	and to apply for specific documents).			
7	The right of access applies to the executive branch with no bodies or classes of information excluded. This includes executive (cabinet) and administration including all ministries, departments, local government, public schools, public health care bodies, the police, the armed forces, security services, and bodies owned or controlled by the above.	8	8	2
8	The right of access applies to the legislature, including both administrative and other information, with no bodies excluded.	4	4	2
9	The right of access applies to the judicial branch, including both administrative and other information, with no bodies excluded.	4	4	2
10	The right of access applies to State-owned enterprises (commercial entities that are owned or controlled by the State).	2	2	2
11	The right of access applies to other public authorities, including constitutional, statutory and oversight bodies (such as an election commission or information commission/er).	2	2	2
12	The right of access applies to a) private bodies that perform a public function and b) private bodies that receive significant public funding.	2	1	2
TOTAL		30	25	

2. Proactive Publication of Information

One of the weaknesses of the Law is that it fails to impose any obligations on public bodies to make information available on a proactive basis, i.e. in the absence of a request for information. In most countries, and this is certainly also the case in Jordan, a large majority of citizens will never make a formal request for information under the right to information law. For these citizens, apart from informal means of accessing information, proactive publication of information is the main way that they access information. Put differently, proactive publication of information is an important way of ensuring that all citizens have access to at least a common, minimum platform of information about public bodies and their work.

Furthermore, with the open data movement, countries around the world are discovering the economic potential of proactive publication of information, and especially the publication of data sets in open, machine processible formats. Programmers, data geeks and software companies around the world are making use of this type of information to provide useful and profitable products and services.

In recognition of these benefits, modern right to information laws are imposing increasingly robust requirements on public bodies to disclose information on a proactive basis. As an example, section 4(1)(b) of the Indian Right to Information Act, 2005, requires all public bodies to publish, on a proactive basis, 17 different categories of information. Proactive publication obligations in different laws cover a range of types or categories of information, of which some of the more common are:

- Information about the public body such as its structure, legal and policy framework, decision-making procedures, staff, main programmes and projects, especially those which directly affect the public, and so on.
- Information about opportunities for the public to participate in decision-making at the public body.
- Financial information about the body, including its revenue and expenditure budgets.
- Information about licences, concessions and public benefits entered into or provided by the public body.
- Information about the types of information the public body holds, along with the contact details of the person responsible for receiving and processing requests for information.

Recommendation:

- The Law should incorporate a strong section on the proactive publication or disclosure of information in line with the comments above.

Note: The RTI Rating did not assess the duty to publish and so no excerpt from it is provided here.

3. Procedures for Making Requests for Information

A key means of accessing information is through making requests and, to ensure that this works in an efficient manner, international standards require that right to information legislation includes comprehensive rules relating to the requesting process. This means that the law should establish both clear and simple rules for filing or making requests and fair and user-friendly rules on processing requests. Unfortunately, this is one of the areas where the Law does least well, mostly because it simply fails to include the necessary detail relating to procedural issues.

The Law does include a few basic rules on both making and processing requests. In terms of the former, applicants must provide their name, place of residence, work and “any other particulars decided by the Council” (Article 9(a)), as well as a clear description of the information sought (Article 9(b)). This is presumably to be achieved via the form for making requests which is to be prepared by the Information Commission (Article 6(a)(1)) and approved by the Information Council (Article 4(c)). The Law does not include any other particulars regarding the making of requests.

In terms of the information to be provided on a request for information, better practice is to limit this to information which is strictly required to process the request. Best practice in this area is to require requesters only to provide a clear description of the information sought and an address for provision of the information, which may be an email address for information which is provided electronically. It is not necessary to require other details such as the name, residence and place of work of the applicant. If the limitation on the scope of the Law to citizens is retained, some system would presumably be required to establish that.

The Law also fails to address a number of issues relating to the making of requests, including the following:

- Although the Law does not explicitly require requesters to provide a reason for their requests, at the same time it does not prohibit public bodies from asking for such a reason. Moreover, Article 7, which grants a right to request information only if the requester has a “legitimate interest” in the information, suggests that reasons may need to be provided. Requesters should never be expected to provide reasons for their requests because the right to information is a human right, which a person should not have to justify exercising.
- The Law does not make it clear how requests may actually be lodged, beyond indicating that this they should be done via the form and in writing. Better practice is to indicate that requests may be lodged in different ways, including by mail, in person, by fax and electronically (either by email or via an online form). It may be noted that the fact that requests need to be made in writing could be a barrier to their being submitted electronically, unless appropriate measures are put in place for this.
- The Law does not provide for a clear obligation on public bodies or the responsible official to provide assistance to requesters who need it. A requester may need such assistance either due to illiteracy or disability, or because he or she is having difficulty describing the information sought clearly (a common problem in many countries). Article 8 of the Law does

- provide that the responsible official should “facilitate the obtainment of information” but this is a very general statement.
- Public bodies are also not required to provide requesters with a dated receipt to acknowledge their requests. Such receipts are important as evidence that the request has been made, for example as the basis for an appeal if no response is provided by the public body to the request.
 - Where public bodies do not hold the information, Article 12 of the Law simply requires them to inform the requester of this. Better practice in such cases is to require the public body to transfer the request if it is aware of another body which holds the information, and to inform the requester about this, or simply to inform the requester if it is not aware of another such body.

In terms of the rules for processing requests, a hallmark of strong right to information legislation is that public bodies should be required to comply with requesters’ preferences regarding the format in which they access the information, whether electronically, through a photocopy, by inspecting the documents or in some other way. Article 11(a) provides that where information cannot be copied, the requester shall be shown it instead, but otherwise the Law does not include any rules relating to the format of access.

According to Article (9(c) of the Law, public bodies must respond to requests within thirty days (which is approximately 20 working days). This is reasonable but better practice is to provide for a shorter time limit – say of ten working days – and then allow for this to be extended for more complex requests, for example where finding the information requires a search through a larger number of documents or consultations with third parties is required. It may be noted that the proposed amendments to the Law would reduce this to 15 days (or ten working days), which is very much in line with international standards. It is also better practice to indicate that the time limit is a maximum, and that public bodies are required to respond to requests as soon as possible.

International standards mandate that it should be free to file a request for information and that requesters should only be charged the actual costs incurred by a public body in reproducing and delivering the information. The Law generally meets these standards, with Article 11(a) indicating that the requester has to cover the cost of copying the document and Article 18 indicating that the amount for this shall be specified by the Council of Ministers, on the recommendation of the Information Council. It would be preferable if the Law made it explicit that no fee

could be charged simply for making a request.⁶ Better practice is also to provide for fee waivers for poorer requesters. Neither of these two points are mentioned in the Law.

The Law is also silent regarding the matter of whether or not requesters are free to reuse information they receive via a request as they might wish. The idea of free reuse of information lies at the heart of the open data movement and the considerable economic activity it has generated. Essentially, absent clear rules on reuse, individuals may be reluctant to engage in further processing of information with a view to transforming it into something more valuable. In many countries, the rules on reuse are set out in open licences for public sector information (while privately owned information remains subject to applicable intellectual property rules).

Recommendations:

- Consideration should be given to limiting the information that requesters are required to provide on the form for making requests to a description of the information sought and an address for provision of that information.
- The Law should make it clear that requesters may not be required to provide reasons for their requests.
- The Law should make it clear that requests may be lodged in different ways, including by mail, in person, by fax and electronically.
- The Law should set out clearly and specifically the obligation of public bodies to provide assistance to requesters who need it for whatever reason.
- Public bodies should be required to provide requesters with a dated receipt acknowledging their requests.
- Where public bodies do not hold requested information, they should be required to transfer the request to another body which holds the information and to inform the requester about this, if they are aware of another such body, or simply to inform the requester if they are not.
- Public bodies should be required to provide access to information in the format indicated by requesters unless the information is not technically available in that format, or providing it in that format would damage the record or be unduly burdensome.
- The proposed amendments to the Law to reduce the time limit for

⁶ It may be noted that Article 111 of the Constitution of Jordan provides that no tax or duty may be imposed unless this is provided for by law, which would preclude the imposition of a fee for lodging a request. But it would still be preferable for this to be made quite clear in the right to information law.

responding to requests to 15 days should be adopted, but consideration should be given to allowing for extensions for complex requests. In addition, public bodies should be required to respond to requests as soon as possible, with the time limit being understood as a maximum rather than the normal time for responding.

- Consideration should be given to making it explicit that no fee may be charged simply for making a request for information and to putting in place a system of fee waivers for poorer requesters.
- The Law should establish a set of rules guaranteeing free reuse of public sector information, for example through a system of open licences.

Indicator	Max	Points	Article
13	2	0	
14	2	0	9(a), (b), 4(c), 6(a)(a)
15	2	0	
16	2	0	
17	2	0	
18	2	0	
19	2	0	
20	2	0	11(a)
21	2	0	
22	2	1	9(c)

	manner of satisfying the request (including through publication).			
23	There are clear limits on timeline extensions (20 working days or less), including a requirement that requesters be notified and provided with the reasons for the extension.	2	2	
24	It is free to file requests.	2	2	
25	There are clear rules relating to access fees, which are set centrally, rather than being determined by individual public authorities. These include a requirement that fees be limited to the cost of reproducing and sending the information (so that inspection of documents and electronic copies are free) and a certain initial number of pages (at least 20) are provided for free.	2	0	18
26	There are fee waivers for impecunious requesters	2	0	
27	There are no limitations on or charges for reuse of information received from public bodies, except where a third party (which is not a public authority) holds a legally protected copyright over the information.	2	0	
TOTAL		30	5	

4. Exceptions to the Right of Access

The right to information is not absolute and international law recognises a number of legitimate interests which may justify a refusal to provide access to information, such as national security, good relations with other States, privacy and so on. At the same time, international law establishes a number of standards and protections against the overbroad application of exceptions to the right of access. Indeed, the way the regime of exceptions in a right to information law is crafted is one of its most important features, since this draws the important dividing line between information which must be disclosed and that which may be withheld.

A key issue regarding the regime of exceptions is the relationship between the new right to information law and pre-existing secrecy rules, many of which will not meet the standards for secrecy established by the new law. In Jordan, as the recent publication, *Assessment of Media Development in Jordan: Based on UNESCO's Media Development Indicators* indicates, a number of existing laws include unduly broad provisions on secrecy.⁷ The passage of an RTI law is meant to herald a break from the old, secretive ways of the past and better practice is for it to provide protection

⁷ UNESCO, 2015, Paris, pp. 52-54. Available in English and Arabic at: <http://www.unesco.org/new/en/communication-and-information/resources/publications-and-communication-materials/publications/full-list/assessment-of-media-development-in-jordan/>.

for all legitimate secrecy interest, and then to override other laws to the extent that they go beyond this. This does not mean that other laws may not elaborate on the nature of a secrecy interest that is recognised in the right to information law, such as national security or privacy. But other laws cannot establish new or more extensive grounds for secrecy than are recognised in the right to information law.

Unfortunately, the Jordanian right to information law does not override other laws, as is clear from its Articles 7 and 13(a). Indeed, it calls on public bodies to classify all information that is deemed to be confidential according to other legislation within three months of its coming into force (which may be extended for another three months) (see Article 14). Article 11(c) provides that such classification must precede any application for information, which suggests that public bodies must provide access to any information that is not classified. But in practice this does not happen, even though the large majority of public bodies have not in fact classified their information.⁸ Ultimately, relying on classification as a means of indicating what information should and should not be disclosed is problematical, since there is no guarantee that classification will be done properly in the first place and the sensitivity of information changes, sometimes dramatically, over time.

Instead of relying on classification, the system of exceptions should be based on the core idea of withholding information only where its disclosure would cause harm to a legitimate or protected interest, such as national security or privacy. In this case, the right to information should provide a comprehensive list of such legitimate interests, and allow for access to information to be refused only where disclosure of the information would pose a specific risk of harm to one of those interests.

In terms of the specific interests which are protected by the Law, most are consistent with international standards in this area. Three, however, go beyond what is recognised as legitimate under international law, as follows:

- Article 10 prohibits access to information which “prompts the imprinting of religious, racial, ethnic, or discrimination due to gender or colour”. While this may seem legitimate, it is important to recognise that this is not a general restriction on freedom of expression but a limitation on access to information which is held by a public body. Normally, public bodies should not hold information which promotes discrimination. And, if they do, that information should be made public, rather than kept secret, where it might continue to lead to discrimination.
- Articles 13(e) and (f) define privacy too broadly, to include “professional secrets”, which tends to be defined far too broadly, and all correspondence, including with public bodies. Better practice is simply to provide protection

⁸ *Ibid.*, p. 49.

- against unreasonable invasions of privacy, without specifying what exactly that might include.
- Article 13(i) covers not only intellectual property held by private third parties but also public intellectual property which, as noted above, should actually be waived through an open licence.

The second part of the test for exceptions under international law is that disclosure of the information would harm the protected interest. Unfortunately, most of the exceptions in the Law do not incorporate a harm test. This includes the following:

- Article 13(b) protects information classified as confidential in agreement with another State rather than information the disclosure of which would harm relations with another State.
- Article 13(c) protects information “appertaining to national defence” rather than information the disclosure of which would harm national defence.
- Article 13(d) requires the consent of the responsible official before information containing “analyses, recommendations, suggestions or consultations” may be made public, rather than covering only information the disclosure of which would harm the free and frank provision of advice in future.
- Article 13(g) protects information that would affect, rather than harm, negotiations between Jordan and another State or party.
- Article 13(h) protects information relating to investigations, rather than information the disclosure of which would harm those investigations.

A third element of the international test for exceptions is what is known as the public interest override, which mandates that information can only be withheld if the harm to the protected interest would outweigh the benefits of disclosure of the information. In other words where, on balance, the benefits of disclosure are greater than the harm, the information should still be disclosed. This is a crucial part of the test for exceptions, and prevents even minor harms from preventing the disclosure of sometimes very important public interest information. This might be the case, for example, where information was private in nature but also disclosed evidence of serious corruption by the person involved. It is obvious that in such cases the person should not be able to claim privacy so as to keep their corrupt activities secret. The Law does not include a public interest override.

Better practice right to information laws place overall time limits on the secrecy of information in recognition of the fact that the sensitivity of information declines over time. In some cases this time limit is 30 years, although the modern tendency is to reduce it to 20 or even 15 years, in light of the fact that information dates and becomes less sensitive far more quickly in the modern era. Article 19 of the Law

provides that the Council of Ministers shall issue the necessary by-laws for implementing the Law, including one “which defines the protected documents that may be revealed and on which a minimum period of thirty years of retaining them has elapsed”. The exact meaning of this is not clear, although it is clearly a form of overall time limit on secrecy. Better practice would be to impose an overall presumption that all information becomes public after a set time limit, and perhaps to give the Council of Ministers the power to extend the time limit in exceptional cases where information remained sensitive for whatever reason.

Article 11(b) provides that where only part of a document is secret, that part should be removed and the rest of the document made public, a form of severability clause which is in line with international standards. The Law does not, however, provide for consultation with third parties where information provided by them on a confidential basis is the subject of a request. Such consultation allows the third party either to consent to the disclosure of the information or to provide reasons as to why he or she does not think it should be disclosed, in which case the public body should take those reasons into account when deciding whether or not the information falls within the scope of the regime of exceptions.

According to Article 9(d), where a public body refuses a request for information, it must provide the requester with a “grounded and justified” decision, while Article 12 requires public bodies to indicate where the information is not available or has been destroyed. These rules are in line with international standards. However, better practice is also to require public bodies to identify the exact provision in the Law they are relying on to deny access – which can facilitate the ability of the requester to lodge an appeal – and also to provide the requester with information about his or her right to lodge an appeal.

Recommendations:

- In case of conflict, the right to information law should override other (secrecy) laws rather than as is currently the case, where the right to information law preserves exceptions or secrecy provisions in other laws.
- The system in the Law whereby classification is supposed to serve as the primary reason to deny access should be replaced by a more principled system based on the idea of protecting the legitimate interests listed in the right to information law against harm.
- The exception in Article 10 should be removed and the exceptions in Articles 13(e), (f) and (i) should be narrowed in line with the comments above.
- All of the exceptions should incorporate a harm test.

- The Law should include a public interest override so that information may only be withheld where the harm to the protected interest outweighs the benefits of disclosure.
- The rule on overall time limits for secrecy in Article 19 should be replaced by a simple presumption in favour of all information becoming public after a set time limit, with a power vested in the Council of Ministers to extend secrecy beyond that time limit where this was exceptionally justified.
- Consideration should be given to adding a provision on consultation with third parties to the Law.
- Article 9(d) should require public bodies to inform requesters of the exact provision in the Law that they are relying on to deny access, as well as about requesters' right to lodge an appeal against their decision to deny access.

Indicator	Max	Points	Article
28	4	0	2, 7, 11(c), 13(a), 14
29	10	7	10, 13
30	4	0	13
31	4	0	
32	2	0	19

33	Clear and appropriate procedures are in place for consulting with third parties who provided information which is the subject of a request on a confidential basis. Public authorities shall take into account any objections by third parties when considering requests for information, but third parties do not have veto power over the release of information.	2	0	
34	There is a severability clause so that where only part of a record is covered by an exception the remainder must be disclosed.	2	2	11(b)
35	When refusing to provide access to information, public authorities must a) state the exact legal grounds and reason(s) for the refusal and b) inform the applicant of the relevant appeals procedures.	2	1	9(d), 12
TOTAL		30	10	

5. Appeals Against Refusals to Provide Access

A very important feature of a strong right to information system is a robust system of appeals. The adoption of a right to information law brings very significant changes in terms of the information relationship between officials and citizens and a strong system of appeals is necessary in order to ensure that the rules are interpreted and applied in an appropriate manner.

Many right to information laws provide for three levels of appeals. The first level is an internal review of the decision by a higher authority in the same public body which originally rejected the request. Given that, in the Jordanian system, the responsible official is presumptively the head of the public body, although this function may be delegated, it may not make sense to bother with an internal appeal (there is no point in appealing a decision by the head of the body because there is no one more senior in the body to consider that appeal).

The third level of appeal is to the courts, which in most countries always have a role to play in ensuring that legislation is interpreted and applied properly. Article 17(a) of the Jordanian Law provides for an appeal to the Higher Court of Justice (now the Administrative Court) within 30 days (which the amendments propose to reduce to 15 days) where a request for information has been rejected or not responded to within the time limits set out in the Law. Where a complaint has been lodged with the Council (see below), the 30-day period is suspended until that complaint has been decided. This is broadly in line with international standards, although better practice is to allow for an appeal not only where a request has been rejected (or not responded to) but also where it has otherwise not been processed in accordance with the rules (for example, where access is not provided in the right format or an excessive fee has been charged for access). It is also problematical to reduce the

time limit for lodging an appeal to just 15 days. For example, the individual might be out of the country for this entire period.

It is the second level of appeal, however, which is in most cases the most important. This level of appeal is to an administrative body which is independent from or external to the original decision-maker. In many countries, this body is called an information commission or commissioner, while in Jordan it is the Information Council (with the Information Commissioner playing a secretarial or support role to the Council). According to Article 4(b) of the Law, one of the functions of the Council is to examine and settle complaints, while Articles 6(2) and 6(3) provide for the Information Commissioner to prepare rules on the processing of complaints and to prepare individual complaints for consideration by the Council. Finally, Article 17(b) provides requesters with the right to lodge complaints with the Council.

According to international standards, the administrative oversight body that hears complaints must be independent of government, given that most complaints will relate to the manner in which government has processed a request. According to Article 2 of the Law, the Chair of the Council is the Minister of Culture. Article 3(a) indicates the other members, which include the Information Commissioner (the Director General of the National Library), the Secretary General of the Ministry of Interior, the Secretary General of the Information Higher Council,⁹ the Director General of the Department of Statistics, the Director General of the National Center of Information Technology, the Director General of Moral Guidance in the Armed Forces and the General Commissioner of Human Rights. All of these individuals represent public bodies and many represent politically accountable organs of government. As a result, the Council signally fails to respect the international rule on independence of such oversight bodies.

The amendments to the Law currently being considered would add the Presidents of the Jordan Press Association (JPA) and the Jordan Bar Association (JBA), and the Director of the Jordan Media Commission (JMC) as members of the Council. While this is an improvement, in particular inasmuch as it adds two members who are not from government, namely the Presidents of the JPA and JBA, it still falls far short of what is required by international standards.

The latter require, for example, that the members of the oversight body are appointed in a manner that is protected against political interference, that they have security of tenure and are protected against arbitrary dismissal once appointed, that the body reports to and has its budget approved by the parliament (or that other effective systems are in place to protect its financial independence) and that there

⁹ This body has been abolished and this is reflected in the proposed amendments to the Law.

are prohibitions on individuals with strong political connections from being appointed to the body. None of these conditions are met in the case of the Council, taking into account both its membership and the fact that the National Library, a public body effectively serves as its secretariat.

In addition to the requirement of independence, it is important that the oversight body should have the necessary powers both to investigate complaints properly and to provide for proper remedies in case they find that the Law has not been respected. The Law is silent as to the powers of the Council. Some of the powers that it needs are as follows:

- Powers to investigate complaints including to review all information, including information which is claimed to be secrecy, to compel witnesses to appear before it and to conduct on-site investigations at public bodies where this is necessary.
- Powers to order appropriate remedies for requesters, including that the public body should provide information to the requester. Such orders should be legally binding in nature so that public bodies are bound to either follow them or appeal them to the courts.¹⁰

There are also a number of procedural matters relating to appeals which should be spelled out in the right to information law, including the following:

- Complaints to the administrative oversight body should be free and should not require a lawyer.
- The Law should provide for clear procedures, including time limits, for decisions, by oversight bodies. According to Article 6(2) of the Law, the Commission is supposed to develop procedures relating to the processing of complaints by the Council, although it is not clear whether or not this has been done. According to Article 17(c) of the Law, the Council is supposed to decide complaints within 30 days, which the amendments would reduce to 15 days. In practice, it would be difficult to decide more complex complaints fairly within such a short period of time, given that the process should provide both the complainant and the public body (and potentially also an involved third party) with an opportunity to make representations. As a result, a 60-day maximum time limit might be more realistic.
- In relation to a complaint, the public body should bear the burden of proving that it acted in compliance with the Law. There are two main reasons for this. First, the public body has access to all of the relevant information about the matter, whereas the complainant has access to very little information. It is

¹⁰ It is a positive feature of the Jordanian system that, even though the Council's decisions are not binding, according to our information they have been followed in practice in 36 of the 38 cases that the Council has decided.

only fair to place the burden of proof on the party that has access to the relevant information. Second, an improper denial of access to information is a denial of a human right and it should always be up to the State to show that it has not acted in a way which undermines human rights.

Recommendations:

- The grounds for appeals to both the courts and the Council should be broadened to include any failure to process a request in accordance with the legal rules.
- The oversight body which processes complaints should be protected against any possible interference in or influence over its decisions by government, including through an appointments process which ensures that its members are personally independent of government and systems which ensure that, as an institution, it is administratively and financially independent of government.
- The Law should explicitly allocate the powers noted above – both to investigate and then to resolve complaints – to the oversight body.
- The Law should also establish clear procedural rules for the processing of complaints, as outlined above. This responsibility may be delegated – as in the case of the Law to the Information Commission – but the rules should be set out clearly in a legally binding form.
- Consideration should be given to providing for a longer time period, for example up to 60 days, for the Council to decide on complaints.

Indicator	Max	Points	Article
36	2	0	
37	2	2	17(b)
38	2	0	3(a)
39	2	0	
40	2	0	

41	The independent oversight body has the necessary mandate and power to perform its functions, including to review classified documents and inspect the premises of public bodies.	2	0	
42	The decisions of the independent oversight body are binding.	2	1	4(b)
43	In deciding an appeal, the independent oversight body has the power to order appropriate remedies for the requester, including the declassification of information.	2	1	
44	Requesters have a right to lodge a judicial appeal in addition to an appeal to an (independent) oversight body.	2	2	17(a)
45	Appeals (both internal and external) are free of charge and do not require legal assistance.	2	0	
46	The grounds for the external appeal are broad (including not only refusals to provide information but also refusals to provide information in the form requested, administrative silence and other breach of timelines, charging excessive fees, etc.).	4	1	17(b)
47	Clear procedures, including timelines, are in place for dealing with external appeals.	2	1	17(c)
48	In the appeal process, the government bears the burden of demonstrating that it did not operate in breach of the rules.	2	0	
49	The external appellate body has the power to impose appropriate structural measures on the public authority (e.g. to conduct more training or to engage in better record management)	2	0	
TOTAL		30	8	

6. The System of Sanctions and Protections

An effective system of sanctions and protections is important to the successful implementation of right to information legislation. Sanctions should be available for officials who act in ways that obstruct the proper implementation of the law, whether by directly blocking access or by blocking it indirectly through obstructing the work of a public body or of the oversight body. This might take the form of destroying or hiding information, interpreting exceptions in an unjustifiably broad manner or refusing to cooperate with the responsible official, among other possibilities.

In most countries, the right to information law provides for criminal penalties for such obstruction of access. However, due to the high barrier to applying criminal penalties, these are in most countries rarely if ever applied. A more practical system, which has been put in place in counties like India, is to provide for administrative

sanctions (fines) to be imposed on officials who obstruct access, in that case as determined by the oversight bodies, the Information Commissions.

While it is important to have systems for imposing sanctions on individuals, in many cases the problem is more broadly rooted within the public body as a whole. To address this, better practice laws provide for the oversight body to impose remedies on public bodies where they are shown to be failing, on a systematic basis, to meet their obligations under the law. Some of the common remedies that are available in these cases are to require the public body to appoint a responsible official, to provide appropriate training to its officials, to manage its records better and so on.

In addition to punishing officials who fail to fulfil their disclosure obligations, a strong right to information law should offer protection to employees in relation to acts done in good faith to implement the law. Such protection is necessary to give officials the confidence to disclose information, given that this is a major change from what they have been used to. It is also important to signal to them that they will not be at risk of being sanctioned via the provisions in a secrecy law for disclosing information.

Better practice laws also provide protection to whistleblowers, defined as those who expose wrongdoing, serious maladministration, a breach of human rights, humanitarian law violations or other threats to the overall public interest, even if they otherwise act in breach of a binding rule or contract, as long as at the time of the disclosure they had reasonable grounds to believe that the information was substantially true and exposed wrongdoing or the other threats noted above. Such protection acts as an important information safety valve, ensuring that information of significant public interest is made available to the public.

None of these sanctions or protections is provided for in the Jordanian right to information Law.

Recommendations:

- The Law should incorporate a system of sanctions – whether criminal or administrative or both – for individuals who obstruct access to information.
- Consideration should be given to providing for a system for imposing remedies on public bodies which are systematically failing to meet their obligations under the law.
- The Law should provide protection to officials who disclose information under the Law in good faith.
- The Law should provide protection for whistleblowers against any legal or

employment-related sanction.

Indicator	Max	Points	Article
50	2	0	Sanctions may be imposed on those who wilfully act to undermine the right to information, including through the unauthorised destruction of information.
51	2	0	There is a system for redressing the problem of public authorities which systematically fail to disclose information or underperform (either through imposing sanctions on them or requiring remedial actions of them).
52	2	0	The independent oversight body and its staff are granted legal immunity for acts undertaken in good faith in the exercise or performance of any power, duty or function under the RTI Law. Others are granted similar immunity for the good faith release of information pursuant to the RTI Law.
53	2	0	There are legal protections against imposing sanctions on those who, in good faith, release information which discloses wrongdoing (i.e. whistleblowers).
TOTAL		8	0

7. Promotional Measures for the Right to Information

For a right to information law to be implemented successfully, a number of promotional measures are needed. A first such measure is to appoint a dedicated official – often referred to as an information officer – with responsibilities for receiving and processing requests and otherwise for making sure the public body meets its obligations under the Law. Article 2 of the Jordanian Law does define the “responsible official” as the “Prime Minister, Minister, chair or director general of the department”, while Article 16 provides that this person may delegate these functions to another senior official in writing. Article 8 provides generally that this person “should facilitate the obtainment of information and to guarantee the disclosure thereof”.

The problem with this approach is that it is not in fact practical for the head of a department, let alone the Minister or Prime Minister, to undertake the needed tasks while in practice only a few public bodies have delegated this function to another official. Furthermore, Article 8 is not sufficiently clear as to the exact duties of the responsible official, which should explicitly include ensuring the proper receipt and processing of requests.

In terms of public education, Article 4(d) of the Law requires the Council to: “Issue leaflets and carry out the suitable activities to explain and promote the culture of right to acquire knowledge and obtain information.” This is useful but it would be preferable if the provision was more explicit about the role of the Council in terms of raising public awareness about the right to information.

Article 14(a) requires all public bodies to “duly index and organize the information and documents that are available with it according to the professional and technical practices in force”. While this is useful, it falls short of better practice in terms of records management systems, which are likely to be far more effective if they provide for a central body to set minimum standards in this area and also to provide support and assistance to public bodies to meet those minimum standards. Records management is a complex science and public bodies cannot all be expected to undertake this task without support. Furthermore, in the absence of centrally set minimum standards, there is likely to be a patchwork of different standards across the civil service. In many countries, it is the administrative oversight body (the information commission) that sets minimum standards in this area and provides support to public bodies to help them meet those standards.

According to Article 14(a) of the Law, public bodies are required to index the information they hold. However, these indexes are themselves confidential. Better practice is to require such indexes to be public in nature, subject to redacting certain items from the list where merely to acknowledge the existence of a document would itself represent a breach of the regime of exceptions.

According to Article 4(e), the Information Commission is required to prepare an annual report on implementation of the right to information which is then approved by the Council and forwarded to the Prime Minister. At present, these annual reports are secret and not provided to the public. The amendments would render this report public when the Prime Minister sends it to the two chambers of parliament at the beginning of the ordinary session. This is useful but it still represents a long delay in the publication of the report because the annual report for the previous year only gets sent to parliament during the following ordinary session. Better practice is for the oversight body to publish the report at the same time as it is sent to the Prime Minister.

Two promotional measures that are commonly found in right to information laws are missing from the Law. The first is an obligation on public bodies to provide adequate training to their staff. It is clear that officials need training to be able to implement their obligations under the right to information law. In the absence of a specific obligation to provide such training, many public bodies in Jordan have not made the required effort in this area. Article 4(d) of the Law does call on the Council

to “promote the culture of right to acquire knowledge and obtain information”. However, this falls short of an obligation on public bodies to provide training and, in practice, the Council has not had the required resources to do this.

Second, there is no obligation on public bodies to report annually on what they have done to implement the right to information law. Such reporting – whether in the form of a special annual report on the right to information or a section on the right to information in the general annual report that each public body produces – is an invaluable source of information about what efforts have been made and what remains to be done to secure full implementation of the law. In many countries, the oversight body relies on these reports to prepare its own central annual report on implementation.

Recommendations:

- The Law should require public bodies to appoint a senior official as the responsible official, rather than allocating this task to the head of the body, and it should also define the responsibilities of these officials more clearly and precisely.
- Consideration should be given to making Article 4(d) more explicit in terms of the obligation of the Council to raise public awareness about the right to information.
- The Law should put in place a more developed records management system which includes having a central body both set mandatory minimum standards in this area and provide support to public bodies to meet those minimum standards.
- Public bodies should be required to publish the indexes they are required to create in accordance with Article 14(a) of the Law, subject to redacting sensitive information.
- The Council should make its annual report public at the same time as it is sent to the Prime Minister.
- The law should place an obligation on public bodies to provide adequate training to their staff on the right to information.
- The law should also require public bodies to report annually on what they have done to implement the law.

Indicator	Max	Points	Article
54	2	0	2, 8, 16
55	2	2	4(d)
56	2	0	
57	2	1	14(a)
58	2	1	14(a)
59	2	0	
60	2	0	
61	2	1	4(e)
TOTAL		16	5

-Ends-