

**Freedom of Information  
Around the World 2006**  
A Global Survey of Access to Government  
Records Laws

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- DRAFT COPY -

[NOTE: AN UPDATED VERSION OF THE GLOBAL SURVEY,  
COMPLETE WITH A NEW, UPDATED INTRODUCTION, WILL  
BE MADE AVAILABLE IN THE NEAR FUTURE.]

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## COUNTRY REPORTS

### ALBANIA

Article 23 of the 1998 [Constitution](#) states:

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

Article 56 provides, “Everyone has the right to be informed for the status of the environment and its protection.”

[The Law on the Right to Information for Official Documents](#) was enacted in June 1999.<sup>2</sup> The law allows any person to request information contained in official documents. This includes personal information on individuals exercising state functions related to the performance of their duties. Public authorities must decide in 15 days and provide the information within 30 days.

Unusually, there are no exceptions in the law for withholding information. Documents can be withheld only if another law such as the laws on data protection or classified information restricts their disclosure.

Government agencies are required to publish their location, functions, rules, methods and procedures. Documents that have been previously released and those that the public authority deems important to others must also be published. The bodies must also create certain documents including final decisions on cases, administrative staff manuals, and indexes.

The [People’s Advocate](#) (Ombudsman) is tasked with oversight of the law. Under the statute setting up the office, the Advocate is an independent office elected by three-fifths of Parliament for a five-year term.<sup>3</sup> The Advocate can receive complaints and conduct investigations. As part of an investigation, he can demand classified information from government bodies. Once he has completed an investigation, the Advocate can recommend a criminal investigation, court action or dismissal of officials for serious offenses but the decisions are not binding. The Advocate handled a number of complaints under the law in 2003 and 2004.

Appeals can also be made to a court. A Tirana district court made the first ruling on the law in a case brought by the Centre for Development and Democratisation of the Institutions against the Ministry of Education in January 2005.

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<sup>1</sup> Constitution of Albania, 1998. <http://www.ipls.org/services/kusht/contents.html>

<sup>2</sup> The Law on the Right to Information for Official Documents, No. 8503, 30 June 1999. [http://hidaa.gov.al/english/pub/l\\_8503.htm](http://hidaa.gov.al/english/pub/l_8503.htm)

<sup>3</sup> Statute No. 8454, dated 4 February 1999 on People’s Advocate. <http://www.avokatipopullit.gov.al/English/index.htm>

Implementation of the law has been problematic. The act is not well known and the number of requests has been low. A 2003 survey by the Centre for Development and Democratization of the Institutions (CDDI) found that 87 percent of public employees were not aware of the Act, no institutions had published the required information and few had appointed officers.<sup>4</sup> Other problems found included deadlines not being respected and fees regulations not being published. In 2004, the People's Advocate recommended that disciplinary measures be imposed against officials who intentionally or negligently violate the law, reflecting a growing frustration with the progress of implementation.<sup>5</sup>

The Law on Information Classified "State Secret" regulates the creation and control of classified information.<sup>6</sup> It sets three levels of classification: top secret, secret and confidential. Information can be classified for ten years but that can be extended. It creates a Directorate for the Security of Classified Information to enforce security rules. It was adopted to ensure compatibility with NATO standards.<sup>7</sup> In May 2006, the Parliament approved amendments to the law to create a new category called "restricted" for information the disclosure of which would "damage the normal state activity and the interests or effectiveness of the state institutions." It was strongly criticized by civil society groups and international organizations.<sup>8</sup> Articles 294-296 of the Criminal Code penalize the release of state secrets by both officials and citizens, with a penalty of up to ten years for unauthorized release.<sup>9</sup>

The Law on Archives sets rules on retention and collection of archive files.<sup>10</sup> The Cold War International History Project reports continued problems with access to files from the Communist-era, including access to Communist Party records. It also noted that declassification of Cold War-era files is proceeding slowly.<sup>11</sup>

[The Law on the Protection of Personal Data](#) allows for individuals to access and correct their personal information held by public and private bodies.<sup>12</sup> It is also overseen by the Ombudsman.

[The Law on the Declaration and Control of Assets, Financial Obligations of Elected Persons and Some Civil Servants](#) was adopted in April 2003.<sup>13</sup> It requires public officials to declare their assets and liabilities. It is overseen by the High Inspectorate of Declaration and Control of Assets. The law specifically authorizes public access to the declarations under the Law on the Right to Information.

Albania signed the Aarhus Convention in 1998 and ratified it in 2001.<sup>14</sup> The [Law on](#)

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<sup>4</sup> CDDI, Rapport on monitoring process on Albanian Public Administration for the implementation of the law for the "Access of Information on Official Documents", 2004.

<sup>5</sup> Annual Report of the People's Advocate for 2004, 2005.

<sup>6</sup> Law nr. 8457 On Information Classified as "State Secret", 11 February 1999.

<sup>7</sup> See Ministry of Defense of Albania, Restructuring of the Armed Forces 2002-2010. [http://www.mod.gov.al/anglisht/AntNATO\\_Angl/Ant\\_NATOLink3.htm](http://www.mod.gov.al/anglisht/AntNATO_Angl/Ant_NATOLink3.htm)

<sup>8</sup> See comments of OSCE FOM, April 2006. [http://www.osce.org/documents/rfm/2006/04/18815\\_en.pdf](http://www.osce.org/documents/rfm/2006/04/18815_en.pdf); Albanian Helsinki Committee and the Center for Parliamentary Studies, February 27, 2006. <http://www.ahc.org.al/kshh/eng/letter/27022006.html>; Letter from Justice Initiative and Center for the Development and Democratization of Institutions, 9 February 2006.

<sup>9</sup> Criminal Code. No. 7895, dated 27 January 1995.

<sup>10</sup> Law On Archives No 9154, 11 June 2003.

<sup>11</sup> CWIHP and Its Partners Seek Greater Access to Albanian Cold War Files, Passport: The Newsletter of the Society for Historians of American Foreign Relations, April 2005.

<sup>12</sup> Law on the Protection of Personal Data, No.8517, 22 July 1999. [http://hidaa.gov.al/english/pub/1\\_8517.htm](http://hidaa.gov.al/english/pub/1_8517.htm)

<sup>13</sup> The Law on the Declaration and Control of Assets, Financial Obligations of Elected Persons and Some Civil Servants, 10 April 2003. [http://hidaa.gov.al/english/pub/1\\_9049.htm](http://hidaa.gov.al/english/pub/1_9049.htm)

<sup>14</sup> Law no. 8672, 26 October 2000. For more information on environmental access, see UNECE, Environmental Performance Reviews -- Albania, November 2002. <http://www.unece.org/env/epr/studies/albania/welcome.htm>

[Environmental Protection](#) requires publication of environmental information.<sup>15</sup>

## ANGOLA

The 1992 [Constitution](#) provides for freedom of the press but does not explicitly provide for freedom of information.<sup>16</sup> In 2004, the Constitutional Commission drafted a new Constitution which does provide for a right of information.<sup>17</sup>

The [Law on Access to Administrative Documents](#) was approved in August 2002.<sup>18</sup> The law is based on the Portuguese LADA and is nearly identical except for a few sections. It allows any person to demand access to administrative documents held by state authorities, public institutions, local authorities and private bodies that are exercising public functions. Requests must be in writing. Government agencies must respond no later than 10 days after receiving a request. It revokes all legislation that is contrary to it.

The Act does not apply to documents not drawn up for an administrative activity such as meetings of the Council of Ministers, personal notes and sketches. Access to documents in proceedings that are not decided or in the preparation of a decision can be delayed until the proceedings are complete or up to one year after they were prepared. Documents relating to internal or external security and secrecy of justice can be withheld under other legislation.

Access to documents with personal information is limited to the named individual and can only be used for purposes for which it is authorized. Individuals can also demand corrections of information.

Those denied can appeal internally or to a court.

The law provides for the creation of a monitoring commission (Comissão de fiscalização). It can examine complaints, provide opinions on access, review practices and decide on classification of documents. It can also give opinions on implementation and must produce an annual report on the law.

Bodies are required every six months to publish decisions, circulars, guidelines and any references for documents that have an interpretation of enacted laws or administrative procedures. Each body must have a responsible person for implementation of the provisions of the act.

The law has not been particularly implemented. The Media Institute of Southern Africa reports that many public bodies have appointed information officers but there are “major difficulties” for journalists obtain information.<sup>19</sup> There has been strong pressure on the government by international organizations to reign in the massive corruption in the country by improving transparency. The IMF has issued several critical reports but noted improvements in

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<sup>15</sup> Law on Environmental Protection No.8934, 5 September 2002. <http://www.basel.int/legalmatters/natleg/albania4.doc>

<sup>16</sup> Constitutional Law of the Republic of Angola. [http://www.ocfre.unibe.ch/law/icl/ao00000\\_.html](http://www.ocfre.unibe.ch/law/icl/ao00000_.html)

<sup>17</sup> Homepage: <http://www.comissao-constitucional.gv.ao/default.htm>

<sup>18</sup> Lei de Acesso aos Documentos Administrativos. No 11/02. 16 August 2002. <http://www.privacyinternational.org/countries/angola/foi-law02.doc>

<sup>19</sup> Media Institute of Southern Africa, -So This Is Democracy? 2005, April 2006.

transparency in 2004.<sup>20</sup> Global Witness has called on the government to adopt the Transparency in Extractive Industry Initiative.<sup>21</sup>

The Parliament also approved the [Law on State Secrets](#) in August 2002.<sup>22</sup> The law authorizes the classification of information for a wide variety of information. It sets four categories: top secret, secret, confidential, and reserved. The law applies to any person anywhere who has access, not just government officials. NGOs have expressed concern over this provision being used to restrict information on corruption and abuses.<sup>23</sup> According to Freedom House, the law is used to persecute journalists who publish classified information.<sup>24</sup>

## **ANTIGUA & BARBUDA**

Article 12 of the 1981 [Constitution](#) provides for a general protection of freedom of expression including a right to seek information.<sup>25</sup> The Constitution Review Commission in 2002 heard testimony about amending the Constitution to include a specific right of information but declined to do so, stating:

The Commission does not wish to stand in the way of the trend towards greater openness in Government, but considers that the process may for the time being best be left to be canvassed in relation to ordinary law, and is not yet ripe for constitutional entrenchment.<sup>26</sup>

The [Freedom of Information Act, 2004](#) was approved by Parliament in October 2004 and signed by the Governor-General on 5 November 2004.<sup>27</sup> The Act allows any persons to demand information from public bodies, defined to include bodies which are controlled or substantially financed by Government or which perform public functions to the extent of those functions. It does not apply to commissions of inquiry and the courts or their registries. The Minister can exempt public authorities or their specific functions by Order, subject to the negative resolution of the House of Representatives. The Act also allows individuals to demand information held by private bodies when it is necessary for the exercise or protection of any right.

Requests must be in writing unless the requestor is illiterate or disabled in which case it can be made orally. Both public and private bodies must respond to requests in twenty working days, which can be extended to a maximum of forty days where the request is for a large number of records or requires a large search. Requests for information necessary to safeguard the life or liberty of a person must be responded to in 48 hours. A failure to respond within the time limits is deemed a refusal. Information will be provided after payment of a fee (which cannot exceed the actual cost of searching for, preparing and communicating the information). No fee is payable for requests for personal information or requests in the public interest.

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<sup>20</sup> See Angola and the IMF. <http://www.imf.org/external/country/AGO/>

<sup>21</sup> Global Witness, Time for Transparency, March 2004. <http://www.globalwitness.org/reports/download.php/00121.rtf>

<sup>22</sup> Lei no. 10/02 Do Segredo de Estado. 16 Agosto 2002. <http://www.privacyinternational.org/countries/angola/secrets-law02.doc>

<sup>23</sup> See Human Rights Watch, Some Transparency, No Accountability: The Use of Oil Revenue in Angola and Its Impact on Human Rights, January 2004. <http://www.hrw.org/reports/2004/angola0104/>

<sup>24</sup> Freedom House, Freedom of the Press 2005, p. 26.

<sup>25</sup> The Antigua and Barbuda Constitutional Order 1981. <http://pdba.georgetown.edu/Constitutions/Antigua/antigua-barbuda.html>

<sup>26</sup> Report of the Constitution Review Commission, 2002.

<sup>27</sup> Freedom of Information Act, 2004. [http://www.ab.gov.ag/gov\\_v2/government/parliament/laws/freedom\\_of\\_info.pdf](http://www.ab.gov.ag/gov_v2/government/parliament/laws/freedom_of_info.pdf)

There are exemptions for personal information, legally privileged communications, commercial or confidential information, health and safety, law enforcement, national defence and security, public economic interests, policy making of public authorities and Cabinet documents. However, public and private bodies must show that the harm still exists at the time of the request and there is a limit of thirty years for some of the exemptions. A blanket “public interest override” applies to all exemptions, which requires that, even if an exemption applies, public authorities may not refuse a request unless the harm that would result from disclosure outweighs the public interest in release.

Appeals of denials are to an independent Information Commissioner and then to the High Court. The Information Commissioner hears complaints and can issue binding decisions on public authorities and private bodies. The Commissioner must dispose of cases within 30 days and has the power to order compensation, impose fines, and require public authorities to take actions to come into compliance with the Act and must refer cases which reasonably disclose evidence of criminal offences under the Act to the appropriate authorities. The Commissioner must also publicize the Act (including publishing a guide on using the Act), issue a code of practice on record keeping, monitor and report on compliance of the Act, make recommendations on reforms, train public officials, and issue an annual report. The Information Commissioner, Millicent David, was announced in July 2005 but then waited several months before receiving formal approval to begin work.

Public authorities are required to appoint an information officer to facilitate access. They must publish annually: details of the body’s structure and functions; details of services it provides; request and complaints mechanisms; a guide on its records systems; descriptions of the duties of senior officials; regulations, policies, guides and manuals; decisions and policies with reasons and interpretations; and mechanisms for the public to engage in policy decisions. They also have a duty to conduct good record keeping, give training to employees and publish an annual review of the Act.

The Act also includes a whistle-blowing provision which allows any person to disclose information relating to a wrong-doing of a public authority to the Commissioner or other authority. That person is not liable to legal liability or employment sanctions if done in good faith.

In 2004, the Government also passed [The Integrity in Public Life Act 2004](#)<sup>28</sup>, which requires certain officials holding public office to annually declare their income, assets and liabilities to an Integrity Commission, with a view to promoting transparency and accountability. The Integrity Commission was set up on 1 March 2005, when its three members received their instruments of appointment from the Government.<sup>29</sup>

A bill on Data Protection to allow individuals to access, correct and control their personal information held by public and private bodies is currently pending in the Parliament.

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<sup>28</sup> The Integrity in Public Life Act 2004. [http://www.ab.gov.ag/gov\\_v2/government/parliament/laws/integrity\\_in\\_public\\_life2004.pdf](http://www.ab.gov.ag/gov_v2/government/parliament/laws/integrity_in_public_life2004.pdf)

<sup>29</sup> The Antigua Sun, Integrity Commission appointed, March 11 2005.

## ARGENTINA

The [Argentine Constitution](#) does not include a general right of access to public documents or information.<sup>30</sup> Article 43(3) recognizes a right of individuals to access and correct their own records held by public or private bodies. Also Article 41(2) obliges authorities to provide information on the environment. Many courts have recognized and stressed the importance of this right.<sup>31</sup> The courts have also recognized a number of cases under Article 13 of the American Convention on Human Rights.<sup>32</sup>

The [Access to Public Information Regulation](#) was introduced by President Néstor Kirchner in 2003.<sup>33</sup> It applies to any agency, entity, organism or company established under the jurisdiction of the Executive Power. The Regulation applies also to companies that have received funds from the government. Information is defined as any document, recording, photograph, either in paper or magnetic media, created or obtained by any of the persons or entities that must comply with the Regulation or under its control, or created with government funds, or if it is going to be used in an official decision including official meetings. If the information does not exist, the requested agency has no duty to create it or compile it, unless there is a legal obligation for the State to create it.

The Regulation established a presumption of publicity of all documents held by the subjects regulated by it. Access to documents is free of charge, unless reproduction is necessary. In that case the claimant must pay the price of requested copies. Any person, individual or company, is entitled to request and access public information without any requisite of standing, subjective right or representation by an attorney. Agencies have ten days to answer an access request.

There are exemptions for documents and information affecting national defence, foreign policy, trade secrets, legal advice of government counsel, privacy and intimacy and sensitive data under the Data Protection Act, and information that may risk someone else's life.

There is a right of internal appeal under the Administrative Procedure Act. Under this Act any person who requested access and did not receive the information can file an administrative appeal to a higher authority. However, the administrative appeal is not mandatory so any party can choose to continue the appeal internally or file a claim in the administrative court. No cases have been filed under the Regulation.

Government agencies that hold public information must organize an index of the information in order to facilitate access. Public information must be provided without any other qualification, except those provided in the Regulation Decree. The government must also generate, update and

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<sup>30</sup> Constitution of the Argentine Nation, <http://www.biblioteca.jus.gov.ar/Argentina-Constitution.pdf>

<sup>31</sup> Corte Suprema, "Urteaga, Facundo R. C. Estado Nacional – Estado Mayor Conjunto de las FF.AA. – s/ amparo, ley n° 16.986" sentencia del 15/10/98 (LA LNEY, 1998 – F, 237. Administrative Court of Appeals, sala 1ª, "Fundación Accionar Preservación Ambiente Sustentable c/ Comité Ejecutor Plan GayM Cuenca Matanza-Riachuelo y otro s/ amparo", del 16/4/2002, LL 2003-A-254: Right to access to environmental information, although not mentioned in the Constitution, is a fundamental right. Plaintiff has right to access to information about the environment but case was declared moot because information was timely provided.

<sup>32</sup> Sofia Tiscorna & CELS v. Estado Nacional (E.D. 180-426 -1998-): FOI lawsuit invoking section 13 of the ACHR and requesting access to information held by the police during the military regime; CNCont. Adm, Sala 5, 25/3/02, "Monner Sans c/ Fuerza Aerea Argentina s/ amparo": Recognized right of an individual to access information about the situation of civil airplanes and examinations performed by the Argentine Air Force related to their security. The Court found he had standing to request the information because he was a passenger of airplanes; Poder Ciudadano v. National Senate (November 29, 2004, Administrative Court of Appeals): Compels the Senate to provide the plaintiff list containing number of employees hired at the Senate, salaries, and other administrative information; CNCont Adm, Sala 3, "C.P.A.C.F. c/E.N.": Recognized right of the Public Bar Association to access information contained in public files.

<sup>33</sup> Decree 1172 on Access to Public Information. <http://infoleg.mecon.gov.ar/infolegInternet/anexos/90000-94999/90763/norma.htm>

provide basic information with the aim of guiding the citizenship in its access to information. There is no provision requiring the government to provide the structure and activities or organisation of any agency. The government created a web site with a list and access to the web sites of the state agencies<sup>34</sup>, and the Presidency maintains a web site<sup>35</sup> with information about the meetings that public officials have every day and description of all the agencies. The Cristal web site<sup>36</sup> also publishes budget information, lists of employees, and economic resources already or about to be spent by the government on the Internet as required by section 8 of Law 25.152.<sup>37</sup>

The decree is generally considered good but there are continuing problems with implementation and creating a culture of transparency. A monitoring report conducted by the Association of Civil Rights (ADC) and the Open Justice Initiative found that of 140 information requests, 40 percent were not answered, 17 percent provided significant information, 14 percent had their request transferred and 8 percent received an oral refusal.<sup>38</sup> There are no published court cases. The decree has two major problems. First, it is a decree, so it can be amended at any moment by the Executive Power. Second, a decree of the Executive Power cannot create access obligations on the Legislative Power, the judicial power and other independent bodies of government (like the Ministerio Público or the Ombudsman). Thus, there is a need for an FOI law that covers all the government.

In March 2002, the Executive introduced the FOI bill in Congress. Although some bills have been introduced before, this bill was the first elaborated by the Executive Power with support of NGOs and academics. It was approved by the House of Representatives in May 2003 and was sent to the Senate. In the Senate, the bill was significantly amended and it was returned to the House in December 2004 where it languished. The Senate bill was widely criticized because it imposed requirements for access such as requiring the disclosing of the motive of the request. Civil society groups are now reorganising to make a push for a bill in the next Congress.

The [Law Establishing Access to Environmental Information](#) was adopted in November 2003.<sup>39</sup> It guarantees the right to access environmental information in the hands of the national, provincial or municipal state and the city of Buenos Aires, as well as autonomous entities and public utilities. Access to environmental information is free for any individual person or entity, except for the cost of providing the information. A showing of a special interest is not required. Access to environmental information can be denied if disclosure can affect national defence, foreign relations, trade secrets or intellectual property; works of research that have not been published; and information classified as secret or confidential by laws and regulations. Denial of access by an agency must be reasonable. Once a request is lodged, an agency has 30 days to provide the requested information.

On the provincial level a number of jurisdictions have enacted FOI laws or regulations (by decrees of the governor) during the last 5 years.<sup>40</sup> There are FOI bills pending in the provinces of

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<sup>34</sup> <http://www.cristal.gov.ar/>

<sup>35</sup> <http://www.mejordemocracia.gov.ar/> (Better democracy)

<sup>36</sup> <http://www.cristal.gov.ar/sitio/servicios/transparencia.htm>

<sup>37</sup> Law on Fiscal Transparency. <http://infoleg.mecon.gov.ar/infolegInternet/anexos/60000-64999/60039/texact.htm>

<sup>38</sup> See ADC, 2004 Access to Information Monitoring Report – Argentina. <http://www.adc.org.ar/recursos/550/Access%20to%20Information%20Monitoring%20Report>

<sup>39</sup> Law 25.831. 26 November 2003. <http://infoleg.mecon.gov.ar/infolegInternet/anexos/90000-94999/91548/norma.htm> and also at <http://www.cedha.org.ar/docs/doc289-spa.doc>

<sup>40</sup> City of Buenos Aires: Law 104.; Buenos Aires: Law 12.475/2000 on Access to information; Entre Rios: Decree 1169/2005; Cordoba: Law 8803/1999; Santiago del Estero: Law 6753/2005; Misiones Decree 929/2000; Salta: Decree 1574/2002; Jujuy: Law 444/1999 and Decree 7930/2003; Rio Negro: Law 1829/84 and Decree 1028/2004; Chubut: Law 3764/92; Mendoza.

Neuquen, La Pampa, Mendoza, Santa Fe, Chaco, Tucuman and Catamarca.

The Personal Data Protection Act allows for individuals to access their own personal information held by public and private bodies.<sup>41</sup> It is enforced by the National Directorate for Personal Data Protection.<sup>42</sup> The Act was adopted after the Supreme Court in the case “Ganora”<sup>43</sup> held that the intelligence agencies cannot deny access without a reasonable explanation. Under Article 17 of the Act, the data controller can deny access to the file for reasons of national defense. Scholarly commentary to the case points out that Article 17 considers that individuals can use habeas data to access to their personal information in such cases and that the exception should be limited.<sup>44</sup> Even after “Ganora” was decided, the Secretary of Intelligence usually denies access to its databases invoking Article 17 of the Data Protection Act and Articles 2 and 16 of the Intelligence law.

Article 16 of the Intelligence Law provides that access to the information from any intelligence source shall be authorized by the President or the public officer to whom he may delegate such authority.<sup>45</sup> The President delegated this authority to the Secretary of Intelligence. However, access to classified information is always denied.

## **ARMENIA**

The [Law on Freedom of Information](#) was unanimously approved by the Parliament on 23 September 2003 and went into force in November 2003.<sup>46</sup> The law allows any citizen to demand information from state and local bodies, state offices, organizations financed by the state budget, private organizations of public importance and state officials. Bodies must normally provide the information in five days. Oral requests are required to be responded to immediately.

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

Appeals can be made to the [Human Rights Ombudsman](#).<sup>47</sup> Appeals can also be made to a court. There have been a number of court cases on access to information.<sup>48</sup>

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<sup>41</sup> Personal Data Protection Act. <http://www.protecciondedatos.com.ar/law25326.htm>

<sup>42</sup> Homepage: <http://www2.jus.gov.ar/dnpp/index.html>

<sup>43</sup> Fallos 322:2139.

<sup>44</sup> See Sagues, Nestor, *Derecho Procesal Constitucional*, Acción de amparo, tomo 3, at. 682, 5 edición, Buenos Aires, 1995; Dalla Via, Alberto y Basterra, Marcela, *Habeas Data y otras garantías constitucionales*, Ed Nemeses, at 130, Quilmes, 1999; Ekmedkjian, Miguel y Pizzolo (h), Calogero, *Habeas Data*, Depalma, at 99; Gallardo María y Omledo Karina, *Habeas Data*, LL 1998-A-977; SAGÚÉS, Néstor P., "El hábeas data contra organismos estatales de seguridad", LL 2000-A, 352.

<sup>45</sup> Ley de Inteligencia Nacional no 25,520. <http://infoleg.mecon.gov.ar/infolegInternet/anexos/70000-74999/70496/norma.htm>

<sup>46</sup> Law on Freedom of Information. <http://www.foi.am/en/content/53/>

<sup>47</sup> Homepage: <http://www.ombuds.am/main/en/9/27/139/>

<sup>48</sup> See Center for Freedom of Information, <http://www.foi.am/en/rcontent/14/>

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

After two years, the government has not adopted regulations on procedures for supplying information and for storing and indexing of information and not all bodies have appointed information officials. The Freedom of Information Center states there are significant social and administrative problems starting with a general ignorance of the law by officials and citizens. Other problems are a continuation of secrecy practices started in the Soviet period, a lack of citizen participation and a general mistrust in the judicial system.<sup>49</sup> Many bodies deny requests without using legal grounds, refuse to respond to requests, and demand reasons for the request, which is prohibited by the law. A 2004 study by Article 19 and groups in Armenia found that most journalists and public officials were aware of the law. However, 57 percent of the journalists said that officials had given them false information. The lack of regulations was also cited as a major hindrance.<sup>50</sup> In her 2004 report the Ombudsman stated that “there is a problem with central and local authorities, at all levels, complying with the legally-prescribed procedure on the provision of information. There is a widespread practice of groundlessly refusing to provide information to individuals or NGOs.”<sup>51</sup> She also noted that some bodies such as the Yerevan Mayor’s Office were continuing to deny information even after a court order to release the information and that bodies “arbitrarily” interpreted “notions of ‘commercial secrecy’ or ‘personal data.’”

The government committed to improve public access to information as a part of its 2003 anti-corruption strategy. The OECD’s Anti-Corruption Network for Transition Economies recommended in January 2004 that the government improve the access and response procedures as part of that strategy.<sup>52</sup> Another review by the OECD in 2005 recommended that the government should “consider establishing an office of an Information Commissioner to receive appeals under the Law on Access to Information; limit discretion of officials and the scope of information that could be withheld; enhance cooperation with civil society.”<sup>53</sup>

In 2004, the government proposed amendments to the law that would have expanded exemptions but also broadened the scope of the law to cover many private bodies. The amendments were strongly objected to and were not adopted.

The 1996 Law on State and Official Secrets sets rules on the classification and protection of information relating to military and foreign relations.<sup>54</sup> It creates three categories of classification: “Of Special Importance”, Top Secret and Secret. Information that is classified as “Of Special Importance” or Top Secret is a state secret and can be classified for thirty years. Secret information can be classified for ten years. Disclosing secrets or breaking rules on handling of state secrets is punishable under Article 306 and 307 of the Criminal Code.

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<sup>49</sup> Mavvel Badalyan, Implementation of the Freedom of Information Law in Armenia. OSCE Second South Caucasus Media Conference, November 2005.

<sup>50</sup> Article 19, Freedom of Information and the Media in Armenia, Azerbaijan and Georgia, February 2004.

<sup>51</sup> Annual Report - Activities of the Republic of Armenia’s Human Rights Defender, and on Violations of Human Rights and Fundamental Freedoms in Armenia During 2004.

<sup>52</sup> Anti-Corruption Network for Transition Economies, Regional Anti-Corruption Action Plan for Armenia, Azerbaijan, Georgia, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine: Armenia - Summary of assessment and recommendations, 18 June 2004.

<sup>53</sup> OECD, Fighting Corruption in Transition Economies: Armenia, 2005.

<sup>54</sup> Law on State and Official Secrets, 1996. <http://www.internews.am/legislation/russian/laws2001-arm/gaxtniq.zip> (in Armenian)

Armenia signed the Aarhus Convention in June 1998 and ratified it in August 2001.<sup>55</sup> No legislation implementing it has been adopted. The Law on Protection of the Population in Emergencies requires that authorities notify the public of major emergencies. The Article 19 survey of public officials found that only 17.5 percent of them were aware of the Convention.

The Law on Personal Data provides for the right of citizens to obtain personal information about themselves from public or private bodies.<sup>56</sup> They can also demand that incorrect information be corrected. Appeal is to a court.

## **AUSTRALIA**

The Australian Constitution contains no right to information. The federal [Freedom of Information Act 1982](#)<sup>57</sup> provides for access to documents held by Commonwealth (national government) agencies created after 1 December 1977.<sup>58</sup> The Act requires that applications are made in writing and that agencies respond within 30 days to information requests.

The Act contains a considerable number of exemptions, namely, for Cabinet documents, Executive Council documents, internal working documents, electoral rolls and related documents and documents affecting national security, defence or international relations, affecting relations with States, affecting enforcement of law and protection of public safety, to which secrecy provisions of enactments apply, affecting financial or property interests of the Commonwealth, concerning certain operations of agencies, affecting personal privacy, subject to legal professional privilege, relating to business affairs, relating to research, affecting the national economy, containing material obtained in confidence, disclosure of which would be contempt of Parliament or contempt of court and certain documents arising out of companies and securities legislation.

Ministers can issue "conclusive certificates" stating that information is exempt under the provisions protecting deliberative process documents, national security and defence, Cabinet documents, and Commonwealth/State relations. These conclusive certificates cannot be reviewed during any appeal; an appeal body is only allowed to consider whether it was reasonable for the Minister to claim that the provisions of the exemption were satisfied.

The Act also contains a variety of "public interest" provisions depending on the type of information to which the exemption relates. For example, the exemptions relating to disclosures which would affect relations with States, the financial or property interests of the Commonwealth or the national economy, documents concerning certain operations of agencies and internal working documents are all subject to public interest tests. The High Court of Australia is soon to consider a landmark case regarding how the public interest test is to be considered where a Minister has issued a conclusive certificate that the relevant documents are

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<sup>55</sup> See Regional Environmental Centre, *Doors to Democracy, Current Trends and Practices in Public Participation in Environmental Decisionmaking in the Newly Independent States*, June 1998. <http://www.rec.org/REC/Publications/PPDoors/NIS/cover.html>

<sup>56</sup> Law on Personal Data, 8 October 2002.

<sup>57</sup> Freedom of Information Act 1982, [http://www.austlii.edu.au/au/legis/cth/consol\\_act/foia1982222/](http://www.austlii.edu.au/au/legis/cth/consol_act/foia1982222/), Freedom of Information (Fees and Charges) Regulations 1982, [http://www.austlii.edu.au/au/legis/cth/consol\\_reg/foiacr432/index.html](http://www.austlii.edu.au/au/legis/cth/consol_reg/foiacr432/index.html), Freedom of Information (Miscellaneous Provisions) regulations 1982 [http://www.austlii.edu.au/au/legis/cth/consol\\_reg/foipr612/index.html](http://www.austlii.edu.au/au/legis/cth/consol_reg/foipr612/index.html).

<sup>58</sup> For an overview of FOI laws in Australia and links to relevant government sites, see the University of Tasmania's FOI Review web pages at <http://www.comlaw.utas.edu.au/law/foi/>.

exempt “in the public interest”.<sup>59</sup> The Administrative Appeals Tribunal and the Full Federal Court have already ruled that a Minister need only show that the specific public interest ground raised is reasonable, where the appellant (Michael McKinnon of *The Australian* newspaper) continues to argue that the Minister show that issuing a certificate was reasonable after balancing competing public interest considerations.

Under the Act, applicants have a number of different appeal avenues. They can appeal internally unless the original decision was made by the Minister or the head of the public authority, and then request a merits review<sup>60</sup> by the [Administrative Appeals Tribunal](#) (which can issue binding decisions), followed by appeals on possible errors of law to the Federal Court or High Court. The AAT can also make recommendations on certificates which can be ignored by the Minister who must then advise the Parliament of the decision.

In addition, an applicant can make a complaint at any time on matters of administration to the [Commonwealth Ombudsman](#).<sup>61</sup> The Ombudsman’s decisions are not binding.

There were 39,265 information requests between July 2004 and June 2005, a decrease of 3,362 (7.9 percent) compared with 2003-04.<sup>62</sup> As with previous years, over 90 percent of those requests were for personal information, mostly to the Department of Veterans' Affairs, the Department of Immigration and Multicultural and Indigenous Affairs, and Centrelink. Between 1 December 1982 and 30 June 2005, Commonwealth agencies received a total of 724,650 access requests.

In 2004-2005, there were 508 requests made for internal review, of which 339 related to decisions regarding documents containing 'personal' information. 421 decisions were made on internal review – 56 percent upheld the agency decision and 44 percent resulted in the agency conceding additional materials. The Administrative Appeals Tribunal received 142 appeals and decided 130 appeals. The Commonwealth Ombudsman received 275 complaints and finalised 289 complaints about the way that Australian Government agencies handled requests under the FOI Act.

There are many criticisms of the effectiveness of the Act.<sup>63</sup> The Australian Law Reform Commission and the Administrative Review Council released a joint report in January 1995 calling for substantial changes to improve the law. The review called for the creation of an office of the FOI Commissioner, making the Act more pro-disclosure, limiting exemptions, reviewing secrecy provisions and limiting charges.<sup>64</sup> In June 1999, the Commonwealth Ombudsman found “widespread problems in the recording of FOI decisions and probable misuse of exemptions to the disclosure of information under the legislation” and recommended changes to the Act and the creation of an oversight agency.<sup>65</sup> The Senate held an inquiry in April 2001 on a private members amendment bill to adopt the recommendations of the ALRC and ARC report but to

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<sup>59</sup> High Court test case on Costello FOI, *The Australian*, 4 February 2006.

<sup>60</sup> Merits review is characterised by the capacity for substitution of the decision of the reviewing person or body for that of the original decision maker. This means that the AAT considers the facts, law and policy aspects of the original decision afresh, and can make a new decision affirming, varying or setting aside the original decision.

<sup>61</sup> Homepage: <http://www.comb.gov.au/>

<sup>62</sup> Attorney-General's Department, Freedom of Information Act 1982 Annual Report 2004-05. Available at <http://www.ag.gov.au/foi>

<sup>63</sup> See Matthew Ricketson, Keeping the lid on information, *The Age*, November 28 2002.

<sup>64</sup> The Australian Law Reform Commission, Open government: a review of the federal *Freedom of Information Act 1982*, ALRC 77, January 1995. <http://www.austlii.edu.au/au/other/alrc/publications/reports/77/ALRC77.html>.

<sup>65</sup> Commonwealth Ombudsman, 'Needs to Know' Own motion investigation into the administration of the Freedom of Information Act 1982 in Commonwealth agencies, June 1999. [http://www.comb.gov.au/publications\\_information/Special\\_Reports/NeedstoKnow.pdf](http://www.comb.gov.au/publications_information/Special_Reports/NeedstoKnow.pdf).

date there have been no substantive changes in the Act.<sup>66</sup> However, an amendment to exempt information on Internet sites banned by the Australian Broadcasting Authority was approved in 2003.<sup>67</sup>

More recently, in February 2006 the Ombudsman released a report on the Act which strongly recommended that the Government establish an FOI Commissioner, possibly as a specialized and separately funded unit in the office of the Commonwealth Ombudsman.<sup>68</sup> The key was to ensure that an independent body would be tasked with monitoring and promoting the law. The Ombudsman's report more generally found that requests were often not acknowledged and delayed and that there is still an uneven culture of support for FOI among government agencies, even 20 years after its enactment. It has been previously noted that budget cuts have severely restricted the capacity of the [Attorney General's Department](#) and the Ombudsman to support the Act and there is now little central direction, guidance or monitoring.

Under the [Archives Act](#), most documents are available after 30 years. Cabinet notebooks are closed for 50 years.<sup>69</sup> There is still a small access gap for records for the years between 1976 and 1977.

The Crimes Act provides for punishment for the release of information without authorization.<sup>70</sup> The [National Security Information \(Criminal Proceedings\) Act 2004](#) was approved by Parliament in December 2004. It regulates the use of national security information in trials. The adoption followed the Australian Law Reform Commission report [Keeping Secrets: The Protection of Classified and Security Sensitive Information](#) in June 2004.<sup>71</sup> In 2005, the Intelligence Services Legislation Amendment Act, 2005 Defence Signals Directorate and the Defence Intelligence Organisation was passed, Schedule 7 of which exempts the Defence Signals Directorate and the Defence Intelligence Organisation from the Act. Notably, the Australian Secret Intelligence Service (ASIO) and the Office of National Assessments (ONA) were already exempt.

As noted above, Privacy Act requests for access to personal information are funneled through the FOI. The [Privacy Amendment \(Private Sector\) Act 2000](#) gives individuals the right to access records about themselves held by private parties.<sup>72</sup>

All six states and two territories now have freedom of information laws.<sup>73</sup> There are also privacy acts in most states and territories.<sup>74</sup>

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<sup>66</sup> Senate Legal and Constitutional Legislation Committee, "Inquiry into the Freedom of Information Amendment (Open Government) Bill 2000, April 2001. [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/freedom/report/report.pdf](http://www.aph.gov.au/Senate/committee/legcon_ctte/freedom/report/report.pdf)

<sup>67</sup> See Electronic Frontiers Australia, Amendments to FOI Act: Communications Legislation Amendment Bill 2002. Available at <http://www.efa.org.au/FOI/clabill2002/>

<sup>68</sup> There are Information Commissions in the States of Queensland and Western Australia and in the Northern Territory. See Commonwealth Ombudsman, Scrutinising government - Administration of the Freedom of Information Act 1982 in Australian government agencies, March 2006. [http://www.comb.gov.au/publications\\_information/Special\\_Reports/2006/FOI\\_report\\_March2006.pdf](http://www.comb.gov.au/publications_information/Special_Reports/2006/FOI_report_March2006.pdf)

<sup>69</sup> See National Archives, The Cabinet Notebooks. [http://www.naa.gov.au/the\\_collection/cabinet.html](http://www.naa.gov.au/the_collection/cabinet.html)

<sup>70</sup> The Crimes Act. <http://scaletext.law.gov.au/html/pasteact/0/28/top.htm>

<sup>71</sup> <http://www.austlii.edu.au/au/other/alrc/publications/reports/98/>

<sup>72</sup> Privacy Act 1988. Amended by Privacy Amendment (Private Sector) Act 2000. [http://www.privacy.gov.au/publications/privacy88\\_240103.doc](http://www.privacy.gov.au/publications/privacy88_240103.doc)

<sup>73</sup> See Australian Privacy Foundation, Privacy Laws - States and Territories of Australia. <http://www.privacy.org.au/Resources/PLawsST.html>

<sup>74</sup> *Id.*

## AUSTRIA

Article 20 of the 1987 [Constitution](#) requires that government bodies and corporations must provide information to citizens while also setting extensive secrecy requirements:<sup>75</sup>

(3) All functionaries entrusted with Federal, Laender and municipal administrative duties as well as the functionaries of other public law corporate bodies are, save as otherwise provided by law, pledged to secrecy about all facts of which they have obtained knowledge exclusively from their official activity and whose concealment is enjoined on them in the interest of the maintenance of public peace, order and security, of universal national defence, of external relations, in the interest of a public law corporate body, for the preparation of a ruling or in the preponderant interest of the parties involved (official secrecy). Official secrecy does not exist for functionaries appointed by a popular representative body if it expressly asks for such information.

(4) All functionaries entrusted with Federation, Laender and municipal administrative duties as well as the functionaries of other public law corporate bodies shall impart information about matters pertaining to their sphere of competence in so far as this does not conflict with a legal obligation to maintain secrecy; an onus on professional associations to supply information extends only to members of their respective organizations and this in as much as fulfilment of their statutory functions is not impeded. The detailed regulations are, as regards the Federal authorities and the self-administration to be settled by Federal law in respect of legislation and execution, the business of the Federation; as regards the Laender and municipal authorities and the self-administration to be settled by Land law in respect of framework legislation, they are the business of the Federation while the implemental legislation and execution are Land business.

The 1987 [Auskunftspflichtgesetz](#) (Federal Law on the Duty to Furnish Information) obliges federal authorities to provide information regarding their areas of responsibility within eight weeks.<sup>76</sup> The requests can be written or oral and no justification is required. It applies to national departments, the municipalities, the municipality federations and the self-governing bodies.

Authorities are limited by the secrecy provisions set out in Article 20(3) of the Constitution for reasons relating to public security, defense, international relations, or economic or financial interests of the government.

Appeals for denials are made to the administrative agency first and then to the Administrative Court. The court can rule that the decision was not justifiable.

Austria signed the Aarhus Convention in June 1998 and ratified it in January 2005. The Federal Law on Environmental Information was adopted in 1993 and amended in 2005 to implement the 2003 European Union Directive on the freedom of access to information on the environment for information held by the federal government.<sup>77</sup> In 2002, the EU brought a case in the European Court of Justice identifying several areas where the 1990 Convention had not been properly implemented. It dropped the case in 2002 following changes in the national and

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<sup>75</sup> Austrian Federal Constitutional Law. [http://www.ris.bka.gv.at/ery/ery\\_1930\\_1.pdf](http://www.ris.bka.gv.at/ery/ery_1930_1.pdf)

<sup>76</sup> BGBl 1987/285 (15 May 1987). [http://www.ris.bka.gv.at/ery/ery\\_1987\\_287.pdf](http://www.ris.bka.gv.at/ery/ery_1987_287.pdf)

<sup>77</sup> Umweltinformationsgesetz (Law on access to information on the environment), BGBl. No 495/1993, BGBl. No 137/1999.

state laws.<sup>78</sup> In June 2003, the ECJ issued an opinion in a case brought by a MP that administrative documents relating to the labeling of genetically modified foods (GMOs) were not covered by the 1990 Directive.<sup>79</sup> This was resolved with the adoption of the 2003 EU Directive which covers GMOs.

A law implementing the requirements of the EU Directive on the re-use and commercial exploitation of public sector information (2003/98/EC) was adopted in November 2005.<sup>80</sup> Separate bills are also necessary for each of the states and thus far have been adopted in Vienna and Carinthia.<sup>81</sup>

The [Data Protection Act](#) allows individuals to access personal information about themselves held by public and private bodies.<sup>82</sup> It is overseen by the [Data Protection Commission](#).<sup>83</sup>

The Federal Archives Act sets rules on the preservation of official documents.<sup>84</sup>

The nine Austrian states have FOI laws that place similar obligations on their authorities.<sup>85</sup> There are also laws in the states on providing access to environmental information.<sup>86</sup>

## **AZERBAIJAN**

Article 50 of the [Constitution](#) states:

- I. Everyone is free to look for, acquire, transfer, prepare and distribute information.
- II. Freedom of mass media is guaranteed. State censorship in mass media, including press is prohibited.<sup>87</sup>

Article 57 on Right to Appeal gives citizens a right to appeal and write collective demands to government bodies.

The Law on the Right to Obtain Information was approved by Parliament on 30 September 2005 and signed by the President on 19 December 2005. It came partially into effect at that point. The Law gives any person the right to obtain information held in any form by state authorities and municipalities, legal entities and individuals conducting public functions including education and health care, state-owned or subsidized organizations, and legal entities that are

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<sup>78</sup> Case C-86/01. See European Commission, "Access to Environmental Information: Commission moves against Austria," 13 September 2000.

<sup>79</sup> Case C-316/01, Judgement of the Court, 5th Chamber, 12 June 2003. Opinion of Advocate General Tizzano, Case C-316/01 Dr Eva Glawischnig v Bundesminister für soziale Sicherheit, 5 December 2002.

<sup>80</sup> Bundesgesetz über die Weiterverwendung von Informationen öffentlicher Stellen (Informationsweiterverwendungsgesetz) nr. 135, 18.11.2005. [http://europa.eu.int/information\\_society/policy/psi/docs/pdfs/implementation/at\\_bundesgesetzblatt\\_135.pdf](http://europa.eu.int/information_society/policy/psi/docs/pdfs/implementation/at_bundesgesetzblatt_135.pdf)

<sup>81</sup> For more information, see EU Information Society Portal. [http://europa.eu.int/information\\_society/policy/psi/implementation/status/index\\_en.htm](http://europa.eu.int/information_society/policy/psi/implementation/status/index_en.htm)

<sup>82</sup> Datenschutzgesetz 2000 (DSG 2000), Austrian Federal Law Gazette part I No. 165/1999. [http://www.ris.bka.gv.at/crv/crv\\_1999\\_1\\_165.pdf](http://www.ris.bka.gv.at/crv/crv_1999_1_165.pdf)

<sup>83</sup> Homepage: <http://www.bka.gv.at/datenschutz/>

<sup>84</sup> Federal Archives Act, Federal Law Gazette I No 162/1999.

<sup>85</sup> Federal Fundamental Act dated 15 May 1987 on the duty to grant information on the part of the administration of the Laender and the municipalities (Fundamental Act on the duty to grant Information). [http://www.ris.bka.gv.at/crv/crv\\_1987\\_286.pdf](http://www.ris.bka.gv.at/crv/crv_1987_286.pdf) See Council of Europe, Responses to the Questionnaire on National Practices in Terms of Access to Official Documents, Sem-AC(2002)002 Bil, 18 November 2002.

<sup>86</sup> See Eva Glawischnig & Georg Gunsberg, "Austria: Legal and Institutional Framework and Practices for Public Participation" in Doors to Democracy: Current Trends and Practices in Public Participation in Environmental Decisionmaking in Western Europe, Regional Environmental Centre, June 1998.

<sup>87</sup> Constitution of the Republic of Azerbaijan. <http://www.constitutional-court-az.org/index.php?nw=3&j=11>

dominant or natural monopolies. Responses must be within seven days unless the need is urgent in which case they must respond within 24 hours. Requests can be written or oral.

It does not apply to information defined as a state secret, information in archives and information limited by international agreements. Information that is an official secret, or a professional, commercial, investigative, or judicial secret is considered confidential. There is also an exemption for information which is designated "For Official Use". This includes information related to investigations of criminal or administrative violations, effective state control, the formulation of state policy, financial audits, policy consultations, economic or monetary policy, administration of justice, from foreign states and international organizations, which may endanger the environment, harm the lawful interests of the information owner, or drafts of decrees and acts. Most of the exemptions end when the decision or action is complete and include a test which requires that the harm is greater than the public interest in it. Information can only be considered for official use for five years. Personal information is also considered "for official use." The Law overrides all other laws on limits to access.

There is also a long list of information that cannot be considered "For Official Use" including the results of public opinion polls, statistics, economic and social forecasts, conditions of the environment or various social issues, facts of law violations, job descriptions of public employees, minutes of the Milli Mejlis, lists of grants, benefits or compensations provided to individuals or legal entities, consumers information, results of investigations and changes in the environment.

The law includes a long list of material that bodies must publish including statistical data, budget forecasts and expenditures, legal acts and drafts, decrees and resolutions, reports of activities, staff lists and salaries, loans and grants, environmental conditions, and plans. Bodies must create Internet sites. The information must be published on the Internet or otherwise made widely publicly available.

The law creates an Authority on Information Issues (Ombudsman) to oversee the law. The Authority can review the procedures of the bodies and make decisions on the legality on the limits on access. A requester can also complain to a court.

The bodies must create registers of documents. The register must include all incoming, outgoing or internally produced documents, legal acts and contracts. It does not include accounting documents, memos and notifications. They must also present reports every six months to the Ombudsman.

An initial review by the Citizen's Labour Rights Protection League expressed some concerns with the act, especially relating to the lack of legal sanctions, difficulties in obtaining direct contact with officials, pretexts and broad exemptions to allow for denials of information and the limited powers of the Authority.<sup>88</sup> The League conducted a monitoring project prior to the law going into effect that attempted to obtain information directly from officials and through written inquiries. It found that many bodies were resistant to the public entering to obtain information in over half of the cases. The written requests were slightly more successful but few were fully responded to. They also found differences in requests made by journalists. Pro-government journalists were given information while opposition journalists were illegally denied information.

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<sup>88</sup> Citizen's Labor Rights Protection League of Azerbaijan Republic, Report on Results of Monitoring on Obtaining Information in Azerbaijan Republic Legislation and Practice, 2006. <http://www.clrpl.org/Report%20on%20results%20of%20monitoring.pdf>

Thus far, the Ombudsman has not yet been chosen. On 13 February 2006 President Aliev signed the Decree on the Providing the Law on Obtaining of Information.

Prior to the 2005 law, there were a number of laws that appeared to give some rights of access to information but did not do so in practice. The 1998 Law on Freedom of Information sets general principles on freedom of information but does not give any substantive legal rights.<sup>89</sup> The 1998 Law on Information, Informatisation and Protection of Information set up the legal framework for information.<sup>90</sup>

The Law on State Secrets was adopted in September 2004.<sup>91</sup> It sets broad protections on information relating to military, foreign political, economic, scientific, intelligence and investigations. It creates three categories of protections, Particularly Important, Top Secret and Secret. Information can be withheld for up to 30 years. It replaced the 1996 Law on State Secrets but is virtually unchanged. Article 68 of the Criminal Code penalizes the disclosure of state secrets.

Azerbaijan ratified the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) in March 2000. In March 2002, it adopted the Law of Azerbaijan Republic on Obtaining Environmental Information to implement the Convention.

## BELGIUM

Article 32 of the [Constitution](#) was amended in 1993 to include a right of access to documents held by the government:

Everyone has the right to consult any administrative document and to have a copy made, except in the cases and conditions stipulated by the laws, decrees, or rulings referred to in Article 134.<sup>92</sup>

The constitutional right is implemented on the federal level by the 1994 [Law on the right of access to administrative documents held by federal public authorities](#).<sup>93</sup> The act allows individuals to ask in writing for access to any document held by executive authorities and can include documents in judicial files.<sup>94</sup> Government agencies must respond within thirty days. Each decision must include information on the process of appealing and name the civil servant handing the dossier. The law also includes a right to have the document explained.

There are three categories of exemptions. In the first category, information must be withheld

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<sup>89</sup> Law on Freedom of Information. <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN016969.pdf> (in Russian).

<sup>90</sup> Law on Information, Informatisation and Protection of Information, No 460-1g (1998). <http://www.iinet.org/Director.aspx?P=MediaLaws&ID=25178&LID=1>

<sup>91</sup> Law on State Secrets, 7 September 2004

<sup>92</sup> Constitution of Belgium, 1994. <http://www.uni-wuerzburg.de/law/be00000.html>. See Frankie Schram, "Executive Transparency in Belgium", Freedom of Information Review, No 95, October 2001. According to an analysis by Professor Frankie Schram, this was broadly envisioned in the *travaux préparatoires* to include a wide range of documents in any form held by and executive authority.

<sup>93</sup> Loi du 11 avril 1994 relative à la publicité de l'administration. Modifiée par Loi 25 Juin 1998 et Loi 26 Juin 2000. <http://www.privacyinternational.org/countries/belgium/loi-publicite.rtf>

<sup>94</sup> Schram *Id.*

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

Citizens can appeal denials of information requests to the administrative agency which asks for advice from the Commission d'accès aux documents administratifs. The Commission issues advisory opinions both on request and on its own initiative. The Commission received 116 requests for advice in 2004 and 81 in 2005. Requestors can then make a limited judicial appeal to the Counsel of State. There were approximately ten appeals in 2004 and 2005.

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

In a report on the implementation of the law sent to the Council of Europe, the Foreign Ministry reported a number of problems with the act:

- The protection of the right of access to the official documents is not ensured enough though the appeals mechanism.
- People are not familiar enough with the right of access.
- Inadequate training of civil servants
- The existence of absolute exemptions.
- The existence of the specific regulations which organize the right of access for specific types of documents.<sup>95</sup>

An interdepartmental working group is currently developing a bill to implement the EU Directive on the re-use and commercial exploitation of public sector information (2003/98/EC). The law is expected to amend the 1994 Act. There are separate efforts in the regions to implement the directive.

Belgium signed the Aarhus Convention in 1998 and ratified it in January 2001. The 2000 amendments to the federal access to information act allow for access to environmental information. In 2003, 7,000 requests for information were made to the Info-Environmental Department.<sup>96</sup> In July 2005, the European Commission announced that it was taking legal action against Belgium and six other countries for failing to implement the 2003 EU Directive on access to environmental information.<sup>97</sup> As of May 2005, the government reported that it was

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<sup>95</sup> Council of Europe, Compilation of the replies to the questionnaire on the implementation of Recommendation Rec(2002)2 on access to official documents, DH-S-AC(2004)001 add bil 16 September 2004. (Unofficial translation).

<sup>96</sup> UNECE Implementation Report – Belgium, ECE/MP.PP/2005/18/Add.4, 9 May 2005.

<sup>97</sup> European Commission, Public access to environmental information: Commission takes legal action against seven Member States, 11 July 2005.

drafting a bill to transpose the Directive into law.<sup>98</sup>

The Parliament adopted the [Law on Security Classification and Authorisations](#) in 1998.<sup>99</sup> It creates three levels of classification: Top Secret, Secret and Confidential. The law exempts classified information from access under the 1994 Act.

[The Law on Protection of Personal Data](#) gives individuals the right to access and to correct files about themselves held by public and private bodies.<sup>100</sup> It is enforced by the [Data Protection Commission](#).<sup>101</sup> For administrative documents that contain personal information, access is handed under the 1994 access law.

There are also laws implementing access rules at the regional, community and municipal levels.<sup>102</sup>

## **BELIZE**

[The Freedom of Information Act](#) was enacted in 1994.<sup>103</sup> The law provides for access to documents held by government departments. It does not apply to the courts and the Office of the Governor General. The departments must respond within 14 days.

The definition of documents includes “public contracts, grants or leases of land, or any written or printed matter, any map, plan or photograph, and any article or thing that has been so treated in relation to any sounds or visual images that those sounds or visual images are capable, with or without the aid of some other device, of being reproduced from the article or thing, and includes a copy of any such matter, map, plan, photograph, article or thing, but does not include library material maintained for reference purposes.”

Documents affecting national security, defense, international relations, and Cabinet proceedings are exempt. Other exemptions can be imposed after a “test for harm” that shows that release of the documents would adversely affect trade secrets, personal privacy, confidence, privilege, operations of ministries, enforcement of the law, and the national economy.

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

The Act requires that the Minister administering the Act must publish an annual report on the operation of the Act, which shall be submitted to the National Assembly. These reports have not been produced. Also, the Ombudsman’s reports for the last 5 years make no mention of handling any appeals under the Act.<sup>104</sup>

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<sup>98</sup> ECE Report Id.

<sup>99</sup> Loi relative à la classification et aux habilitations de sécurité, 11 décembre 1998. <http://www.staatsbladclip.be/lois/1999/05/07/loi-1999007004.html>

<sup>100</sup> Loi relative à la protection des données à caractère personnel du 8 décembre 1992. <http://www.law.kuleuven.ac.be/icri/documents/12privacylaw.html>

<sup>101</sup> Homepage: <http://www.privacy.fgov.be/>

<sup>102</sup> La loi du 12 novembre 1997 relative à la publicité de l'administration dans les provinces et les communes. [http://users.swing.be/sw086276/info/L\\_12\\_11\\_1997.htm](http://users.swing.be/sw086276/info/L_12_11_1997.htm)

<sup>103</sup> Freedom of Information Act 1994, 14 May 1994 [http://www.belizeclaw.org/lawadmin/PDF\\_files/cap013.pdf](http://www.belizeclaw.org/lawadmin/PDF_files/cap013.pdf)

<sup>104</sup> Research undertaken by Mr Joss Ticehurst for the Right to Information Campaign being developed by SPEAR, a Belizean NGO.

In 2000, the Political Reform Commission found that the Act was not used often. It recommended that:

Government review and amend the Freedom of Information Act with the objective of narrowing the scope of the Act's definition of documents exempted from public access. The Commission further recommends that the Act be amended to provide for the automatic release of all government documents after fifteen years have passed.<sup>105</sup>

The [Prevention of Corruption in Public Life Act](#) requires that public officials file yearly financial disclosure forms of their assets, income and liabilities.<sup>106</sup> According to Freedom House, the courts have ruled that reporters that question the financial disclosure forms of public officials can be imprisoned.<sup>107</sup> The Reform Commission also recommended the expansion of coverage of the officials subject to the act.

The [Archives Act](#) sets a 30 years rule for the release of documents except for documents that are confidential or secret.<sup>108</sup>

## **BOSNIA AND HERZEGOVINA**

The [Freedom of Access to Information Act](#) (FoAIA) was adopted in July 2001 in Bosnia-Herzegovina and in the [Republika Srpska](#) in May 2001. It went into effect in February 2002.<sup>109</sup> The Act was adopted after Carlos Westendorp, the High Representative for Bosnia and Herzegovina, ordered that a freedom of information bill be developed by the Organization for Security and Co-operation in Europe (OSCE). A high-level group of international and national experts developed the draft bill in June 2000 based on some of the best practices from around the world.

The Act applies to information in any form held by any public authority including legal entities carrying out public functions. It also provides for a broad right of access by any person or legal entity, both in and outside of Bosnia. The request must be in writing. The government agency must respond in 15 days. However, the Act does not apply to international organizations, such as the OSCE, which effectively run the country.

Information can be withheld if it would cause “substantial harm” to defense and security interests, the protection of public safety, crime prevention and crime detection. Non-disclosure is also mandated to protect the deliberative process of a public authority, corporate secrets and personal privacy. A public interest test is applied to all exemptions.

Those who have been denied information can also appeal internally and challenge decisions in court. The [Federation Ombudsmen](#) and the Ombudsman of Republika Srpska can also hear

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<sup>105</sup> Final Report of the Political Reform Commission, January 2000. Available at [http://www.belize.gov.bz/library/political\\_reform/](http://www.belize.gov.bz/library/political_reform/)

<sup>106</sup> Prevention of Corruption in Public Life Act. <http://www.belizelaw.org/lawadmin/PDF%20files/cap012.pdf>

<sup>107</sup> Freedom House, Freedom in the World 2005

<sup>108</sup> Belize Archives Act. [http://www.belizelaw.org/lawadmin/PDF\\_files/cap333.pdf](http://www.belizelaw.org/lawadmin/PDF_files/cap333.pdf)

<sup>109</sup> Freedom Of Access To Information Act For The Federation of Bosnia and Herzegovina, July 2001, [http://www.ohr.int/ohr-dept/media-d/med-recon/freedom/default.asp?content\\_id=7269](http://www.ohr.int/ohr-dept/media-d/med-recon/freedom/default.asp?content_id=7269); Freedom Of Access To Information Act For The Republika Srpska, 18 May 2001. [http://www.ohr.int/ohr-dept/media-d/med-recon/freedom/default.asp?content\\_id=7270](http://www.ohr.int/ohr-dept/media-d/med-recon/freedom/default.asp?content_id=7270).

appeals. In 2004, the Ombudsmen heard nearly 100 complaints, up from 30 in the first year and 60 in the second year. 90 percent of the cases were found to be justified and resulted in Ombudsman intervention and obtaining of the information. Eight recommendations against public authorities who refused to comply were issued resulting in compliance in five of the cases. In Republika Srpska, the Ombudsman received 138 complaints in 2004, up from 26 the previous year. Most were justified and resolved by the Ombudsman contacting the body.<sup>110</sup>

There have been many problems with implementation. The Federation Ombudsmen have dedicated a section in their annual reports on implementation of the FoAIA. The first, issued before the Act went into force called for Ministries to disseminate guides, a register and select information officers.<sup>111</sup> They described the situation of FOI in 2004 as “unequally and inconsistently applied, although, generally, it was somewhat more effectively applied than in the first two years of its application.”<sup>112</sup> They describe the situation as “this right [is] often restricted, on one hand, due to lack of readiness of majority of governmental organs and, on the other hand, due to systemic non-harmonization of other laws with the Act.” They found inconsistent interpretations by public bodies, a failure to evaluate the public interest based on unlawful class exemptions, and later legislation adopted by the Parliament that unlawfully restricts the right of access. According to the Ombudsmen, “certain public organs “do not feel themselves obliged” to apply the Act, since “no one instructed them to do so, or remind them to do so””. They recommended in 2005 that the laws be systematically reviewed to ensure harmony with the FOI.<sup>113</sup>

The Ombudsmen reported in December 2004 that only 142 public bodies were following the rules and recommended that the Ministry of Justice create a registry of all public bodies to improve awareness. They also recommended that the government require that public bodies produce their quarterly reports. In Republic Srpska, the Ombudsman reported that only a “couple” of bodies had properly prepared for the Act and many had not appointed information officers, created indexes or guides and are not aware of their obligations or have “wrongful understanding” of it. A 2005 review by the Center for Free Access to Information found that only 57 percent of bodies responded to requests.<sup>114</sup>

The OSCE Mission to Bosnia and Herzegovina held a regional conference in December 2004 and found that “municipal representatives have noted that many citizens are not aware of this legislation, as the number of requests for information was minimal.”<sup>115</sup>

[The Law on the Protection of Personal Data](#) was enacted in December 2001. It allows individuals to access and correct files containing their personal information held by public and private bodies. It is enforced by a Data Protection Commission.

The [Criminal Code](#) prohibits the disclosure of state secrets. Violations can be punished for up to

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<sup>110</sup> Ombudsman of Republika Srpska, Annual Report 2004.

<sup>111</sup> Ombudsmen of the Federation of Bosnia and Herzegovina, Recommendation for the implementation of the freedom of access to information act, Sept 2001. <http://www.bihfedomb.org/eng/reports/special/secretfiles.htm>

<sup>112</sup> See Ombudsmen of the Federation of Bosnia and Herzegovina, Right to Free Access to Information Human Rights Protection and Media Freedoms. Annual Report for 2005, May 2005. <http://www.bihfedomb.org/eng/reports/2003/rpt2003mediafreedom.htm> See also Citizens' Rights to Information and Situation in the Area of Journalistic Freedoms. Annual Report for 2002, March 2003. <http://www.bihfedomb.org/eng/reports/2002/rpt2002media.htm>

<sup>113</sup> Special report on non-harmonisation of the Criminal Procedure Code and the Law on Tax Administration with freedom of access to information act for FBiH - following drawing attention of the Government of the Federation of BiH and the Ministry of Justice of the Federation of BiH at this fact, 27 June 2005.

<sup>114</sup> Homepage: <http://www.cspi.ba/index2.html>

<sup>115</sup> OSCE Statement by the Spokesperson, Access to information for the BiH public, 1 December 2004.

five years imprisonment.<sup>116</sup> There is a public interest exemption if the person does it “with an aim of disclosing to the public facts which constitute a violation of the constitutional order or of an international agreement, provided that the making public does not undermine the national security of Bosnia and Herzegovina.” The Ombudsmen issued a critical report of the Public Information Acts in Sarajevo and Una-Sana for overly broad prohibitions on publishing on information that would “jeopardize state secrets.”<sup>117</sup> In 2002, the Ombudsmen recommended against the release of intelligence files related to candidates for the upcoming election.<sup>118</sup>

## **BULGARIA**

Article 41 of the [Bulgarian Constitution of 1991](#) states:

- (1) Everyone shall be entitled to seek, receive and impart information. This right shall not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health and morality.
- (2) Citizens shall be entitled to obtain information from state bodies and agencies on any matter of legitimate interest to them which is not a state or other secret prescribed by law and does not affect the rights of others.<sup>119</sup>

In 1996, the Constitutional Court ruled that the Article 41 of the Constitution gives a right to information to any person, however, the right needed to be set out by legislation.<sup>120</sup> There were a number of lower court cases that rejected requests by citizens and NGOs to obtain information.<sup>121</sup>

The [Access to Public Information Act](#) was enacted in June 2000.<sup>122</sup> The law allows for any person or legal entity to demand access to information in any form held by state institutions and other entities funded by the state budget and exercising public functions. Requests can be verbal or written and must be processed within 14 days.

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

Unusually, there is no internal appeals mechanism. There is no also independent oversight body. Denials can be appealed to the regional court or the Supreme Administrative Court. There were

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<sup>116</sup> Criminal Code of Bosnia and Herzegovina 2003 §§ 163-164. <http://www.ohr.int/decisions/judicialrdec/doc/HiRep-dec-101-law-crim-code-bih.doc>

<sup>117</sup> Special report on violation of media freedoms through legislation on public information and media in Canton Sarajevo and Una-Sana Canton, 23 December 2003. <http://www.bihfedomb.org/eng/reports/special/lawchange.htm>

<sup>118</sup> Ombudsmen of the Federation of Bosnia and Herzegovina, Recommendation for the implementation of the freedom of access to information act (2). <http://www.bihfedomb.org/eng/reports/special/secretfiles2.htm>

<sup>119</sup> Constitution of the Republic of Bulgaria of 13 July 1991. <http://www.parliament.bg/?page=const&lng=en>

<sup>120</sup> Judgment No. 7, Case No. 1 of 1996. <http://www.aip-bg.org/documents/ruling.htm>

<sup>121</sup> See Gergana Jouleva, Bulgaria- The Access to Information Programme: Fighting for Transparency During the Democratic Transition, July 2002. Available at <http://www.freedominfo.org/case/bulgaria1.htm>

<sup>122</sup> Access to Public Information Act, <http://www.aip-bg.org/library/laws/apia.htm>. Amended by Personal Data Protection Act and Protection of Classified Information Act. See the Access to Information Programme Homepage for detailed studies and reports on freedom of information in Bulgaria. [http://www.aip-bg.org/index\\_eng.htm](http://www.aip-bg.org/index_eng.htm)

123 decisions in the Supreme Administrative Court between 2001 and 2005. In 2004, the court ruled in several significant cases limiting the trade secrets and preparatory documents exemptions, the application of the Classified Information Act, mute refusals, and began requiring that documents be released following a decision, rather than referring the case back to the public body for reconsideration. One problem has been obtaining contracts with private corporations. In 2005, the SAC ruled that requestors had no right to a contract between the state and Microsoft. The Access to Information Programme (AIP), which litigated many of these cases, reported that these resolved some of the existing weaknesses with the text of the Act.

Minor fines can be levied against government officials who do not follow the requirements of the Act.

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

There were 49,653 registered requests in 2004, down from 67,712 requests in 2003.<sup>123</sup> As in previous years, a large number of the requests were verbal (over 38,000).

A 2004 monitoring project by AIP found improvements over previous years. Overall, they received information in 60 percent of the cases, up from 38 percent in 2003. The number of tacit denials declined from 21 percent down to 12 percent and there were only two cases where they were not able to submit oral requests. They also found that awareness of the law was improved and that all the institutions had appointed officials and adopted internal rules and most had created registers.<sup>124</sup>

The AIP recommended a number of changes to the Act and government policies including requiring open meetings of collective bodies, obliging institutions to make drafts of regulations publicly available, apply the APIA to monopolies, establish a public interest test, conform the exemptions of other legislation in line with the APIA, protect whistleblowers, and establish effective penalties for violations of the APIA.

The Parliament approved the [Law for the Protection of Classified Information](#) in April 2002 as part of Bulgaria's efforts to join NATO.<sup>125</sup> It created a [Commission on Classified Information](#) appointed by the Prime Minister and four levels of security for classified information. The law provides a very broad scope of classification authority, allowing everyone who is empowered to sign a document to classify it. There are requirements to show harm for some provisions but there are no overriding public interest tests. The law revoked the 1997 [Access to Documents of the Former State Security Service Act and Former Intelligence Service of the General Staff Act](#) which regulated access to, and provided procedures for, the disclosure and use of documents stored in the former State Security Service, including files on government officials.<sup>126</sup> It also eliminated the Commission on State Security Records set up under the 1997 Act. A regulation

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<sup>123</sup> 2004 Annual Report for the Public Administration.

<sup>124</sup> Access to Information Programme, Access to Information in Bulgaria 2004 Report, 2005.

<sup>125</sup> Law for the Protection of Classified Information, Prom. SG. 45/30 Apr 2002, corr. SG. 5/17 Jan 2003.

<http://www.dksi.bg/NR/rdonlyres/070CA55F-EAD3-425D-BE41-A01AC62A005D/0/CLASSIFIEDINFORMATIONPROTECTIONACT.doc> For a review, see Alexander Kashumov, National Security and the Right to Information, 2003. Available at <http://www.freedominfo.org>

<sup>126</sup> Access to Documents of the Former State Security Service Act and Former Intelligence Service of the General Staff Act, 1997. [http://www.infotel.bg/juen/klasific\\_informacia/ezd.htm](http://www.infotel.bg/juen/klasific_informacia/ezd.htm)

now establishes access and the right of individuals to access their files created by the former security police is currently unclear. The Constitutional Court upheld the provisions that abolished the law on access to former state security files and created a register of classified documents in 2002.<sup>127</sup> There are also ongoing problems with the access to all of the files of the former security services. Few have been turned over to the National Archives. In January 2005, the government proposed to amend the act to make it easier to destroy documents including the files of the former secret police without declassifying or releasing them and giving the public bodies more control over documents. The provisions were withdrawn following public criticism that it would allow the mass destruction of important files about Bulgarian history.<sup>128</sup>

Under the Administration Act, the Council of Ministers must publish a register of administrative structures and their acts which is defined as “all normative, individual and common administrative acts.” The register must be on the Internet. In 2002, the regulation was amended to limit the Acts published to only those relating to exercising government control.<sup>129</sup>

Bulgaria signed the Aarhus Treaty in 1998 and ratified it in December 2003. A new [Environmental Protection Act](#) was approved in 2002.<sup>130</sup> The new act provides for less automatic disclosure and more exemptions than the previous law from 1991.<sup>131</sup>

The [Personal Data Protection Act](#), which came into force in January 2002, gives individuals the right to access and correct information held about them by public and private bodies.<sup>132</sup> The Commission for the Protection of Personal Data was created in 2003 to oversee the act. The law was amended in 2004 to include an absolute exemption on individuals accessing their own records if officials find that it might harm national security or reveal classified information.<sup>133</sup>

## CANADA

The 1983 [Access to Information Act](#)<sup>134</sup> provides Canadian citizens and other permanent residents and corporations in Canada the right to apply for and obtain copies of records held by government institutions. “Records” include letters, memos, reports, photographs, films, microforms, plans, drawings, diagrams, maps, sound and video recordings, and machine-readable or computer files. The institution must reply in 15 days. The courts have ruled that the Act is “quasi-constitutional.”

Records can be withheld for numerous reasons: they were obtained in confidence from a foreign government, international organization, provincial or municipal or regional government; would injure federal-provincial or international affairs or national defense; relate to legal investigations, trade secrets, financial, commercial, scientific or technical information belonging to the government or materially injurious to the financial interests of Canada; include personal

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<sup>127</sup> Decision No. 11 of 2002.

<sup>128</sup> Hristo Hristov, *Instead of Epilogue - the Battle for Access to Information in Kill the Tramp*, 2006. <http://www.aip-bg.org/hristov/text.htm>

<sup>129</sup> See AIP, *Report on Access to Public Information in Bulgaria 2002*. Available at <http://sadoes.government.bg>

<sup>130</sup> Environmental Protection Act. State Gazette No 91, 25 September 2002. [http://www2.moev.government.bg/recent\\_doc/legislation/EPA\\_En.working%20version.doc](http://www2.moev.government.bg/recent_doc/legislation/EPA_En.working%20version.doc)

<sup>131</sup> See Access to Information Programme, *The Current Situation of the Access to Public Information in Bulgaria 2002; How to Get Access to Environmental Information – Handbook* [http://www.aip-bg.org/pdf/env\\_hndbk\\_eng.pdf](http://www.aip-bg.org/pdf/env_hndbk_eng.pdf)

<sup>132</sup> Personal Data Protection Act. <http://www.aip-bg.org/pdf/pdpa.pdf>

<sup>133</sup> See AIP Report 2004.

<sup>134</sup> Access to Information Act, C. A-1. <http://www.infocom.gc.ca/acts/pdfs/accessact.pdf>

information defined by the Privacy Act; contain trade secrets and other confidential information of third parties; or relate to operations of the government that are less than 20 years old. Documents designated as Cabinet confidences are excluded from the Act and are presumed secret for 20 years.

Appeals of withholding are made to [The Office of the Information Commissioner of Canada](#).<sup>135</sup> The Commissioner receives complaints and can investigate and issue recommendations but does not have the power to issue binding orders. It can ask for judicial review if its recommendation is not followed. The Canadian Federal Court has ruled that government has an obligation to answer all access requests regardless of the perceived motives of those making the requests. Similarly, the Commissioner must investigate all complaints even if the government seeks to block him from doing so on the grounds that the complaints are made for an improper purpose.

The ATIA was amended by the Terrorism Act in November 2001.<sup>136</sup> The amendments allow the Attorney General to issue a certificate to bar an investigation by the Information Commissioner regarding information obtained in confidence from a “foreign entity” or for protection of national security if the Commissioner has ordered the release of information. Limited judicial review is provided for. The Information Commissioner described the review as “so limited as to be fruitless for any objector and demeaning to the reviewing judge.”<sup>137</sup> Thus far, no certificates have been issued.

The Commissioner received 1,506 complaints and completed 1,140 investigations in 2004-2005.<sup>138</sup> The Commissioner has an extensive backlog and an average investigation takes over seven months. Repeated requests for a number of years for additional resources have been denied by the government. The Commissioner also brought four cases before the federal courts. Eight cases were brought by requestors.

The office also issues report cards on agencies that received the most complaints for delays. This is aimed at remedying problems of systemic non-compliance within some major departments. Most of the agencies that have had negative report cards have substantially improved their procedures in the following years. The report notes that the overall complaints for delays dropped over half from nearly 50 percent in 1998 to 21 percent in the most recent report indicating that government departments were becoming more responsive. However, the number of extensions requested by institutions has more than quadrupled between 1999 and 2004.<sup>139</sup> The Commissioner reviewed practices at 42 agencies on extensions and found significant problems in between 40 and 80 percent of all extension requests. In 2004, the Commissioner expanded the report cards to look at the broader ATIA practices in the agency. It now looks at a number of issues including internal processes, resources devoted to ATIA, internal culture and information management.

The Courts have made numerous decisions on the Act, including 19 decisions in 2004-2005. Over the past several years, there has been a series of decisions by the courts on the powers of the Commissioner after government bodies filed 29 legal actions against the Commissioner to reduce his powers to investigate. The courts generally uphold the decisions of the

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<sup>135</sup> Homepage of the Information Commissioner of Canada. <http://www.infocom.gc.ca/>

<sup>136</sup> Bill C-36, the Anti-Terrorism Act. <http://canada.justice.gc.ca/en/terrorism/>

<sup>137</sup> Remarks to Special Committee on Bill C-36, 6 December 2001.

<sup>138</sup> Annual Report 2004-2005.

<sup>139</sup> Alasdair Roberts, Research note: Extensions under the Access to Information Act, October 2004. <http://www.aroberts.us>

Commissioner.<sup>140</sup> The Supreme Court ruled in July 2002 that the decisions of the government to withhold documents under this Cabinet papers exemption can be reviewed by the courts and other bodies including the Information Commissioner to ensure they were procedurally correct.<sup>141</sup> Following this decision, the Federal Court of Appeals ruled in February 2003 that discussion papers that contain background explanations, problem analysis and policy options can be released once a decision is made.<sup>142</sup> This was provided for in the ATIA but shortly after it went into effect, the government renamed the documents “memorandums to the Cabinet” and claimed that the exemption did not apply.

There has been a slow but steady increase in the number of requests made under the Act. In 2004-2005, it totaled over 25,000 requests.<sup>143</sup> A total of over 270,000 requests have been made under the ATIA since 1983. Typically the largest users are businesses and members of the general public. In 2004-2005, 47 percent of requests were by businesses, the public made 32 percent, 8 percent were from NGOs, and 11 percent were by the media.

There is wide recognition that the Act, which is largely unchanged since its adoption, is in need of drastic updating.<sup>144</sup> There has been an increased interest in the last few years to amend it. In 2004 a new Parliamentary Committee on Access to Information, Privacy and Ethics was formed which held hearings. The Liberal Government released a framework for revisions to the bill in 2005 and Information Commissioner John Reid released a draft bill.<sup>145</sup> In 2006, the Commission investigating the “sponsorship scandal” over the paying of \$250 million to Quebec advertising firms linked to the Liberal Government to promote national unity also recommended many changes based on the Information Commissioner’s recommendations.<sup>146</sup>

Most recently, the newly-elected Conservative government promised to include the changes recommended by the Commissioner into its first bill, “The Federal Accountability Act”. However, the government announced that the ATIA reforms were going to be sent separately to a Parliamentary committee for review, reportedly due to pressure from the bureaucracy. The proposed changes were strongly criticized by the Information Commissioner as reducing access to information.<sup>147</sup> Prime Minister Harper also imposed new gag rules on officials speaking to the media or releasing information without permission.<sup>148</sup>

Individuals can access and correct their records held by federal agencies under the [Privacy Act](#), a companion law to the ATIA.<sup>149</sup> There were over 36,000 requests for records in 2004-2005. A total of over 925,000 requests have been made under the Privacy Act since 1983.<sup>150</sup> Under the

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<sup>140</sup> See Office of the Information Commissioner, Annual Reports, 2002-03, 2003-04, 2004-05 for details of the cases.

<sup>141</sup> *Babcock v. Canada* (Attorney General), Supreme Court of Canada, 11 July 2002. <http://www.canlii.org/ca/cas/scc/2002/2002scc57.html>

<sup>142</sup> *Canada (Minister of Environment) v. Canada (Information Commissioner)*, 2003 FCA 68. 7 February 2003. <http://www.canlii.org/ca/cas/fca/2003/2003fca68.html>

<sup>143</sup> Treasury Board of Canada, InfoSource Bulletin No 28, Privacy Act and Access to Information Act 2004-2005 Access to Information, December 2005.

<sup>144</sup> See e.g., Alasdair Roberts, Two Challenges in Administration of the Access to Information Act, Commission of Inquiry into the Sponsorship Program and Advertising Activities, Restoring Accountability - Phase 2 Report. February 2006. <http://www.gomery.ca/en/index.asp>; Canadian Newspaper Association, In Pursuit of Meaningful Access to Information Reform: Proposals to Strengthen Canadian Democracy, 9 February 2004.

<sup>145</sup> See Information Commissioner of Canada, Access to Information Act – Proposed Changes and Notes <http://www.infocom.gc.ca/specialreports/2005reform-e.asp>

<sup>146</sup> Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Id.*

<sup>147</sup> Office of the Information Commissioner of Canada, Response to the Government’s Action Plan for Reform of the Access to Information Act, April 2006. <http://www.infocom.gc.ca/specialreports/2006special-e.asp>

<sup>148</sup> Harper restricts ministers’ message, *Globe and Mail*, 17 March 2006.

<sup>149</sup> Privacy Act. R.S. 1985, c. P-21 <http://laws.justice.gc.ca/en/P-21/index.html>

<sup>150</sup> InfoSource Bulletin No 28, *Id.*

[Personal Information Protection and Electronic Documents Act](#) (PIPEDA), individuals can access and correct their records held by businesses except in provinces which have adopted similar laws.<sup>151</sup> The Acts are overseen by the [Privacy Commissioner](#) who has similar powers to the Information Commissioner.<sup>152</sup> From time to time, including in 2005, it has been proposed that the offices of the Privacy and Information Commissioners should be combined. There have been concerns about the possible conflicts of the two roles and thus far, the suggestions have been rejected.<sup>153</sup> The Supreme Court, in a 2006 case on privacy and freedom of information, ruled that some information could not be released, noting that, “the Privacy Commissioner and the Information Commissioner are of little help because, with no power to make binding orders, they have no teeth.”<sup>154</sup>

The [Security of Information Act](#) criminalizes the unauthorized release, possession or reception of secret information.<sup>155</sup> Employees of the various intelligence services are permanently bound to secrecy. There is a limited defense for disclosing information to reveal a criminal offence but the person must have first informed a Deputy Minister and the relevant commission or committee. The Act was previously named the Official Secrets Act and was renamed by the 2001 Anti-terrorism Act and slightly amended. The Act was used to raid the office and home of a reporter for the Ottawa Citizen in January 2004 following the publication of an article on the controversial deportation of Maher Arar. The decision to raid was criticized widely, including by then newly-elected Prime Minister Paul Martin. The government promised to review the Act but in January 2005, a Justice Canada spokesman said that the review was “up in the air.” A legal challenge to the raid is pending in the courts.

All the Canadian provinces have a freedom of information law and most have a commissioner or ombudsman who provides enforcement and oversight.<sup>156</sup> They also have adopted privacy legislation and in many jurisdictions, the Privacy and Information Commissioners are combined in a single office.

## COLOMBIA

The [Constitution](#) provides for a right of access to government records.<sup>157</sup> Article 74 states “Every person has a right to access to public documents except in cases established by law.” Article 15 provides a right of “habeas data” that allows individuals to access information about themselves held by public and private bodies. Article 78 regulates consumer product information, and Article 112 allows political parties the right of “access to official information and documentation”. Article 23 provides for the mechanism to demand information, “Every person has the right to present petitions to the authorities for the general or private interest and to secure their prompt resolution.”

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<sup>151</sup> Personal Information Protection and Electronic Documents Act. [http://www.privcom.gc.ca/legislation/02\\_06\\_01\\_e.asp](http://www.privcom.gc.ca/legislation/02_06_01_e.asp)

<sup>152</sup> Homepage: [http://www.privcom.gc.ca/index\\_e.asp](http://www.privcom.gc.ca/index_e.asp)

<sup>153</sup> The Offices of the Information and Privacy Commissioners: The Merger and Related Issues Report of the Special Advisor to the Minister of Justice Gérard V. La Forest, 15 November 2005. [http://www.justice.gc.ca/en/pl/laforest\\_e.pdf](http://www.justice.gc.ca/en/pl/laforest_e.pdf)

<sup>154</sup> H.J. Heinz Co. of Canada Ltd. v. Canada (Attorney General), 2006 SCC 13. <http://www.lexum.umontreal.ca/csc-scc/en/rec/html/2006scc013.wpd.html>

<sup>155</sup> Security of Information Act, c. O-5. <http://laws.justice.gc.ca/en/O-5/>

<sup>156</sup> See Alasdair Roberts, Limited Access: Assessing the Health of Canada's Freedom of Information Laws, April 1998. <http://qsilver.queensu.ca/~foi/foi.pdf>

<sup>157</sup> Constitution of Colombia, 1991, revised 2001. <http://www.georgetown.edu/pdba/Constitutions/Colombia/col91.html>

The Constitutional Court has ruled in numerous cases on the fundamental right of information as an essential part of democracy.<sup>158</sup> The Court has also ruled in over 110 cases relating to habeas data since 1992.<sup>159</sup>

Colombia has a long history of freedom of information legislation. In 1888, the Code of Political and Municipal Organization allowed individuals to request documents held in government agencies and archives, unless release of these documents was specifically forbidden by another law.<sup>160</sup>

The [Law Ordering the Publicity of Official Acts and Documents](#) was adopted in 1985.<sup>161</sup> This law allows any person to examine the actual documents held by public agencies and to obtain copies, unless these documents are protected by the Constitution, another law, or for national defense or security considerations. Information requests must be processed in 10 days.

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

The law also requires the publication of acts and rules. The Constitutional Court ruled in December 1999 that under the 1985 Act and a 1998 amendment, legislative acts would only be in force against individuals once they were published.<sup>162</sup>

The law seems little used. Access to information is more common under the constitutional right of Habeas Data than under the 1985 law. There are longstanding problems with implementation and enforcement.<sup>163</sup> A project of law to adopt a stronger law was introduced in 2004 and is current pending in the Congress.<sup>164</sup>

Under the [General Law of Public Archives](#), after 30 years, all documents become public records except for those that contain confidential information or relate to national security.<sup>165</sup>

## CROATIA

Article 38 of the Constitution of Croatia provides for freedom of expression and prohibits censorship, and provides a right of access to information to journalists.<sup>166</sup>

The [Act on the Right of Access to Information](#) was approved by the Parliament on 15 October 2003 and signed by the President on 21 October 2003.<sup>167</sup>

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<sup>158</sup> See Sentencia C-641/02, Sentencia T-216/04. <http://www.cajpe.org.pe/rij/bases/juris-nac/t216.pdf>, Sentencia T-053/96. <http://www.cajpe.org.pe/rij/bases/juris-nac/c-038.pdf>

<sup>159</sup> See EPIC and Privacy International, Privacy and Human Rights 2004: Colombia. <http://www.privacyinternational.org/survey/>

<sup>160</sup> Alberto Donadio, Freedom of Information in Colombia, Access Reports, 16 February 1994.

<sup>161</sup> Ley 57 de 1985 (Julio 5) Por la cual se ordena la publicidad de los actos y documentos oficiales. <http://www.privacyinternational.org/countries/colombia/ley57-foi.doc>

<sup>162</sup> C-957, 1 December 1999.

<sup>163</sup> Donadio, *Id.*

<sup>164</sup> Proyecto de Ley 154 de 2004 Senado por medio de la cual se reglamenta el derecho a la Información. <http://www.alfa-redi.org/privacidad/legislacion.shtml?x=5266>

<sup>165</sup> Ley 594 de 2000 (julio 14) por medio de la cual se dicta la Ley General de Archivos y se dictan otras disposiciones. <http://www.mincultura.gov.co/nuevo/cerodos/DOCUMENTOS/Ley594.pdf>

<sup>166</sup> Constitutional of the Republic of Croatia, 2001. [http://www.usud.hr/htdocs/en/the\\_constitution.htm](http://www.usud.hr/htdocs/en/the_constitution.htm)

<sup>167</sup> Act on the Right of Access to Information (172/03), 15 October 2003. <http://www.gradjani-imaju-pravo-znati.hho.hr/en/lotrainformation.htm>

Any person has the right to information from bodies of public authorities, including state bodies, local and regional governments, and legal and other persons vested with public powers. Requests can be either oral or written. Public authorities are required to respond within 15 days.

There are mandatory exemptions for information that is declared a state, military, official, professional or business secret by law or personal information protected by the law on data protection. Information can also be withheld if there is a “well-founded suspicion” that its publication would cause harm to prevent, uncover or prosecute criminal offenses; make it impossible to conduct court, administrative, or other hearings; make it impossible to conduct administrative supervision; cause serious damage to the life, health and safety of the people or environment; make it impossible to implement economic or monetary policies; or endanger the right of intellectual property.

Appeals of withholdings are to the head of the competent body of the public authority. If that is unsatisfactory, complaints can be filed with the Administrative Court. As of 2005, the courts had issued twenty decisions, mostly relating to the failure of public bodies to respond to requests.<sup>168</sup> They did issue one controversial decision that contracts between the government and German Telecom were business secrets. Complaints can also be made to the [Ombudsman](#). His decisions are not binding and the office has a broad mandate with many other issues.

Requestors can also demand that information that is incomplete or inaccurate be amended or corrected.

The law also imposes a number of administrative duties on public authorities to improve access. They are required to appoint an information officer and develop a catalog of the information that they possess. They must publish in the official gazettes or on the Internet all decisions and measures which affect the interests of beneficiaries; information on their work including activities, structure, and expenditures; information on the use of the Act; and information relating to public tenders. They must also create a report on the status of implementation. The government must publish an annual report on the overall implementation of the law.

There are sanctions available against both legal and physical persons for failure to make information available and criminal penalties for intentionally damaging, destroying, or concealing information.

The Council of Europe GRECO Committee recommended in December 2005 that the effectiveness of implementation be evaluated and further training be given to public officials.<sup>169</sup> A review in 2005 by the Croatian Helsinki Committee describes the implementation of the law as “very slow so far.”<sup>170</sup> Public bodies fail to respond to requests, and many have not appointed information officials, created catalogs of information or registers of requests. The Zagreb Mayor’s office was described as the most secretive public body. The Helsinki Committee also reported that journalists face difficulties in obtaining even routine information and that the Administrative Court was even denying the names of public bodies that were found by the court to have violated the law. Civil Society groups are continuing to push for amendments to the Act

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<sup>168</sup> Croatian Helsinki Committee, First FOI Litigation Experience in Croatia. <http://www.gradjani-imaju-pravo-znati.hho.hr/en/courtpractice.htm>

<sup>169</sup> Greco Eval II Rep (2005) 4E, 9 December 2005.

<sup>170</sup> Croatian Helsinki Committee, Monitoring 2005. <http://www.gradjani-imaju-pravo-znati.hho.hr/en/monitoring2005.htm>

including the creation of an independent Information Commission and a public interest test.<sup>171</sup>

The 1996 Law on the Protection of the Secrecy of Data creates broad rules for the protection of five categories of information: national secrets, military secrets, official secrets, business secrets, and professional secrets.<sup>172</sup> A bill was introduced by the government in March 2006 to replace the 1996 law with a new Data Secrecy law which creates new limits on non-classified information. The government report claims that the 1996 law failed to set a common minimum security standard which resulted in the failure of many government authorities to adopt regulations, which violates their obligations under NATO and EU rules. The bill creates four categories of classified information including one that would allow classification if the information “would damage the efficiency and performance of tasks of public authorities” and fails to set maximum time limits on classification. NGOs in Croatia have set up a campaign to oppose the effort and promote amendments to improve access to information.

The unauthorized publication or disclosure of information classified as a state secret is a violation of the Criminal Code.<sup>173</sup> Officials can be imprisoned for up to five years. Non-officials who know they are publishing a secret can be imprisoned for up to three years or fined.

In 2001, the Interior Ministry provided access to the subjects of 650 files of the nearly 40,000 files created by the Agency for the Protection of the Constitutional Order (SZUP), former President Franjo Tudjman’s secret police which operated in the 1990s. It claimed that the 650 were cases where the agency had monitored people without justification and the rest of the files were on paramilitary leaders or leaders of rebellions.<sup>174</sup>

Croatia signed the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters on 25 June 1998 but has not ratified it. In 2003, it approved the Protocol on Pollutant Release and Transfer Registers to the Aarhus Convention. The Environmental Protection Act of 1994 allows for some publicity and access to environmental information.

The [Act on the Protection of Personal Data](#) adopted in March 2003 sets rules on the access, collection and use of personal information.<sup>175</sup> Individuals can use the Act to access their records. It is overseen by the [Personal Data Protection Agency](#), which was established in April 2004.<sup>176</sup>

Under the [Law on Archive Records and Archives](#), documents are available after 30 years. Documents relating to national security, international relations and defense are sealed for 50 years. Documents which contain personal information are sealed for 70 years.<sup>177</sup>

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<sup>171</sup> Legislative Proposal of Amendments to the Act on the Right of Access to Information. 28 March 2004, [http://www.transparency.hr/dokumenti/zakoni/izmjene\\_i\\_dopune\\_eng.pdf](http://www.transparency.hr/dokumenti/zakoni/izmjene_i_dopune_eng.pdf)

<sup>172</sup> Official Gazette No 108/96, Dec. 1996

<sup>173</sup> Criminal Code §§144-146.

<sup>174</sup> Serbian agency says 126 journalists on Tudjman's secret police files in Croatia, BBC Monitoring Europe – Political, 12 November 2001.

<sup>175</sup> Act on Personal Data Protection. Official Gazette No.103/03.

[http://www.azop.hr/DOWNLOAD/2005/02/16/Croatian\\_Act\\_on\\_Personal\\_Data\\_Protection.pdf](http://www.azop.hr/DOWNLOAD/2005/02/16/Croatian_Act_on_Personal_Data_Protection.pdf)

<sup>176</sup> Homepage: <http://www.azop.hr/default.asp?ru=141>

<sup>177</sup> Law on Archive Records and Archives No 105/1997. <http://www.arhiv.hr/en/hr/pdf/Zakon%20eng.pdf>

## CZECH REPUBLIC

The 1993 Charter of Fundamental Rights and Freedoms provides for a right to information.<sup>178</sup> Article 17 states:

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

The [Law on Free Access to Information](#) was adopted in May 1999 and went into effect in January 2000.<sup>179</sup> The law allows any natural or legal person to access information held by State authorities, communal bodies and private institutions managing public funds. Requests can be made in writing or orally. The public bodies are required to respond to requests within 15 days.

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

Appeals are made to the superior body in the state authority concerned, which must decide in 15 days. An “exposition” can be filled when a central state body rejects an information request. The decision can then be appealed to a court under a separate law. The courts have ruled in numerous cases on issues including procedural and the relationship between the FAI and other laws, where the FAI is given precedence except where the other act sets out a complete access procedure. There has been difficulty obtaining copies of decisions from the courts and suits are pending to force disclosure.

Complaints can also be made to the Public Defender of Rights (Ombudsman).<sup>180</sup> The Office received 19 complaints in 2004. The office found that the largest problem was a failure by public bodies to recognize and register requests, failure to respond, violation of procedures for denying information, and refusing access to information to a person who is a party to an action.<sup>181</sup> The Ombudsman has also noted problems with patients and their families accessing their personal information collected during medical treatment. He issued a recommendation in 2005 regarding access to the medical files of the deceased by their families.<sup>182</sup>

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<sup>178</sup> Charter of Fundamental Rights and Freedoms. <http://www.psp.cz/cgi-bin/eng/docs/laws/listina.html>

<sup>179</sup> Law Dated 11 May 1999 On free access to information, 106/1999 Coll. <http://mujweb.cz/www/vaske/informace.htm>

<sup>180</sup> Homepage: <http://www.ochrance.cz/en/index.php>

<sup>181</sup> Annual Report for 2004.

<sup>182</sup> The right of patients and the bereaved to receive information contained in medical documentation, January 2005.

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

The 2005 implementation report to the UNECE committee reported a number of problems with access rights including conflicts between the laws on access to information and the Administrative Procedures Act, poor enforcement even when there is a court judgment ordering release of information, slow and “ineffective” court reviews and failure of government officials to release information and follow the dictates of the laws.<sup>183</sup> The NGO Otevřená Společnost’s (Open Society) Right to Information Project conducted studies in 2001 and 2002 and found that citizens have obtained access in a majority of cases and the authorities have not been overwhelmed by requests.<sup>184</sup> It also found a number of problems including excessive fees being imposed, the overuse of commercial secrets and data protection as justifications for withholding, unjustified denials by agencies that claim that they are not subject to the act or simply ignore the law, and a failure of agencies to provide segregable information.

The Law was amended in 2006 to make a number of improvements. Courts can now order public bodies to release information rather than returning the case to the public body for re-review, fees are limited to mostly direct costs, relaxing the exemptions so that personal information and trade secrets relating to publicly funded activities can be released, and requiring public bodies to public information that has been released in a request. The changes also implement the EU Directive on the re-use and commercial exploitation of public sector information (2003/98/EC).

[The Protection of Classified Information Act](#) was approved in May 1998 as part of the Czech Republic's entry into NATO.<sup>185</sup> It sets 28 types of information that can be classified into four levels of classification. The Office for the Documentation and Investigation of the Crimes of Communism (UDV) is in charge of security checks. The Constitutional Court ruled in June 2002 that some provisions were unconstitutional because they did not provide for judicial review and the law was amended.<sup>186</sup> In March 2004, the Court rejected an appeal from the Ombudsman to find that the act was too vague in its categories of information.<sup>187</sup>

In April 1996, Parliament approved a law that allows any Czech citizen to obtain his or her file created by the communist-era secret police (StB).<sup>188</sup> In March 2002, President Havel signed legislation expanding access to the files.<sup>189</sup> Any Czech citizen over 18 years old can access nearly any file. The Interior Ministry’s [Office for the Documentation and Investigation of the Crimes of Communism](#) (UDV) is in charge of the files.<sup>190</sup> The Interior Ministry was estimated to hold 60,000 records but it is believed that many more were destroyed in 1989. Another 70 meters of files about former dissidents and diplomats were discovered in its archives in 2005. The

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<sup>183</sup> UNECE, Implementation Report – Czech Republic ECE/MP.PP/2005/18/Add.6, 12 May 2005.

<sup>184</sup> See Open Society, b.a., Free Access to Information in the Czech Republic, August 2002. <http://www.otevrete.cz/index.php?id=142&akce=clanek>

<sup>185</sup> Act 148/1998 dated 11 June 1998 on Protection of Classified Information and on Amendment to Certain Acts. <http://www.nbu.cz/en/act148.php> Most recently amended by Act No. 310/2002 Coll. Regulation 348/2002 concerning Security Eligibility of Individuals, 22 July 2002. <http://www.nbu.cz/angl/regulation.html>

<sup>186</sup> Finding No. 322/2001 Coll.

<sup>187</sup> Pl US31/03, 11 February 2004. [http://test.concourt.cz/angl\\_verze/doc/p-31-03.html](http://test.concourt.cz/angl_verze/doc/p-31-03.html)

<sup>188</sup> Act N. 140/1996 Coll. of 26 April 1996 on Disclosure of Files Established by Activities of the Former State Security Force. See Former Secret Police Files Will Be Open to Public. <http://www.mzv.cz/washington/newslet/c09-1296.htm>

<sup>189</sup> Act 107/2002 amending Act No. 140/1996 Coll. on providing access to volumes created within the activities of the former State Security, and some other Acts.

<sup>190</sup> Homepage: <http://www.mvcr.cz/policie/udv/english/>

government published a list of 75,000 StB collaborators in 2003 on the Ministry's website.<sup>191</sup>

The 2000 [Data Protection Act](#) allows individuals to access and correct their personal information held by public and private bodies.<sup>192</sup> It is enforced by the [Office for Personal Data Protection](#).<sup>193</sup>

The Czech Republic signed the Aarhus Convention in June 1998 and ratified it in July 2004. [Law No 123/1998](#) on the right to information on the environment requires that public bodies disclose information on environmental matters. It was amended in 2005 to make it compatible with the EU Directive 2003 on access to environmental information.<sup>194</sup>

## DENMARK

The first limited act on access to information in Denmark was adopted in 1964.<sup>195</sup> In 1970, the Parliament approved the first comprehensive FOI law, the Act on Access of the Public to Documents in Administrative Files. The 1970 law was replaced in 1985 by the [Access to Public Administration Files Act](#).<sup>196</sup>

It allows "any person" to demand documents in an administrative file. Authorities must respond as soon as possible to requests and if it takes longer than ten days they must inform the requestor of why the response is delayed and when an answer is expected.

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

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

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<sup>191</sup> Radio Prague, Czechs wait thirteen years for official names of secret police collaborators, 24 March 2003. <http://www.radio.cz/en/article/38934>

<sup>192</sup> Act of 4 April 2000 on Protection of the Personal Data, [http://www.uoou.cz/index.php?l=en&m=left&mid=01&u1=legislation&u2=leg\\_101\\_2000&t=](http://www.uoou.cz/index.php?l=en&m=left&mid=01&u1=legislation&u2=leg_101_2000&t=)

<sup>193</sup> Web Site: <http://www.uoou.cz/>

<sup>194</sup> Law No. 123 /1998 on Access to Information on the Environment, of 13 May 1998. [http://www.ecl.nl/documents/czech\\_act.htm](http://www.ecl.nl/documents/czech_act.htm). Amended by Act No. 6/2005 Coll.

<sup>195</sup> The Law on Party Access in Administration 13 May 1964. See Hallo, ed., Access to Environmental Information in Europe: Denmark (Kluwer Law 1996).

<sup>196</sup> Access to Public Administration Files Act. Act No. 572, 19 December 1985. <http://www.privacyinternational.org/countries/denmark/dk-foi-85.doc>

danger to life, health, property or the environment.

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

The [Folketingets Ombudsman](#) can review decisions and issue opinions recommending that documents be released or that the authority justify its decisions better.<sup>197</sup> The Ombudsman cannot order public authorities to act but its recommendations are generally followed.<sup>198</sup> It can also start its own investigations. The Ombudsman receives 200 to 300 complaints each year relating to access to records and decides against the public bodies in around fifteen percent of the cases. It takes three to five months for each decision. Decisions on access can also be appealed to the courts but this is rare.

The Government set up a Public Disclosure Commission in 2001 to review the Act and prepare a new law on access to information.<sup>199</sup> The Commission is considering the effects of new technologies, the role of other laws, the effect of restructuring on how government departments work, and the need for an independent oversight agency. It is being chaired by the Ombudsman and includes participation from government departments and users. It is expected to complete its review in 2007 and issue recommendations. A draft bill is not expected in the Parliament until 2008/09.

The [Act on the re-use of public sector information](#) to implement the requirements of the EU Directive on the re-use and commercial exploitation of public sector information (2003/98/EC) was adopted in June 2004.<sup>200</sup>

The [Public Administration Act](#) governs access to records where a person is party to an administrative decision.<sup>201</sup> It provides for greater access to records than under the Access Act.

The [Act on Processing of Personal Data](#) allows individuals to access their records held by public and private bodies.<sup>202</sup> It is enforced by the [Datatilsynet](#) (Data Protection Agency).<sup>203</sup>

The Act on the legal status of patients allows access for patients to their health records, unless consideration for the person requesting disclosure or for other private interests is of overriding importance.<sup>204</sup>

Denmark signed the Aarhus Convention in June 1998 and ratified and approved it in September 2000. The Access to Environmental Information Act implements the European Environmental Information Directive (90/313/EEC)<sup>205</sup> and was amended in 2000 to implement the Aarhus

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<sup>197</sup> Homepage: [http://www.ombudsmanden.dk/english\\_en/](http://www.ombudsmanden.dk/english_en/)

<sup>198</sup> Council of Europe, Responses to the Questionnaire on National Practices in Terms of Access to Official Documents - Denmark, Sem-AC(2002)002 Bil, 18 November 2002, p.188. See also Summaries of annual reports for reviews of recent cases at <http://www.ombudsmanden.dk/index.asp?art=summ-eng.htm&id=summ-eng&fold=international>

<sup>199</sup> COE report, Ibid, p. 223.

<sup>200</sup> Act on the re-use of public sector information, nr. 596, 24 June 2005. [http://europa.eu.int/information\\_society/policy/psi/docs/pdfs/implementation/dk\\_act\\_596\\_24-06-05.doc](http://europa.eu.int/information_society/policy/psi/docs/pdfs/implementation/dk_act_596_24-06-05.doc)

<sup>201</sup> Act 571 of 19 December 1995. [http://aabenhedskomite.homepage.dk/07love/forvaltningsloven\\_paa\\_engelsk.htm](http://aabenhedskomite.homepage.dk/07love/forvaltningsloven_paa_engelsk.htm)

<sup>202</sup> The Act on Processing of Personal Data (Act No. 429 of 31 May 2000). [http://www.datatilsynet.no/upload/Dokumenter/regelverk/lov\\_forskrift/lov-20000414-031-eng.pdf](http://www.datatilsynet.no/upload/Dokumenter/regelverk/lov_forskrift/lov-20000414-031-eng.pdf)

<sup>203</sup> Homepage: <http://www.datatilsynet.no/>

<sup>204</sup> Act 482 of 1 July 1998.

<sup>205</sup> Act from the Ministry of the Environment on Access to Information on the Environment. No. 292 of 27 April 1994. <http://www.mst.dk/rules/Acts%20in%20force/Intersectoral%20in%20force/03040200.doc>

Convention.<sup>206</sup> A bill that would facilitate the forms of access is pending.

Under the Archives Act, most archives of public bodies are available after 30 years.<sup>207</sup> Archives containing personal information are kept closed for 80 years and those containing information relating national security and other reasons can be closed for varying times.

The Criminal Code prohibits the disclosure of classified information. An intelligence official, Major Frank Soeholm Grevil, was convicted and sentenced to six months imprisonment in November 2004 for revealing documents to journalists stating that the government had no evidence that there were weapons of mass destruction in Iraq. The two journalists were charged in April 2006 with “publishing information illegally obtained by a third party”. The disclosure resulted in the resignation of Defense Minister Svend Aage Jensby in April 2004. Prime Minister Anders Fogh Rasmussen ordered that the reports be declassified saying, “a very extraordinary situation has arisen which has given rise to doubts about the government's credibility.” Grevil has appealed his conviction.

Under the Home Rule Act, Greenland has a separate set of laws generally based on Danish law.<sup>208</sup> The 1994 Public Administration Act and the 1994 Access to Public Administration Files Act were inspired by Danish legislation as well as practice.<sup>209</sup> The 1998 Act on Archives provides access by the public to archives.<sup>210</sup>

## DOMINICAN REPUBLIC

Article 8 (10) of the [Constitution](#) gives the media a right of access to all public and private sources of information except in cases of harm to public order or national security.<sup>211</sup>

President Hipólito Mejía approved the [Law on Access to Information](#) on 28 July 2004.<sup>212</sup> The law allows any person the right to demand information in any form from national and municipal bodies, state enterprises, and private organizations that receive public money to conduct state business. It does not include rough drafts and projects that are not an administrative procedure. The national legislature and judiciary are also covered for their administrative activities. The requests must be in writing. Government bodies have 15 days to respond. The media is given a greater right of access.

There are twelve exemptions for information relating to: defence or state security that has been classified as reserved by an executive order or could affect international relations; would affect a government function if released too early; affect the operation of the banking or financial system; would affect an administrative or judicial proceeding; classified as secret relating to scientific, technological, communications, industrial, commercial, or financial the release of

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<sup>206</sup> Act from the Ministry of Environment and Energy, Amending Certain Environmental Acts. No. 447 of 31 May 2000. <http://www.mst.dk/rules/Acts%20in%20force/Intersectoral%20in%20force/03040500.doc>

<sup>207</sup> See presentation of Hanne Rasmussen, International Council of Archives, SPP Rome, February 2002. <http://www.spp-ica.org/files/docs2002/Rasmussen.doc>

<sup>208</sup> Act No. 577 of 29 November 1978.

<sup>209</sup> Act No. 8 of 13 June 1994 on Public Administration Act, Act No. 9 of 13 June 1994 on Access to Public Administration Files with later amendments.

<sup>210</sup> Act No. 22 of 30 October 1998.

<sup>211</sup> Constitución Política de la República Dominicana de 2002. <http://pdba.georgetown.edu/Constitutions/DomRep/domrep02.html>

<sup>212</sup> Ley General de Acceso a la Información Pública. No 200-04. <http://www.centrojuanmontalvo.org.do/documentos/acceso.pdf>

which would cause harm to the national interest; would harm an administrative investigation; would cause inequality or violate administrative hiring law; advice, recommendations or opinions that would harm the deliberative process prior to the final decision; commercial, industrial, or technical secret received in confidence; judicial or administrative secrets; personal privacy; and health and public security, the environment and the public interest in general.

Appeals of decisions can be made to a superior body and then to the administrative court. There are criminal penalties for officials who unlawfully deny, obstruct or prevent access of two to five years imprisonment and banning them from public employment for five years.

All acts and activities of public bodies are required to be published.<sup>213</sup> This includes acts and administrative activities of all three branches; budgets and calculations of resources; programs and projects; lists of all public employees; the sworn declarations of employees; listings of beneficiaries of programs and subsidies; state accounts of national debt; regulatory laws, decrees, decisions and other norms; official indices, statistics, and values; legal agreements and contracts; and other information required to be public by law. Public bodies are also required to publish in advance regulations and acts. The information must be in understandable language. The publication can be exempted if there is a strong public interest, for internal security, if it would cause disinformation or confusion, if it would negate the effectiveness of the regulation, or for urgency reasons.

Regulations for the FOI law were enacted in February 2005.<sup>214</sup> A report has criticized that the law requires to explain the reasons to request access to public information. The Regulation provides that no reason is necessary and only a simple request is sufficient.<sup>215</sup> One of the first cases was the Director of the journal *El Día*, who requested under the FOI law the list of officers of the Police related with the illegal use of cars seized legally by the Police but never returned to their owners.<sup>216</sup>

Law 82 of 1979 on the Sworn Declaration of Assets requires public officials to declare their assets. The declarations are public.

## **ECUADOR**

Article 81 of the [Political Constitution](#) states:<sup>217</sup>

The state shall guarantee the right, in particular for journalists and social commentators, to obtain access to sources of information; and to seek, receive, examine, and disseminate objective, accurate, pluralistic, and timely information, without prior censorship, on matters of general interest, consistent with community values.

...

Information held in public archives shall not be classified as secret, with the exception of

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<sup>213</sup> Supreme Court of RD Office <http://www.suprema.gov.do/poderjudicial/oficinaccesoinfpub.htm>; Secretary of the Presidency web site <http://www.stp.gov.do/portalttransp.html>; Procuraduría [http://www.procuraduria.gov.do/PGR.NET/Transparencia/Procedimientos\\_Transparencia.aspx](http://www.procuraduria.gov.do/PGR.NET/Transparencia/Procedimientos_Transparencia.aspx)

<sup>214</sup> Reglamento de la Ley General de Libre Acceso a la Información Pública - Decreto No. 130-05 de fecha 25 de febrero de 2005

<sup>215</sup> [http://www.procuraduria.gov.do/PGR.NET/Dependencias/DPCA/Documentos/mecanismo\\_implementacion\\_convencion.pdf](http://www.procuraduria.gov.do/PGR.NET/Dependencias/DPCA/Documentos/mecanismo_implementacion_convencion.pdf)

<sup>216</sup> See Servio Tulio Castaños, Estrategia para la adopción de la ley de libre acceso a la información pública. La experiencia dominicana [http://www.thedialogue.org/publications/programs/policy/politics\\_and\\_institutions/press\\_freedom/background\\_ca/castanos.asp](http://www.thedialogue.org/publications/programs/policy/politics_and_institutions/press_freedom/background_ca/castanos.asp)

<sup>217</sup> Constitución Política de la República de Ecuador de 1998. <http://pdba.georgetown.edu/Constitutions/Ecuador/ecuador98.html>

documents requiring such classification for the purposes of national defense or other reasons specified by law.

The [Organic Law on Transparency and Access to Public Information](#) (LOTAIP) was adopted on 18 May 2004.<sup>218</sup> The law gives citizens the right to demand public information in any format from public bodies and organizations that provide state services or are publicly owned. The request must be in writing. Bodies must respond in ten days but that can be extended another five days. There is no obligation to create information, conduct evaluations or analysis, or to produce summaries, statistical information, or indices if the information is widely dispersed.

There are exemptions for personal information, national security, national defence including military plans, intelligence, and other information protected specially by other laws. The regulations note that this includes commercial or financial information including information given in confidence; protected commercial, banking industrial or technical secrets, information related to the administration of justice; information on state decision making; if it would cause harm; and information given to the Tax Administration.

Information can be secret for a maximum of 15 years but the duration can be extended if there is continued justification for it. Information currently held as secret that is over 15 years old should be made public. The National Security Council is responsible for the classification and declassification of national security-related information. Congress can also declassify information in special session. Information cannot be classified following a request.

The [Ombudsman \(Defensoría del Pueblo\)](#) is in charge of monitoring and promoting the law. It can hear complaints or make investigations on its own initiative.<sup>219</sup>

Complaints about withholdings can be made to a court by individual requestors. The Ombudsman can also take cases to court. The court can order the release of the information. Appeals of court decisions can be made to the Constitutional Court.

Public bodies are required make information about their activities on web sites including their structures and legal basis, internal regulations, goals and objectives, directories of personnel, monthly remunerations, services, contracts including a list of those who have failed to fulfil previous ones, budgets, results of audits, procurements, credits, and travel allowances of officials.<sup>220</sup> Courts and other bodies are required to publish the full texts of decisions. The Congress is required to publish weekly on its web site all texts of projects of laws. The Electoral Supreme Court is required to publish the amounts received and spent by political campaigns. Political parties are required to publish annual reports on their expenditures.

Public bodies are required to appoint an official to receive and answer requests. Bodies must create registries of documents. They must also make an index of classified information. They are required to adopt programs to improve awareness of the law and citizen participation. University and other educational bodies are also required to include information on the rights in the law in their education programmes.

Public employees who unlawfully withhold, alter or falsify information can be fined one month's

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<sup>218</sup> Ley Orgánica de Transparencia y Acceso a la Información Pública. Oficio N° SGA.0000173, a 11 de mayo del 2004. <http://www.aedep.com/paginas/leydere.htm>.

<sup>219</sup> Homepage: <http://www.defensordelpueblo.org.ec/>

<sup>220</sup> See <http://www.mingobierno.gov.ec/leytransparencia.html>

salary or be suspended without salary for that period.

The law went into effect in May 2004 but implementation has been slow. Regulations for implementation were released in January 2005.<sup>221</sup> Public bodies have not appointed officials, nor have they created the lists of classified information. A recent report by the Access Initiative found that “Ignorance exists regarding the Law of Transparency and Access to Public Information throughout all levels of local government (municipalities, provincial councils, etc.). There is also a lack of knowledge within civil society about the Law and the citizen’s right to public information”.<sup>222</sup>

The Law of Environmental Management gives a right to obtain information about environmental harms.<sup>223</sup>

## **ESTONIA**

Article 44 of the [Estonian Constitution](#) states:

- (1) Everyone shall have the right to freely receive information circulated for general use.
- (2) At the request of Estonian citizens, and to the extent and in accordance with procedures determined by law, all state and local government authorities and their officials shall be obligated to provide information on their work, with the exception of information which is forbidden by law to be divulged, and information which is intended for internal use only.
- (3) Estonian citizens shall have the right to become acquainted with information about themselves held by state and local government authorities and in state and local government archives, in accordance with procedures determined by law. This right may be restricted by law in order to protect the rights and liberties of other persons, and the secrecy of children's ancestry, as well as to prevent a crime, or in the interests of apprehending a criminal or to clarify the truth for a court case.
- (4) Unless otherwise determined by law, the rights specified in Paragraphs (2) and (3) shall exist equally for Estonian citizens and citizens of other states and stateless persons who are present in Estonia.<sup>224</sup>

The [Public Information Act](#) (PIA) was approved in November 2000 and took effect in January 2001.<sup>225</sup> The Act covers state and local agencies, legal persons in public law and private entities that are conducting public duties including educational, health care, social or other public services. Any person may make a request for information and the holder of information must respond within five working days. Requests for information are registered. Fees may be waived if information is requested for research purposes.

The Act does not apply to information classified as a state secret. Internal information can be

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<sup>221</sup> Reglamento a la Ley Orgánica de Transparencia y Acceso a la Información Pública, N. 2471. 12 Enero 2005. <http://www.presidencia.gov.ec/noticias.asp?noid=4169>

<sup>222</sup> See The State of Access to Information, Participation, and Environmental Justice in Ecuador. <http://www.iniciativadeacceso.org/ecuador/Resumen%20Ecuador%20ING.pdf>

<sup>223</sup> *Id.*

<sup>224</sup> Constitution of Estonia, [http://www.oefre.unibe.ch/law/icl/en00000\\_.html](http://www.oefre.unibe.ch/law/icl/en00000_.html)

<sup>225</sup> Public Information Act, Passed 15 November 2000. RT I 2000, 92, 597. <http://www.legaltext.ec/text/en/X40095K2.htm>

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

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

The Act is enforced by the [Data Protection Inspectorate](#).<sup>226</sup> The Inspectorate can review the procedures of the public authorities and receive complaints. Officials can demand explanations from government bodies and examine internal documents. The Inspectorate can order a body to comply with the Act and release documents. The Inspectorate has made inquiries with data holders and believes that the act is generally followed although in 15 percent of the cases there was non-compliance and five cases of a breach of the PIA.<sup>227</sup> In 2004, the PIA investigated 34 complaints about the Act. The body can appeal to an administrative court. There have been only a few court cases so far.

A review by the Council of Europe GRECO committee found that the Act was successful in promoting access to information:

The GET found that the rules providing transparency of the Estonian public administration are satisfactory. It was confirmed to the GET that the Public Information Act had brought dramatic changes, such as a broad information flow available on-line (electronically), facilitated access to public documents, press attachés in every Ministry etc. The obligations on authorities under the Public Information Act not only to provide information, but also to assist the public in accessing documents, are important features of this law. Furthermore, there is a practice of public consultation.<sup>228</sup>

The [State Secrets Act](#) controls the creation, use and dissemination of secret information.<sup>229</sup> It was amended in August 2001 to comply with NATO requirements. It sets four levels of classification and information can be classified for up to fifty years. The Penal Code prohibits the intentional

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<sup>226</sup> Homepage: <http://www.dp.gov.ee/?lang=en>

<sup>227</sup> Council of Europe, Responses to the Questionnaire on National Practices in Terms of Access to Official Documents - Estonia, Sem-AC(2002)002 Bil, 18 November 2002, p.154.

<sup>228</sup> Second Evaluation Round - Evaluation Report on Estonia Greco Eval II Rep (2003) 4E 2 July 2004. [http://www.greco.coe.int/evaluations/cycle2/GrecoEval2Rep\(2003\)4E-Estonia.pdf](http://www.greco.coe.int/evaluations/cycle2/GrecoEval2Rep(2003)4E-Estonia.pdf)

<sup>229</sup> State Secrets Act RT1 I 1999, 16, 271. <http://www.legaltext.ee/text/en/X30057K6.htm>. See also Approval of Procedure for Protection of State Secrets and Procedure for Issue of Permits for Access to State Secrets, Government of the Republic Regulation No. 216 of 8 July 1999, RT I 1999, 61, 622. <http://www.legaltext.ee/text/en/X40004K4.htm>

or negligent disclosure of state secrets or “internal information.”<sup>230</sup> Foreign Minister Kristiina Ojuland was fired in 2005 after an audit found that 91 secret documents were missing.<sup>231</sup> Defense Minister Margus Hanson resigned in November 2004 following the theft of a briefcase of containing secret documents from his home. He was fined 6,250 euros in November 2005.

The [Personal Data Protection Act](#) allows individuals to obtain and correct records containing personal information about themselves held by public and private bodies. It is enforced by the Data Protection Inspectorate.<sup>232</sup>

The [Archives Act](#) requires that public records are transferred to the Archive after twenty years.<sup>233</sup>

Estonia signed the Aarhus Convention in June 1998 and ratified it in August 2001. The PIA applies to access environmental information. The [Environmental Register Act](#) requires the collection in a database of detailed information regarding the environment including pollution, waste and radioactive waste, genetically modified organisms, natural environmental factors, permits and other materials.<sup>234</sup> The information is public unless its release would endanger public safety, cause environmental damage, or contains intellectual property secrets. There are also a variety of other environmental laws that provide for collection and disclosure of environmental information.<sup>235</sup>

## **FINLAND**

Section 12 of the 2000 [Constitution](#) states:

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

(2) Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings.<sup>236</sup>

Finland has a long tradition of open access to government files. As a Swedish-governed territory, the 1766 Access to Public Records Act applied to Finland. It was actually introduced by a Finnish clergyman and Member of Parliament named Anders Chydenius.<sup>237</sup> This remained in effect until 1809 when Finland came under Russian control. After that, openness policy continued through a series of laws and decree on openness and publicity that were periodically

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<sup>230</sup> Penal Code §§241-243

<sup>231</sup> Estonian foreign minister sacked over missing documents, Agence France Press, 10 February 2005.

<sup>232</sup> Personal Data Protection Act. RT I 2003, 26, 158, 12 February 2003. <http://www.legaltext.ee/text/en/X70030.htm>

<sup>233</sup> The Archives Act. RT I 1998, 36/37, 552. <http://www.legaltext.ee/text/en/X2058K5.htm>

<sup>234</sup> Environmental Register Act, Passed 19 June 2002 (RT I 2002, 58, 361). <http://www.legaltext.ee/text/en/X60041.htm>

<sup>235</sup> See Council of Europe report, p.121.

<sup>236</sup> Constitution of Finland, 2000. <http://www.uni-wuerzburg.de/law/fi000000.html>

<sup>237</sup> See Stephen Lamb, "Freedom of Information, A Finnish clergyman's gift to democracy", Freedom of Information Review, No. 97, February 2002.

adopted and overruled.<sup>238</sup> When Finland became an independent country in 1917, the new Constitution provided for freedom of expression but did not include specific right of access to documents and the 1919 Freedom of the Press Law created a general presumption of openness.<sup>239</sup> This was found to be lacking and in 1939, the first President of Finland, K.J. Ståhlberg began work on a new law. He co-drafted a proposal in 1945 which was adopted in 1951 as the Act on Publicity of Official Documents.<sup>240</sup> It remained in effect until 1999.

The [Act on the Openness of Government Activities](#) replaced the 1951 act and went into effect on 1 December 1999.<sup>241</sup> It sets the principle that documents are to be in the public domain unless there is a specific reason for withholding. Every person has a right to access any “official document” in the public domain held by public authorities and private bodies that exercise public authority, including electronic records.

Those asking for information are not required to provide reasons for their request or to verify their identity unless they are requesting personal or other secret information. Responses to requests must be made within 14 days. Petitioners, appellants and others persons who are party to a matter have a extended right of access to documents not in the public domain.

Access to “non-official documents” and documents not in the official domain such as private notes and internal discussions are limited and may not be archived. Documents which contain information on decision-making must be kept. Preparatory documents are to be entered into the public domain at the time of decisions, if not earlier.<sup>242</sup>

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

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

Appeals to any denial can be made to a higher authority and then to an Administrative Court. The Chancellor of Justice and the Parliamentary Ombudsman can also review the decision. The Ombudsman handles approximately fifty complaints annually. Between 1999 and 2002, the

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<sup>238</sup> For an detailed history of Finnish FOI, see Stanley Anderson, Public Access to Government Files in Sweden, *Am. Jnl of Comparative Law* Vol 21 (3). Summer 1973.

<sup>239</sup> Painovapauslaki 04/01/1919. <http://www.finlex.fi/fi/laki/alkup/1919/19190001001> (In Finnish)

<sup>240</sup> Act 83/9/2/1951.

<sup>241</sup> Act on the Openness of Government Activities, No. 621/99, <http://www.finlex.fi/en/laki/kaannokset/1999/en19990621.pdf>. Decree on the Openness of Government Activities and on Good Practice in Information Management (1030/1999). <http://www.finlex.fi/pdf/saadkaan/E9991030.PDF>

<sup>242</sup> See <http://www.hare.vn.fi> (register of projects and legal preparatory documents).

Supreme Administrative Court heard 40 cases under the Act. A review by the Ministry of Justice found that the number of cases had increased following the adoption of the new law but no major problems were found.<sup>243</sup>

There are also sanctions for those who breach secrecy provisions. Finnish Prime Minister Anneli Jäätteenmäki was prosecuted in 2003 under the Act and the Criminal Code for illegally obtaining and releasing documents during the election campaign relating to meetings between her predecessor and US President George Bush about Iraq. She was forced to step down but was found not guilty in March 2004. An aide to the president was found guilty and fined 80 days salary.

A review by the Ministry of Justice in 2003 found that the act had further solidified openness, especially in the preparatory stage.<sup>244</sup> It also found half of the authorities had begun to implement good information management practices. 77 percent said that the revisions of the secrecy provisions had been successful but there were still some problems over evaluation of the provisions relating to protection of trade and professional secrets. The Council of Europe GRECO committee noted in 2004 that the policy of openness and electronic access is a key reason for low corruption in Finland:

The long established system of free access to information in Finland is probably a key factor to explain why corruptive practices seem to be exceptional events in the country. The provisions concerning transparency (mainly the Constitution and the Act on Openness of Government activities) apply to all levels of administration and do not only provide for rights to access to all public documents as a main rule, but obliges the authorities to proactively supply information to the public. The GET did not see any sign that the frequent use of electronic means in public administration in any way limited the transparency, but rather the contrary. Finland should be commended for its transparent e-governance policy.<sup>245</sup>

Finland signed the Aarhus Convention in June 1998 and ratified it in September 2004. Access to environmental information is through the Openness Act. The Environmental Protection Act requires that monitoring data on the environment be made public.<sup>246</sup>

The [Personal Data Act](#) allows individuals to access and correct their records held by public and private bodies.<sup>247</sup> It is overseen and enforced by the [Data Protection Ombudsman](#).<sup>248</sup> Every November, the tax records of every person become publicly available and are widely available and published in newspapers.

The [Archives Act](#) sets rules requiring the retention of important documents.<sup>249</sup>

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<sup>243</sup> National Research Institute of Legal Policy, Act on Openness of Government Activities: Presentation and analysis of legal practices pertaining to the Act, 2003.

<sup>244</sup> Act on the Openness of Government Activities: An Evaluation of its Application by State Administrative Authorities, 2003.

<sup>245</sup> GRECO, Second Evaluation Round – Evaluation Report on Finland, Greco Eval II Rep (2003) 3E, 2 July 2004.

<sup>246</sup> Environmental Protection Act. No. 86/2000.

<sup>247</sup> Personal Data Act (523/1999). <http://www.tietosuojafi/uploads/hopxtvf.HTM>

<sup>248</sup> Homepage: <http://www.tietosuojafi/1560.htm>

<sup>249</sup> Archives Act (831/1994). <http://www.narc.fi/law/lawfr.html>

**FRANCE**

Article 14 of the [1789 Declaration of the Rights of Man](#) called for access to information about the budget to be made freely available: “All the citizens have a right to decide, either personally or by their representatives, as to the necessity of the public contribution; to grant this freely; to know to what uses it is put.”<sup>250</sup>

The Conseil d’Etat found in April 2002 that the right of administrative documents is a fundamental right under Article 34 of the Constitution.<sup>251</sup>

The 1978 [Law on Access to Administrative Documents](#) provides for a right to access by all persons to administrative documents held by public bodies.<sup>252</sup> These documents include “files, reports, studies, records, minutes, statistics, orders, instructions, ministerial circulars, memoranda or replies containing an interpretation of positive law or a description of administrative procedures, recommendations, forecasts and decisions originating from the State, territorial authorities, public institutions or from public or private-law organizations managing a public service.” They can be in any form. Documents handed over are subject to copyright rules and cannot be reproduced for commercial purposes. Public bodies must respond in one month.

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

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

An ordinance was adopted in June 2005 to amend the 1978 law to implement the EU Directive on the re-use and commercial exploitation of public sector information (2003/98/EC).<sup>253</sup> It also made a number of other changes to the law including setting out the structure and composition of the Commission, requiring bodies to appoint a responsible person, and allowing access in electronic form

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<sup>250</sup> <http://www.yale.edu/lawweb/avalon/rightsof.htm>

<sup>251</sup> Parret Ullmann du Conseil d’Etat du 29 avril 2002.

<sup>252</sup> Loi no. 78-753 du 17 juillet 1978 de la liberté d’accès aux documents administratifs; Loi no 79-587 du juillet 1979 relative à la motivation des actes administratifs et à l’amélioration des relations entre l’administration et le public. <http://www.legifrance.gouv.fr/texteconsolide/PPEAV.htm> English version (not updated) <http://www.cada.fr/uk/center2.htm>

<sup>253</sup> Ordonnance n° 2005-650 du 6 juin 2005 relative à la liberté d’accès aux documents administratifs et à la réutilisation des informations publiques. <http://admi.net/jo/20050607/JUSX0500084R.html>

[The Commission d'accès aux documents administratifs](#) (CADA) is charged with oversight.<sup>254</sup> It can mediate disputes and issue recommendations but its decisions are not binding. There is no internal appeals under the law and all appeals are heard first by the CADA. It handled over 5,400 requests in 2004, up nearly 10 percent from the previous few years.<sup>255</sup> On average, around 50 percent of its recommendations are for the body to release the information that it is withholding (47.9 percent in 2004) and 10 percent against the requestor. In twenty percent of cases, the document is given before the CADA makes its decision. Privacy is listed as the most significant reason for upholding denials (around 50 percent of the time) followed by preparatory documents. The bodies follow the advice around 70 percent of the time and refuse to follow the advice in less than 10 percent of the cases. The CADA also issued opinions in 452 cases under a 2002 law that allows for individuals to access their medical records without needing it to be sent to a doctor first.<sup>256</sup>

A complaint must be decided by the CADA before it can be appealed to an administrative court. A 2004 review by the CADA found that only in 4 out of 155 cases did the courts have a different opinion than the Commission.

Generally, there seems to be low awareness of the law.<sup>257</sup> The number of requests for review by the CADA has increased slowly but substantially over the years (from under 1000 for the first few years to nearly 5,500 in 2004) indicating some increased use of the law. The CADA in its 2004 report admitted that it was difficult to make conclusions about the law based on solely the number of requests and hoped that the appointment of officials required in the new amendments would make it easier to determine the use of the law. The former head of the Commission Michèle Puybasset has said that the largest problems stem from the failure of bodies to recognize that the act applies to them or still have traditional notions of secrecy and excessive delays (80 percent of bodies do not meet the deadline).<sup>258</sup>

The COE GRECO anti-corruption committee gave France a positive review in 2004 for its transparency efforts:

The transparency requirement is long-standing, statutory and accompanied by adequate supervision. The access to administrative documents commission (CADA) plays an important part and makes sure that individuals are all entitled to see administrative documents, subject to any necessary statutory restrictions. The GET has received representative examples of CADA decisions that have helped to reduce corruption by encouraging transparency in government departments, other public bodies and private bodies receiving public funding or serving the public interest. The users' and administrative simplifications office (DUSA) and the agency for developing e-government (ADAE) are helping to introduce a more proactive information policy based on greater use of new information technologies.<sup>259</sup>

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<sup>254</sup> Homepage: <http://www.cada.fr/>

<sup>255</sup> CADA, Rapport d'activité de l'année 2004.

<sup>256</sup> Loi No. 2002-303 de 4 mars 2002 relative aux droits des maladies et à la qualité du système de la santé publique

<sup>257</sup> Anina Johnson, You Don't Know what you've Got until it's Gone, Freedom of Information Review No 85, February 2000.

<sup>258</sup> Michèle Puybasset, The French Approach. Paper prepared for the Bertelsmann Foundation's Freedom of Information project.

<sup>259</sup> Second Evaluation Round Evaluation Report on France. Adopted by GRECO at its 21<sup>st</sup> Plenary Meeting (Strasbourg, 29 November - 2 December 2004). Greco Eval II Rep (2004) 5E.

A 1998 law sets rules on classification of national security information.<sup>260</sup> The Commission consultative du secret de la défense nationale (CCSDN) gives advice on the declassification and release of national security information in court cases. The advice is published in the Official Journal.<sup>261</sup>

The 1978 [Data Protection Act](#) allows individuals to obtain and correct files that contain personal information about themselves from public and private bodies.<sup>262</sup> It is enforced by the [Commission Nationale de l'Informatique et des Libertés](#) (CNIL).<sup>263</sup>

In 2004, the Code du Patrimoine largely rescinded and replaced the 1979 Law on Archives. The Code makes files held in the archives public after thirty years. Files containing information relating to individuals' medical or personal life, international relations and national security can be kept closed for varying times up to 150 years.

A 2002 law allows for former adoptees and wards of the state to access their records and find out the names of their parents, relatives and their medical conditions.<sup>264</sup> It created a new commission, the Conseil national pour l'accès aux origines personnelles (CNAOP) to enforce the act. Prior to the formation of the CNAOP in August 2002, the CADA issued 132 opinions.

France signed the Aarhus Convention in June 1998 and ratified and implemented it in July 2002.<sup>265</sup> It included a declaration that "The French Government will see to the dissemination of relevant information for the protection of the environment while, at the same time, ensuring protection of industrial and commercial secrets, with reference to established legal practice applicable in France." The ECJ ruled in June 2003 that the French government had failed to adequately implement the 1990 directive.<sup>266</sup> In July 2005, the European Commission announced that it was taking legal action against France and six other countries for failing to implement the 2003 EU Directive on access to environmental information.<sup>267</sup>

## GEORGIA

The [Constitution of Georgia](#) includes two provisions specifying a right of access to information.<sup>268</sup>

Article 37(5). Individuals have the right to complete, objective and timely information on

<sup>260</sup> Loi no 98-567 du 8 juillet 1998 instituant une Commission consultative du secret de la défense nationale, <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=DEX9700140L>. See Rapport de la Commission consultative du secret de la défense nationale - Bilan 1998-2004, <http://lesrapports.ladocumentationfrancaise.fr/BRP/054000109/0000.pdf>

<sup>261</sup> For a copy of decisions, see <http://www.reseauvoltaire.net/rubrique387.html>

<sup>262</sup> Loi du 6 janvier 1978 modifiée relative à l'informatique, aux fichiers et aux libertés après adoption en par le Sénat du projet de loi de transposition <http://www.cnil.fr/fileadmin/documents/uk/78-17VA.pdf>

<sup>263</sup> Homepage: <http://www.cnil.fr/>

<sup>264</sup> Loi no 2002-93 du 22 janvier 2002 relative à l'accès aux origines des personnes adoptées et pupilles de l'Etat. <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=MESEX0205318L>. For information, see <http://vosdroits.service-public.fr/ARBO/10050203-NXFAM749.html>. Dossier législatif: <http://www.senat.fr/dossierleg/pil00-352.html>

<sup>265</sup> Ordonnance n° 2001-321 du 11 avril 2001 relative à la transposition de directives communautaires et à la mise en œuvre de certaines dispositions du droit communautaire dans le domaine de l'environnement. (JO du 14 avril 2001). <http://aida.ineris.fr/textes/ordonnance/text8900.htm>

<sup>266</sup> Commission of the European Communities v French Republic, Case C-233/00. Decision of 26 June 2003. Available at <http://www.curia.eu.int/>

<sup>267</sup> European Commission, Public access to environmental information: Commission takes legal action against seven Member States, 11 July 2005.

<sup>268</sup> Constitution of the Republic of Georgia, <http://www.friends-partners.org/oldfriends/constitution/constitution.georgia.html>

their working and living conditions.

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

The [General Administrative Code of Georgia](#) was adopted in 1999.<sup>269</sup> Chapter 3 of the Code is entitled “Freedom of Information.” It sets a general presumption that information kept, received or held by a public agency should be open. All public information should be entered into a public register in two days.

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

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

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

Those whose requests have been denied can appeal internally or can ask a court to nullify an agency decision. The court can review classified information to see if it has been classified properly. The Supreme Court ruled in June 2003 that legal fees can be obtained as damages when a requester wins a case. It agreed in March 2006 to hear a case brought by the Georgian Young Lawyers Association on the constitutionality of limits to access to information in the Administrative Code.

The OECD said in 2005 that “is a well-known fact that FOI Chapter is one of the best-implemented laws in Georgia, which is conditioned mostly by the special interest of diverse donors.”<sup>270</sup> A survey of public officials by Article 19 and national partners in 2004 found that all the public officials were aware of legal obligations to release information and 92 percent were aware of the FOI provisions of the Administrative Code.<sup>271</sup>

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<sup>269</sup> General Administrative Code of Georgia 2002. [http://www.ifes.ge/files/laws/code\\_general.html](http://www.ifes.ge/files/laws/code_general.html). For more information see IRIS, Freedom of Information Guide, 2002. [http://www.irisprojects.umd.edu/georgia/Publications/English/guide\\_foi\\_eng.pdf](http://www.irisprojects.umd.edu/georgia/Publications/English/guide_foi_eng.pdf)

<sup>270</sup> Fighting Corruption in Transition Economies: Georgia OECD 2005

<sup>271</sup> Article 19, Under Lock and Key: Freedom of Information and the Media in Armenia, Azerbaijan and Georgia, April 2005.

However there are still problems with implementation including a lack of promotion by officials, demands for reasons for requests (declining but still common), failure of some bodies to create registries, failure of administrative appeals and sanctions, and slowness by courts.<sup>272</sup> The Ombudsman in 2004 found that most public authorities are not fulfilling their obligations for reports.<sup>273</sup> The International Society for Fair Elections and Democracy conducted a national survey of public accessibility of information in 2001 and found that it was still difficult for ordinary citizens to obtain information.<sup>274</sup> The OECD's Anti-Corruption Network for Transition Economies recommended in January 2004 that the government:

Ensure that the access to information legislation limits discretion on the part of the public officials in charge as to whether the requested information should be disclosed, and to limit the scope of information that could be withheld. Consider steps to reach out to both, public officials as well as citizens to raise awareness about their responsibilities and rights under the access to information regulations.<sup>275</sup>

The [Law on State Secrets](#) sets rules on the classification of information where “disclosure or loss of which may inflict harm on the sovereignty, constitutional framework or political and economic interests of Georgia”.<sup>276</sup> There are three categories with fixed terms for the length of classification: “Of Extraordinary Importance”- 20 years, Top Secret – 10 years and Secret – 5 years. The State Inspection for Protection of State Secrets oversees the protection of secrets and can order declassification. A 1997 decree sets the procedures on classification.<sup>277</sup> Information shall be declassified no later than the end of the fixed term (unless it is extended by the President) or when it is no longer necessary to be classified. All information about the construction of the President's residence was decreed to be a state secret in 2004.

The Criminal Code prohibits the disclosure of personal secrets, state secrets, and other secret information.<sup>278</sup>

Georgia signed the Aarhus Convention in June 1998 and ratified it in April 2000. The Law on Environmental Protection provides for a right to information about the environment and other related laws provide for public registers.<sup>279</sup> The Article 19 study in 2004 found that only 52 percent of the public officials surveyed know about the convention and only ten percent relied on its provisions to releasing information. An Act on State Environmental Control was adopted in June 2005.

## GERMANY

The [Act to Regulate Access to Federal Government Information](#) was adopted in June 2005 and

<sup>272</sup> Transparency International Georgia, Adherence to the Anti-Corruption Recommendations of the Oecd's Anti- Corruption Network (Acn) Recommendations by the Government of Georgia - Alternative Report, December 2005.

<sup>273</sup> Office of the Public Defender of Georgia, Report on conditions of Human Rights in Georgia in 2004, 2005.

<sup>274</sup> International Society for Fair Elections and Democracy, The report on the monitoring of openness and accessibility of information, 2002.

<sup>275</sup> Anti-Corruption Network for Transition Economies, Regional Anti-Corruption Action Plan for Armenia, Azerbaijan, Georgia, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine: Georgia - Summary of assessment and recommendations, 21 January 2004.

<sup>276</sup> Law On State Secrets. No. 455. 29 October 1996. [http://www.irisprojects.umd.edu/georgia/Laws/English/law\\_state\\_secrets.pdf](http://www.irisprojects.umd.edu/georgia/Laws/English/law_state_secrets.pdf)

<sup>277</sup> “The Procedure for Defining the Information as a State Secret and its Protection” Decree No. 42 of the President of Georgia of 1997, 21 January 1997

<sup>278</sup> Criminal Code. [http://www.ifes.ge/files/laws/criminal\\_code.html](http://www.ifes.ge/files/laws/criminal_code.html)

<sup>279</sup> See UNECE, Environmental Performance Reviews – Georgia 2003. <http://www.unece.org/env/epr/studies/georgia/>

went into force on 1 January 2006.<sup>280</sup> It gives any person a right of access to official information from agencies of the federal government or those organizations or persons conducting public duties. Information must be provided within one month. It can be provided orally, in writing or electronically.

There are extensive exemptions in the law. Drafts or notes are not included in the definition of official information. There are exemptions for information the disclosure of which would have a detrimental effect on international relations; military interests; internal or external security interests; duties of regulatory authorities; external financial control; prevention of prohibited foreign trade; ongoing legal, criminal or administrative proceedings; jeopardize public safety; subject to secrecy or confidentiality by another law or state secrets regulation; impair the fiscal interests of the federal government; third party confidential information or relates to the intelligence services or the Security Screening Act. Drafts and resolutions can be withheld if they would prevent the success of the decision or pending matters. This does not include results of evidence gathering or opinions of third parties. Access to another person's personal data can only be given if the interest outweighs the other person's interest or the person consents to the release. Sensitive personal data can only be released with consent. There is no right of access if it conflicts with intellectual property rights.

Requestors can appeal denials internally. They can then complain to the [Federal Commissioner for Data Protection and Freedom of Information](#).<sup>281</sup> The Commissioner also has the authority to monitor compliance, issue complaints, recommend improvements in law and practice and submit a bi-annual report. Appeals can also be made to the courts.

Authorities are required to maintain indexes of information and their purposes. Indexes and other information should be made available on government websites.

Implementation of the Act has been very low profile. There has been little media attention or discussion of the law and little effort by the government to promote the law. Some agencies such as the Foreign Office have announced that they are planning to charge large fees for access to information.<sup>282</sup>

Federal Archives are regulated under the Federal Archives Act.<sup>283</sup> It allows for open access to most records after thirty years. Personal information is withheld for thirty years after the death of the person or 110 years after their birth. Information can also be withheld by other laws. The Government announced in April 2006 that it was opening the Holocaust archives.<sup>284</sup>

Germany signed the Aarhus Convention in December 1998 but has not ratified it. Access to environmental information is under the Environmental Information Act.<sup>285</sup> The German practice was found several times by the European Court of Justice to not be adequate under the EU 1990 Directive. The law was revised in 2005 to implement the EU Directive 2003/35/EC on public

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<sup>280</sup> Gesetz zur Regelung des Zugangs zu Informationen des Bundes (Informationsfreiheitsgesetz – IFG) [http://www.informationsfreiheit.info/files/foia\\_germany\\_final\\_june05\\_clear.pdf](http://www.informationsfreiheit.info/files/foia_germany_final_june05_clear.pdf) (unofficial translation of final draft)

<sup>281</sup> Homepage: [http://www.bfd.bund.de/EN/Home/homepage\\_node.html](http://www.bfd.bund.de/EN/Home/homepage_node.html)

<sup>282</sup> Freedom of information: Federal Foreign Office uses hefty fees as deterrent, Heise Online, 2 February 2006.

<sup>283</sup> Law on the Preservation and Use of Federal Archival Documents (Bundesarchivgesetz - BArchG) of 6 January 1988 (BGBl. I S. 62), as amended at last by the Freedom of Information Law of 5 September 2005 (BGBl. I S. 2722). <http://www.bundesarchiv.de/benutzung/rechtsgrundlagen/bundesarchivgesetz/index.html?lang=en>

<sup>284</sup> After Resisting for Decades, Germany Agrees to Open Archive of Holocaust Documents, NY Times, 19 April 2006.

<sup>285</sup> Environmental Information Act 1994 (Umwelthinformationsgesetz, UIG) <http://www.iuscomp.org/gla/statutes/UIG.htm>

access to environmental information.<sup>286</sup>

Individuals have a right to access and correct their own personal information held by government and private bodies under the Federal Data Protection Act.<sup>287</sup> It is also enforced by the Federal Commissioner.

The Stasi Records Act allows access to the files of the secret police of the former German Democratic Republic (East Germany).<sup>288</sup> The law created a Federal Commission for the Records of the State Security Services of the Former GDR which has a staff of 3,000 piecing together shredded documents and making files available.<sup>289</sup> There have been two million requests from individuals for access to the files and three million requests for background checks since the archives became available. Researchers and the media have used the archives 15,000 times. There was an extended legal battle over the release of files collected on former Chancellor Helmut Kohl related to illegal activities by Kohl while he was head of a political party. In 2005, some of the files were released but it did not include information gathered from illegal wiretaps.<sup>290</sup>

The states of Brandenburg, Berlin, Hamburg, Nordrhein-Westfalen, and Schleswig-Holstein have also adopted combination FOI and Data Protection laws each with its own commissioner.<sup>291</sup> Efforts are pending in another three states.<sup>292</sup> All of the states have data protection laws with commissions.

## GREECE

The [Constitution](#) was substantially amended in 2001 to provide for a more extensive right of access.<sup>293</sup> Article 5A states:

1. All persons are entitled to information, as specified by law. Restrictions to this right may be imposed by law only insofar as they are absolutely necessary and justified for reasons of national security, of combating crime or of protecting rights and interests of third parties.
2. All persons are entitled to participate in the Information Society. Facilitation of access to electronically handled information, as well as of the production, exchange and diffusion thereof constitutes an obligation of the State, always in observance of the guarantees of articles 9, 9A and 19.

In addition, Article 10, which gives a right of petition, now states:

3. The competent service or authority is obliged to reply to requests for information and

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<sup>286</sup> See S. Bugdahn: Of Europeanization and domestication: the implementation of the Environmental Information Directive in Ireland, Great Britain and Germany, *Journal of European Public Policy* 12: 1 February 2005.

<sup>287</sup> Federal Data Protection Act (Bundesdatenschutzgesetz, BDSG). [http://www.datenschutz-berlin.de/recht/de/bdsg/bdsg01\\_eng.htm](http://www.datenschutz-berlin.de/recht/de/bdsg/bdsg01_eng.htm)

<sup>288</sup> Act Regarding the Records of the State Security Service of the Former German Democratic Republic (Stasi Records Act) of 20 December 1991. [http://www.bstu.de/seiten\\_ausland/englisch/gesetz\\_eng/stugenglisch.pdf](http://www.bstu.de/seiten_ausland/englisch/gesetz_eng/stugenglisch.pdf)

<sup>289</sup> Web Site: <http://www.bstu.de/home.htm>

<sup>290</sup> Kohl's Stasi Files Released, Deutsche Welle, 24 March 2005.

<sup>291</sup> See Gill, Four Pioneers: Freedom of Information in the German States [http://www.informationsfreiheit.info/files/Gill\\_en040505.pdf](http://www.informationsfreiheit.info/files/Gill_en040505.pdf)

<sup>292</sup> See <http://home.online.no/~wkeim/files/050731bl-en.htm#answers>

<sup>293</sup> Constitution of Greece. [http://confinder.richmond.edu/greek\\_2001.html](http://confinder.richmond.edu/greek_2001.html)

for issuing documents, especially certificates, supporting documents and attestations within a set deadline not exceeding 60 days, as specified by law. In case this deadline elapses without action or in case of unlawful refusal, in addition to any other sanctions and consequences at law, special compensation is also paid to the applicant, as specified by law.

The right of access was first provided in a 1986 law that gave a right of access to administrative documents.<sup>294</sup> The right was read broadly by the Ombudsman and the Council of Ministers to give a right of access to all persons. In 1999, the Ombudsman ruled that the 1986 Act allowed access to all administrative documents “without there being any condition of legitimate interest on part of the applicant” referencing a 1993 Council of Ministers decision that a “reasonable interest” rather than a specific legal interest is an adequate reason.<sup>295</sup> In 1999, the law was supplanted by Article 5 of the [Code of Administrative Procedure](#)<sup>296</sup> which expanded the right of access. The Code provides that “interested persons” have a right to access administrative documents created by government agencies. In 2001, the Ombudsman affirmed that no interest is necessary for the 1999 law noting that following the adoption of the revised constitutional right of access and the 1999 that that “it is clearly the legislator’s intent to expand and not restrict the application of the principle of transparency.”<sup>297</sup>

The request must be in writing. Administrative documents are defined as “all documents produced by public authorities such as reports, studies, minutes, statistics, administrative circulars, responses opinions and decisions.” In addition, the 1999 law allows persons with a “special legitimate interest” to obtain “private documents” relating to a case about them.

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

Appeals are made internally. The [Ombudsman](#) can receive complaints on violations of the right of access and mediate or issue opinions.<sup>298</sup> The Ombudsman heard 22 cases in 2004 relating to violations of access to information.

A law to implement the EU Directive on the re-use and commercial exploitation of public sector information (2003/98/EC) was adopted in January 2006.<sup>299</sup>

The [Law on the Protection of Individuals with regard to the Processing of Personal Data](#) allows any person to obtain their personal information held by government departments or private entities.<sup>300</sup> It is enforced by the [Hellenic Data Protection Authority](#).<sup>301</sup>

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<sup>294</sup> Article 16 of Law 1599/1986.

<sup>295</sup> Decision no. 1397/1993. See The Greek Ombudsman, Annual Report 1999 §§ 2.2, 3.22, 3.9.

<sup>296</sup> Law No. 2690/1999 Ratification of the Administrative Procedure Code and other provisions <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN001820.pdf>

<sup>297</sup> See The Greek Ombudsman, Annual Report 2001 §3.1.1.

<sup>298</sup> Ombudsman Homepage: [http://www.synigoros.gr/en\\_index.htm](http://www.synigoros.gr/en_index.htm)

<sup>299</sup> No 3448-2006. <http://www.pocota.gr/download/N.3448-2006.pdf>

<sup>300</sup> Law no. 2472 on the Protection of Individuals with regard to the Processing of Personal Data. [http://www.dpa.gr/Documents/Eng/2472engl\\_all2.doc](http://www.dpa.gr/Documents/Eng/2472engl_all2.doc)

<sup>301</sup> Homepage: <http://www.dpa.gr/>

Greece signed the Aarhus Convention in June 1998 and ratified it in January 2006. A 1995 joint ministerial decree implemented the EU 90/313/EEC Directive after the European Commission started an infringement proceeding against Greece.<sup>302</sup> In July 2005, the European Commission announced that it was taking legal action against Greece and six other countries for failing to implement the 2003 EU Directive on access to environmental information.<sup>303</sup>

The Penal Code punishes the disclosure of state secrets. The Ombudsman has ruled in several cases that simply because a document is classified is not a ground for withholding it from access under the Code of Administrative Procedure. The files of the former military dictatorship were destroyed by the Socialist government in mid 1980s.

## HUNGARY

Article 61 (1) of the Constitution states:

In the Republic of Hungary, everyone has the right to the freely express his opinion, and furthermore to access and distribute information of public interest.<sup>304</sup>

The Constitutional Court ruled in 1992 that freedom of information is a fundamental right essential for citizen oversight.<sup>305</sup> In 1994, the Court struck down the law on state secrets, ruling that it was too restrictive and infringed on freedom of information.<sup>306</sup>

Act No. LXIII of 1992 on the [Protection of Personal Data and Disclosure of Data of Public Interest](#) is a combined Data Protection and Freedom of Information Act.<sup>307</sup> The Act guarantees that all persons should have access to information of public interest which is broadly defined as any information being processed by government authorities except for personal information. Requests can be written, oral or electronic. Agencies must respond in 15 days to requests.

State or official secrets and information related to national defense, national security, criminal investigations, monetary and currency policy, international relations and judicial procedure can be restricted if specifically required by law. Internal documents are generally not available for 10 years.

The [Parliamentary Commissioner for Data Protection and Freedom of Information](#) oversees the 1992 Act.<sup>308</sup> Besides acting as an ombudsman for both data protection and freedom of information, the Commissioner's tasks include: maintaining the Data Protection Register and providing opinions on data protection and information access-related draft legislation as well as each category of official secrets. In 2004, there was a total of 169 submissions relating to access

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<sup>302</sup> Joint Ministerial Decision 77921/1440 of 06/09/1995, Official Gazette 795 B' 14/9/1995 on the freedom of access of the citizens to the public authorities for information relating to the environment. See Hallo, Access to Environmental Information in Europe: Greece (Kluwer Law 1996).

<sup>303</sup> European Commission, Public access to environmental information: Commission takes legal action against seven Member States, 11 July 2005.

<sup>304</sup> Constitution of the Republic of Hungary, [http://www.uni-wuerzburg.de/law/hu00000\\_.html](http://www.uni-wuerzburg.de/law/hu00000_.html).

<sup>305</sup> Decision 32/1992.(VI.29.) ABH

<sup>306</sup> Decision 34/1994 (VI.24) AB

<sup>307</sup> Act LXIII OF 1992 on the Protection of Personal Data and the Publicity of Data of Public Interest, [http://abiweb.obh.hu/dpc/legislation/1992\\_LXIIIa.htm](http://abiweb.obh.hu/dpc/legislation/1992_LXIIIa.htm)

<sup>308</sup> Web Site: <http://www.obh.hu/>

to information, a 20 percent increase over 2003.<sup>309</sup> 71 of those were complaints and 86 were requests for consultations, 5 on official secrets and 7 ex officio investigations. 26 percent were from individuals. 16 percent from journalists and 31 percent were from public bodies asking for advice.

Those denied access can appeal to the courts.

There have been a number of significant amendments to the law in the last several years. In April 2003, the so-called “Glass Pockets Act” modified 19 different laws including the FOI to facilitate the transparency of the use of public funds by limiting business secrets, expanding disclosure requirements and requiring budget organizations to continually post updated financial information.<sup>310</sup> Act XIX of 2005 expanded the definition of public interest data, applied the law to judicial records, reduced the time for access to internal documents from 20 years down to ten, allowed oral and electronic requests, allowed the requestor to set the form of access, and expanded the power of the commissioner to investigate and issue recommendations and opinions.

[Act XC of 2005 on the Freedom of Information by Electronic Means](#) imposes E-FOI requirements for the law.<sup>311</sup> It requires a number of public bodies to create home pages and sets out in an annex an extensive list of information that needs to be released. The Minister of Informatics and Communications must create a central list of databases and registries and a uniform public data search engine. Ministries must also publish information about draft legislation and ministerial decrees and related documents. Many court decisions must also be published. The cases should be anonymised.

The Parliamentary Commissioner in his 2004 report noted a number of continuing problems including access to court records and the cost of disclosures on public bodies. Regulatory bodies who refused to reveal their activities were also a problem.

The Secrecy Act of 1995 sets rules on the classification of information.<sup>312</sup> It was amended in 1999 to incorporate NATO rules and substantially revised by Act LIII of 2003. The Parliamentary Commissioner is entitled to change the classification of state and official secrets. The Commissioner conducted an investigation and found that most bodies that used the act were properly classifying information but also reported that the Government Control Office (KEHI) has resisted following the orders of the Commissioner on implementing the lists of secrets. The Parliament in 2006 began a review of the Act to revise it to make it conform with EU and NATO rules. The bill was withdrawn following public criticism.<sup>313</sup>

Article 221 of the 1978 Criminal Code allows for imprisonment of up to five years for breaching state secrets. Miklos Haraszti, the OSCE Representative on Freedom of the Media and a former Hungarian dissident, criticized the government in November 2004 for using the law against a journalist who quoted from a police report on a MP under investigation. The Commissioner

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<sup>309</sup> Annual Report of the Data Protection and FOI Ombudsman for 2004.

<sup>310</sup> Act XXIV of 2003 Amending Certain Acts on the Use of Public Funds, the Public Disclosure, Transparency and Increased Control of the Uses of Public Property (The “Glass Pockets Act”). [http://www.freedominfo.org/documents/hu\\_trans\\_2005rvy90.doc](http://www.freedominfo.org/documents/hu_trans_2005rvy90.doc)

<sup>311</sup> Act XC of 2005 on the Freedom of Information by Electronic Means [http://en.ihm.gov.hu/data/75436/act\\_xc\\_of\\_2005\\_on\\_the\\_freedom\\_of\\_information\\_by\\_electronic\\_means.pdf](http://en.ihm.gov.hu/data/75436/act_xc_of_2005_on_the_freedom_of_information_by_electronic_means.pdf)

<sup>312</sup> Act LXV of 1995 on State and Official Secrets. [http://faculty.maxwell.syr.edu/asroberts/foi/library/hungary\\_secrecy\\_95.pdf](http://faculty.maxwell.syr.edu/asroberts/foi/library/hungary_secrecy_95.pdf)

<sup>313</sup> See HCLU, The transparency of the State is in jeopardy! The draft Secrecy Act must be revoked!, 19 January 2006. [http://www.tasz.hu/index.php?op=contentlist2&catalog\\_id=2423](http://www.tasz.hu/index.php?op=contentlist2&catalog_id=2423)

ruled that the report was not be eligible to be secret and was declassified by the police.<sup>314</sup>

Individuals can have access to their own files created by the communist-era secret police under the 2003 Act on the Disclosure of the Secret Service Activities of the Communist Regime and on the Establishment of the Historical Archives of the Hungarian State Security which replaced 1994 Screening Act.<sup>315</sup> The [Historical Archive of the Hungarian State Security](#) controls the files.<sup>316</sup> The law was amended to allow for greater access following revelations that Prime Minister Peter Medgyessy once worked for the communist-era intelligence service.<sup>317</sup> The law makes information about high ranking public officials public data and allows victims to see the records of the people who spied on them. However, the Commissioner was critical of the new law as limiting some access rights and not defining public figures properly.<sup>318</sup> The government announced in December 2004 that it planned to fully open the files.<sup>319</sup>

Under the [Act on Public Records, Public Archives, and the Protection of Private Archives](#), public authorities must transfer files within 15 years.<sup>320</sup> Any individual can access records over 30 years old. Archives can be closed for longer in the interest of privacy, state secrets, official secrets and confidential business data.

Hungary signed the Aarhus Convention in December 1998 and ratified it in July 2001. The Protocol on Pollutant Release and Transfer Registers was signed in May 2003 and Hungary joined the European Pollutant Emission Register in March 2004. Access to environmental information is through the 1992 FOI/DP Act. In July 2005, the European Commission announced that it was taking legal action against Hungary and six other countries for failing to implement the 2003 EU Directive on access to environmental information.<sup>321</sup>

The Criminal Code punishes the failure to comply with obligations to provide public information, render it inaccessible, or the publishing of false or untrue information.<sup>322</sup>

## ICELAND

The [Information Act](#) (Upplýsingalög) governs the release of records held by state and municipal administrations and private parties exercising state power that affects individual rights or obligations.<sup>323</sup> The Act was adopted in 1996 and went into effect in 1997. Under the Act, individuals, including nonresidents, and legal entities, have a legal right to documents and other

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<sup>314</sup> Organization for Security and Co-operation in Europe Representative on Freedom of the Media, OSCE media watchdog criticises Hungary over arbitrary harassment of journalist, 16 November 2004.

<sup>315</sup> Act III of 2003 on the Disclosure of the Secret Service Activities of the Past Regime and the Historic Archive of the National Security Services, 14 January 2003. [http://www.th.hu/html/en/acts/ABTL\\_4\\_2003\\_evi\\_III\\_tv\\_e.pdf](http://www.th.hu/html/en/acts/ABTL_4_2003_evi_III_tv_e.pdf). Act XXIII of 1994 on the Screening of Holders of Some Important Positions, Holders of Positions of Public Trust and Opinion-Leading Public Figures, and on the Office of History.

<sup>316</sup> Homepage: [http://www.th.hu/index\\_e\\_start.html](http://www.th.hu/index_e_start.html)

<sup>317</sup> For more information on the controversy, see RFE/RL NEWSLINE Vol. 6, No. 117, Part II, 24 June 2002.

<sup>318</sup> Recommendation of the Data Protection Commissioner summarizing the results of the investigation concerning the enforcement of freedom of information and informational self-determination pursuant to Act III of 2003 on the Disclosure of the Secret Service Activities of the Past Regime and the Historic Archive of the National Security Services, 15 December 2003.

<sup>319</sup> Hungary to Open Spy Files - More communist-era spies may be revealed when the files are opened, DW, 9 December 2004.

<sup>320</sup> Act LXVI of 1995 on Public Records, Public Archives, and the Protection of Private Archives.

[http://www.th.hu/html/en/acts/Act\\_LXVI\\_of\\_1995.doc](http://www.th.hu/html/en/acts/Act_LXVI_of_1995.doc)

<sup>321</sup> European Commission, Public access to environmental information: Commission takes legal action against seven Member States, 11 July 2005.

<sup>322</sup> Act IV of 1978 on the Criminal Code. [http://abiweb.obh.hu/dpc/legislation/1978\\_IV\\_177a.htm](http://abiweb.obh.hu/dpc/legislation/1978_IV_177a.htm)

<sup>323</sup> Information Act. Act no. 50/1996. <http://eng.forsaetisraduneyti.is/media/English/accesstoinfo.doc>

materials without having to show a reason why they are asking for these documents. Government bodies must explain in writing if they have not processed a request in seven days.

Exempted from the Act are materials relating to meetings of the Council of State and the Cabinet, memoranda recorded at ministerial meetings and documents which have been prepared for such meetings, correspondence prepared for court proceedings, working documents before a final decision is made, and applications for employment. The Act also does not apply to registrations, enforcement proceedings, property attachments, injunctions, sales in execution, moratoria on debts, compositions, liquidations, divisions of estates at death and other official divisions, investigations or prosecutions in criminal cases, information under the Administrative Procedure Act and the Personal Data Act, and cases where other provisions are made in international agreements to which Iceland is a party. Access to this information is available once the measures are complete or after a period of 30 years (80 years for personal information).

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

Denials can be appealed to the [Information Committee](#) which rules on the disputes.<sup>324</sup> Government bodies are required to comply with the decisions but can appeal to the courts. The Committee made 139 rulings between 1997 and 2001.<sup>325</sup>

A working group is currently reviewing laws on institutions such as Statistics Iceland and the Meteorological Office to revise them to allow for database access to implement the EU Directive on the re-use and commercial exploitation of public sector information (2003/98/EC).<sup>326</sup>

The Council of Europe GRECO anti-corruption committee review of Iceland in 2003 found a high level of transparency:

Generally, the GET's review of relevant laws, standards, policies, and practices, as well as discussions with public officials and representatives of civil society, relating to pertinent issues of public administration, established that the systems in place have a high degree of safeguards to ensure integrity and in particular, transparency. The Information Act and the policy on e-governance facilitate appropriate access to public information. Iceland should be commended for that.<sup>327</sup>

Individuals can obtain records that contain their personal information from public and private

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<sup>324</sup> Homepage: <http://ursk.forsaetisraduneyti.is/>

<sup>325</sup> Council of Europe, Responses to the Questionnaire on National Practices in Terms of Access to Official Documents - Iceland, Sem-AC(2002)002 Bil, 18 November 2002, p.157.

<sup>326</sup> Advisory Panel on Public Sector Information, Update on current status of Implementation in European Union member-states, 4 January 2005.

<sup>327</sup> Second Evaluation Round - Evaluation Report on Iceland. Adopted by GRECO at its 19 th Plenary Meeting (Strasbourg, 28 June – 2 July 2004). Greco Eval II Rep (2003) 7E

bodies under the [Personal Data Act](#).<sup>328</sup> The Act is enforced by the [Persónyvernd](#) (Data Protection Authority).<sup>329</sup>

The Criminal Code provides for of up to sixteen years imprisonment for disclosing “secret agreements, contemplations or resolutions of the State relating to matters on which its fortune or rights against other States depend or which are of major financial or commercial importance for the Icelandic nation” and up to ten years for military secrets.<sup>330</sup>

Iceland signed the Aarhus Convention in June 1998 but has not ratified it. Access to environmental information is available under the Act on Public Access to Environmental Information.<sup>331</sup> The Minister of the Environment is also obliged to publish information.

Under the [Act on the National Archives of Iceland](#), files are transferred to the archives after 30 years.<sup>332</sup> Access to archives is under the Information Act and denials can be appealed to the Information Committee.

## INDIA

The Supreme Court ruled in 1975 that access to government information was an essential part of the fundamental right to freedom of speech and expression.<sup>333</sup> The Court ruled in 2002 that voters have a right to know information about candidates for elected offices and ordered the Election Commission to make candidates publish information about criminal records, assets, liabilities and educational qualifications.<sup>334</sup>

The [Right to Information Act](#) was approved by the Parliament in May 2005 and signed by the President in June 2005.<sup>335</sup> Certain preliminary clauses went into effect immediately, but the entire Act came into force in October 2005. The Act replaces the [Freedom of Information Act, 2002](#) which was adopted in January 2003 but never came into force.<sup>336</sup>

Under the national Act, all Indian citizens have a right to ask to ask for information not only from Central Government public authorities, but also from public authorities under the jurisdiction of the states. This includes local level bodies (called *panchayats*). The Act covers all public authorities set up by the Constitution or statute, as well as bodies controlled or substantially financed by the Government or non-government organizations which are substantially funded by the Government. Citizens can not only request to inspect or copy

<sup>328</sup> Act on Protection and Processing of Personal Data, No. 77/2000 (Amendments: Act No. 90/2001 and Act No. 81/2002). <http://www.personuvernd.is/tolvunefnd.nsf/pages/1E685B166D04084D00256922004744AE>

<sup>329</sup> Web Site: <http://personuvernd.is/tolvunefnd.nsf/pages/english>

<sup>330</sup> Criminal Code No 19 §§ 91-92.

<sup>331</sup> Public Access to Environmental Information Act, 21/1993.

<sup>332</sup> The Act on The National Archives of Iceland Law No. 66/1985. <http://www.archives.is/index.php?node=145>

<sup>333</sup> State of Uttar Pradesh v. Raj Narain and Others [(1975) 4 SCC 428. Also see S.P. Gupta vs. Union of India (AIR 1982 SC 149); See Government of India, Report of the Working Group on Right to Information and Promotion of Open and Transparent Government, May 1997. For a detailed review of the situation of freedom of information in India until 2001, See Article 19, Global Trends on the Right to Information: A Survey of South Asia, July 2001. Available at <http://www.article19.org/>

<sup>334</sup> Union of India v. Association For Democratic Reforms. Civil Appeal No 7178 of 2001. <http://www.privacyinternational.org/countries/india/india-v-adr-foia-502.pdf>

<sup>335</sup> Right to Information Act, No. 22 of 2005. <http://persmin.nic.in/RTI/WebActRTI.htm>

<sup>336</sup> Freedom of Information Act 2002, Act No. 5 of 2003, 6 January 2003. <http://www.manupatra.com/downloads/acts/the%20freedom%20of%20information%20act%202002.htm>

information, but the Act also allows them to make an application to inspect public works and take samples.

Applications must be submitted to a Public Information Officer (PIO) who must be appointed in every unit of a public authority. Applications may also be sent to an Assistant PIO, who should be appointed at local levels, who will forward the request to the relevant PIO. The PIO must respond in writing within thirty days or if the request concerns the life or liberty of a person, within 48 hours.

The Act includes a list of exemptions, although they are all subject to a blanket override whereby information may be released if the public interest in disclosure outweighs the harm to the protected interest. Exemptions cover disclosures that would prejudicially affect the sovereignty and integrity of India, the security, strategic or economic interests of the State, relations with foreign States, would lead to incitement of an offence, has been expressly forbidden to be published by a court or tribunal, could constitute a contempt of court; would endanger the life or safety of a person or identify a source used by law enforcement bodies, would impede an investigation or apprehension or prosecution of an offender, would cause a breach of parliamentary privilege; Cabinet papers (although materials relied upon must be released after decisions are made), commercial confidence information, trade secrets or intellectual property where disclosure would harm the competitive position of a third party, information available due to a fiduciary relationship, information obtained in confidence from a foreign government and personal information which has no relationship to any public activity or which would cause an unwarranted invasion of privacy.

An internal appeal can be made against decisions to a nominated person who is senior in rank to the PIO. A second appeal can be made to newly established Information Commissions at the Central and State levels or alternatively, a complaint can be made directly to these Commissions. Information Commissions have a broad remit to hear cases related to any matter relating to access under the Act. They have investigative powers and can make binding decisions. Information Commissions can make any order necessary to ensure compliance with the Act (including requiring a public authority to publish information, appoint PIOs, produce annual reports and make changes to record management), and can also order compensation and impose penalties.

The Act attempts to bar appeals to the courts, but as the right to information is a constitutional right, it would appear that citizens still have the right to go to the High Court or Supreme Court if they feel their right has been infringed.

Fines and disciplinary proceedings can be ordered for a range of offences, including refusing to access an application, delaying providing information (for which a daily penalty can be imposed), provision of false, misleading or incomplete information and obstruction of information officials.

The Act also imposes duties to monitor and promote the law. All public authorities must proactively publish and disseminate a very wide range of information, including details of the services they provide, their organizational structure, their decision-making norms and rules, opportunities for public consultation, recipients of government subsidies, licences, concessions, or permits, categories of information held, and contact details of PIOs. Public authorities must also maintain indexes of all records and over time computerize and network their records. Information Commissions must monitor implementation and produce annual reports. To the

extent that resources are available, Governments must also provide training for officials and conduct public education activities, including publishing a User's Guide.

Implementation of the Right to Information Act has been varied across the country. The Central Government, which sponsored the Act, has been relatively active, although it was slow in putting in place systems, in ensuring fulsome proactive disclosure and in setting up the Central Information Commission. To date, more than 20 states have appointed Information Commissioners, although actually setting up and providing adequate resources to the Information Commission offices has often been slow. Applications are being made throughout the country, with varying levels of success. It has been reported that local panchayat officials have been particularly slow in coming to terms with their duties under the new law.

Although the [Official Secrets Act, 1923](#), which is based on the 1911 UK OSA, has not been repealed, the Right to Information Act specifically states that its provisions will have effect notwithstanding anything inconsistent in the OSA or any other law.<sup>337</sup> The OSA prohibits the unauthorized collection or disclosure of secret information and is frequently used against the media.<sup>338</sup>

The [Public Records Act, 1993](#) sets a thirty year rule for access to archives.<sup>339</sup> The Right to Information Act specifically states that information shall be provided under the Act after 20 years, but it then specifies that certain exemptions will still apply beyond this period.

At the time the national Right to Information Act was passed, eight states and one territory had passed their own access laws, largely in response to pressure from local activists fighting corruption. Acts were passed in Tamil Nadu, (1997) Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Assam (2003), Madhya Pradesh (2003) and Jammu & Kashmir (2004). Uttar Pradesh and Chattisgarh also adopted Codes of Practice and Executive Orders on Access to Information.<sup>340</sup> With the passage of the national Act, the state laws are either lapsing or being specifically repealed. However, the Jammu and Kashmir Act will continue to operate in respect of state public authorities, because the Central Government cannot legislate for Jammu and Kashmir due to its special constitutional status.

## **IRELAND**

The [Freedom of Information Act](#) was approved in 1997 and went into effect in April 1998.<sup>341</sup> The Act creates a broad presumption that the public can access all information held by government bodies describing itself in the title as "An act to enable members of the public to obtain access, to the greatest extent possible consistent with the public interest and the right to privacy, to information in the possession of public bodies and to enable persons to have personal information relating to them in the possession of such bodies corrected and, accordingly, to provide for a right of access to records held by such bodies."

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<sup>337</sup> The Official Secrets Act, 1923, Act no. 19 of 1923. [http://www.jnet.org/FE\\_Article/MediaLaw.asp?UILang=1&CID=101585](http://www.jnet.org/FE_Article/MediaLaw.asp?UILang=1&CID=101585)

<sup>338</sup> See Govt still not clear on what's a secret, Times of India, 8 January 2003.

<sup>339</sup> Public Records Act, 1993. No. 69 OF 1993(22 December 1993). [http://nationalarchives.nic.in/public\\_record93.html](http://nationalarchives.nic.in/public_record93.html)

<sup>340</sup> See <http://www.humanrightsinitiative.org/programs/ai/rti/india/states/default.htm>

<sup>341</sup> Freedom of Information Act, 1997, [http://www.foi.gov.ie/foi.nsf/v85mm2r37c5mm2t35cgsje9hg6c\\_?OpenFrameSet](http://www.foi.gov.ie/foi.nsf/v85mm2r37c5mm2t35cgsje9hg6c_?OpenFrameSet). For a comprehensive overview, see McDonagh, Freedom of Information in Ireland (Sweet and Maxwell, 1998), and McDonagh, "Freedom of Information in Ireland: Five Years On," (22 September 2003) at <http://www.freedominfo.org/documents/ireland.pdf>

Under the Act, any person can request any record held by a public body. The Act lists the government departments and bodies it covers. The Minister of Finance can by regulation add more bodies and has been slowly expanding the scope of the legislation to new organizations, now numbering almost 500.<sup>342</sup> The Act does not apply to the Garda Síochána (police) and a number of other bodies including the Health and Safety Authority (secretly introduced as an amendment in 2005), the Central Bank, Financial Services Authority, Irish Financial Services Regulatory Authority, and National Treasury Management Agency. Government bodies must respond within four weeks and justify why information is withheld. It also requires that agencies provide a written explanation to individuals of decisions that affect their interests.

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

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

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

There is a right of internal appeal. There is also a right of external appeal to the [Office of the Information Commissioner](#) who also oversees and enforces the Act.<sup>343</sup> Decisions of the Commissioner are binding and can be appealed only on a point of law. In 2005 the Commissioner, who is also the Ombudsman, received 360 appeals (2 percent of requests, down from 6 percent in 2003) and agreed to hear 285 of them (down from 333 in 2004). The Commissioner reviewed 447 cases and issued 272 formal decisions, affirming the decision of the government body in 75 percent of the cases, varied the decision in 18 percent and annulled it in 6.6 percent. Another 44 cases (10 percent of cases) were settled.

There have been over a dozen decisions by the High Court and two decisions by the Supreme Court.<sup>344</sup> The Minister of Justice issued no new certificates in 2003 or 2004 to prevent release of sensitive information.

Public bodies are required to publish information relating to their structure, functions, duties,

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<sup>342</sup> See <http://www.foi.gov.ie/foi.nsf/WebPages/AllPublicBodiesCovered?OpenDocument>

<sup>343</sup> Homepage: <http://www.irlgov.ie/oic/>

<sup>344</sup> For copies of decisions, see <http://www.oic.gov.ie/en/CourtJudgments/>

descriptions of records, and the internal rules, procedures, practices, guidelines, and interpretations of the agency.

Inside the government, the FOI Central Policy Unit (CPU) in the [Department of Finance](#) coordinates the Act.<sup>345</sup> The CPU chairs several working and advisory groups and promotes and trains staff on the Act. It also recommends which government bodies the Act ought to cover in the future.

The Freedom of Information (Amendment) Act was adopted in April 2003.<sup>346</sup> The amendment extended the time for withholding of Cabinet Documents from five years to ten years and expanded the coverage of the exemption; allowed public servants to issue unappealable certificates saying that deliberative processes are ongoing to prevent access and weakened the public interest test; weakened the harm test for security, defence and international relations; and allowed the government to impose fees for requests and appeals. The government announced in June 2003 that it was imposing a new fee structure based in the amendment - €15 for requests, €75 for internal reviews and €150 for reviews to the Information Commissioner.

There were 14,616 requests in 2005, up 14 percent from 2004, but still lower than the 18,400 requests made in 2003 before the amendments.<sup>347</sup> 43 percent of all requests were granted in full, 26 percent in part and 15 percent were denied in full. Four percent were subject to an internal review. 76 percent of all requests were from individuals asking for their personal information and 6.5 percent were from journalists (down from 20 percent in 2001). 13 percent requests were dealt with outside of FOI. From 1998 though 2003, bodies received over 93,000 requests.

The Information Commissioner issued a report in June 2004 finding that since the introduction of fees the overall usage of the Act declined over 50 percent and requests for non-personal information declined by 75 percent.<sup>348</sup> The review also found that journalists (down 83 percent) and businesses (down 53 percent) were substantially less likely to use the act. The Council of Europe GRECO committee was critical of the changes and recommended changes in its 2005 review of corruption efforts in Ireland:

[T]he described rules could prevent the public from requesting information and/or appealing a decision not to give out information. Above all, the fee system [...] sends a negative signal to the public, which is to some extent in contradiction with the general principles of the right to access to official information, as provided for in the Freedom of Information Act. The GET therefore recommends to reconsider the system of fees for requests for access to official information according to the Freedom of Information Act as well as with regard to the available review and appeal procedures in this respect.<sup>349</sup>

Many government departments have begun to publish details on their web sites of all requests and responses which was criticized by the media as an effort to stop the use of FOI for investigative reporting. The Department of Communications also began to publish the name and address of every requestor on its web site. The Data Protection Commissioner ruled in 2003 that bodies could publish the names of FOI requestors who were acting in their professional capacity

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<sup>345</sup> Homepage: <http://www.foi.gov.ie/>

<sup>346</sup> Freedom of Information (Amendment) Act 2003, Number 9 of 2003. <http://www.gov.ie/bills28/acts/2003/a903.pdf>

<sup>347</sup> Office of the Information Commissioner, Annual Report 2005. See also Seventh Report by the Minister for Finance on Freedom of Information, January - December 2004, August 2005.

<sup>348</sup> Office of the Information Commission, Review of the Operation of the Freedom of Information (Amendment) Act 2003, June 2004.

<sup>349</sup> GRECO, Second Evaluation Round - Evaluation Report on Ireland, December 2005.

as journalists or as employees of a company but not the names of individuals asking for their own records or those whose professions could not be determined.<sup>350</sup>

Under the National Archives Act, records that are over 30 years old must be transferred to the National Archives and be made available to the public.<sup>351</sup> There is an “access gap” between 1998 when the FOI went into effect and those documents covered under the Archives Act.<sup>352</sup> Some major bodies such as the Department of Health have been failing to transfer their records long after legally required.<sup>353</sup>

The [Official Secrets Act 1963](#), which is based on the UK Official Secrets Act 1911, remains in force and criminalizes the unauthorized release of information.<sup>354</sup> Minister for Justice Michael McDowell was criticized in December 2005 for leaking information from Garda intelligence files about the director of the Centre for Public Inquiry to a funder and a newspaper.

Ireland signed the Aarhus Convention in June 1998 but has not ratified it. The Access to Information on the Environment Regulations, 1998 implement the 1992 EU Directive on access to environmental information.<sup>355</sup> Ireland was required to implement the EU Directive 2003/4/EC by 15 February 2005 but as of March 2006 had not done so.

A [Statutory Instrument](#) was adopted in June 2005 to implement the EU Directive on the re-use and commercial exploitation of public sector information (2003/98/EC).<sup>356</sup>

Individuals can obtain records containing personal information about themselves held by public and private bodies under the [Data Protection Act](#) 1988 which was updated in 2003 by the Data Protection (Amendment) Act to extend to manual files.<sup>357</sup> It is overseen by the [Data Protection Commissioner](#).<sup>358</sup>

## ISRAEL

The Supreme Court ruled in the 1990 Shalit case that citizens have a fundamental right to obtain information from the government.<sup>359</sup>

The [Freedom of Information Law](#) was unanimously approved by the Knesset in May 1998 and went into effect in May 1999.<sup>360</sup> The law was the culmination of a campaign launched in 1992 by the Coalition for Freedom of Information. The law allows any citizen or resident access to

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<sup>350</sup> Ireland Data Protection Commissioner, Appendix 2, Annual Report 2003.

<sup>351</sup> National Archives Act 1986. <http://www.nationalarchives.ie/PROI1867.html>

<sup>352</sup> See McDonagh, Freedom of Information in Ireland (Sweet and Marwell, 1998), chapter 20.

<sup>353</sup> 12-year gap in Department records, IrishHealth.com, 4 January 2006.

<sup>354</sup> Official Secrets Act, 1963. [http://www.irishstatutebook.ie/1963\\_1.html](http://www.irishstatutebook.ie/1963_1.html)

<sup>355</sup> European Communities Act, 1972 (Access to Information on the Environment) Regulations 1998. S.I. No 125/1998. [http://www.environ.ie/DOEI/docipub.nsf/0/fecdecefd52bc7bc80256b76005db5ec/\\$FILE/SI%20125%20of%201998.pdf](http://www.environ.ie/DOEI/docipub.nsf/0/fecdecefd52bc7bc80256b76005db5ec/$FILE/SI%20125%20of%201998.pdf)

<sup>356</sup> Statutory Instrument S.I. No. 279 of 2005, European Communities (Re-Use of Public Sector Information) Regulations 2005. [http://europa.eu.int/information\\_society/policy/psi/docs/pdfs/implementation/ire\\_si\\_for\\_directive\\_2003-1-98.pdf](http://europa.eu.int/information_society/policy/psi/docs/pdfs/implementation/ire_si_for_directive_2003-1-98.pdf)

<sup>357</sup> Compendium of both Data Protection Acts. <http://www.dataprivacy.ie/viewdoc.asp?Docid=70&Catid=47&StartDate=1+January+2006&m=1>

<sup>358</sup> Homepage: <http://www.dataprivacy.ie/>

<sup>359</sup> H.C. 1601-4/90 Shalit et al. v. Peres et al., 44(3) P.D. 353. See Debbie L. Rabina, Access to government information in Israel: stages in the continuing development of a national information policy, <http://www.ifla.org/IV/ifla66/papers/018-160e.htm>

<sup>360</sup> Freedom of Information Law 5758-1998. [http://www.police.gov.il/english/Information\\_Services/Law/xx\\_5759\\_1998.asp](http://www.police.gov.il/english/Information_Services/Law/xx_5759_1998.asp)

information held by public authorities including government ministries, the Presidency, Parliament, courts, local councils, government-owned corporations and other bodies doing public business. Additional bodies can be included by the Justice Ministry and a committee in the Knesset. Universities and the National Lottery were recently included.

It can also be used by non-citizens and non-residents relating to their rights in Israel. The information can be in any form, including written, recorded, filmed, photographed or digitized. Requests for information must be processed within 30 days and departments have 15 days after processing to provide the information.

The security services and other bodies that handle intelligence matters, national security and foreign policy are excluded from coverage under the Act. There are mandatory exemptions for information that would harm national security, foreign affairs of the safety of an individual, or that the Minister of Defense has declared to be necessary for protecting national security; personal privacy; or is protected by another law. There are discretionary exemptions for information that may interfere with the functioning of a public authority; policies under development; negotiations with external bodies of individuals; internal deliberations; internal agency management; trade or professional secrets (except for some environmental information); privileged information; law enforcement customs and procedures; disciplinary affairs of public employees; and if they would damage the privacy of a dead person. The public authority must consider the public interest in releasing the information.

Those denied information may appeal to the courts, which can review all information that is withheld and order the release of information if it finds that the public interest in disclosure is greater than the reason for withholding and the disclosure is not prohibited by another law. There have been numerous court cases which have been somewhat contradictory.<sup>361</sup> The Supreme Court limited the application of the law in 2005, rejecting a lower courts ruling that “special harm” must be found to justify withholdings.<sup>362</sup> In January 2006, it limited the withholding of information to protect internal discussions.<sup>363</sup>

Public authorities must publish regulations, guidelines and information detailing how to use the FOIL. The authorities must also publish an annual report on their structure and activities and appoint an official responsible for the act. Under e-government efforts, government departments are required to publish information on their web sites including reports.<sup>364</sup>

A recent review indicates that the implementation of the law has not been particularly successful.<sup>365</sup> The Civil Service Commission never set up a planned unit to implement the act and there is no central monitoring of the bodies including reviewing the annual reports. There has been almost no training of officials. There has also been a lack of interest by requestors with most ministries receiving less than 100 requests each year, mostly for non-personal information requests.<sup>366</sup> Few journalists appear to be using the Act. A new organization, the Freedom of Information Movement, was recently set up to promote openness.<sup>367</sup> An index published by the

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<sup>361</sup> Rabin, Y and Peled, R (2005) Between FOI Law and FOI Culture: The Israeli Experience. *Open Government: a journal on Freedom of Information*. Volume 1 Issue 2. 26 July 2005

<sup>362</sup> Karniel, Y (2005) Case Comment: The New Freedom of Information Law in Israel is Tested by its Supreme Court. *Open Government: a journal on Freedom of Information*. Volume 1 Issue 2. 26 July 2005.

<sup>363</sup> Supreme Court: Publicly-funded bodies must provide freer information, *Jerusalem Post*, 22 January 2006.

<sup>364</sup> Israel Government Gateway. <http://www.info.gov.il/eng/mainpage.asp>. See Israel: Round Table Report, ICA 36<sup>th</sup> Conference, October 2002.

<sup>365</sup> Rabin, Y and Peled, *Id*.

<sup>366</sup> Email from Roy Peled, Movement for Freedom of Information, January 2005.

<sup>367</sup> Homepage: <http://www.foim.org.il/main/default.aspx>

FOIM and the Coleman School of Law in Rishon le-Zion in 2006 found that even the best ranked ministries did not do better than a rating of 3.03 out of 5. The Ministries of Treasury and Justice received the best scores while Tourism and Agriculture were the worst.

Under the [Protection of Privacy Law](#), individuals have a right to access their personal information held in databanks by government or private entities.<sup>368</sup> It is enforced by the Registrar of Databases within the Ministry of Justice.

The Archive Law 1955 and regulations set a 30 year rule for access to documents submitted to the State Archives and 50 year rule for military documents.<sup>369</sup> However, many government departments have created their own archives which are not subject to the law.<sup>370</sup> The State Comptroller issued a report in May 2004 critical of the lack of guidelines on the preservation of electronic records and warned that many were being lost or destroyed.<sup>371</sup> The State Archivist, Dr. Tuvia Friling, resigned in protest in December 2004 following the refusal of the General Security Service and the Mossad to follow the 50 year rule and release security documents from the time of Israel's founding.

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

## ITALY

Chapter V of Law No. 241 of 7 August 1990 provides for access to administrative documents.<sup>372</sup> However, the right to access is limited. The law states that those requesting information must have a legal interest. The [1992 regulations](#) require "a personal concrete interest to safeguard in legally relevant situations." The courts have ruled that this includes the right of environmental groups and local councilors to demand information on behalf of those they represent. It was amended in 2005.<sup>373</sup> The revision appears to adopt the court rulings and relax the interest somewhat to allow access when an individual can show they represent a more general public interest.

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

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<sup>368</sup> The Protection of Privacy Law 5741-1981, 1011 Laws of the State of Israel 128. <http://www.rgr.co.il/English/Resources/PRIVACYr.pdf> (unofficial translation)

<sup>369</sup> Archives Law, 5715-1955.

<sup>370</sup> Deborah Rabina, Examination of and Recommendations for a national information policy for Israel: the Use of Democratic Models for the Understanding of Information Policy Processes (PhD Thesis, 2001).

<sup>371</sup> Preservation of Electronic Records, Annual Report of the State Comptroller, May 2004. [http://www.mevaker.gov.il/serve/site/docs/Records\\_Preservation\\_SAI\\_Israel\\_May2004.pdf](http://www.mevaker.gov.il/serve/site/docs/Records_Preservation_SAI_Israel_May2004.pdf)

<sup>372</sup> Law No. 241 of 7 August 1990. [http://www.governo.it/Presidenza/DICA/documentazione\\_accesso/normativa/legge241\\_1990\\_eng.html](http://www.governo.it/Presidenza/DICA/documentazione_accesso/normativa/legge241_1990_eng.html) (not current)

<sup>373</sup> Legge 11 febbraio 2005, n. 15 "Modifiche ed integrazioni alla legge 7 agosto 1990, n. 241, concernenti norme generali sull'azione amministrativa" <http://www.parlamento.it/leggi/050151.htm>

Information relating to state secrets, fiscal procedures, development of policy, and relating to rights of third parties is excluded. Information relating to national defense, international relations monetary policy, public order and prevention of crime, personal privacy and professional secrets can be withheld but must be given when it is necessary to defend their legal interest. The 1992 regulations require that non-disclosure must generally be justified in terms of “concrete damage” to the public interest, but they also state that access may be denied if there is specific, identified damage to national security and defense or international relations; if there is a danger of damaging monetary and foreign exchange policy; and if they relate to the enforcement of laws and the privacy and confidentiality of individuals, legal persons, groups, enterprises and associations.

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

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

A decree to implement the EU Directive on the re-use and commercial exploitation of public sector information (2003/98/EC) was adopted in January 2006.<sup>374</sup>

The [Commission on Access to Administrative Documents](#) under the Office of the Prime Minister monitors the workings of the law.<sup>375</sup> The Commission reviews the regulations of the bodies, comments on related legislation, issues an annual report and can request all documents except those subject to state secrecy. It is also tasked with operating and analyzing the general databank of information requests. In its 2004 report, it noted that some bodies had not adopted required regulations and there was still difficulty with the culture of transparency in public administration. It issued 84 opinions in 2004.<sup>376</sup>

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

Italy signed the Aarhus Convention in 1998 and ratified it in 2001. Under Law 349/86, any citizen has a right of access to information related to the environment held by the Ministry of the Environment. The courts have ruled that environmental information is broadly defined.<sup>377</sup> A 1997 decree implements the 1990 EU environmental information directive and does not require a specific interest.<sup>378</sup> It is currently under review to make it compatible with EU Legislation. In July 2005, the European Commission announced that it was taking legal action against Italy and six other countries for failing to implement the 2003 EU Directive on access to environmental information.<sup>379</sup> The European Court of Human Rights ruled in the 1998 case of [Guerra v Italy](#)

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<sup>374</sup> Dectro LEGISLATIVO 24 gennaio 2006, n. 36, "Attuazione della direttiva 2003/98/ce relativa al riutilizzo di documenti nel settore pubblico". <http://www.cnipa.gov.it/site/files/riusodatipub.pdf>

<sup>375</sup> Homepage: <http://www.governo.it/Presidenza/ACCESSO/index.html>

<sup>376</sup> Relazione per l'anno 2004 della Commissione per l'accesso ai documenti amministrativi sulla trasparenza dell'attività della pubblica amministrazione

<sup>377</sup> See Hallo, *Access to Environmental Information in Europe: Italy* (Kluwer Law 1996).

<sup>378</sup> Decreto legislativo del 24/02/1997 n. 39, Attuazione della direttiva 90/313/CEE, concernente la libertà di accesso alle informazioni in materia di ambiente, Supplemento ordinario alla Gazzetta Ufficiale Serie generale, n.54, del 06/03/1997, p 3.

<sup>379</sup> European Commission, *Public access to environmental information: Commission takes legal action against seven*

that governments had an obligation to inform citizens of risks from a chemical factory under Article 8 (protecting privacy and family life) of the European Convention on Human Rights, which Italy failed to do.<sup>380</sup>

Law 24 of October 1977 sets rules on state and official secrets.<sup>381</sup> The Criminal Code prohibits the disclosure of state secrets and other information which is forbidden from being published.<sup>382</sup> The Central Security Office in the intelligence service (CESIS) enforces protection of state secrets.

Under the [Data Protection Code](#) individuals can access records containing personal information about themselves held by public and private bodies.<sup>383</sup> It is enforced by the [Garante](#).<sup>384</sup>

## JAMAICA

The [Access to Information Act](#) was adopted in July 2002.<sup>385</sup> Initially, the Act was to be implemented across the whole of government, but in December 2004 the Act was amended to permit the Act to be phased into effect in four phases, starting in January 2004.<sup>386</sup> All Ministries had implemented the Act by May 2005, and all departments and agencies were prepared for implementation by July 2005.<sup>387</sup>

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

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

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Member States, 11 July 2005.

<sup>380</sup> Case of Guerra and Others v. Italy (116/1996/735/932), 19 February 1998. <http://www.ecl.nl/cases/ECHR/guerra.htm>

<sup>381</sup> Legge 24 ottobre 1977, n. 801 Istituzione e ordinamento dei servizi per le informazioni e la sicurezza e disciplina del segreto di Stato. <http://www.serviziinformazione sicurezza.gov.it/pdcweb.nsf/documenti/LEGGE801>

<sup>382</sup> Criminal Code §§261-263.

<sup>383</sup> Personal Data Protection Code, Legislative Decree no. 196 of 30 June 2003. <http://www.garanteprivacy.it/garante/document?ID=311066>

<sup>384</sup> Homepage: <http://www.garanteprivacy.it/>

<sup>385</sup> Access to Information Act 2002. [http://www.jis.gov.jm/special\\_sections/ATI/ATIACT.pdf](http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf)

<sup>386</sup> See update from the Cabinet Office of Jamaica at <http://www.cabinet.gov.jm/accessInfo.asp>

<sup>387</sup> See <http://www.ziplaw.com/news/archives/000355.html> and <http://www.jamaicansforjustice.org/ATI/about.htm>

information that is incorrect if the documents are used for administrative purposes.

Appeals are heard internally by the Permanent Secretary or principal officer of the Ministry or the Minister for documents subject to a certificate. Second appeals then go to an Appeal Tribunal set up specifically to hear complaints under the Act. The Tribunal was established in December 2003 but has been slow to take up its mandate. The ATI Stakeholders Advisory Group (see below for details) has reported that problems faced by requestors going to the Tribunal have included: lengthy delays in receiving acknowledgement of the appeal from the Tribunal; lengthy delays in getting dates set for hearings; excessively formalistic, onerous and legalistic procedures; short notice periods for hearings; and onerous procedural requirements. The Group has also observed that difficulties faced by the Tribunal include: all current members being employed elsewhere, which has led to severe scheduling difficulties sittings of the Tribunal; difficulty getting draft regulations amended; and lack of a designated Secretariat.<sup>388</sup>

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

The [Access to Information Unit](#)<sup>389</sup> of the Jamaica Archives and Records Department in the Office of the Prime Minister was formed in January 2003 to overseeing the implementation of the Act.<sup>390</sup> The Unit provides training and guidance to both agencies and the public on the Act and is working with NGOs such as the Carter Center. By March 2004, the Unit had trained 4339 public employees and others on the Act. The ATI Unit also set up an ATI Association of Administrators, which brought together department ATI officials to discuss implementation challenges and successes, and set up an ATI Stakeholders Advisory Group made up of the ATI Unit Director and a cross section of business, media and NGO representatives who gave feedback on implementation.<sup>391</sup> However, in July 2005 both the Executive Officer and Public Relations Officer resigned, and the Government has not filled these positions.<sup>392</sup> This has significantly slowed the work of the Unit.

The ATI Stakeholders Advisory Group reports that 468 requests were received and 165 were granted full access in the first year of operation of the Act. The ATI Unit reported in March 2005 that the Appeal Tribunal initially received ten appeals against three Public Authorities, namely, the Bank of Jamaica (5 appeals), the Ministry of Finance & Planning (4 appeals) and the Office of the Prime Minister (1 appeal).<sup>393</sup> However, Jamaicans for Justice have reported that by early 2006 the Appeals Tribunal has only managed to sit on two days to hear three appeals.<sup>394</sup>

The Act explicitly requires that the law is reviewed by a parliamentary committee within two years of coming into force. A Joint Select Committee on Access to Information, chaired by Information Minister Trevor Munroe, was accordingly set up in December 2005, and began hearings in January 2006. The Committee completed its hearings in March 2005. However, a

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<sup>388</sup> Access to Information Advisory Stakeholders Committee Submission to Parliamentary Select Committee Conducting the Review of the Access to Information Act 2002, February 2006.

<sup>389</sup> See also <http://www.jard.gov.jm/ati/>

<sup>390</sup> Homepage: [http://www.jis.gov.jm/special\\_sections/ATI/default.html](http://www.jis.gov.jm/special_sections/ATI/default.html)

<sup>391</sup> Aylair Livingstone, Director ATI Unit, The Implementation Of The Access To Information Act - The Jamaican Experience: Challenges & Successes, 2005.

[http://www.humanrightsinitiative.org/programs/ai/rti/implementation/general/implementation\\_of\\_ai\\_act\\_jamaican\\_experience.pdf](http://www.humanrightsinitiative.org/programs/ai/rti/implementation/general/implementation_of_ai_act_jamaican_experience.pdf)

<sup>392</sup> Carolyn Gomes, Executive Director, Jamaicans for Justice (2006) "Reviewing the Access to Information Act in Jamaica", CHRI Newsletter, [http://www.humanrightsinitiative.org/publications/nl/newsletter\\_spring\\_2006/article6.htm](http://www.humanrightsinitiative.org/publications/nl/newsletter_spring_2006/article6.htm)

<sup>393</sup> [http://www.jard.gov.jm/ati/index.php?option=com\\_docman&task=doc\\_download&gid=71&Itemid=1](http://www.jard.gov.jm/ati/index.php?option=com_docman&task=doc_download&gid=71&Itemid=1)

<sup>394</sup> Carolyn Gomes, Executive Director, Jamaicans for Justice (2006) "Reviewing the Access to Information Act in Jamaica", CHRI Newsletter, [http://www.humanrightsinitiative.org/publications/nl/newsletter\\_spring\\_2006/article6.htm](http://www.humanrightsinitiative.org/publications/nl/newsletter_spring_2006/article6.htm)

new Information Minister was appointed shortly after and it is expected that the Committee will begin another round of hearings before finalizing its recommendations. A number of amendments were proposed to the Committee to narrow the scope of the law, including amendments to remove Cabinet and the Bank of Jamaica from its scope. Civil society organizations made representations to the Committee seeking amendments to the law and operational changes to facilitate better access.<sup>395</sup>

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

The Official Secrets Act 1911 remains in force and applies to the unauthorized disclosure of documents. Minister of Justice AJ Nicholson said in April 2003 that the Government would move to abolish the Act following implementation of the ATI Act.<sup>396</sup>

## **JAPAN**

After a 20-year effort, the [Law Concerning Access to Information Held by Administrative Organs](#)<sup>397</sup> was approved by the Diet in May 1999 and went into effect in April 2001. The law allows any individual or company, Japanese or foreign, to request administrative documents held by administrative agencies in electronic or printed form. A separate law enacted in November 2001 extended the coverage of the access law to public service corporations. Departments must respond in 30 days.

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

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

There is no internal appeal. Appeals are referred by the agency to the Information Disclosure Review Board, a committee in the Office of the Prime Minister made of panels of three persons from outside government including law professors and retired public officials.

The Board has made a number of interesting decisions. In September 2002, it recommended the disclosure of the minutes of the meetings between Emperor Hirohito and US General Douglas

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<sup>395</sup> See [http://www.humanrightsinitiative.org/programs/ai/rti/international/laws\\_&\\_papers.htm#19](http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_&_papers.htm#19) to access these submissions.

<sup>396</sup> Access to Information Act to be Implemented on October 1, JIS, 25 April 2003.

<sup>397</sup> Law Concerning Access to Information Held by Administrative Organs. <http://www.soumu.go.jp/gyoukan/kanri/translation3.htm>. For a detailed analysis and comparison with US law, see Lawrence Repeta and David M. Schultz, Japanese Government Information: New Rules for Access - The 2001 Information Disclosure Law, and a Comparison with the U.S. FOIA, <http://www.gwu.edu/~nsarchiv/nsa/foia/japanfoia.html>

MacArthur. In 2004, it recommended that the Health Ministry release a list of 500 hospitals that used a blood-clotting agent infected with Hepatitis C. Following the decision, the Health Minister promised to release the full list of 7,000 hospitals that used the drug. The decisions are not binding but are generally followed. The Coast Guard in August 2004 was the first government body to refuse a recommendation.<sup>398</sup>

Denials can also be appealed to one of eight different district courts. There were 23 lawsuits filed in 2004. The district courts ruled in 20 cases and the appeals courts in 11 cases. The Supreme Court also heard a number of cases based on local FOI laws. In June 2004, the Tokyo District Court ordered the Supreme Court to release four documents related to a bribery case involving Lockheed Martin.

There was a total of 93,717 requests in 2004 to administrative agencies and public corporations, up from 73,348 in 2003 and 48,000 in 2002. In all of the years, a significant percentage of the requests have been from companies and individuals demanding copies of public lists such as high-income taxpayers and alcoholic beverage license holders. In 2004, nearly 60,000 of the requests resulted in full disclosure, 21,000 in partial releases and over 3,000 in non-disclosure. There were over 1,500 administrative appeals and 720 decisions from the Review Board in 2004.

The main criticisms by civil society groups of the Act as implemented are high fees, delays in referring appeals to the Information Disclosure Review Board, missing documents, poor archiving, and excessively broad disclosures.<sup>399</sup> The public interest test is only infrequently used.<sup>400</sup> Since the adoption of the new law on protecting personal privacy, government bodies have expanded the scope of withholding personal information about public officials. It is cited in approximately 70 percent of withholdings.<sup>401</sup>

A government panel made up of law professors and experts conducted an extensive review of the law in 2005 that mostly focused on its implementation. The panel released its report in March 2005 finding numerous problems with the law but made no recommendations on changes to the legislation, after deciding that its mandate did not allow it to do so.<sup>402</sup> The government issued a decree in April 2006 that reduced fees by half.

The [Act on the Protection of Personal Information](#) was adopted in 2003.<sup>403</sup> It allows individuals to obtain and correct their personal information by public and private bodies.

A 1999 law required the creation of a Pollutant Release and Transfer Register.<sup>404</sup> A law which requires government ministries, local governments and specified businesses to publish annual reports on the environmental consequences of their activities was approved in 2004.<sup>405</sup>

Nearly 3,000 local governments also have adopted disclosure laws. Over 80 percent of all villages

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<sup>398</sup> Coast guard refuses official request for info, The Asahi Shimbun, 14 August 2004.

<sup>399</sup> Lawrence Repeta, "Japan's Disappointing Information Disclosure Law" (forthcoming).

<sup>400</sup> Info disclosure law has achieved little, The Daily Yomiuri, 3 April 2006.

<sup>401</sup> Repeta, id.

<sup>402</sup> Repeta, id.

<sup>403</sup> <http://www5.cao.go.jp/seikatsu/koin/foreign/act.pdf>

<sup>404</sup> Law Concerning Reporting, etc. of Releases to the Environment of Specific Chemical Substances and Promoting Improvements in Their Management. Law No. 86 of 1999. <http://www.env.go.jp/en/laws/chemi/prtr/index.html>. See Ministry of Environment, Pollution Release and Transfer Register. <http://www.prtr-info.jp/prtrinfo/e-index.html>

<sup>405</sup> Law Concerning the Promotion of Business Activities with Environmental Consideration by Specified Corporations, etc., by Facilitating Access to Environmental Information, and Other Measures, Law No. 77 of 2004. <http://www.env.go.jp/en/laws/policy/business.pdf>

also have disclosure laws. The first jurisdictions to adopt laws were Kanayama town in Yamagata prefecture and Kanagawa Prefecture in 1982.<sup>406</sup>

## **SOUTH KOREA**

The Constitutional Court ruled in 1989 that there is a constitutional right to information “as an aspect of the right of freedom of expression and specific implementing legislation to define the contours of the right was not a prerequisite to its enforcement.”<sup>407</sup>

The [Act on Disclosure of Information by Public Agencies](#) was enacted in 1996 and went into effect in January 1998.<sup>408</sup> It allows citizens to demand information held by public agencies. Those requesting information must provide their names and resident registration numbers and the purpose for the use of the information. A separate Presidential Decree allows access by foreigners who are residents, in the country temporarily for education or research, or companies with an office in Korea. Agencies must decide in 15 days.

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

Agencies must set up an information disclosure deliberative committee to determine release. Those denied can appeal to public agencies; further appeal can also be made to the head of the central agency under the Administrative Appeals Act. Judicial review is provided under the Administrative Litigation Act in cases where an individual’s “legal interest is violated due to the disposition or omission of public agencies.” The courts have been active in promoting a right of access and have found that disclosure should be the rule not the exception.<sup>409</sup> The Supreme Court ruled in October 2004 that the military could not withhold information on the 1979 coup and the 1980 democratic uprising.

The Ministry of Government Administration is in charge of oversight and planning for the Act and can inspect and review the activities of state agencies.<sup>410</sup> The Cabinet Legislation Bureau eliminated a provision in the draft bill for an Independent Information Disclosure Commission.

The Korean Government has also been active in promoting electronic government as a means

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<sup>406</sup> Lawrence Repeta, The Birth of the Freedom of Information Act in Japan: Kanagawa 1982. <http://www.freedominfo.org/reports/japan.htm>

<sup>407</sup> Right to Information (1 KCCR 176, 88HunMa22, 4 September 1989). <http://www.ccourt.go.kr/english/decision10year.htm>

<sup>408</sup> Act on Information Disclosure by Public Agencies, Act No. 5242, 31 December 1996. [http://www.freedominfo.org/documents/korea%20980258118\\_korea.doc](http://www.freedominfo.org/documents/korea%20980258118_korea.doc)

<sup>409</sup> See Kyu Ho Youm, Freedom of Expression and the Law: Rights and Responsibilities in South Korea, 38 Stan. J Int’l L. 123, Winter 2002.

<sup>410</sup> Homepage: <http://www.gcc.go.kr/english/main.asp>

of improving access to information and to fight corruption.<sup>411</sup> The Online Data Release System allows for citizen to obtain information from government departments using a website.<sup>412</sup>

However, reviews have found problems with frequent improper denials of requests, the failure of government agencies to publish lists of available documents, and a disregard and non-enforcement of the Act.<sup>413</sup> A coalition of citizens and anti-corruption groups launched the Korean Social Pact on Anti-Corruption and Transparency (K-Pact) in 2005, calling for the law to be amended to improve public access to information to fight corruption.<sup>414</sup>

The Military Secrets Protection Act sets rules on the disclosure of classified information.<sup>415</sup> It was revised in 1993 following a decision of the Constitutional Court that the Act was constitutional only if the secrets are marked as classified following a legal procedure, and would create a clear danger to national security.<sup>416</sup> Two members of the opposition Grand National Party were sanctioned by the National Assembly's Ethics Committee in 2004 for releasing a classified report that estimated that Seoul would be captured in 16 days if it were invaded by North Korea unless US forces intervened. A committee was set up in 2004 to review the role of members of the Korean military who collaborated with the Japanese occupiers.

[The Act on Protection of Personal Information Maintained by Public Agencies](#) allows individuals to obtain and correct personal information held by government agencies.<sup>417</sup> The Ministry of Government Administration and Home Affairs (MOGAHA) is responsible for overseeing the Act. [The Act on Promotion of Information and Communications Network Utilization and Data Protection](#) provides for a right of access to personal information held by telecommunications companies, travel agencies, airlines, hotels and educational institutes.<sup>418</sup>

The Public Records Management Act regulates the maintenance and use of archived records.<sup>419</sup> Most are accessible after 30 years. Secret records must be reviewed for declassification. A list of all records produced between 1998 and 2003 was released in January 2005 to facilitate access to records.<sup>420</sup>

## Kosovo

Kosovo is a province of Serbia under the administration of the United Nations Interim Administration Mission in Kosovo (UNMIK). Negotiations have begun on its final status, which is likely to eventually be as an independent state. The Assembly of Kosovo approved the [Law on](#)

<sup>411</sup> See Government Computerization Centre. <http://www.gcc.go.kr/english/sub02/index-2.html>; Seoul Open System. <http://english.metro.seoul.kr/government/policies/anti/civilapplications/>

<sup>412</sup> See Ministry of Government Administration and Home Affairs. [http://www.gcc.go.kr/english/sub02/sub02\\_1\\_2.asp](http://www.gcc.go.kr/english/sub02/sub02_1_2.asp)

<sup>413</sup> See Heungsik Park, Reform of Administrative Transparency in Korea: The Case of Korea (Friedrich Naumann Stiftung). Also see Transparency International, National Integrity Systems 2001: Republic of Korea.

<sup>414</sup> Korean Social Pact on Anti-Corruption and Transparency, March 2005. <http://pact.or.kr/english/images/kpact.pdf>

<sup>415</sup> Military Secrets Protection Act, Act No. 4616 (1993). See [http://www.mnd.go.kr/cms.jsp?p\\_id=0191802000000](http://www.mnd.go.kr/cms.jsp?p_id=0191802000000)

<sup>416</sup> Military Secret Leakage case, 4 KCCR 64, 89Hun-Ka104, 25 February 1992. See The Constitutional Court, The First Ten Years of the Constitutional Court, 2001. <http://www.court.go.kr/english/decision.htm> See Kyo Ho Youm, Freedom of Expression and National Security in South Korea in Coliver. *Secrecy and Liberty: National Security, Freedom of Expression and Access to Information*, Martinus Nijhoff Publishers.

<sup>417</sup> Act on Protection of Personal Information Maintained by Public Agencies. [http://www.cyberprivacy.or.kr/english/pds/a\\_3.pdf](http://www.cyberprivacy.or.kr/english/pds/a_3.pdf)

<sup>418</sup> The Act on Promotion of Information and Communications Network Utilization and Data Protection. [http://www.cyberprivacy.or.kr/english/pds/a\\_2.doc](http://www.cyberprivacy.or.kr/english/pds/a_2.doc)

<sup>419</sup> See review at [http://www.archives.go.kr/e\\_gars/html\\_system/law\\_contents.asp](http://www.archives.go.kr/e_gars/html_system/law_contents.asp)

<sup>420</sup> Official Records List Promises Greater Transparency, Chosun, 30 January 2005.

[Access to Official Documents](#) on 16 October 2003.<sup>421</sup> It was approved by UNMIK with two changes on exemptions on 6 November 2003.<sup>422</sup>

The law allows any “habitual resident” or person eligible to be a resident of Kosovo or natural or legal persons in Kosovo to have a right of access to documents held by any Provisional Institution of Self-Government (PISG), municipality, independent bodies set up under the Constitutional framework or Kosovo Trust Agency. The institutions may also grant the rights to non-residents. The request can be made in written or electronic form. Institutions must respond in fifteen working days.

There are exemptions if disclosure would undermine: the public interest in public security, defense and military matters, international relations or the financial monetary or economic policy of the PISG; the privacy and integrity of an individual; commercial interests; court proceedings; or the purpose of inspections, investigations or audits. The government must draft a list of documents to be exempted. There are also exemptions for internal documents prior to the decision being made or if it would seriously undermine the decision-making process. The exemptions may apply for a maximum of thirty years. The body must consider if there is an overriding public interest in disclosure including if there is a failure to comply with legal obligations, existence of criminal acts, abuse of authority or neglect, unauthorized use of public funds or danger to the health or safety of the public.

One of the two changes imposed by UNMIK gave it control over access and classification of documents relating to security, defense, and military matters, external relations and monetary policy under the international control.

Appeals of denial are first back to the body asking it to reconsider and then can be made to a court or to the Ombudsperson Institution.<sup>423</sup>

Each institution is required to create a register of documents, if possible in electronic form. Each document should be recorded in the register with a reference number, title and description and date it was created or received. Institutions are required to make documents available directly through an electronic register, especially legislative documents and those relating to the development of policy and strategy. Each institution is also required to produce an annual report on cases of denials with reasons and the number of sensitive documents not recorded in the register.

Implementation of the law has been limited. The Ombudsman described it in July 2005 as “an example of a law which so far have, to a considerable extent, existed only on paper.” The Ombudsman also reported in January 2005 that he had not received a single complaint.<sup>424</sup> The OSCE review of the law in January 2005 found that there were numerous problems with implementation:

- None of the institutions it had interviewed had set up the official register as required by the law;
- The government has not adopted the rules and regulations on classification of sensitive

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<sup>421</sup> Law on Access to Official Documents. No. 2003/12. [http://www.unmikonline.org/regulations/2003/RE2003\\_32.pdf](http://www.unmikonline.org/regulations/2003/RE2003_32.pdf).

<sup>422</sup> United Nations Interim Administration Mission in Kosovo, Regulation No. 2003/32 on the Promulgation of a Law Adopted by the Assembly of Kosovo on Access to Official Documents, 6 November 2003.

<sup>423</sup> Homepage: <http://www.ombudspersonkosovo.org/>

<sup>424</sup> Marek Antoni Nowicki, The Great Bazaar, Transitions Online, 14 January 2005.

- documents;
- The Government has not drafted the list of documents on sensitive documents;
- The Office of Prime Minister had not published the annual report on implementation.<sup>425</sup>

The Law on Access to Official Documents recognizes that there should be a law on data protection that would allow individuals access to their personal information held by public and privacy bodies. However, it has not yet been adopted.

## **LATVIA**

The Constitution of Latvia states:

Article 100. Everyone has the right to freedom of expression which includes the right to freely receive, keep and distribute information and to express their views. Censorship is prohibited.

Article 104. Everyone has the right to address submissions to State or local government institutions and to receive a materially responsive reply.

Article 115. The State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment.<sup>426</sup>

The [Law on Freedom of Information](#) was signed into law by the State President in November 1998 and has been amended a number of times recently.<sup>427</sup> Any person can ask for information in “any technically feasible form” without having to show a reason. The request can be oral or written. Bodies must respond in 15 days.

The law creates two categories of information – “generally accessible” and “restricted”. Information can only be limited if it is intended for a limited group of people and the disclosure would hinder the work of the institution or harm a person’s legitimate interest. To be restricted, it must be restricted by another law, for internal use of an institution, a trade secret not relating to public procurements, about the private life of an individual, concerns certification, examination, project, tender and similar evaluation procedures, or relates to state security but not a state secret.

There is a right of internal appeal to the head of the institution or a higher authority. The [State Data Inspectorate](#) was given oversight authority starting in January 2004.<sup>428</sup> Between 10 to 20 percent of its complaints have been related to FOI cases. It also has conducted some educational activities and given advice but its activities have been limited of a lack of additional funding.

Appeals can also be made to a court. The Constitutional Court ruled in 1999 that a regulation issued by the Cabinet of Ministers restricting access to budget information was void because it

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<sup>425</sup> Organization for Security and Co-operation in Europe Mission in Kosovo, Implementation of Kosovo Assembly Laws by the Executive Branch of the Provisional Institutions of Self-Government Review Period: Laws Promulgated in 2002-2003, January 2005.

<sup>426</sup> Constitution of Latvia 1998. [http://www.oefre.unibe.ch/law/icl/lg00000\\_.html](http://www.oefre.unibe.ch/law/icl/lg00000_.html)

<sup>427</sup> Law on Freedom of Information, Adopted 29 October 1998, Signed 6 November 1998. [http://www.nobribes.org/Documents/Latvia\\_FOILaw.doc](http://www.nobribes.org/Documents/Latvia_FOILaw.doc) (not current version)

<sup>428</sup> Homepage: <http://www.dvi.gov.lv/eng>

violated the FOI Act.<sup>429</sup> The Administrative Court ruled in January 2005 that the Prosecutors General's office is subject to access requests.

The law was amended in December 2005 to implement the EU Directive on the re-use and commercial exploitation of public sector information (2003/98/EC) and the EU Environmental Information Directive (2003/4/EC).<sup>430</sup> The amendments have made some substantive improvements to the workings of the law. The right of access was further clarified and strengthened. The duration for restricted information was limited to one year, subject to renewals. It also required institutions to create information registers and make those available on the body's website and allowed requesters to obtain information in the format of their choice. New regulations are currently being developed to implement the revised act, including on fees. There are currently efforts to amend the law to limit the scope of the exemption for NATO-related information.

Implementation has improved somewhat but there are still problems. Early surveys found a serious lack of resources and training.<sup>431</sup> The GRECO Evaluation team in 2004 recommended that "measures be taken to enhance easier access to public information, above all at local level."<sup>432</sup> The situation has gotten better due to a new law on administrative procedure which improved decisions and appeals, government commitments to improve anti-corruption mechanisms, and pressure from civil society, journalists, court cases and international organizations. The amendments are expected to improve practices by limiting the discretion of officials to withhold information but the right of information is still not considered strong enough by civil society groups.

The State Secrets Act sets rules on levels the protection of classified information. It was adopted in 1996 and amended in 2001.<sup>433</sup> It is overseen by the Constitutional Protection Bureau. The Constitutional Court ruled in 2003 upholding the regulations on security clearances.<sup>434</sup>

The Centre for the Documentation of the Consequences of Totalitarianism was placed in charge of the files of the former KGB that were not destroyed or taken back to Moscow in 1991. The records include 5,000 index cards of informers.<sup>435</sup> The Center was moved in November 2002 to become part of the Constitutional Protection Bureau.<sup>436</sup> The Parliament voted overwhelmingly in May 2004 to release thousands of KGB files but the President refused to approve it. The Parliament's approved a revised bill in June 2006 to publish information on KGB agents in the official newspaper following the October 2006 election.

The [Law on Personal Data Protection](#) allows individuals to obtain and correct their own records held by public or private bodies.<sup>437</sup> It is overseen by the State Data Protection Inspectorate.

The [Law on Archives](#) provides for open access to files held by the state archives after 10 years

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<sup>429</sup> Decision in Case 04-02(99), 6 July 1999. [http://www.satv.tiesa.gov.lv/Eng/Spriedumi/04-02\(99\).htm](http://www.satv.tiesa.gov.lv/Eng/Spriedumi/04-02(99).htm)

<sup>430</sup> Act of 22 December 2005. Signed by President on 3 January 2005. In effect 1 February 2006.

<sup>431</sup> See Delna, A Survey of Access to Information in Latvia, 2002. <http://www.delna.lv/>

<sup>432</sup> Second Evaluation Round - Evaluation Report on Latvia Greco Eval II Rep (2004) 4E. 2 July 2004.

<sup>433</sup> Law on State Secrets. Published in "Vestnesis" 181, 29 October 1996.

<sup>434</sup> Constitutional Court of Latvia, Judgment in case No. 2002-20-0103, 23 April 2003. [http://www.satv.tiesa.gov.lv/Eng/Spriedumi/20-0103\(02\).htm](http://www.satv.tiesa.gov.lv/Eng/Spriedumi/20-0103(02).htm)

<sup>435</sup> Latvia Debates Putting Cards On The Table, Wall Street Journal Europe, 1 November 1999.

<sup>436</sup> Law on preserving and application of the documents of former KGB and establishment of the fact of cooperation with former KGB, 17 November 2003.

<sup>437</sup> Personal Data Protection Law 2000. <http://www.dvi.gov.lv/eng/legislation/pdp/>

for most records.<sup>438</sup>

The [Law on Environmental Protection](#) requires authorities to publish information relating to environmental matters and authorizes citizens to demand information from agencies.<sup>439</sup> Latvia signed the Aarhus Convention in 1998 and ratified it in 2002. It signed the Protocol on Pollutant Release and Transfer Registers in 2003.

## **LIECHTENSTEIN**

The Information Act (Informationsgesetz) was adopted in May 1999 and went into force in January 2000.<sup>440</sup> It allows any person to obtain files from state and municipal organs and private individuals who are conducting public tasks. Responses must be responded to in a “timely” manner.

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

Appeals can be made to a court.

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

Under the [Data Protection Act 2002](#), individuals have a right to access and to correct their personal information held by public or private bodies.<sup>441</sup> It is enforced by the [Data Protection Commissioner](#).<sup>442</sup>

Liechtenstein signed the Aarhus Convention in June 1998 but it has not yet been ratified. Access to environmental information is through the Information Act.

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

Chapter 16 of the Criminal Code prohibits the disclosure of state secrets. Punishment can be up to ten years imprisonment.

## **LITHUANIA**

Article 25(5) of the [Constitution](#) states: “The citizen shall have the right to receive, according to the procedure established by law, any information concerning him that is held by State

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<sup>438</sup> Law on Archives, March 26, 1991 Amended: 21 October 1993. <http://www.arhivi.lv/engl/eng-lvas-law-on-arch.html>

<sup>439</sup> Law on Environmental Protection, 22 May 1997, amended 20 June 2000. <http://www.ttc.lv/New/lv/tulkojumi/E0042.doc>

<sup>440</sup> Gesetz vom 19 Mai 1999 über die Information der Bevölkerung (Informationsgesetz) [http://www.gesetze.li/get\\_pdf.jsp?PDF=1999159.pdf](http://www.gesetze.li/get_pdf.jsp?PDF=1999159.pdf)

<sup>441</sup> Data Protection Act of 14 March 2002 No. 55 issued on 8 May 2002. <http://www.lly.li/dsgenglish-3.doc>

<sup>442</sup> Homepage: <http://www.sds.lly.li/>

institutions.”<sup>443</sup>

The [Law on the Provision of Information to the Public](#) sets out the general principle of freedom of information stating, “Every individual shall have the right to obtain from state and local authority institutions and agencies and other budgetary institutions public information regarding their activities, their official documents (copies), as well as private information about himself.”<sup>444</sup>

The Law on the Right to Obtain Information from State and Local Government Institutions was enacted in January 2000 and substantially revised in November 2005 to implement the EU Directive on the re-use and commercial exploitation of public sector information (2003/98/EC)<sup>445</sup> It allows citizens, residents and legal persons in Lithuania or other EU and EEA countries to obtain information by state and local government bodies and private bodies providing public services. Requests must be in writing and include the name and address of the individual asking for information. Requests must be acted on within 20 days (up from 14 previously) which can be extended another 20 days.

Information that is a state, official, professional, commercial or bank secret under another law cannot be disclosed. Also exempted is other information protected by law and whose disclosure would violate personal privacy, intellectual property rights, or cause damage to interests of state security and defense, foreign policy interests and criminal prosecution. Information can also be withheld that is not related to government functions, protected by intellectual property rights, held by national television and radio, schools, libraries, museums, archives, requiring a legal interest, or exchanged between administrations.

Appeals can be made to an internal Appeals Dispute Commission and then to an administrative court. The Seimas Ombudsman reviewed 73 cases in 2004 relating to the “provision of explanations, other information or requested documents.”

Public bodies must also create an index of the information they hold and publish information about functions, structure and activities.

The COE GRECO anti-corruption program found significant problems with access to public access to records in 2002 and recommended improvements.

The GET was also concerned about the indications that it is generally difficult for the public and the media to have access to public documents, partly due to legal obstacles, partly due to a discretionary application of the regulations by public officials. In addition, information concerning inappropriately influenced journalists and media should be further scrutinised. The control of the authorities exerted by the public opinion, to a large extent thanks to media, is vital in a democratic society and plays a significant role by revealing hidden corrupt practices. However, for this control to be effective access to public documents must be ensured. Therefore, the GET recommended Lithuania to improve the transparency of public authorities vis-a-vis media and the wider public, in particular, with regard to access to public documents and information.<sup>446</sup>

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<sup>443</sup> Constitution of the Republic of Lithuania. 25 October 1992. <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>

<sup>444</sup> Law on Provision of Information to the Public. 2 July 1996 No. I-1418 (as amended by 20 June 2002 No. IX – 972). <http://www3.lrs.lt/cgi-bin/getfmt?c1=w&c2=170831>

<sup>445</sup> Nr. X-383 of 10 November 2005. See EU, Public Sector Information Implementation Status. [http://europa.eu.int/information\\_society/policy/psi/implementation/status/index\\_en.htm](http://europa.eu.int/information_society/policy/psi/implementation/status/index_en.htm)

<sup>446</sup> GRECO, First Evaluation Round - Evaluation Report on Lithuania. 4-8 March 2002. Greco Eval I Rep (2002) 1E Final.

The [Law on State Secrets and Official Secrets](#) sets rules on the protection of classified information. It was enacted in 1999 to implement NATO standards, replacing the 1995 [Law on State Secrets and Their Protection](#).<sup>447</sup> It is overseen by the Commission for Secrets Protection Co-ordination. The Constitutional Court in 1996 ruled that several provisions of the 1995 act were unconstitutional.<sup>448</sup> President Rolandas Paksas was impeached in April 2004 for disclosing state secrets by revealing to a Russian citizen that he was under surveillance by the Internal Security Department.<sup>449</sup> He was later found innocent by a court of the charge.

In November 1999, Parliament enacted the [Law on Registering, Confession, Entry into Records and Protection of Persons Who Have Admitted to Secret Collaboration with Special Services of the Former USSR](#) to vet public officials who worked with the Soviet-era secret police.<sup>450</sup> Those who refuse to admit ties with the secret police face having information about their activities under the communist regime made public. 1,500 had admitted their ties as of January 2005 including recently a number of senior officials such as Foreign Minister Antanas Valionis and State Security Department Director General Arvydas Pocius. It is estimated another 4,500 have not come forward. The European Court of Human Rights ruled in July 2004 that two former KGB employees had been discriminated against in their employment following admitting their past ties.<sup>451</sup>

The [Law on Legal Protection of Personal Data](#) allows individuals to access and correct personal information held by public and private bodies.<sup>452</sup> It is enforced by the [State Data Protection Inspectorate](#).<sup>453</sup>

The [Law on Declaration of the Property and Income of Residents](#) makes public the declarations of elected and senior officials in the Official Gazette<sup>454</sup>

The [Law on Archives](#) requires that state institutions transfer most documents after 15 years.<sup>455</sup> Secret documents are to be kept for 30 years by the institution and access is regulated by the Secrets Law.

Lithuania signed the Aarhus Convention in June 1998 and ratified it in 2002. Access to environmental information is based on a 1999 order on public access to environmental information.<sup>456</sup>

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<sup>447</sup> The Law on State Secrets and Official Secrets. No. VIII – 1443, 25 November 1999. (amended as of 20 November 2001. No. IX - 613). <http://www3.lrs.lt/cgi-bin/getfmt?c1=w&c2=157736>. See NATO, Background information on the Lithuanian National NATO Integration Programme, 1999-2000. <http://www.nato.int/pfp/lt/current/ANP/anp2000.html>

<sup>448</sup> Case 3/96. 9 December 1996. <http://www3.lrs.lt/c-bin/eng/preps2?Condition1=42645&Condition2=>

<sup>449</sup> See <http://www.ibanc.org/impeachment.html>

<sup>450</sup> Law on Registering, Confession, Entry into Records and Protection of Persons who Have Admitted to Secret Collaboration with Special Services of the Former USSR. No. VIII-1436. 23 November 1999. As amended by 13 June 2000. No. VIII-1726. <http://www3.lrs.lt/cgi-bin/getfmt?c1=w&c2=123807>

<sup>451</sup> Case of Sidabras and Diautas v. Lithuania. Applications nos. 55480/00 and 59330/00.

<sup>452</sup> The Law on Legal Protection of Personal Data, No. IX-1296. 21 January 2003. <http://www3.lrs.lt/cgi-bin/getfmt?c1=w&c2=208886>

<sup>453</sup> Homepage: <http://www.ada.lt/index.php?lng=en&action=page&id=100>

<sup>454</sup> Law on Declaration of the Property and Income of Residents. 16 May 1996 No I - 1338 (as amended by July 20, 2000. No. VIII - 1887).

<sup>455</sup> Law on Archives. 5 December 1995 No. I-1115. <http://www3.lrs.lt/cgi-bin/getfmt?c1=w&c2=95208>

<sup>456</sup> Government Resolution No 1175 On Approval of the Order on Public Access to Environmental Information in the Republic of Lithuania, adopted on 22 October 1999; Order of the Minister of Environment No 273 On the Regulation on Possession of Documentation, Provision of Information Under the Public Requests and Visitor Service in the Ministry of Environment, adopted on 4 July 2000.

## MACEDONIA

Article 16 of the [Constitution](#) of Macedonia provides:

The freedom of speech, public address, public information and the establishment of institutions for public information is guaranteed.

Free access to information and the freedom of reception and transmission of information are guaranteed.<sup>457</sup>

The [Law on Free Access to Information of Public Character](#) was adopted on 25 January 2006. It is scheduled to go into force in September 2006.<sup>458</sup>

The law allows any natural or legal person to obtain information from state and municipal bodies and natural and legal persons who are performing public functions. The requests can be oral, written or electronic. Requests must be responded to in 10 days.

There are exemptions for classified information, personal data, confidential information, tax violations, pending investigations, documents being compiled if it would cause misunderstanding, environmental protection, and protecting intellectual property. All the exemptions are subject to a test that requires release if the public interest is greater than the harm.

Denials can be appealed to the Commission for the Protection of the Right to Free Access to Information of Public Character. The Commission can decide on complaints. It is also tasked to ensure the law is implemented, publishes the list of information holders, issues opinions on other laws, trains public officials and compiles an annual report of all the statistics for requests in the previous year. The Commission was established in May 2006.

Appeals of decisions of the Commission can be filed in a court.

Public bodies are required to designate officials to be responsible for implementation of the act. The bodies are required to make public information on their organizations and structures, competencies, regulations, programs and activities, procurements, costs and publishing of decisions. They must maintain and regularly update and publish a list of information that they hold. They must also maintain detailed statistics on requests made and the final outcomes.

The law also provides for a limited whistleblower protection that limits sanctions for any public employee who discloses protected information that reveals abuses of power or corruption or that is for the prevention of serious threats to human health and life or the environment.

Fines can be imposed against officials who fail to follow various requirements of the law.

The [Law on Classified Information](#) was adopted in 2004 to implement EU and NATO standards on protections of secret information.<sup>459</sup> It creates four levels of classification. The Directorate for Security of Classified Information oversees the functioning of the law.

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<sup>457</sup> Constitution of the Republic of Macedonia. <http://www.usud.gov.mk/domino/WEBSUD.nsf/UstavE?OpenPage>

<sup>458</sup> Law on Free Access to Information of Public Character. <http://www.freedominfo.org/documents/Macedonia%20FOI%20Law%20ENG%20Official%20Gazette%2013-2006.doc>

<sup>459</sup> Law on Classified Information. <http://www.mediacycenter.org.mk/files//pdf/classlaw.pdf>

The [Law on Personal Data Protection](#) was adopted in January 2005, replacing a 1994 law.<sup>460</sup> Individuals have a right of access to their personal data held by public and private bodies.

Macedonia accepted the Aarhus Convention in July 1999. The 2005 [Law on Environment](#) provides for a right to access from government bodies and others supervised by the state.<sup>461</sup>

## **MEXICO**

The Constitution was amended in 1977 to include a right of freedom of information. Article 6 says in part, “the right of information shall be guaranteed by the state”.<sup>462</sup> The Supreme Court made a number of decisions further enhancing that right.

The [Federal Law of Transparency and Access to Public Government Information](#) was unanimously approved by Parliament in April 2002 and signed by President Fox in June 2002.<sup>463</sup> It went into effect in June 2003.

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

The law creates five categories of privileged information. For these categories, information can be withheld if their release will harm the public interest. These include information on national security, public security or national defense; international relations; financial, economic or monetary stability; life, security or health of any person at risk; and verification of the observance of law, prosecution of crimes, collection of taxes, immigration or strategies in pending processes. There are an additional six categories of exempted information. These are information protected by another law that can be considered confidential or privileged, commercial secrets, preliminary findings, judicial or administrative files prior to a ruling, public servants responsibility proceedings before a ruling, and opinions in a judicial process prior to a final decision. Information can only be classified for 12 years. Information relating to “the investigation of severe violations of fundamental rights or crimes against humanity” may not be classified. Personal data is considered confidential and is not subject to the 12 year rule.

Any withholdings can be appealed to the internal unit or to the [Federal Institute for Access to Public Information](#) (IFAI).<sup>464</sup> The IFAI can carry out investigations and order government bodies to release information. IFAI received 2,639 appeals in 2005 (5 percent of all requests) and resolved 2,091 of them, up from 1,430 in 2004. IFAI found for the requestor in 42 percent of the cases and confirmed the agency decision in 17 percent of the cases. The rest were dismissed for administrative or other reasons. Individuals but not government bodies can appeal decisions to federal courts. There have been over 100 cases heard by the courts since 2003. Many of those

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<sup>460</sup> Law on Personal Data Protection. [http://www.libertad-institut.com/de/MK/nationallaws/Draft\\_%20Law\\_on\\_Personal\\_Data\\_%20protection\\_%202004.pdf](http://www.libertad-institut.com/de/MK/nationallaws/Draft_%20Law_on_Personal_Data_%20protection_%202004.pdf)

<sup>461</sup> Law on Environment. <http://www.moepp.gov.mk/WBStorage/Files/Law%20on%20Environment.pdf>

<sup>462</sup> Constitución Política de los Estados Unidos Mexicanos. <http://info4.juridicas.unam.mx/ijure/fed/9/default.htm>

<sup>463</sup> Federal Law of Transparency and Access to Public Government Information. <http://www.ifai.org.mx/publicaciones/taia.pdf>. For an extensive review, see Kate Doyle, In Mexico, a New Law Guarantees the Right to Know. <http://www.freedominfo.org/reports/mexico1.htm>

<sup>464</sup> Instituto Federal de Acceso a la Información Pública Homepage <http://www.ifai.org.mx/>

cases were by banks which had been bailed out by the government, or by public bodies such as the state oil company (PEMEX) which were attempting to limit disclosure claiming commercial secrecy. The courts have generally ruled in favor of IFAI in those cases. 16 cases were brought by requestors.

The IFAI also has general duties to interpret the law, develop criteria for classified and privileged information, help create standards for archives, monitor the activities of the agencies and generally promote the law. It has set up a sophisticated electronic system for requests on the Internet called SISI for the Executive agencies and arranged with the Federal Election Institute to provide computers in their offices for individuals in remote locations to use to submit requests.<sup>465</sup> A review by the Annenberg School for Communications found that the IFAI played a very positive role in promoting transparency.<sup>466</sup>

Each body must create a liaison unit to answer requests and fulfill the other requirements of the law. They must produce a regular index of all files, including privileged or confidential files. They are required to publish an extensive amount of information on their web sites, including structure, directories, salaries of public employees, aims and objectives, audits, subsidies and contracts. They are required to set up information committees to review classification and non-disclosure of information and monitor compliance of the body.

The law has generally been hailed as a success. Human Rights Watch says that the law “dealt a major blow to [the] culture of secrecy” and describes it as “the single most unambiguous achievement in the area of human rights during the Fox presidency.”<sup>467</sup> There has been strong and growing use of the law. There were 50,127 requests in 2005 up from 37,732 requests in 2004. 47,000 were for public information, and nearly 3,000 were by individuals asking for their personal information. Each year, over 90 percent of the requests are submitted electronically using SISI. In 2005, 34 percent of the requests were from academics, 27 percent from the general public, 18 percent from businesses, 13 percent from internal government officials, and 9 percent were from the media.

There are some problems with implementation. Some agencies and officials have filed lawsuits to oppose rulings or have not complied with IFAI rulings (about 10 so far) and many public bodies have poor archives that makes locating information difficult. Awareness of the law among the general public is growing but still somewhat low at 33 percent in 2004, up from 22 percent in 2003. 20 percent were aware of the IFAI in 2004, up from 12 percent in 2003. HRW also has expressed concern that IFAI is vulnerable to political interference, the possibility that a new administration would allow agencies to resist compliance, the lack of progress in the other branches and at the state level, and the failure of the law to apply to political parties.

There have also been legislative proposals that would undermine the law. Two Senators introduced an amendment in March 2006 that would allow agencies to appeal decisions to the courts, but would make the original requestor defend the appeal.<sup>468</sup> That provision was withdrawn after the IFAI publicly opposed it. A law on national security adopted in January 2005 allowed public bodies to withhold some information but the final version was amended to reflect the exemptions in the transparency law.

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<sup>465</sup> <http://www.informacionpublica.gob.mx/>

<sup>466</sup> Annenberg School for Communications, The Federal Institute for Access to Information and a Culture of Transparency, February 2006. [http://www.pgcs.asc.upenn.edu/docs/mex\\_report\\_fiai06\\_english.pdf](http://www.pgcs.asc.upenn.edu/docs/mex_report_fiai06_english.pdf)

<sup>467</sup> Human Rights Watch, Mexico: Lost in Translation, May 2006.

<sup>468</sup> Peligra ley de transparencia con iniciativa panista: IFAI. El Universal, 10 March 2006.

The transparency law also imposes privacy protection rules on federal bodies. They are required to allow access to, correct, and prevent misuse of personal information. The IFAI provides decisions and oversight. There are four initiatives currently pending in the Congress to create a separate Data Protection Act that would allow individuals to access and correct records held by public and private organizations and limit the use of their personal information. Two would appoint the IFAI as the oversight body. A project to amend Article 16 of the Constitution to recognize the right of Data Protection has been approved in the Senate.

FOI laws have been adopted in 28 states and districts and there are pending efforts in the four remaining states. Nearly all of the states have their own independent information commission.<sup>469</sup> There is considerable variation in the laws and many are weaker than the national law.<sup>470</sup> There is currently an effort to develop national minimum standards for the state laws. Over a dozen have signed up to the INFOMEX system run by the IFAI to facilitate electronic access to records.

## **MOLDOVA**

Article 34 of the [Constitution](#) provides for a right of access to information. It states:

- (1) Having access to any information of public interest is everybody's right that may not be curtailed.
- (2) According with their established level of competence, public authorities shall ensure that citizens are correctly informed both on public affairs and matters of personal interest.
- (3) The right of access to information may not prejudice either the measures taken to protect citizens or national security.
- (4) The State and private media are obliged to ensure that correct information reaches the public.<sup>471</sup>

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

[The Law on Access to Information](#) was approved by Parliament in May 2000 and went into force in August 2000.<sup>472</sup> Under the law, citizens and residents of Moldova can demand information from state institutions, organizations financed by the public budget and individuals and legal entities that provide public services and hold official information. The bodies must respond within 15 working days.

Information can be withheld to protect state secrets related to military, economic, technical-scientific, foreign policy, intelligence, counterintelligence and investigation activities if disclosure would endanger the security of the state; confidential business information submitted to public institutions under conditions of confidentiality; personal data the disclosure of which may be

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<sup>469</sup> See Limac Asociación Civil Libertad de Información-México, <http://www.limac.org.mx/>

<sup>470</sup> Human Rights Watch, *id.*

<sup>471</sup> Constitution of the Republic of Moldova, adopted on 29 July 1994. <http://xiv.parlament.md/en/legalfoundation/constitution/>

<sup>472</sup> Access to Information Law, No 982-XIV, 5 November 2000. [http://ijc.md/en/mlu/docs/access\\_info\\_law.shtml](http://ijc.md/en/mlu/docs/access_info_law.shtml)

considered as intrusions into privacy; information related to the investigative activity of corresponding bodies; and information that represents the final or intermediary results of scientific and technical research. Information providers must prove that the restriction is authorized by law, necessary in a democratic society for protection of rights or legitimate interests of the person or national security and that the damage to those interests would be larger than the public interest in disclosing the information.

Appeals about refusals, delays, fees and damages can be made to the top management of the department that holds the information or its superior body. If they are not satisfied, they can appeal directly to the courts. There were 11 cases in 2003-2004. The Supreme Court ruled in 2004 against a lawsuit for minutes of the 2002 parliamentary session which had been labeled "for official use only."<sup>473</sup> Requestors can also appeal to the [Ombudsman](#).<sup>474</sup>

The Administrative and Criminal Codes were amended in 2001 to allow for imposition of fines and penalties for violating the Access Act.<sup>475</sup>

Implementation of the law has been problematic. The Freedom of Expression and Access to Information Promotion Centre found in May 2003 that "the implementation of the Law on Access to Information remains extremely tedious, despite efforts made by non-governmental organizations to hasten the process. Rule of law education and enforcement as well as general education about freedom of information are necessary next steps."<sup>476</sup> A review in 2004 by three NGOs found that the bodies were not following the legal requirements. Central bodies and law enforcement bodies were the most closed and local bodies were the most open.<sup>477</sup> Other problems included a failure to respond to requests at all and non-execution of judicial decisions.<sup>478</sup>

The government drafted a bill to create a new [Law on Information](#) in 2005. The bill would have substantially reduced access rights by replacing the existing law for a Soviet-style information law. It was strongly opposed by NGOs and international organizations.<sup>479</sup> The Parliament removed the bill from consideration.

[The Law on State Secrets](#) sets rules of classification of information relating to the military, economic, science and technology, foreign affairs and intelligence.<sup>480</sup> It sets three levels of classification for state secrets - "extreme importance", "strict secret", and "secret" and created an Inter-department Commission for State Secret Protection to coordinate. A draft bill to replace the law was released in 2005. The bill, which was developed by the intelligence service, made few changes to the existing Act.<sup>481</sup> The Criminal Code prohibits the disclosure of state secrets by officials. Punishment is a fine and up to five years imprisonment.<sup>482</sup>

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<sup>473</sup> Moldova Media News. Volume 4, nr.7, 30 July 2004.

<sup>474</sup> Homepage: <http://www.ombudsman.md/>

<sup>475</sup> Committee for the Protection of Journalists, Attacks on the Press 2001: Moldova. <http://www.cpj.org/attacks01/europe01/moldova.html>

<sup>476</sup> Mass-media and Legislation, 2003. [http://www.lexaccess.org.md/cuvint\\_stud\\_eng.htm](http://www.lexaccess.org.md/cuvint_stud_eng.htm)

<sup>477</sup> Moldovan law on information access seriously violated – survey, BBC Monitoring Service, 29 September 2004.

<sup>478</sup> Olivia Pirtac, Independent Journalism Centre, Annual Report for the Year 2005 the Freedom of Speech and Information in the Republic of Moldova.

<sup>479</sup> Law on access to information under the risk of disappearance. <http://access-info.org.md/declarationlawinformation.pdf>; David Banisar, Comments on the Moldovan Draft Law on Information, September 2005. [http://www.osce.org/documents/rfm/2005/09/16420\\_en.pdf](http://www.osce.org/documents/rfm/2005/09/16420_en.pdf)

<sup>480</sup> Law on State Secrets no. 106-XIII of 17.05.94. <http://www.ijnct.org/Director.aspx?P=MediaLaws&ID=25362&LID=1>

<sup>481</sup> See David Banisar, Comments on the Moldovan Draft Law on State and Official Secrets. September 2005. [http://www.osce.org/documents/rfm/2005/09/16421\\_en.pdf](http://www.osce.org/documents/rfm/2005/09/16421_en.pdf)

<sup>482</sup> Criminal Code §§344-345.

Moldova signed the Aarhus Convention in June 1998 and ratified it in August 1999. The Parliament approved in the first reading an amendment to the Law on Access to include environmental access in March 2003 but the law was rejected after objections that it would reduce the level of access to information.<sup>483</sup> The 2003 report from the Information Access Center found “national legislation ensures an efficient judicial framework for the achievement and protection of the right to access environmental information” but in December 2004, journalists said that they had serious problems obtaining environmental information.<sup>484</sup>

The Law on Archival Fund sets rules on the retention of documents and their access.<sup>485</sup> Personal information can be kept secret for 75 years.

## **MONTENEGRO**

There is no general right of freedom of information in the [Constitution](#).<sup>486</sup> Article 35 provides for freedom of the press. Article 19 gives everyone a right to “timely and complete information” about the environment. Article 31 gives individuals a right to access personal information about themselves and prevent its abuse.

The Law on Free Access to Information was adopted in November 2005 and went into effect then.

The law allows any natural or legal person the right to access information held in any form by state and local authorities, public companies and other entities that perform public powers. Requests must be in writing, including via email. Bodies must decide within eight days which can be extended another 15 days. In cases of emergencies, responses must be within 48 hours.

There are exemptions for national security, defense or international relations; public security, commercial or other private or public economic benefits; economic monetary or foreign exchange policy; prevention and investigation of criminal matters; personal privacy and other personal rights; and internal negotiations. The interests must be “significantly harmed” and the harm must be “considerably bigger than the public interest in publishing such information”. Information cannot be withheld if it relates to ignoring regulations, unauthorized use of public resources, misuse of power, criminal offenses and other related maladministration issues.

Appeals for denials are to the supervisory body of the agency. Appeals can then be made to a court.

Government bodies are also required to create and publish lists of types of information held including public registers and records. The media ministry must publish a guide.

There are sanctions for agencies and officials who fail to allow access to information, publish the guide or punish whistleblowers.

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<sup>483</sup> Legislative Initiative No. 4050 of 12 November 2002.

<sup>484</sup> Moldova Media News, Volume 4, nr.12, 23 December 2004.

<sup>485</sup> Law on the Archival Fund of the Republic of Moldova, no. 880/XII of 22001.92.

<sup>486</sup> Constitution of the Republic of Montenegro. [http://www.venice.coe.int/docs/2005/CDL\(2005\)096-e.pdf](http://www.venice.coe.int/docs/2005/CDL(2005)096-e.pdf)

The law also includes a limited whistleblower protection provision that limits sanctions on public employees who publicly reveal misuse or irregularities and who also inform the head of the agency or relevant investigatory agency.

The Ministry of Culture and Media is in charge of implementation and has conducted some trainings of officials but the perception by NGOs is that there is little political will on the law. The Network for the Affirmation of NGO Sector (MANS) has filed several hundred requests so far and report that the agencies responded back on time in around 50 percent of the cases.

There is currently no data protection act in Montenegro. The government has established a working group on data protection to develop a bill to send to Parliament in 2006.

There is no law on the classification of state secrets but a working group is developing a bill to legislate on it this year. The Agency for National Security has issued a decree on classification but refuses to release it. The Criminal Code prohibits the disclosure of Official Secrets and Military Secrets.<sup>487</sup> The Law on the Agency for National Security allows individuals to ask for their files but thus far, it says no one has asked for them.

## **NETHERLANDS**

Article 110 of the Constitution states:

In the exercise of their duties government bodies shall observe the principle of transparency in accordance with rules to be prescribed by Act of Parliament.<sup>488</sup>

This has been generally recognized as obliging government bodies to be open and publish information but it is not considered to provide a right to citizens to be able to demand access. There was a debate on amending the Constitution as part of an effort to update it to include information technology. However, the FOI right was not included.

Transparency has been of longstanding concern in the Netherlands. The 1795 Declaration of Rights of Man stated, "That every one has the right to concur in requiring, from each functionary of public administration, an account and justification on his conduct."<sup>489</sup>

Freedom of information legislation was first adopted in 1978. The [Government Information \(Public Access\) Act](#) (WOB) replaced the original law in 1991.<sup>490</sup> Under the Act, any person can demand information related to an administrative matter if it is contained in documents held by public authorities or companies carrying out work for a public authority. The request can either be written or oral. The authority has two weeks to respond. Recommendations of advisory committees must be made public within four weeks.

Information must be withheld if it would endanger the unity of the Crown, damage the security

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<sup>487</sup> Criminal Code §§ 425, 471.

<sup>488</sup> Unofficial translation. Official translation of Constitution of the Netherlands, 2002 at [http://www.minbzk.nl/contents/pages/6156/grondwet\\_UK\\_6-02.pdf](http://www.minbzk.nl/contents/pages/6156/grondwet_UK_6-02.pdf)

<sup>489</sup> [http://www.uni-kassel.de/~dippel/rmc\\_web/constitutions/NL-00-1795-01-31/translation\\_en/nl-nat-1795-1-31-t-en-112.html](http://www.uni-kassel.de/~dippel/rmc_web/constitutions/NL-00-1795-01-31/translation_en/nl-nat-1795-1-31-t-en-112.html)

<sup>490</sup> Act of 31 October 1991, containing regulations governing public access to government information. [http://www.minbzk.nl/contents/pages/5306/public\\_access\\_government\\_info\\_10-91.pdf](http://www.minbzk.nl/contents/pages/5306/public_access_government_info_10-91.pdf). It replaced the Act on Public Access to Information of 9 November 1978.

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

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

A bill to amend the WOB to implement the requirements of the EU Directive on the re-use and commercial exploitation of public sector information (2003/98/EC) was approved in December 2005.

According to experts, the WOB is only lightly used, around 1,000 requests each year, mostly by a few newspapers.<sup>491</sup> The lack of interest stems from media and NGOs’ belief that filing requests could be considered to be disruptive to good relations with government bodies, no tradition of political research, a lack of sanctions, broad exemptions and poor archives. The Minister for Government Reform announced in December 2005 that he will introduce a new more liberal law. A draft bill for consultation is now being considered.<sup>492</sup>

Individuals can obtain and correct personal information held about them by public and private bodies under the [Personal Data Protection Act](#).<sup>493</sup> It is overseen and enforced by the [Data Protection Authority](#) (CBP).<sup>494</sup>

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

The Criminal Code prohibits the disclosure of state secrets. Punishment can be up to 15 years imprisonment.<sup>495</sup> Reporter Peter R. de Vries was investigated in December 2005 after he published secret information that had been on a disk lost by an official that showed that the intelligence service was monitoring the private life of murdered politician Pim Fortuyn. The prosecutor’s office announced in February 2006 that there were dropping the investigation.<sup>496</sup>

The Netherlands signed the Aarhus Convention in June 1998 and accepted it in December 2004. Access to environmental information is under the WOB. The WOB was amended in July 2005 to implement the convention and the 2003 EU Directive.<sup>497</sup>

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<sup>491</sup> Roger Vleugels, The Dutch FOIA, a 25 year old toddler, December 2005.

<sup>492</sup> See <http://www.law.wur.nl/NR/rdonlyres/DF5D6A45-FD88-439E-A042-8E22E18A7EA2/22801/WettekstSymposiumVersie.pdf>

<sup>493</sup> Personal Data Protection Act of 2000. <http://www.cbp-info.nl/bis/subset-1-11-7.html>

<sup>494</sup> Homepage: <http://www.cbpdweb.nl/>

<sup>495</sup> Criminal Code §98.

<sup>496</sup> Officer lost memory stick with details of Afghan mission, Expatia, 2 February 2006.

<sup>497</sup> Staatsblad 2005/341, 7 July 2005.

## NEW ZEALAND

Section 14 of the [Bill of Rights Act](#) states that “Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.”<sup>498</sup>

The [Official Information Act 1982](#) starts from the principle that all official information should be available.<sup>499</sup> The Court of Appeals said in 1988 that “the permeating importance of the Act is such that it is entitled to be ranked as a constitutional measure”.<sup>500</sup> Any citizen, resident, or company in New Zealand can demand official information held by public bodies, state-owned enterprises and bodies which carry out public functions. Agencies have been required in some cases to take down notes of discussions that contributed to government decision-making if no documents are available. The body has no more than 20 days to respond.

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

[The Office of the Ombudsmen](#) reviews denials of access.<sup>501</sup> The decisions of the Ombudsmen have limited many of the categories of exemption, requiring agencies to justify their decisions in terms of the possible consequences of disclosure. The focus has shifted from withholding information to setting how and when information, especially politically sensitive information, should be released.<sup>502</sup> As noted by a previous Secretary of the Cabinet, “virtually all written work in the government these days is prepared on the assumption that it will be made public in time [...] the focus in the current open style of government is on managing the dissemination of official information.”<sup>503</sup> It is common for Cabinet documents and advice to be released.

The Ombudsmen’s decisions are binding, but there are limited sanctions for non-compliance and some agencies have reportedly ignored their rulings. The Ombudsmen received 922 complaints in 2004-05 and actioned 1,183 complaints overall. A 2005 study into the Act found that of the sample applications assessed, requesters who were denied information were informed of their review rights in 71 per cent of responses. Significantly, private individuals were told of their review rights in only 53 per cent of responses.<sup>504</sup> The police was the organization most complained about. The vast majority of complaints related to refusals or delays which were

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<sup>498</sup> [http://www.uni-wuerzburg.de/law/nz01000\\_.html](http://www.uni-wuerzburg.de/law/nz01000_.html)

<sup>499</sup> Official Information Act 1982. <http://www.ombudsmen.govt.nz/official.htm>

<sup>500</sup> Commissioner of Police v Ombudsman [1988] 1 NZLR 385.

<sup>501</sup> Office of Ombudsman Homepage: <http://www.ombudsmen.govt.nz/>

<sup>502</sup> Alastair Morrison, “The Games People Play: Journalism and the Official Information Act,” in *The Official Information Act: Papers presented at a seminar held by the Legal Research Foundation*, 1997.

<sup>503</sup> Marie Shroff, “Behind the Official Information Act: Politics, Power and Procedure” in *The Official Information Act: 1997*.

<sup>504</sup> Steven Price, “The Official Information Act 1982: A window on Government or curtains drawn?”, Victoria University of Wellington, 2005 p.24, [http://www.lawschool.vuw.ac.nz/vuw/fca/law/files/Occasional\\_Paper17.pdf](http://www.lawschool.vuw.ac.nz/vuw/fca/law/files/Occasional_Paper17.pdf)

deemed as refusals. It took the Ombudsman's office an average of 73 days to complete their handling of complaints.<sup>505</sup>

In 2005, the Ombudsmen made a couple of notable precedent-setting decisions. They dealt with a number of complaints regarding whether advice or opinions from political advisers could be accessed under the Act. Political advisers themselves are not covered by the Act, but, if information generated by advisers comes to be held by a Minister in his or her official capacity, or by an agency subject to the Act, the Ombudsman found that that information is subject to the Act. The Ombudsman also considered the issue of whether MPs should be charged fees for their requests. Generally, where the requester is an MP, charges are waived because it is recognized that there is a public interest in MPs having access to information so they can exercise their democratic responsibilities. However, the Ombudsman found that in some cases it was still reasonable to fix a charge, namely, where a Member made serial, virtually identical requests, repeated on a monthly basis, for information coming within a widely framed category. In 2004, he ruled that the papers from the joint Australia New Zealand Food Regulation Ministerial Council, a body that now sets food standards for New Zealand, could be withheld but recommended changes to the Act to limit the definition of an international organization.

The Governor General can issue a "Cabinet veto" directing an agency not to comply with the Ombudsmen's decision. The veto, however, can be reviewed by the High Court. Between 1983 and 1987, 14 vetoes were exercised under a system that allowed individual ministers to issue vetoes. Veto power has not been used since 1987, when it was converted to a collective decision.

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

The Law Commission released a detailed [review](#) of the Act in 1997.<sup>506</sup> It found that the biggest problems were large and broadly defined requests, delays in responding to requests, resistance to the Act outside the core state sector, and the absence of a coordinated approach to supervision, compliance, policy advice and education. The review also found that "the assumption that policy advice will eventually be released under the Act has in our view improved the quality and transparency of [policy] advice." The Commission recommended reducing response time to 15 days and making agencies respond before the deadline, requiring bodies that do not appeal Ombudsman's decisions to the court to release information, giving the Ministry of Justice more coordination responsibility (in lieu of creating an Information Commission), providing more resources to the Ombudsman and Ministry of Justice, and adequately funding the Ombudsman's public activities to promote the Act. The proposals have not been acted upon yet.<sup>507</sup>

In 2005, a review by academic Steven Price found that problems with the Act remained.<sup>508</sup> The review quoted former MP Michael Laws as saying, "It is ridiculously easy to circumvent the act and to hide information from requesters and Ombudsmen alike [...] Of course, all potentially embarrassing information is routinely refused and time delays are simply de rigueur." Price

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<sup>505</sup> Ombudsman, Annual Report 2004-05.

[http://www.humanrightsinitiative.org/programs/ai/rti/international/laws\\_papers/newzealand/annual\\_report\\_2004\\_05\\_nz.pdf](http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/newzealand/annual_report_2004_05_nz.pdf)

<sup>506</sup> Law Commission, Review of the Official Information Act 1982. <http://www.lawcom.govt.nz/documents/publications/R40.pdf>

<sup>507</sup> See Paul Bellamy, NZ Parliamentary Library, Background Paper No. 27 on Access to Official Information, May 2003.

[http://www.clerk.parliament.govt.nz/Content/ResearchPapers/BP27\\_OfficialInformation.pdf](http://www.clerk.parliament.govt.nz/Content/ResearchPapers/BP27_OfficialInformation.pdf)

<sup>508</sup> Steven Price, *id.*

reported that the Ombudsman's 2002 OIA Practice Guideline contain a damning list of 57 "misconceptions" about the OIA that persist more than 20 years after its enactment, including that information must be withheld if the person concerned does not consent to its release; if the information is misleading it can be withheld; any confidential information can be withheld; and that ministers have a right to undisturbed consideration of advice; drafts can be withheld. It is understood that the Government has recently commissioned an academic study of the Act looking at how well it is administered and where shortcomings continue to exist. The report is likely to be released at the end of 2006.

In the past few years, there have been several significant controversies relating to failures to release information. In 2003, the Immigration Service told the Ombudsman that it did not possess a memorandum that stated that the Immigration Service was "lying in unison" regarding the case of Ahmed Zaoui, an Algerian asylum seeker.<sup>509</sup> The memo was subsequently leaked to a MP and the Ombudsman re-opened his inquiry and issued a new report critical of the agency and recommended changes to the information request procedures.<sup>510</sup> The employee was later sacked. The Ombudsmen reviewed the revised procedures and noted in their 2003-2004 report that "the resulting policy for handling OIA requests produced by the Department is one of the best we have seen and would serve as a model on how to approach statutory obligations under the official information legislation."

The Ombudsmen said the greatest problems that caused delays is a failure to determine who is responsible for answering the request and in cases where "politically sensitive" information is requested and when third parties need to be notified. The Ombudsmen said there was an "urgent need" for better training of public employees and released new Practice Guidelines to facilitate better understanding of the Act. The report also reviewed an effort by the government to create a de facto class exemption for advice to the Prime Minister from the Department of the Prime Minister and Cabinet and stated that decisions would still have to be made on a case by case basis. In 2004, they recommended additional training by either the State Services Commission or the Ministry of Justice to improve all agencies' consistency in responding to requests and are seeking more money to provide additional training themselves since the two bodies have not done it themselves.

The [Local Government Official Information and Meetings Act 1987](#) provides for access to information held by local authorities.<sup>511</sup> It follows the same framework for access as the OIA. It is also overseen by the Ombudsmen.

The [Privacy Act 1993](#) allows individuals to obtain and correct records about themselves held by public and private bodies.<sup>512</sup> It is overseen by the [Privacy Commissioner](#).<sup>513</sup> The Privacy Commissioner and the Ombudsman have an agreement to work together when there is a request that applies to both Acts. In 1998, the [Privacy Commissioner](#) also recommended more training for government officials to reduce the misapplication of the Privacy Act to justify nondisclosure.<sup>514</sup>

The OIA repealed the Official Secrets Act 1951. Protections for classified information are set by

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<sup>509</sup> Inquiry misled over 'lie in unison' memo, NZ Herald, 30 July 2003.

<sup>510</sup> Ombudsman's Report upon the Actions of the Department of Labour. <http://www.ombudsmen.govt.nz/Own%20Motion%20Report.htm>

<sup>511</sup> Local Government Official Information and Meetings Act 1987. <http://www.ombudsmen.govt.nz/local.htm>

<sup>512</sup> Privacy Act 1993. Text and amendments available at <http://www.knowledge-basket.co.nz/privacy/legislation/legislation.html>

<sup>513</sup> Homepage: <http://www.privacy.org.nz/>

<sup>514</sup> Private Word, Issue No.20, November 1998, <http://www.privacy.org.nz/privword/nov97pw.html>

a Cabinet Directive issued in 1982.<sup>515</sup> The levels of protection are Top Secret, Secret, Confidential, Restricted, Sensitive and In Confidence. The classification level is not determinative on the decision to release the information under the OIA.

The [Public Records Act](#) was passed by Parliament in April 2005 and replaced the Archives Act and the document and archive provisions of the Local Government Act 1974.<sup>516</sup> The Public Records Act now requires that at 25 years, records will need to be classified as having either open access or restricted access and will then be available for transfer to the Archive. However, the OIA's requirements on release of information prevail.

## NORWAY

Article 100 of the 1814 Constitution was amended in October 2004 to include a specific right of access to access documents and attend court proceedings and meetings. The changes were recommended by the Governmental Commission on Freedom of Expression.<sup>517</sup> The new Article 100(5) now states:

Everyone has a right of access to the documents of the State and of the municipal administration and a right to be present at sittings of the courts and of administrative bodies elected by the people. Exceptions may be laid down in law in order to protect personal data security and other weighty reasons.

The [Freedom of Information Act of 1970](#) provides for any person to have a broad right of access to official documents held by public authorities.<sup>518</sup> Official documents are defined as information which is recorded and can be listened to, displayed or transferred and which is either created by the authority and dispatched or has been received by the authority. All records are indexed at the time of creation or receipt and some ministries make the electronic indexes available on the Internet or through e-mail.

Requests can be made in any form including anonymously and must be responded to immediately. Internal guidelines issued by the Ministry of Justice say that requests should be responded to in three days. The Ombudsman in 2000 ruled, "It should be possible to decide most disclosure requests the same day or at least in the course of one to three working days, provided that no special, practical difficulties were involved."<sup>519</sup> Release may be delayed, "if the documents then available give a directly misleading impression of the case and that public disclosure could therefore be detrimental to obvious public or private interests."

There is a broad exemption for internal documents when the agency has not completed its handling of the case unless the agency has dispatched the document. Documents are also exempt from release if they are made secret by another law or if they refer to national security, national defense or international relations, financial management, the minutes of the Council of State,

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<sup>515</sup> Cabinet Directive on Security Classification. CO (82) 14, 17 December 1982. <http://www.security.govt.nz/sigd/sigd4a.html>. See Security in Government Departments Manual 1994. <http://www.security.govt.nz/sigd/index.html>

<sup>516</sup> See NZ Archives, Public Records Legislation. <http://www.archives.govt.nz/about/legislation.html>

<sup>517</sup> See NOU 1999: 27. <http://odin.dep.no/od/norsk/publ/utredninger/NOU/012005-020029/index-hov012-b-n-a.html>

<sup>518</sup> Act of 19 June 1970 relating to public access to documents in the public administration (lov om offentlighet i forvaltningen av 19 juni 1970 nr 69). Amended by Act No. 47 of 11 June 1982 and Act no. 86 of 17 December 1982 and Act of 10 January 1997 No. 7. <http://www.ub.uio.no/ujur/ulovdata/lov-19700619-069-eng.pdf> Update

<sup>519</sup> Case 2000-0400 *in* Sivilombudsmannen, The Parliamentary Ombudsman – Norway Annual Report 2000.

appointments or protections in the civil service, regulatory or control measures, test answers, annual fiscal budgets or long-term budgets, and photographs of persons entered in a personal data register.

In 2001, the Parliament amended the act to allow applicants to civil service positions and promotions to refuse consent to have their names disclosed. The Ombudsman criticized the government in his 2001, 2002 and 2003 reports on the implementation of the amendment as bodies were refusing in many cases to disclose any names or consider the public interest in high government positions. In 2003, he stated “it would appear that the administration is practicing the provision in a more restrictive manner than appears to be the intention of the lawmaker.”

If access is denied, individuals can appeal to a higher authority and then to the Storting's [Ombudsman for Public Administration](#) or a court. The Ombudsman's decisions are not binding but are generally followed.<sup>520</sup> There have been very few court cases.

The Ombudsman conducted a systematic review of FOI practices in 2001 and stated in his annual report that:

More than 30 years have passed since the Freedom of Information Act was passed. However, disclosure complaints show that there is room for improvement in application of the law in practice. Work to ensure that extended freedom of information is routinely considered is still important and must continuously be done to achieve a more favourable attitude towards extended disclosure.

The government released a white paper in April 1998 proposing changes in the law.<sup>521</sup> These include changing the subject of the request to information from documents, limiting the internal documents exemption, and making the law consistent with European Union requirements on access to environmental information. In October 2004, the government announced that it was planning to introduce a bill to replace the Act with a new law that “provides for greater transparency than the current Freedom of Information Act.”<sup>522</sup> A bill was introduced in 2005.

Norway signed the Aarhus Convention in June 1998 and ratified it in May 2003. The [Environmental Information Act](#) was approved in May 2003.<sup>523</sup>

The 1998 [Security Act](#) sets rules on classification of information.<sup>524</sup> It creates four levels of classification and requires that information cannot be classified for more than 30 years. The National Security Authority enforces the Act. Starting in 1988, Norway began releasing en masse most documents over 30 years old.<sup>525</sup> The Act on Defence Secrets prohibits the disclosing of military secrets by government officials and also the collection (sketches, photographs and notes) and disclosure of secrets by others including journalists.<sup>526</sup> Articles 90 and 91 of the Criminal

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<sup>520</sup> Homepage: <http://www.sivilombudsmannen.no/eng/statisk/som.html>

<sup>521</sup> See Fredrik Sejersted, Norway: The Act on Public Access to Documents: Current Frustrations and Proposals for Reform, *European Public Law Journal*, Vol 5, No. 1, 1999.

<sup>522</sup> The Speech from the Throne by his Majesty the King on the Occasion of the Opening of the 149th Session of the Storting, 2 October 2004.

<sup>523</sup> Act No. 31 of 9 May 2003 relating to environmental information. <http://odin.dep.no/md/english/doc/regelverk/acts/022051-200017/dok-bu.html>

<sup>524</sup> Act of 20 March 1998 No. 10 relating to Protective Security Services (the Security Act). <http://www.ub.uio.no/ujur/ulovdata/lov-19980320-010-eng.doc>

<sup>525</sup> For information generally on national security issues in Norway and the previous system of classification, see Nils Peter Gleditsch, *Freedom of Expression, Freedom of Information and National Security: The Case of Norway*, in *Security and Liberty: National Security, Freedom of Expression and Access to Information* (Coliver et al, Ed), Martinus Nijhoff Publishers.

<sup>526</sup> Lov nr. 10 om forebyggende sikkerhetstjeneste, 20 March 1998 <http://www.lovdata.no/all/nl-19980320-010.html>

Code criminalize the disclosure of secrets. Imprisonment can be up to ten years.

The [Personal Data Act](#) allows individuals to access and correct files containing personal information about themselves held by public and private bodies.<sup>527</sup> It is overseen and enforced by the [Datatilsynet](#) (The Data Inspectorate).<sup>528</sup>

The Archives Act of 1992 sets a thirty years rule for the release of information.<sup>529</sup> A new Archives Act sets rules for the collection and registration of documents.<sup>530</sup>

The Municipalities Act of 25 September 1992 requires that meetings of local governments are open unless subject to a statutory duty of confidentiality.

## **PAKISTAN**

The [Constitution of Pakistan](#) does not expressly give a right of access to information. Article 19 states:

Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence.<sup>531</sup>

The Supreme Court ruled in 1993 that Article 19 includes a right of citizens to receive information.<sup>532</sup>

In October 2002, President Perviz Musharraf promulgated the [Freedom of Information Ordinance 2002](#), largely at the urging of the Asian Development Bank.<sup>533</sup> Although the Ordinance should have lapsed within 6 months, the President has issued a constitutional decree which has ensured the continuance of the Ordinance. The Ombudsman ruled in April 2004 that the Ordinance still was in force even in the absence of the regulations.<sup>534</sup> Rules were issued in June 2004, but without any input from stakeholders.<sup>535</sup> Civil society groups have since lobbied the Government to implement [Model Rules](#), but to no avail.

It allows any citizen access to official records held by a public body of the federal government including ministries, departments, boards, councils, courts and tribunals. It does not apply to government-owned corporations or to provincial governments. The bodies must respond within 21 days.

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<sup>527</sup> Act of 14 April 2000 No. 31 relating to the processing of personal data (Personal Data Act).

<http://www.datatilsynet.no/lov/loven/poleng.html>

<sup>528</sup> Homepage: <http://www.datatilsynet.no/>

<sup>529</sup> Archives Act of 4 December 1992 No. 126.

<sup>530</sup> See COE Report, p.214.

<sup>531</sup> Constitution of the Islamic Republic of Pakistan. <http://www.pakistani.org/pakistan/constitution/>

<sup>532</sup> Sharif v. Pakistan, PLD 1993 S.C. 471

<sup>533</sup> Freedom of Information Ordinance 2002, No. XCVI of 2002. F. No. 2(1)/2002-Pub. Islamabad. 26 October 2002.

[http://www.crcp.sdnpk.org/ordinance\\_of\\_2002.htm](http://www.crcp.sdnpk.org/ordinance_of_2002.htm)

<sup>534</sup> Wafaqi Mohtasib, Failure to Provide Information Under the FOI Ordinance 2002, 6 April 2004. <http://www.crcp.org.pk/ombudsman.htm>

<sup>535</sup> Freedom of Information Rules 2004. <http://www.crcp.org.pk/PDF%20Files/FOI%20Rules%202004.PDF>

There is some ambiguity about what information is accessible. The Ordinance allows access to “official records” and then sets out an exceptions regime subject to a harm test for international relations, law enforcement; invasion of privacy; and economic and commercial affairs of a public body. However, it also allows access to “public records” which it specifically defines as only policies and guidelines; transactions involving acquisition and disposal of property; licenses and contracts; final orders and decisions; and other records as notified by the government. It then makes these public records subject to mandatory exemptions for: notings on files; minutes of meetings; any intermediary opinion or recommendation; individuals’ bank account records; defense forces and national security; classified information; personal privacy; documents given in confidence; other records decreed by the government.

Government bodies are required to appoint an official to handle requests. They also have a duty to publish acts, regulations, manuals, orders and other rules that have a force of law, and maintain and index records. It specifically requires that those records covered by it are computerized and networked throughout the country within a reasonable time, subject to finances, to facilitate access.

Appeals of denials can be made to the Wafaqi Mohtasib (Ombudsman) or for tax-related matters, to the Federal Tax Ombudsman. The Ombudsmen have the power to make binding orders. Officials that destroy records with the intention of preventing disclosure can be fined and imprisoned for up to two years. The Mohtasib can fine requesters Rs10,000 for making “frivolous, vexatious or malicious” complaints.

The law says that it applies notwithstanding other laws such as the Official Secrets Act, which is based on the original UK OSA 1911 and sets broad restrictions on the disclosure of classified information.<sup>536</sup> The Consumer Rights Commission of Pakistan has called for the repeal of the OSA to facilitate freedom of information.

Media groups and NGOs report that the Act has not been fully implemented and access is still difficult.<sup>537</sup> As recently as March 2006, the Centre for Peace and Development Initiatives held a workshop for the Cabinet Division of Government following which it commented that many information officers are still not fully aware of their roles and responsibilities under the Ordinance. CPDI complained that implementation of the Ordinance still requires a major cultural and attitudinal shift on the part of government officials. It recommended that the government improve the current restrictive legislative framework, organize training and sensitization workshops, provide clear and detailed guidelines to designated officers about dealing with information requests and ensure that all ministries prepare lists and indexation of records held by them and publish them on websites.<sup>538</sup> It has also demanded that all parliamentary committees promote greater access to information to open up government decision-making processes, because most committees considering legislative bills or performing oversight duties hold their meetings privately without disclosing their minutes.<sup>539</sup>

The National Assembly rejected an attempt by the opposition Pakistan People’s Party in October 2004 to introduce a bill to create a comprehensive law on freedom of information.

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<sup>536</sup> For a detailed review of the situation of freedom of information in Pakistan until 2001, See Article 19, Global Trends on the Right to Information: A Survey of South Asia, July 2001. Available at <http://www.article19.org/>

<sup>537</sup> Information law not being implemented, Daily Times, 4 October 2004.

<sup>538</sup> CPDI, CPDI-Pakistan Calls for Designated Officers to Take Effective Steps to Implement the Freedom of Information Ordinance 2002”, 2006

<sup>539</sup> CPDI, CPDI-Pakistan Demands Transparency in the Functioning of Parliamentary Committees”, 2006.

None of the 4 provinces has adopted FOI laws for information held by provincial bodies. Two ministers from the North Western Frontier Province (NWFP) promised in August 2004 to adopt a FOI law for NWFP.<sup>540</sup>

## **PANAMA**

The [Constitution](#) was amended in 2004 to include a right of access to information.<sup>541</sup> Article 43 gives all persons the right to access public information except in cases where it has been restricted by law. Article 42 allows individuals the right to access and control personal information held by public or private bodies. Article 44 gives the right of habeas data to enforce both of these rights of access in court.

[The Law on Transparency in Public Administration](#) was approved by the National Assembly in December 2001 and promulgated on 22 January 2002.<sup>542</sup> The law gives the right for any person to ask for information in any form from government bodies. Individuals also have the right to access their own files and correct them. Government bodies must respond within 30 days. Fees can only be charged for reproduction.

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

Government bodies also have the obligation to publish regulations, general policies and strategic plans, internal procedure manuals, and descriptions of organizational structures. A code of ethics requires that all senior government officials publish declarations of their financial holdings, conflicts of interests and other information for anti-corruption purposes.<sup>543</sup>

Appeals can be made to a court under an action of habeas data.

There are sanctions for failing to comply with the law or destroying or altering information.

The Ombudsman ([La Defensoría del Pueblo](#)) has been active in promoting implementation of the law.<sup>544</sup> It set up a "Transparency Node" and made arrangements with government departments to facilitate access to information online such as the state payroll. The office also published a guide on the Act<sup>545</sup> and has pursued cases in court including against departments that did not make their payrolls available online.

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<sup>540</sup> Access to information in NWFP promised, Dawn, 14 August 2004.

<sup>541</sup> Constitución Política de la República de Panamá. [http://www.asamblea.gob.pa/actualidad/25176\\_2004.pdf](http://www.asamblea.gob.pa/actualidad/25176_2004.pdf)

<sup>542</sup> Ley No. 6 de 22 de enero de 2002 Que dicta normas para la transparencia en le gestión pública, establece la acción de Hábeas Data y dicta otras disposiciones. <http://www.legalinfo-panama.com/legislacion/administrativo/00195.pdf>

<sup>543</sup> See Decreto 15 de 19 de julio de 2002 "Por el cual se establece el Código de Ética en el Tribunal Electoral". <http://www.tribunal-electoral.gob.pa/codigo-etica/>

<sup>544</sup> Homepage: <http://www.defensoriadelpueblo.gob.pa/>

<sup>545</sup> See Que dicta Normas para la Transparencia en la Gestión Pública, establece la Acción de Habeas Data y otras disposiciones, enero 2002, <http://www.defensoriadelpueblo.gob.pa/Publicaciones/PDF/Ley6.pdf>

A controversial implementing decree was issued in May 2002 that limited access to “interested persons”.<sup>546</sup> The regulation was criticized by the OAS, the Ombudsman, civil society groups and the media.<sup>547</sup> The Ombudsman filed a complaint with the Supreme Court asking the court to find the regulation illegal. The Court upheld the restrictions in a series of cases. However, starting in 2004, the Court reversed its position and ruled that it was not necessary to show an interest. President Martín Torrijos ran on a campaign of anti-corruption and was critical of the regulation. His first act as President in September 2004 was to repeal the regulations.<sup>548</sup>

There are still many serious problems with the implementation of the Act. The Inter American Press Association (IAPA) noted some of the problems and made recommendations on changes in February 2006, stating:

This legislation begs many serious questions. There still exists a culture of secrecy in Government, which has not been overcome. Public employees are reluctant to offer information, and, in general, deny or make excuses upon receiving requests. Therefore, it is recommended improving Chapter VI of the law that deals with sanctions and responsibilities of government employees when information is denied. There cannot be an adequate implementation of this law while there is no awareness campaign at all levels on the benefits and how it can be used in practice. In general, citizens, public officials, and civil society do not use this law, so the Government is urged to launch a staunch educational campaign.<sup>549</sup>

## PERU

Article 2(5) of the [Constitution](#) states:

All persons have the right: [...] To solicit information that one needs without disclosing the reason, and to receive that information from any public entity within the period specified by law, at a reasonable cost. Information that affects personal intimacy and that is expressly excluded by law or for reasons of national security is not subject to disclosure.<sup>550</sup>

Access to information is constitutionally protected under the right of habeas data. Several cases have allowed the courts to establish their jurisdiction over, and support for, habeas data.<sup>551</sup>

[The Law of Transparency and Access to Public Information](#) was adopted in August 2002 and went into effect in January 2003.<sup>552</sup> Under the law, every individual has the right to request information in any form from any government body or private entity that offers public services

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<sup>546</sup> Decreto Ejecutivo 124 de 21 de mayo de 2002. [http://www.asamblea.gob.pa/NORMAS/2000/2002/2002\\_522\\_0648.PDF](http://www.asamblea.gob.pa/NORMAS/2000/2002/2002_522_0648.PDF)

<sup>547</sup> Opinión en torno al Decreto Ejecutivo que reglamenta la Ley de Transparencia, 5 de Junio de 2002 <http://www.defensoriadelpueblo.gob.pa/ComunicadosCuerpo.asp?ComunicadosID=1023312643>. See also <http://probidad.org/regional/legislacion/2001/024.html>

<sup>548</sup> Executive Decree 335, 1 September 2004.

<sup>549</sup> Inter American Press Association, IAPA asks Panamanian Congress to strengthen reforms on press freedom, Recommendations during Chapultepec Forum on decriminalization of libel and slander, right to reply, transparency, and access to public information, 14 February 2006.

<sup>550</sup> Constitution of Peru, 1993. <http://pdpa.georgetown.edu/Constitutions/Peru/per93reforms05.html> (Spanish)

<sup>551</sup> See Javier Casas, A Legal Framework for Access to Information in Peru, in Article 19, Time for Change: Promoting and Protecting Access to Information and Reproductive and Sexual Health Rights in Peru, January 2006. See list available at <http://www.caipe.org.pe/RIJ/bases/juris-nac/aip.htm>

<sup>552</sup> Ley 27.808 de transparencia y acceso a la información pública. [http://www.justiceinitiative.org/db/resource2/fs/?file\\_id=15210](http://www.justiceinitiative.org/db/resource2/fs/?file_id=15210)

or executes administrative functions without having to explain why. Documentation funded by the public budget is considered public information. Public bodies must respond within seven working days which can be extended in extraordinary cases for another five days.

The Parliament substantially amended the law in January 2003 following criticism of the excessive exemptions, especially relating to national security, and a law suit filed by the Ombudsman in the Constitutional Tribunal challenging the constitutionality of the Act.

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

Appeals can be made to a higher department. Once appeals are completed, the requestor can appeal administratively to the court under Law N° 27444 or under Law N° 26301 for the constitutional right of habeas data.<sup>553</sup> As of 2005, there had been 25 petitions before the Constitutional Court under habeas data.<sup>554</sup> In 2003, The Constitutional Court ordered the release under habeas data of all the expenses of the ex-president of Peru, Mr. Alberto Fujimori in his travels abroad.<sup>555</sup>

The [Ombudsman](#) can also investigate non-compliance and issue non-binding opinions.<sup>556</sup> The Ombudsman is also conducting training and promoting the Act. Prior to the Act, the office handled many cases informally on access to personal records.

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

There were nearly 40,000 requests in the first year.<sup>557</sup> However, a review by the Instituto de Prensa y Sociedad (IPYS) found that many of the requests were not requests for information but requests for certificates and licenses, proposals, invitations and congratulatory messages. A monitoring project by IPYS found that only 17 percent of requests were fully responded to, 32 percent of requests were not answered at all and 68 percent of the requests answered were not done within the timeframes.<sup>558</sup> The Access Initiative – Peru review of access to environmental information found numerous problems including a continued culture of secrecy, low awareness of the law, a lack of systemized information, and lack of reliable information.<sup>559</sup>

<sup>553</sup> Ley N° 26301, Aprueban Ley Referida a la Aplicación de la Acción Constitucional de Habeas Data, 2 May 1994. <http://www.asesor.com.pe/teleley/bull505.htm>.

<sup>554</sup> Casas. *Id.*

<sup>555</sup> <http://www.cajpe.org.pe/RH/bases/juris-nac/aip.htm>

<sup>556</sup> Homepage: <http://www.ombudsman.gob.pe/>

<sup>557</sup> Casas. *Id.*

<sup>558</sup> Instituto de Prensa y Sociedad, <http://www.ipys.org/monitoreosolicitudes.pdf>

<sup>559</sup> The Access Initiative – Peru, Situation of the Access to the Information, to the Social Participation and to the Environmental Justice in Peru. <http://www.iniciativadeacceso.org/peru/Resumen%20Per%FA%20ING.pdf>

A new law on Intelligence services was approved by the Parliament in June 2005. It creates new categories of classified information and allows for greater withholding on information by intelligence services.<sup>560</sup> The Criminal Code prohibits the disclosure of state secrets.<sup>561</sup>

The government has committed to creating a special commission to develop a data protection act but it has not advanced.<sup>562</sup>

## PHILIPPINES

The right to information was first included in the 1973 Constitution and was expanded in the 1987 [Constitution](#). Article III, Section 7, states:

The right of the people to information of matters of public concern shall be recognized. Access to official records and documents, and papers pertaining to official acts, transactions, or decisions as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.<sup>563</sup>

Article II, Section 28 obliges government to fully disclose information of a public interest:

Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

The Supreme Court as far back as 1948 recognized the importance of access to information and has issued a series of rulings.<sup>564</sup> The Court ruled in 1987 that the right could be applied directly without the need for an additional Act.<sup>565</sup>

There is no Freedom of Information Act per se in the Philippines but a combination of the Constitutional right and various other legal provisions makes it one of the most open countries in the region.<sup>566</sup>

The [Code of Conduct and Ethical Standards for Public Officials and Employees](#) requires disclosure of public transactions and guarantees access to official information, records or documents.<sup>567</sup> The Act sets a policy of “full public disclosure of all its transactions involving public interest.” Officials must act on a request within 15 working days from receipt of the request.

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<sup>560</sup> Consejo de la Prensa Peruana, Intelligence law contradicts transparency and access to public information law, 7 July 2005.

<sup>561</sup> Article 330.

<sup>562</sup> Ministerial Resolution No. 094-2002-JUS

<sup>563</sup> Constitution of Philippines, <http://www.chanrobles.com/philsupremelaw1.htm>

<sup>564</sup> Abelardo Subido, Editor, The Manila Post, petitioner, vs. Roman Ozeta, Secretary of Justice, and Mariano Villanueva, Register of Deeds of City of Manila, respondents. G.R. No. L-1631. 27 February 1948. <http://www.aer.ph/images/stories/projects/id/cases/subido.pdf>. For an overview of constitutional cases, see Nepomuceno A. Malaluan, Democracy, Development and Access to Official Information in the Philippines, Action for Economic Reforms, April 2001. <http://www.aer.ph/images/stories/projects/id/access.pdf>

<sup>565</sup> Legaspi v. Civil Service Commission, 150 SCRA 530, 29 May 1987. <http://www.aer.ph/images/stories/projects/id/cases/legaspi.pdf>

<sup>566</sup> See Yvonne Chua, The Philippines: A Liberal Information Regime even without an Information Law. <http://www.freedominfo.org/features/20030117.htm>

<sup>567</sup> Republic Act 6713 of 1987. <http://www.csc.gov.ph/RA6713.html>

The [implementing regulations](#) of the law require that the head of each body “establish measures and standards that will ensure transparency and openness”.<sup>568</sup>

The rules create exemptions for information and documents related to national security and foreign affairs, information that would cause imminent harm to an individual, privileged information or information exempted by another law, drafts or decisions, orders, rulings, policy, decisions, memoranda, and information that would intrude into personal privacy, impede law enforcement and cause financial instability.

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

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

A comparative review by the Southeast Asian Press Alliance in 2002 found that the Philippines, even without a formal FOI law, was one of the most open in the region.<sup>569</sup> However, there are still many problems in accessing information, especially by non-media.<sup>570</sup> These include a lack of a uniform procedure to obtain information from bodies, a “fluid” scope of right due to changing government policies, limited sanctions, inadequate remedies to require disclosure, and a lack of a culture of transparency in government bodies.<sup>571</sup>

In 2002, civil society groups formed the Access to Information Network to press for the adoption of a FOI law. In the past several Congresses, numerous bills have been introduced but thus far none have been approved.<sup>572</sup>

Article 229 of the [Penal Code](#) prohibits public officers from releasing “any secret” or from “wrongfully deliver papers or copies of papers” with a maximum penalty of jail and a fine of 2,000 pesos if the release “caused serious damage to the public interest.”<sup>573</sup>

## **POLAND**

Article 61 of the [Constitution](#) provides for the right to information and mandates that Parliament enact a law setting out this right.<sup>574</sup>

(1) A citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions. Such right shall also include receipt of information on the activities of self-governing economic or

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<sup>568</sup> Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees. <http://www.csc.gov.ph/RA6713b.html>

<sup>569</sup> Coronel, The Right to Know: Access to Information in Southeast Asia (PCIJ 2001).

<sup>570</sup> See Article 19, Freedom of Expression and the Media, Baseline Study – Philippines, 2005. <http://www.article19.org/pdfs/publications/philippines-baseline-study.pdf>

<sup>571</sup> Access to Information Network, Position Paper on Bills on People’s Access to Official Information, 2 February 2005.

<sup>572</sup> See Philippine Center for Investigative Journalism, Widening Access to Information. <http://www.i-site.ph/Focus/access-info.html>

<sup>573</sup> Revised Penal Code, Act No 3815. <http://www.chanrobles.com/revisedpenalcodeofthephilippines.htm>

<sup>574</sup> Constitution of Poland, [http://www.uni-wuerzburg.de/law/pl00000\\_.html](http://www.uni-wuerzburg.de/law/pl00000_.html)

professional organs and other persons or organizational units relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury.

(2) The right to obtain information shall ensure access to documents and entry to sittings of collective organs of public authority formed by universal elections, with the opportunity to make sound and visual recordings.

(3) Limitations upon the rights referred to in Paragraphs (1) and (2), may be imposed by statute solely to protect freedoms and rights of other persons and economic subjects, public order, security or important economic interests of the State.

The [Law on Access to Public Information](#) was approved in September 2001 and went into effect in January 2002.<sup>575</sup>

The Act allows anyone to demand access to public information, public data and public assets held by public bodies, private bodies that exercise public tasks, trade unions and political parties. The requests can be oral or written. The bodies must respond within 14 days.

The law sets out categories of public information including internal and foreign policy, information relating to the structure of legal entities, operational activities of public organizations, public data such as official documents and positions, and public assets. There are exemptions for state secrets and confidential information as protected by a law, personal privacy and business secrets.

Appeals of denials of access are made under the Code of Administrative Procedure initially internally and then to a court. The [Office of the Commissioner for Civil Rights Protection](#) (Ombudsman) has also been active in promoting the law as a means for improving legal structures.<sup>576</sup> The Ombudsman called for greater transparency in his 2004 report, stating that it should be given priority over the privacy of public officials.

The real heart of the Act is the duties placed on public bodies to publish information about their policies, draft legislation, legal organization, principles of operation, contents of administrative acts and decisions, and public assets. The law requires that each create a Public Information Bulletin to allow access to information via computer networks.<sup>577</sup> Collecting public authorities are required to hold open meetings and create minutes or recordings of the meetings.

Poland enacted the [Classified Information Protection Act](#) in January 1999 as a condition for entering NATO.<sup>578</sup> The Act covers classified information or information collected by government agencies the disclosure of which “might damage interests of the state, public interests, or lawfully protected interests of citizens or of an organization.” The Act creates two categories – state secrets and public service secrets. State secrets can be designated as Top Secret or Secret, public service secrets can be designated as confidential or restricted. Most state secrets shall be classified for fifty years while some information relating to spies and informants and information from other states can be classified for an unlimited time. Confidential information is classified for five years while restricted can be classified for two years. A student from Warsaw

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<sup>575</sup> Law on Access to Public Information. Journal of Laws No 112, item 1198. 6 September 2001.

[http://europa.eu.int/information\\_society/policy/psi/docs/pdfs/implementation/po\\_tra\\_%20dz-u-01-112-1198\\_21-03-05.doc](http://europa.eu.int/information_society/policy/psi/docs/pdfs/implementation/po_tra_%20dz-u-01-112-1198_21-03-05.doc)

<sup>576</sup> Homepage: <http://www.brpo.gov.pl/index.php?e=1&poz=430>

<sup>577</sup> Main government BIP page: <http://www.bip.gov.pl/>

<sup>578</sup> The Classified Information Protection Act of 22 January 1999.

[http://www.isn.ethz.ch/php/research/foia/docs/classified\\_information\\_Poland.pdf](http://www.isn.ethz.ch/php/research/foia/docs/classified_information_Poland.pdf)

Technical University was arrested in April 2004 after he discovered that 12 used hard drives that he had bought contained secret information from the Ministry of Foreign Affairs and sold the drives to newspaper NIE, which published information on the foreign minister and excerpts of meetings.<sup>579</sup> In January 2006, Defense Minister Radoslaw Sikorski announced that the government was going to declassify all remaining files of the Warsaw Pact.<sup>580</sup>

A law creating a [National Remembrance Institute](#) (IPN) to allow victims of the communist-era secret police access to records was approved by Parliament in October 1998.<sup>581</sup> President Aleksander Kwasniewski vetoed the law, saying that it should allow all Poles, not just the victims, to access the records but his veto was overridden and he later signed the law.<sup>582</sup> The IPN took control of all archives of the communist-era security service and those of courts, prosecutors' offices, the former Communist Party and other institutions. Since February 2001, Polish citizens have been allowed to see their personal files compiled by communist authorities before 1989.<sup>583</sup> Around 14,000 people have made inquiries. In February 2005, journalist Bronislaw Wildstein published a list of 240,000 names of agents, informers, and victims (but not identifying who belongs in which category) from the IPN on the Internet.<sup>584</sup> The list reportedly has become the most popular search on the Polish Internet.

The Screening Act, which allows a special commission to examine the records of government officials who might have collaborated with the secret police, was approved in June 1997, but its implementation was delayed until November 1998, when the Constitutional Tribunal ruled that the Act was constitutional except for two provisions. There have been some allegations that the information is used politically.<sup>585</sup>

Poland signed the Aarhus Convention on Access to Information in June 1998 and ratified it in February 2002. The Law on the Protection of the Environment allows for access to information.<sup>586</sup>

Under the [Act on Protection of Personal Data](#), individuals can obtain and correct records that contain personal information about themselves from both public and private bodies.<sup>587</sup> It is enforced by the [Bureau of the Inspector General for the Protection of Personal Data](#).<sup>588</sup>

## PORTUGAL

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

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<sup>579</sup> MSZ Secrets on the Front Page, The Warsaw Voice, 14 April 2004.

<sup>580</sup> AFP, Poland To Declassify Warsaw Pact Files: Defense Minister, 3 January 2006.

<sup>581</sup> Homepage: [http://www.ipn.gov.pl/index\\_eng.html](http://www.ipn.gov.pl/index_eng.html)

<sup>582</sup> "Veto Overridden, President Signs Secret Files Bill," Polish News Bulletin, 21 December 1998.

<sup>583</sup> "Airing Dirty Laundry", The Warsaw Voice, 11 February 2001 No. 6 (642).

<sup>584</sup> See <http://www.listawildsteina.com/indexint.html>

<sup>585</sup> RFE/RL Newsline Vol. 4, No. 146, Part II, 1 August 2000.

<sup>586</sup> Act of 27 April 2001 Environmental Protection Law. See Access to Environmental Handbook. <http://www.mos.gov.pl/aarhus/dokumenty/Access-to-envir-info.pdf>

<sup>587</sup> Act of 29 August 1997 on the Protection of Personal Data. Journal of Laws of 29 October 1997, No. 133, item 883 with later amendments. [http://www.giodo.gov.pl/plik/id\\_p/61/i/en/](http://www.giodo.gov.pl/plik/id_p/61/i/en/)

<sup>588</sup> Homepage: <http://www.giodo.gov.pl/English/english.htm>

1. Citizens are entitled to be informed by the Public Service, when they so require, about the progress of proceedings in which they are directly interested and to know the final decisions that are taken with respect to them.
2. Citizens shall also enjoy the right to have access to administrative records and files, subject to the legal provisions with respect to internal and external security, investigation of crime and personal privacy.
3. Administrative action shall be notified to interested parties in the manner prescribed by law; it shall be based on stated and accessible substantial grounds when it affects legally protected rights or interests.
4. Interested parties are guaranteed effective protection of the courts for their legally protected rights or interests, including recognition of these rights or interests, challenging any administrative action, regardless of its form, that affects these, enforcing administrative acts that are legally due and adopting appropriate protective measures.
5. Citizens are also entitled to object against administrative regulations that have external validity and that are damaging to their legally protected rights or interests.
6. For the purposes of paragraphs 1 and 2, the law shall fix the maximum period within which the Public Service must respond.<sup>589</sup>

The 1993 [Law of Access to Administrative Documents](#) (LADA) allows any person to demand access to administrative documents held by state authorities, public institutions, and local authorities in any form.<sup>590</sup> Requests must be in writing. Government bodies must respond no later than 10 days after receiving a request.

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

Those denied can appeal to the [Commission of Access to Administrative Documents](#) (CADA), an independent Parliamentary agency.<sup>591</sup> The CADA can examine complaints, provide opinions on access, review practices and decide on classification of systems. Public employees have a duty to cooperate with the CADA, or face discipline. Its decisions are not binding so if an agency continues to deny access, further appeal can be made to an administrative court. The CADA received 527 requests for advice (down from 542 in the previous year) and issued 330 opinions in 2004.

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

The COE GRECO Committee reported some problems with the law in their 2006 review:

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<sup>589</sup> Constitution of the Portuguese Republic, 1997. [http://www.parlamento.pt/leis/constituicao\\_ingles/IND\\_CRP\\_ING.htm](http://www.parlamento.pt/leis/constituicao_ingles/IND_CRP_ING.htm)

<sup>590</sup> Lei n° 65/93, de 26 de Agosto, com as alterações constantes da Lei n° 8/95, de 29 de Março e pela Lei n°94/99, de 16 de Julho. <http://www.cada.pt/PAGINAS/ladaing.html>. See <http://www.cada.pt/PAGINAS/acessoing.html> for a detailed overview of the Act.

<sup>591</sup> Homepage: <http://www.cada.pt/>

their right of access is not always effective in practice. Among the reasons put forward for this on the visit were: i. the excessive time taken by certain departments to supply requested information (for example, concerning public procurement and building permits); and ii. procedural (occasionally protracted) delays, particularly when the access commission is required to give a prior opinion, which can sometimes take up to two months. The Portuguese authorities have nevertheless indicated that the information delivery procedures are not normally slow and that the commission's prior opinion is warranted in certain touchier cases such as access to documents with personal data identifying third parties. The GET therefore observes that the Portuguese authorities should implement a more proactive policy on access to official documents and review the procedural constraints that lead to delays (occasionally protracted), with a view to giving proper effect to individuals' right of access to official documents.<sup>592</sup>

Portugal signed the Aarhus Convention on Access to Information in June 1998 and ratified it in June 2003. The LADA governs access to environmental information. In 1998, the European Commission issued a reasoned opinion that Portugal was not complying with the 1990 EU Directive on Access to Information. It closed the proceeding in 2000 after Portugal made modifications to the LADA. The National Assembly approved a new law implementing the Convention and 2003 EU Directive in April 2006.

A working group made up of the Ministry of Justice, Ministry of Economy and Ministry of Finances is developing a bill to amend the LADA to implement the requirements of the EU Directive on the re-use and commercial exploitation of public sector information (2003/98/EC).<sup>593</sup>

The Law of State Secrecy sets rules on the classification on information harmful to the state security.<sup>594</sup> The Commission for the Protection of the State Secret oversees the Act. Information can be classified for four year periods.<sup>595</sup>

[The Act on the Protection of Personal Data](#) allows any person to access and correct their personal information held by a public or private body.<sup>596</sup> It is enforced by the [National Data Protection Commission](#).<sup>597</sup>

## ROMANIA

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

A person's right of access to any information of public interest cannot be restricted. The

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<sup>592</sup> GRECO, Second Evaluation Round Evaluation Report on Portugal Greco Eval II Rep (2005) 11E 12 May 2006.

<sup>593</sup> See EU Information Society, Public Sector Information: Implementation: Status. [http://europa.eu.int/information\\_society/policy/psi/implementation/status/index\\_en.htm#portugal](http://europa.eu.int/information_society/policy/psi/implementation/status/index_en.htm#portugal)

<sup>594</sup> Law of State Secrecy no 6/94, of 7 April 1994. <http://www.terraviva.pt/guincho/3938/Segredo%20de%20Estado.doc> (in Portuguese).

<sup>595</sup> <http://www.cada.pt/paginas/acessoing.html>

<sup>596</sup> Act n° 67/98 of 26 October 1998 on the Protection of Personal Data (transposing into the Portuguese legal system Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data). [http://www.cnpd.pt/Leis/lei\\_6798en.htm](http://www.cnpd.pt/Leis/lei_6798en.htm)

<sup>597</sup> Homepage: <http://www.cnpd.pt/>

public authorities, according to their competence, shall be bound to provide for correct information to citizens on public affairs and matters of personal interest. The right to information shall not be prejudicial to the protection of the young or to national security.<sup>598</sup>

The [Law Regarding Free Access to Information of Public Interest](#) was approved in October 2001.<sup>599</sup> The [implementing regulations](#) of the law state, “free and unrestrained access to information of public interest shall be the rule and limitation of access shall be the exemption.”<sup>600</sup> It allows for any person to ask for information from public authorities and state companies. The authorities must respond in 10 days.

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

Those denied can appeal to the agency concerned or to a court. Public employees can be disciplined for refusing to disclose information. The [People’s Advocate](#) (Ombudsman) can also hear complaints and make recommendations.<sup>601</sup> In 2004, the office received 403 complaints related to the denial of information.<sup>602</sup>

Authorities must also publish a wide variety of basic information about their structures and activities including their register of “documents in the public interest.” They are required to set up specialized divisions to deal with the Act.

According to the Agency for Government Strategies, there were over 710,000 requests (mostly oral) in 2005. Two percent of the requests were denied which resulted in 1846 administrative appeals (down from 6,154 in 2004). 55 percent of the appeals resulted in the decision being overturned, 33 percent were rejected and 11 percent were settled. There were 424 (up from 394) court cases.<sup>603</sup>

The Institute for Public Policies describes access by NGOs to information as “very difficult” citing misuse of classification to hide categories of information, excessive fees and refusing to provide information in the forms requested.<sup>604</sup> The Association for the Defense of Human Rights in Romania-Helsinki Committee (APADOR-CH) reported that most public institutions respond to requests, although there are still problems with complex or “delicate” requests. There are also ongoing problems with agencies charging excessive copying fees. This is significantly better than the 2003 report where they stated that “In practice, the access to information of public interest is denied and the law is inoperative.”

APADOR has also made a detailed list of recommended changes needed to the Act and other

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<sup>598</sup> Constitution of Romania. <http://www.senat.ro/ENGL/EZA/constitution.html>

<sup>599</sup> The Law Regarding the Free Access to the Information of Public Interest. <http://www.publicinfo.ro/INITIAT/Legea%20accesului%20eng.pdf>

<sup>600</sup> Decision on Methodological Norms of Putting into Force Law No. 544/2001 on Free Access to Information of Public Interest <http://www.publicinfo.ro/INITIAT/NormeMetodologiceLegeLiberAccesInformatie-engl.pdf>

<sup>601</sup> Homepage: <http://www.avp.ro/indexen.html>

<sup>602</sup> Annual Report 2004.

<sup>603</sup> Agency for Government Strategies, Report concerning the applying of Law no. 544/2001 concerning the access at the public interest information during year 2005.

<sup>604</sup> The Institute for Public Policies, Facts and flaws facing NGOs when confronted with public institutions refusing to grant free access to public interest information, 9 February 2006.

related laws to improve access. Those changes include modifying the Ministry of Information, giving the FOI law primary effect over other laws, limiting exemptions, and revising the Classified Information, Archive and Data Protection Acts.<sup>605</sup>

The [Law on Protecting Classified Information](#) was enacted in April 2002 following pressure from NATO to adopt a law before Romania could join the alliance.<sup>606</sup> There was considerable controversy over the adoption of the law, amid claims that the government was misleading the Parliament on the NATO requirements (which are not public) to extend the scope of the law beyond what was required. One particularly controversial provision creates a level of classification called “office secret”, which is defined as any information that could affect the interest of a legal person, be it private or state owned, which cannot be appealed. The Office of the National Registry of State Secret Information keeps the registers of secret information. The National Authority for Security maintains the controls on NATO information. The Criminal Code prohibits the possession of classified information by those not authorized to have it.<sup>607</sup> Two journalists were charged in February 2006 for illegally receiving classified information. The Supreme Court ordered the release of one who was detained for several days.<sup>608</sup>

The 1999 [Law on the Access to the Personal File and the Disclosure of the Securitate as a Political Police](#) allows Romanian citizens to access their Securitate (the former secret police) files.<sup>609</sup> It also allows public access to the files of those aspiring for public office and other information relating to the activities of the Securitate. The law set up the [National Council for the Search of Security Archives \(CNSAS\)](#) to administer the archives. The Council’s activities were limited for years as the Romanian Intelligence Service (SRI) refused to hand over the files of its predecessor. A reported 12 kilometers of files were transferred to the Council in 2005 following a presidential order but many remain in the hands of the SRI which claims that they would harm national security if released.<sup>610</sup> The Council has also been hampered by regular crises over its leadership, some leading to mass public protests, and claims of misuse of files. The new head of the Council said in April 2006 that many of the Securitate files were destroyed in 1989 and called on the SRI to hand over all remaining files.<sup>611</sup> The Prime Minister also called for the release of all of the Communist-era files. The European Court of Human Rights ruled in 2000 that the Romanian Intelligence Service retention and use of Securitate files that falsely accused a person of being a member of a fascist party fifty years before was a violation of the ECHR.<sup>612</sup>

The [Law on Decisional Transparency in Public Administration](#) was approved in December 2002 and went into effect in April 2003. It requires meetings of government bodies to open, the disclosure of information about pending activities, and requires the bodies to invite citizens to participate in decisions.<sup>613</sup> According the Agency for Government Strategies, there were 8769 requests for information on draft laws and 7140 recommendations received, of which 64 percent

<sup>605</sup> See APADOR, Limits of Access to Information in Romania – The Necessity of Certain Legislative Correlations.

<sup>606</sup> Law no. 182 of 12 April 2002 on the protection of classified information. Published in the Official Gazette, Part I no. 248 of 12 April 2002. <http://www.privacyinternational.org/countries/romania/classified-info-law-02.doc>. See Government of Romania, Agenda of Preparations for NATO Membership: Progress and Priorities - Midterm Review. [http://domino.kappa.ro/mac/home.nsf/Toate/nato/\\$File/annex24.html](http://domino.kappa.ro/mac/home.nsf/Toate/nato/$File/annex24.html)

<sup>607</sup> Criminal Code § 169.

<sup>608</sup> IFEX, One journalist indicted, another freed on secrets charge, 23 February 2006.

<sup>609</sup> Law No. 189 of 7 December 1999 on the access to the personal file and the disclosure of the Securitate as a political police, <http://www.cdep.ro/legislatie/eng/vol44eng.pdf>. See Ioana Borza, Decommunization in Romania: A Case Study of the State Security Files Access Law <http://www.polito.ubbcluj.ro/EAST/East6/borza.htm>

<sup>610</sup> Homepage: <http://www.cnsas.ro/main.html>

<sup>611</sup> CNSAS head: Intelligence Services control Securitate files, Bucharest Daily News, 14 April 2005.

<sup>612</sup> Rotaru v Romania (App no 28341/95), 8 BHRC 449, 4 May 2000.

<sup>613</sup> Law no.52 of 21 January 2003 regarding the decisional transparency in the public administration. [http://www.transparency.ro/doc/ghid\\_transparenta\\_eng.pdf](http://www.transparency.ro/doc/ghid_transparenta_eng.pdf)

were included in the draft acts. There were 131 cases brought in court against violations of the law in 2005, nearly 30 percent of which resulted in decisions for the individual and 31 percent for the government body. The Agency expressed concern that the low numbers indicated a “low level of civic involvement” but did note an eleven percent increase in recommendations from civil society groups.

The [Law on Certain Steps for Assuring Transparency in Performing High Official Positions, Public and Business Positions, for Prevention and Sanctioning the Corruption](#) was approved in 2003. It includes sections requiring that access to electronic information and government is improved through the creation of a “National Computerized System” and the names of tax delinquents are published.<sup>614</sup>

The [Law on Protection of Persons concerning the Processing of Personal Data and the Free Circulation of Such Data](#) allows individuals to access and correct personal information held by public or private bodies.<sup>615</sup> It is enforced by the [National Authority for the Supervision of Personal Data Processing](#) which was created in 2005.<sup>616</sup>

The [Law on National Archives](#) sets rules on access to information in archives. Information can be withheld for up to 100 years.<sup>617</sup>

Romania signed the Aarhus Convention in June 1998 and ratified it in July 2000. Governmental Decision no. 878/2005 on public access to environmental information implements EU Directive 2003/4/EC and sets rules on access.<sup>618</sup>

## SERBIA

Article 10 of the [Constitution of Serbia](#) states:

The work of State agencies shall be open to the public. The publicity of work of the State agencies may be restricted or precluded only in cases provided by law.<sup>619</sup>

The [Law on Free Access to Information of Public Importance](#) was adopted on 5 November 2004 and went into effect on 13 November 2004.<sup>620</sup>

The law allows any person the right to demand information from public authorities including state bodies, organizations vested with public authority and legal persons funded wholly or predominately by a state body. There is a public interest for information relating to a threat to public health and the environment and a presumed interest to all other information unless the public authority can prove otherwise. The request should be in writing but if it is made orally, the

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<sup>614</sup> Law on Certain Steps for Assuring Transparency in Performing High Official Positions, Public and Business Positions, for Prevention and Sanctioning the Corruption. <http://www.sigmaweb.org/dataoecd/34/15/35015795.pdf>

<sup>615</sup> Law no. 677/2001 for the Protection of Persons concerning the Processing of Personal Data and Free Circulation of Such Data. <http://www.avp.ro/leg677en.html>

<sup>616</sup> Homepage: <http://www.dataprotection.ro/index.php>

<sup>617</sup> Law no. 16/1996 on the National Archives. [http://www.apador.org/en/legi/lege\\_16\\_1996\\_e.rtf](http://www.apador.org/en/legi/lege_16_1996_e.rtf)

<sup>618</sup> Governmental Decision no. 878/2005 on public access to environmental information, 28 July 2005 replacing Resolution no. 1115/2002 of 10 October 2002 regarding the free access to the information regarding the environment. [http://www.apador.org/en/legi/hot\\_1115\\_2002\\_e.rtf](http://www.apador.org/en/legi/hot_1115_2002_e.rtf)

<sup>619</sup> Constitution of Serbia, 1990. <http://www.arhiva.serbia.sr.gov.yu/cms/view.php?id=1011>

<sup>620</sup> Law on Free Access to Information of Public Importance. [http://www.poverenik.org.yu/Dokumentacija/eng\\_23\\_ldok.pdf](http://www.poverenik.org.yu/Dokumentacija/eng_23_ldok.pdf)

public authority should record it and treat it in the same way as a written request. Public authorities are required to respond in 15 days except in cases where there is a threat to the person's life or freedom, protection of the public health or environment, in which case the request must be responded to in 48 hours. The deadline can be extended to a total of 40 days in cases where the authority has a justified reason to not respond in the 15 day deadline. Authorities cannot give preference to a single journalist or media outlet when several have applied for the information. It does not apply to areas under federal jurisdiction such as foreign affairs.

Access to documents is free. Fees for copies of documents can be imposed and are waived for journalists, NGOs focusing on human rights, and those asking for information relating to a threat to their persons or the public.

There are mandatory exemptions for information if its release would: risk the life, health, safety or another vital interest of a person; imperil, obstruct or impede in the criminal process or other legal proceedings; seriously imperil national defense, national and public safety or international relations; substantially undermine economic processes or significantly impede economic interests; or make available information protected by law that is protected as a state, official, business or other secret if its disclosure could seriously prejudice the interests and outweigh the interest in access to information. Access to information is also limited if it would violate the right to privacy or reputation unless the person consents, it relates to a person, phenomenon, or even especially done by a public official relating to their duties, or the person has given rise to the request by their behaviour.

An appeal can be made to the [Commission for Information of Public Importance](#).<sup>621</sup> The Commission is an autonomous and independent public body. The Commissioner can hear cases relating to denial of access to information, delays, excessive fees, and refusal to provide the information in the form or language request by the applicant. His decisions are binding on public authorities. If the body fails to release the information, the Commissioner can ask the government to enforce the decision. The Commissioner expressed concern in March 2006 that there are a number of decisions that have not been acted on by the bodies and that the Ministry of Culture did not have any ability to enforce sanctions for non-compliance. The Ministry of Culture informed the Commissioner that an amendment to transfer that authority to the Ministry of State Administration was being developed.

The requestor can appeal decisions of the Commissioner to the courts. Appeals of denials relating to the National Assembly, President, Cabinet, the Supreme Court, the Constitutional Court and the Public Prosecutor are not allowed to be heard by the Commissioner because they have a higher constitutional standing than the Commissioner. Appeals in those cases can only be made directly to an administrative court and the court can only review the reasonableness of the procedure rather than the merits.

The Commissioner also monitors the implementation by public authorities, prepares or proposes changes to regulations on implementation, trains employees, considers complaints, educates the public, and publishes a public manual on how to use the law. The Commissioner was appointed in December 2004 but there have been problems with adequate funding for the office. Initially, much of the promotion work was funded by the Fund for an Open Society Institute (FOSS) and the OSCE Mission in Serbia and Montenegro. The Commission received 693 cases from July 2005 and February 2006. It resolved 443 cases in that time, mostly relating to non-responses by

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<sup>621</sup> Homepage: [http://www.poverenik.org.yu/default\\_eng.asp](http://www.poverenik.org.yu/default_eng.asp)

public bodies. It found for the requestor in all but 14 cases.

Public authorities must appoint an authorized official to receive requests and monitor and promote implementation. They must publish an annual directory describing its powers, duties and organization, its budget, the types of services it offers, the names of its heads and their powers and duties, the types of information it holds, and procedures for submitting requests. They must also train their staff on the law and publish an annual report to the Commissioner on the activities relating to the Act. The Ministry of Culture is in charge of implementation and coordination of the law.

Public authorities can be held liable for damages if they prevent a media outlet from publishing information by withholding it without justification or by giving preference to another journalist or media outlet. The authorized official can be fined up to 50,000 dinars (500 euros) for violating the provisions of the law, including failing to submit the annual report.

Reviews of implementation have found many problems. The Commissioner expressed “serious concerns” with the implementation so far, stating in his March 2006 report that “willingness of state agencies to allow access to all information on their work [...] is still on a low level.”<sup>622</sup> He expressed concern about the high level of silent refusals by public bodies, the lack of justification for refusing information, and denials based on requests from other bodies. He found that less than ten percent of denials were justified. The Commissioner also noted that most state authorities “had done almost nothing or completely little to educate their personnel in implementation of the law”, not produced the required information booklets, set up web sites, and many never produced or were late with their annual reports. Of the bodies that did submit reports, there were a total of over 2,000 requests for the period. A review of five municipalities by CeSID and the Commission in 2006 found that bodies have not adequately provided enough training and resources for public employees and that there is a low level of awareness of the law by the population (20 percent).<sup>623</sup>

The 1998 FRY [Law on Protection of Personal Data](#) gives citizens a right to access and correct personal information held by public and private bodies.<sup>624</sup> Citizens can sue in court if the law is violated. The law is not widely known and there are currently efforts to replace it. The government is currently developing a new law to replace it.

There is no law setting out procedures on the protection of state secrets. In May 2001, the government issued two decrees allowing for citizen to have limited access to their files created by the State Security Service under Milosevic. Citizens were allowed to look at summaries but could not copy them or take notes. The Lawyers Committee for Human Rights (YUCOM) asked the Constitutional Court to review the legality of the decree. The Court ruled in 2003 that it was illegal and it was withdrawn in June 2003. The Parliament adopted a [Lustration Law](#) in May 2003.<sup>625</sup> The Criminal Code prohibits the disclosure of state secrets. In 2004, the government raided the offices of the Helsinki Committee for Human Rights and seized a book based on the state secrets claims.

Serbia has not signed the Aarhus Convention.

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<sup>622</sup> Commissioner for Information of Public Importance, Report of the Implementation of the Law of Free Access to Information of Public Importance, March 2006.

<sup>623</sup> Implementation of Free Access to Information Law Lacking, Oneworld.net, 12 April 2006.

<sup>624</sup> Law on Protection of Personal Data, 12 May 1998. <http://www.gov.yu/informatics/documents/LawOnProtection.htm>

<sup>625</sup> Accountability for Human Rights Violations Act, Official Gazette of the RS” No. 58/2003. [http://www.lustration.net/human\\_rights.pdf](http://www.lustration.net/human_rights.pdf)

## SLOVAKIA

The 1992 [Constitution](#) provides for a general right of access to information and a specific right of access to environmental information.<sup>626</sup>

Article 26 (5) State bodies and territorial self-administration bodies are under an obligation to provide information on their activities in an appropriate manner and in the state language. The conditions and manner of execution will be specified by law.

Article 45 Everyone has the right to timely and complete information about the state of the environment and the causes and consequences of its condition.

The [Act on Free Access to Information](#) was approved in May 2000 and went into force on 1 January 2001.<sup>627</sup> Any person or organization can demand information held by state agencies, municipalities and private organizations that are making public decisions. The body must respond no later than 10 days after receipt of the request and must keep a registry of requests. Costs are limited to reproduction and can be waived.

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

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

The law also requires that a variety of information is published by the government bodies including their structures, powers, procedures, and lists of regulations, guidelines, instructions and interpretations. The National Council is also required to publish the data of sessions, minutes, copies of acts and information on the attendance and voting records of MPs.

The Citizen and Democracy Association conducted four reviews of the implementation of the access and publication provisions in 2002 and found that basic information was usually provided but “problematic information” such as contracts and privatization is often withheld. It also found that information was often arbitrarily withheld or only given when an attorney was involved. The Association also was involved in several court cases including two where the Supreme Court ruled for disclosure and also provided legal assistance in other cases. In 2004, the government released a number of contracts with companies such as PSA Peugeot Citroen and Kia Motors after a court case by the Association.

A new [Act on Protecting Classified Information](#) went into effect in May 2004.<sup>628</sup> The law creates

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<sup>626</sup> Constitution of the Slovak Republic 1992. [http://www.oefre.unibe.ch/law/icl/lo00000\\_.html](http://www.oefre.unibe.ch/law/icl/lo00000_.html)

<sup>627</sup> Act on Free Access to Information. [http://www.info211.sk/zakon\\_en.php](http://www.info211.sk/zakon_en.php)

<sup>628</sup> ACT of 11 March 2004 on the Protection of classified information and on the amendment and supplementing of certain acts. <http://www.nbusr.sk/english/NR452AJ.rtf>

broader areas than the previous Act and allows public authorities to create their own lists of classified information. Under the previous law, Minister's wages were decreed to be classified information in 2002. The director of the National Security Office (NBU) said in 2001 that "Ministries decide on what is classified information and what is not. The laws contain annexes defining basic information and the degrees of secrecy. It is quite obvious that this has been done by incompetent people."<sup>629</sup>

In August 2002, the Parliament approved the National Memory Act which allowed access to files of the StB, the former communist-era secret police.<sup>630</sup> The law created the [Institute for National Memory](#).<sup>631</sup> In November 2004, the Institute released 20,000 files on informers on its web site as part of an effort to put all of its 60,000 files online. The full list of collaborators was published in May 2005. In February 2006, the European Court of Human Rights ruled against Slovakia in the case of a person who had been accused of being a StB collaborator, finding that the denial of access to classified information that was used to justify the finding of collaborate violated Article 8 of the European Convention on Human Rights.<sup>632</sup>

Under the [Act on Protection of Personal Data](#), individuals can access and correct person information held by public and private bodies.<sup>633</sup> It is enforced by the [Office for Personal Data Protection](#).<sup>634</sup>

Slovakia agreed to the Aarhus Convention on access to environmental information in December 2005. Parliament approved a new environmental act in 2004 following a fight with NGOs and some ministries who opposed the act as limiting the right of access.<sup>635</sup> The new act only regulates the collection and publishing information. The right to access is still regulated by the Act on Free Access to Information.

## **SLOVENIA**

The [Constitution](#) of Slovenia states:

Article 38 [...] Everyone has the right of access to the collected personal data that relates to him and the right to judicial protection in the event of any abuse of such data.

Article 39 [...] Except in such cases as are provided by law, everyone has the right to obtain information of a public nature in which he has a well founded legal interest under law.<sup>636</sup>

The [Access to Public Information Act](#) (ZDIJZ) was adopted in February 2003.<sup>637</sup> It provides that

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<sup>629</sup> Slovak Security Office Director Discusses System of Security Screening, 2 November 2001 (translated by FBIS).

<sup>630</sup> ACT 553/2002 Coll. of 19 August 2002 on Disclosure of Documents Regarding the Activity of State Security Authorities in the Period 1939 - 1989 and on Founding the Nation's Memory Institute (Ústav pamäti národa) and on Amending Certain Acts (Nation's Memory Act). [http://www.upn.gov.sk/data/pdf/553\\_2002\\_en.pdf](http://www.upn.gov.sk/data/pdf/553_2002_en.pdf)

<sup>631</sup> Homepage: <http://www.upn.gov.sk/>

<sup>632</sup> Turek v. Slovakia - 57986/00 [2006] ECHR 138 (14 February 2006).

<sup>633</sup> Act no. 428 of 3 July 2002. [http://www.dataprotection.gov.sk/buxusnew/docs/act\\_428.pdf](http://www.dataprotection.gov.sk/buxusnew/docs/act_428.pdf)

<sup>634</sup> Homepage: <http://www.dataprotection.gov.sk/>

<sup>635</sup> Act No. 205/2004 Coll. on assembling, storing and spreading environmental information.

<sup>636</sup> Constitution of Slovenia. [http://www.us-rs.si/en/index.php?sv\\_path=6](http://www.us-rs.si/en/index.php?sv_path=6)

<sup>637</sup> Access to Public Information Act. <http://www.ip-rs.si/index.php?id=520>

“everyone” has a right to information of public character held by state bodies, local government agencies, public agencies, public contractors and other entities of public law. Requests can be oral or written. The bodies must respond in 20 working days.

There are exemptions for classified data, business secrets, personal information that would infringe privacy, confidentiality of statistics information, tax procedure, criminal prosecutions, administrative or civil procedures, pre-decisional materials that would lead to a misunderstanding, natural or cultural conservation, and internal operations. There is a public interest test with some exemptions. The exemptions also do not apply to use of public funds or execution of public functions and employment of a civil servant, environmental hazards, and improperly classified information.

There is a right of appeal to the [Information Commissioner](#) who can issue binding decisions.<sup>638</sup> Its decisions can be appealed to a court. Fines can be imposed for destruction of information or failure to disclose without authorization. The Commission heard 106 cases in 2005, up from 62 in 2004.<sup>639</sup> 11 decisions have been filed in courts. In November 2005, the office was merged with the Data Protection Commission.<sup>640</sup>

The Commission also maintains the list of public bodies covered under the Act. In one of its first decisions, the Commissioner ruled that the office of the former president was covered under the Act.

Public bodies are required to appoint a leading official to receive requests and to create a catalog of the public information and make it available on the Internet along with the current and proposed regulations, programmes, strategies, views, opinions and other documents of public character. They must also publish annual reports on the Act.

The law was substantially amended in July 2005 to implement the EU Directives on Re-use of Public Sector Information (2003/98/EC) and Access to Environmental Information (2003/4/ES). The amendment also created the public interest test and gave the Commission the power to review information to see if it has been improperly classified.

The Ministry of Information Society was tasked to implement the Act but it has now been closed down and its functions have been transferred to the Ministry for Internal Affairs. Most of the state bodies have not produced reports on usage (only 333 out of 2610 were submitted). Of those that have, 15838 requests were filed in 2004, 80 were denied.<sup>641</sup>

The [Classified Information Act](#) was adopted in 2001 to implement NATO rules on protection of classified information. It is overseen by the Government Office for the Protection of Classified Information.<sup>642</sup> In April 2003, many of the security files of the UDBA, the former Yugoslavian secret police were published on a web site in Thailand by the Slovene Honorary Consul for New Zealand Dusan Lajovic. The documents were on over one million people including the officials, collaborators, and targets of surveillance. The current intelligence agency and the national

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<sup>638</sup> Homepage: <http://www.dostopdoinformacij.si/index.php?id=149>

<sup>639</sup> Information Commissioner, Statistics of the Office. <http://www.ip-rs.si/index.php?id=509>

<sup>640</sup> Information Commissioner Act. <http://www.ip-rs.si/index.php?id=519&type=98>

<sup>641</sup> Email from Information Commissioner, May 2006.

<sup>642</sup> Classified Information Act, 8 November 2001; Official Gazette of the Republic of Slovenia, No 87/2001. <http://nato.gov.si/eng/documents/classified-info-act/>

archives claimed they did not have a copy of the files in their archives.<sup>643</sup>

The [Personal Data Protection Act](#) provides for individuals to access and correct their personal information held by public or private bodies.<sup>644</sup> It is overseen by the Information Commission.

Slovenia signed the Aarhus Convention in June 1998 and ratified it in July 2004. Article 14 of the 1993 Environmental Protection Act states that environmental data is public property.<sup>645</sup> Access to information is under the ZDIJZ.

Under the [Archives and Archival Institutions Act](#), most documents are available 30 years after their creation. Documents with data that could harm national security, public order or economic interests can be withheld for 40 years and those containing personal information can be withheld for 75 years or 10 years after the death of the person mentioned.<sup>646</sup>

## **SOUTH AFRICA**

Section 32 of the South African [Constitution](#) of 1996 states:

- (1) Everyone has the right of access to – (a) any information held by the state, and; (b) any information that is held by another person and that is required for the exercise or protection of any rights;
- (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.<sup>647</sup>

The [Promotion of Access to Information Act \(PAIA\)](#) was approved by Parliament in February 2000 and went into effect in March 2001.<sup>648</sup> It implements the constitutional right of access and is intended to “Foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information” and “Actively promote a society in which the people of South Africa have effective access to information to enable them to fully exercise and protect all of their rights.”

Under the Act, any person can demand records from government bodies without showing a reason. State bodies currently have 30 days to respond (reduced from 60 days before March 2003 and 90 days before March 2002).

The Act also includes a unique provision (as required in the Constitution) that allows individuals and government bodies to access records held by private bodies when the record is “necessary for the exercise or protection” of people's rights. Bodies must respond within 30 days.

The Act does not apply to records of the Cabinet and its committees, judicial functions of courts and tribunals, and individual members of Parliament and provincial legislatures. There are a

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<sup>643</sup> REF/RL Balkan Report, 25 April 2003.

<sup>644</sup> Personal Data Protection Act. [http://www.ip-rs.si/fileadmin/user\\_upload/doc/PDPA - consolidated\\_23.03.06.doc](http://www.ip-rs.si/fileadmin/user_upload/doc/PDPA - consolidated_23.03.06.doc)

<sup>645</sup> Official Gazette of RS, No. 32/93.

<sup>646</sup> Archives and Archival Institutions Act (Official Gazette of the RS, No. 20/97).  
<http://www.arhiv.gov.si/fileadmin/arhiv.gov.si/pageuploads/razno/AAIA.pdf>

<sup>647</sup> The Constitution of the Republic of South Africa, Act 108 of 1996. <http://www.polity.org.za/govdocs/constitution/saconst.html>

<sup>648</sup> Promotion of Access to Information Act, Act 2 of 2000. <http://www.gov.za/gazette/acts/2000/a2-00.pdf>. For a detailed analysis of the Act, see Currie and Klaaren, The Promotion of Access to Information Act Commentary (Siber Ink 2002).

number of mandatory and discretionary exemptions for records of both public and private bodies. Most of the exemptions require some demonstration that the release of the information would cause harm. The exemptions include personal privacy, commercial information, confidential information, safety of persons and property, law-enforcement proceedings, legal privilege, defense, security and international relations, economic interests, and the internal operations of public bodies. Many of the exemptions must be balanced against a public-interest test that require disclosure if the information show a serious contravention or failure to comply with the law or an imminent and serious public safety or environmental risk.

For public bodies such as national government departments, provincial government departments and local authorities, the internal review is handled by the responsible Cabinet minister. It can then be reviewed by a High Court. Decisions of private bodies are appealed directly to the court. The courts can review any record and can set aside decisions and order the agency to act. The South African History Archive and the Open Democracy Advice Centre have brought a number of successful court cases against both public and private bodies where the courts have ordered the release of information or the public bodies have settled the cases out of court. In 2005, businessman Richard Young won a three-year fight to have draft documents released in respect of a controversial government investigation into procurement processes surrounding a major arms deal. The drafts showed that a number of significant findings had been omitted or watered down in the publicly-released report, suggesting "serious irregularities" in the procurement process. Notably, the Attorney General, when questioned by MPS in 2003, denied making any material edits to the final report. In another notable decision, in April 2005, the Institute for Democracy in South Africa (IDASA) lost an appeal to the Cape Town High Court seeking to establish the principle that political parties were obliged to give details of substantial private donations under the Act. The Court found that political parties are not public bodies under the Act and alternatively that the information was not required for the proper exercise of the right to vote, such that the political parties as private bodies were under no disclosure obligation under the law.<sup>649</sup> The Supreme Court of Appeal limited the right of individuals to obtain information from private bodies, ruling in March 2006 that a hospital was not required to provide information to the wife of a deceased patient who was trying to obtain more information about his death as part of a potential lawsuit against the hospital.<sup>650</sup>

There are criminal fines and jail terms for those who destroy, damage, alter or falsify records. The public prosecutor can investigate cases of maladministration.

Public and private organizations must publish manuals describing their structure, functions, contact information, access guide, services and description of the categories of records held by the body. The manuals are submitted to the [South African Human Rights Commission](#) and published in the Government Gazette. The National Intelligence Agency was exempted in June 2003 from having to publish a manual until 2008 and the South African Secret Service received a similar exemption. Most smaller private organizations were exempted in September 2005 from producing manuals until 2011.<sup>651</sup> Government bodies must also publish a list of categories of information that is accessible without requiring an access request.

The [South African Human Rights Commission](#) (SAHRC) has been designated to oversee the

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<sup>649</sup> "Parties don't have to disclose funds", I-Africa, 20 April 2005.

<sup>650</sup> *Unitas Hospital v Van Wyk* [2006] SCA 32 (RSA). <http://www.law.wits.ac.za/sca/files/unitas/unitas.pdf>

<sup>651</sup> SAHRC, Access to Information/ PAIA: Exemptions relating to section 51 manuals, 7 September 2005.

functioning of the Act.<sup>652</sup> It was required under the law to issue a [User's Guide](#) on the Act in all official languages. It must also submit annual reports to Parliament, and can promote the Act, make recommendations, and monitor its implementation. A major problem has been that the Commission initially received little funding for any activities under the Act.

The expert committee that drafted the Act proposed creating an Open Democracy Commission and specialized information courts, but those sections were removed by the Cabinet before the draft bill was introduced in Parliament. The SAHRC commissioned papers on its role and the possible creation of an independent information commission and announced in October 2004 that it planned to seek the authority to have greater oversight over the PAIA. The 2004-05 SAHRC Annual Report included a recommendation for the establishment of an Information Commissioner to act as a cheap, timely independent appeals mechanism under the Act.

There have been problems in the implementation of the Act and its use has been limited. A survey conducted by the Open Democracy Advice Centre in 2002 found, "on the whole, [PAIA] has not been properly or consistently implemented, not only because of the newness of the act, but because of low levels of awareness and information of the requirements set out in the act. Where implementation has taken place it has been partial and inconsistent."<sup>653</sup> Almost half of the public employees had not heard of the Act. A larger problem pointed out by the Centre for the Study of Violence and Reconciliation is the poor records management of most departments.<sup>654</sup>

More recently, ODAC published results of a monitoring survey carried out over a period of 6 months in 2004 during which 140 requests were submitted to 18 public institutions by 7 requestors from different spheres of civil society.<sup>655</sup> The 2004 Monitoring Survey followed a similar 2003 Monitoring Survey, undertaken as part of a pilot monitoring study.<sup>656</sup> The 2004 Survey found that only 13 percent of the submitted requests for information resulted in the information being provided within the 30-day time limit in the Act, while 63 percent of the requests were ignored. Out of the 140 requests that were formulated, the requestors were unable to submit 15 percent of them. Only 1 percent of the responses to the requests for information culminated in a written refusal and 2 percent met with oral refusals. Interestingly, a comparison of the two surveys shows that compliance has actually dropped; in 2003, 52 percent of the requests received no response and only 23 percent of requests received a positive response.

The South African History Archives also commissioned a study in 2004 on how prepared State departments were to manage requests for digital electronic records made under the Act.<sup>657</sup> The Report indicated that few departments keep official records in electronic form and that there was no formal policy and procedure on how and when electronic records should be stored.

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<sup>652</sup> SAHRC PAIA Homepage: <http://www.sahrc.org.za/paia.htm>

<sup>653</sup> Allison Tilley and Victoria Mayer, Access to Information Law and the Challenge of Effective Implementation, in *The Right to Know, the Right to Live: Access to Information and Socio-Economic Justice* (ODAC 2002).

<sup>654</sup> Dale McKinley, The State of Access to Information in South Africa.

[http://www.apc.org/apps/img\\_upload/6972616672696361646f63756d656e74/CSVREPORT\\_ON\\_FREEDOM\\_OF\\_INFORMATION.doc](http://www.apc.org/apps/img_upload/6972616672696361646f63756d656e74/CSVREPORT_ON_FREEDOM_OF_INFORMATION.doc)

<sup>655</sup> ODAC, South Africa Summary Country Report: Open Society Institute Justice Initiative 2004 Monitoring Study <http://www.opendemocracy.org.za/documents/SA2004OSIJMonitoringStudySummaryRTKday.doc>

<sup>656</sup> ODAC, Access to Information in the Republic of South Africa: Results of the Open Society Justice Initiative Access to Information Monitoring Tool 2003, [http://www.justiceinitiative.org/db/resource2?res\\_id=102207](http://www.justiceinitiative.org/db/resource2?res_id=102207)

<sup>657</sup> Report on the Survey of Public Bodies Conducted on Behalf of the South African History Archives Relating to the Promotion of Access to Information Act No. 2 of 2000 and Born Digital Electronic Records, 2 June 2005. [http://www.wits.ac.za/saha/publications/FOIP\\_1\\_5\\_SAHA.pdf](http://www.wits.ac.za/saha/publications/FOIP_1_5_SAHA.pdf)

The last SAHRC report, produced for 2004-05,<sup>658</sup> reported with concern that the number of public bodies submitting their statistical reports continues to remain low, with a decrease in the number of reports received. The SAHRC noted that if they cannot obtain proper reports the extent of use of the Act by the public cannot be accurately and comprehensively ascertained. The SAHRC identified that more training of officials will be undertaken in the following year to deal with the problem. The SAHRC also flagged that the reporting year will be changed from the financial year (ending in March) to the calendar year from 2007. Notable statistics for the 2004-05 year included the fact that the South African Police Service received 17,001 requests, compared to 14,744 the previous year. The next most targeted public body was the Department of Transport, with 716 requests. Interestingly, it appears that very few appeals – less than 20 – were made against refusals to disclose information.

The Apartheid-era [Protection of Information Act of 1982](#) sets rules on the classification and declassification of information.<sup>659</sup> The government announced the creation of a classification and declassification review committee in March 2003. The Truth and Reconciliation Commission found that there was a systematic destruction of classified documents starting in the period 1990-1994, sanctioned by the Cabinet. There has been considerable controversy over access to the records of the Truth and Reconciliation Commission (TRC) some of which were sent to the National Intelligence Agency. The government is claiming that it can reclassify the “sensitive” documents in the files. In 2003, SAHA won an out of court settlement under the terms of which the files were moved to the National Archives and are being prepared for public access. SAHA also discovered the existence of many thousands of Military Intelligence files that had never been sent to the TRC. SAHA used the PAIA to secure lists of these files and is now systematically accessing the files themselves. SAHA discovered in February 2006 that thousands of files from military intelligence files had been sent to Zimbabwe without keeping copies even after a PAIA request had been filed.<sup>660</sup>

The Law Reform Commission is currently holding a public consultation on privacy and data protection as part of an effort to enact a law to enforce the constitutional right of privacy. It issued a second discussion paper and draft bill in October 2005.<sup>661</sup>

The National Archives of South Africa Act of 1996 provides for the release of records in the custody of the National Archives after 20 years.<sup>662</sup>

## SPAIN

Article 105 of the 1978 [Constitution](#) states:

The law shall regulate [...] b) access by the citizens to the administrative archives and registers except where it affects the security and defense of the State, the investigation of crimes, and the privacy of persons<sup>663</sup>

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<sup>658</sup> SAHRC, Annual Report 2004-05 – Annex 5, [http://www.sahrc.org.za/sahrc\\_cms/downloads/SectionFive2004\\_2005.pdf](http://www.sahrc.org.za/sahrc_cms/downloads/SectionFive2004_2005.pdf)

<sup>659</sup> Protection of Information Act No 84 of 1982, 3 June 1982. <http://www.nia.org.za/LEGISLATION/PROTECTION%20OF%20INFORMATION%20ACT%2084%20OF%201982.doc>

<sup>660</sup> SAHA, South African History Archive seeks return of historical military intelligence records, 7 March 2006.

<sup>661</sup> South African Law Reform Commission, Privacy and Data Protection. Issue Paper 109, October 2005.

<sup>662</sup> National Archives of South Africa Act of 1996. [http://www.national.archives.gov.za/arch\\_act.htm](http://www.national.archives.gov.za/arch_act.htm)

<sup>663</sup> Constitution of Spain, 1992. <http://www.uni-wuerzburg.de/law/sp00000.html>

The 1992 [Law on Rules for Public Administration](#) provides for access to government records and documents by Spanish citizens.<sup>664</sup> It also includes rules for access of persons in administrative proceedings. The provisions on access were included to implement the 1990 EU Access to Environmental Information Directive. The documents must be part of a file which has been completed. Agencies must respond in three months.

Documents can be withheld if the public interest or a third party's interest would be better served by non-disclosure or if the request would affect the effectiveness of the operations of the public service. Access can also be denied if the documents refer to government actions related to constitutional responsibilities, national defense or national security, investigations, business or industrial secrecy or monetary policy. Access to documents that contain personal information are limited to the persons named in the documents. There are also restrictions for information protected by other laws including classified information, health information, statistics, the civil and central registry, and the law on the historical archives.

Denials can be appealed administratively. The [Ombudsman](#) can also review cases of failure to follow the law.<sup>665</sup> The Ombudsman recommended in 2002 that agencies make access with 15 days for files for with an interest and 30 days for general access and not overuse the exception on effectiveness of the public administration.<sup>666</sup>

Government bodies are also required to maintain a registry of documents and publish acts and decisions.

An extensive report published in October 2005 by Sustainia and The Open Society Justice Initiative concludes that nearly 60 percent of the requests filed under the Law 30/1992 for the study were unanswered.<sup>667</sup> From requests filed under the Law 38/1995 on the right of access to information relating to the environment, only 30 percent were answered correctly, while 20 percent were answered late and the remaining 50 percent were never answered. The report recommends that Spain needs to adopt a FOI law according to international standards because Law 30/1992 is not enough to guarantee an adequate right of access.

There was considerable controversy about information over the blame for the 11 March 2004 Madrid train bombings. The government selectively declassified documents in March 2004 after it lost the election in an effort to show that ETA was responsible for the bombings. The Prime Minister, Jose Luis Rodriguez Zapatero said in December 2004 that his predecessor Jose Maria Aznar had destroyed all computer files relating to the investigation of the bombings when he left office. Zapatero received the €12,000 bill by the computer consulting firm for the destruction of the files.<sup>668</sup>

Spain signed the Aarhus Convention in June 1998 and ratified it in December 2004. [Law 38/1995 on the right of access to information relating to the environment](#) implemented the 1990 EU Access to Environment Directive.<sup>669</sup> It was adopted after the European Commission found

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<sup>664</sup> Ley 30/1992, de 26 de Noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común, [http://noticias.juridicas.com/base\\_datos/Admin/l30-1992.html](http://noticias.juridicas.com/base_datos/Admin/l30-1992.html). Modified by ley 4/99, de 13 January 1999.

<sup>665</sup> Homepage: <http://www.defensordelpueblo.es/index.asp>

<sup>666</sup> Annual Report 2002, § 3.3.1.2.

<sup>667</sup> 'Transparencia y Silencio' Estudio Sobre el Acceso a la Información en España, Octubre de 2005. [http://www.sustentia.com/transparencia\\_y\\_silencio\\_espana.pdf](http://www.sustentia.com/transparencia_y_silencio_espana.pdf)

<sup>668</sup> Aznar 'purged all records in Madrid bombings cover-up', The Independent, 14 December 2004.

<sup>669</sup> Ley 38/1995, de 12 de diciembre de derecho de acceso a la información en materia de medio ambiente. <http://www.siam-cma.org/lexislacion/doc.asp?id=89>

that the Law on Public Administration was not adequate and started infringement proceedings against Spain in 1992. In July 2005, the European Commission announced that it was taking legal action against Spain and six other countries for failing to implement the 2003 EU Directive on access to environmental information.<sup>670</sup>

The [Data Protection Act](#) allows individuals to access and correct records about themselves held by public and private bodies.<sup>671</sup> It is enforced by the [Data Protection Agency](#).<sup>672</sup>

## SWEDEN

The principle of openness “Offentlighetsgrundsatsen” has been long enshrined in Swedish law. Sweden enacted the world's first Freedom of Information Act in 1766.<sup>673</sup>

There are four fundamental laws that make up the Swedish Constitution. Of those, the Instrument of Government and the Freedom of the Press Act specifically provide for freedom of information.

Chapter 2, Article 1 of [The Instrument of Government](#) guarantees that all citizens have the right of:

- (2) freedom of information: that is, the freedom to procure and receive information and otherwise acquaint oneself with the utterances of others.<sup>674</sup>

Specific rules on access are contained in the [Freedom of the Press Act](#), which was first adopted in 1766. The current version was adopted in 1949 and amended in 1976.<sup>675</sup> Chapter 2 on the Public Nature of Official Documents, decrees that “every Swedish subject [and resident] shall have free access to official documents.” Public authorities must respond immediately to requests for official documents. Requests can be in any form and can be anonymous.

Each authority is required to keep a register of all official documents and most indices are publicly available. This makes it possible for ordinary citizens to go to the Prime Minister's office and view copies of all of his correspondence.

There are four exceptions to the registration requirement: documents that are of little importance to the authorities activities; documents that are not secret and are kept in a manner that can be ascertained whether they have been received or drawn up by the authority; documents that are kept in large numbers which the government has exempted under the secrecy ordinance; and electronic records already registered and available from another

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<sup>670</sup> European Commission, Public access to environmental information: Commission takes legal action against seven Member States, 11 July 2005.

<sup>671</sup> Organic Law 15/1999 of 13 December on the Protection of Personal Data.  
[https://www.agenciaprotecciondatos.org/ley\\_15\\_injeles\\_v2\\_pdf.pdf](https://www.agenciaprotecciondatos.org/ley_15_injeles_v2_pdf.pdf)

<sup>672</sup> Homepage: <https://www.agenciaprotecciondatos.org/>

<sup>673</sup> The Freedom of Press Act, 2 December 1766. Following a coup d'état in 1772, the Act was repealed. A democratic government returned in 1809 and a new Freedom of the Press Act was adopted in 1810 and replaced by another in 1812 which remained in force until 1949.

<sup>674</sup> The Instrument of Government. [http://www.riksdagen.se/templates/R\\_PageExtended\\_6319.aspx](http://www.riksdagen.se/templates/R_PageExtended_6319.aspx)

<sup>675</sup> Freedom of the Press Act. [http://www.riksdagen.se/templates/R\\_Page\\_6313.aspx](http://www.riksdagen.se/templates/R_Page_6313.aspx)

ministry.<sup>676</sup> Importantly, internal documents such as drafts, memoranda and outlines are not considered official documents unless they are filed and registered or they contain new factual information that is taken into account in decision-making. There is no obligation to keep non-official documents.

Under the Act, there are discretionary exemptions to protect national security and foreign relations; fiscal policy, the inspection and supervisory functions of public authorities; prevention of crime; the public economic interest; the protection of privacy; and the preservation of plant or animal species.

All documents that are secret must be specified by law. A comprehensive list of the documents that are exempted is provided in the 1980 Secrecy Act which has over 160 sections.<sup>677</sup> Most of the restrictions require a finding that their release would cause harm to the protected interest. Information can be kept secret between 2 and 70 years. The Secrecy Ordinance sets additional regulations on some provisions of the Secrecy Act.<sup>678</sup> A government panel in 2003 found that the Act has been continually changed since 1980.<sup>679</sup> The government classified the list of dead and missing Swedes from the Tsunami in January 2005 because of fears that the houses of the missing would be robbed. The Supreme Administrative Court ruled in February 2005 that the withholding was illegal and the names were released.

Decisions by public authorities to deny access to official documents may be appealed internally. They can then be appealed to general administrative courts and ultimately to the Supreme Administrative Court. Complaints can also be made to the [Parliamentary Ombudsman](#).<sup>680</sup> The Ombudsman can investigate and issue non-binding decisions. The Ombudsman received 288 complaints relating to access to documents and freedom of the press between July 2004 and June 2005 and issued admonitions to government departments in 90 cases.<sup>681</sup>

The government announced a proposal in 2002 to merge the Secrecy Act and the Public Records Act into a single Management of Official Documents Act that would “set all the requirements to be met by public authorities throughout the process of handling official documents.”<sup>682</sup> The proposal was stopped because of concerns about its constitutionality. The government is now considering a proposal by a panel to write a new Secrecy Act.<sup>683</sup> The panel recommended making the Act more user-friendly by restructuring it, modernizing the language, and including definitions in the Act. They also recommended some form of external oversight, an improvement on the requirement to show harm in some cases, a public interest test, increasing the secrecy of information on the health or the sexual activities of an individual if it would cause harm, and improving the protection of sensitive personal information and the link between real and fictitious identities.

Even in a country with such a longstanding principle, there are still problems with access. The

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<sup>676</sup> Public Access to Information and Secrecy with Swedish Authorities. <http://www.regeringen.se/sb/d/574/a/36828>. Ministry of Justice, The right of access to official documents in Sweden. <http://www.regeringen.se/sb/d/574/a/27810>

<sup>677</sup> Secrets Act (1980:100). <http://www.notisum.se/rnp/sls/lag/19800100.htm> (in Swedish). See Public Access to Information and Secrecy with Swedish Authorities.

<sup>678</sup> Secrecy Ordinance (1980:657). <http://www.notisum.se/rnp/sls/lag/19800657.htm> (in Swedish)

<sup>679</sup> SOU 2003:99. <http://www.regeringen.se/sb/d/108/a/412>

<sup>680</sup> Homepage: <http://www.io.se/default.asp?SetLanguage=en>

<sup>681</sup> Annual Report 2003-2004.

<sup>682</sup> <http://justitie.regeringen.se/content/1/c4/04/40/56d08880.pdf>

<sup>683</sup> SOU 2003:99. <http://www.regeringen.se/sb/d/108/a/412>

regular changes to the Secrecy Act has raised concerns.<sup>684</sup> The plans for the building of Prime Minister Göran Persson's house were classified in April 2005. There are also problems with awareness of the Act. A researcher at the University of Gothenburg was fined \$4500 in July 2005 for refusing to follow a court order to release his records, instead shredding them. The Ombudsman said that the University did not do enough to get the records back.<sup>685</sup> The Deputy Ombudsman stated in the 2004-05 report that there was "often a lack of fundamental knowledge of these areas" particularly with local administrations. The government ran an "Open Sweden Campaign" in 2002 to improve public-sector transparency, raise the level of public knowledge and awareness of information disclosure policies, and encourage active citizen involvement and debate. It was coordinated by representatives from the national government, county councils, municipalities and trade unions. The government said:

[C]lear signals from the public, journalists and trade unions and professional organizations indicate that inadequacies exist in terms of knowledge about the public access to information principle, and with respect to its application. Examples of such inadequacies include delays in connection with the release of official documents, improper invocations of secrecy and cases where employees do not feel at liberty to exercise the freedom of expression and communication freedom guaranteed them by law. Many citizens have insufficient knowledge of these rights, making it difficult for those citizens to exercise them. The government believes that this type of openness is one of the cornerstones of a democratic society, and that it must continue to be so.

Sweden signed the Aarhus convention in June 1998 and ratified it in June 2005. Access to environmental information is under the Freedom of Press Act.

Individuals have a right to access and correct personal information held by public and private bodies under the [Personal Data Act](#).<sup>686</sup> It is enforced by the [Data Inspection Board](#).<sup>687</sup>

## SWITZERLAND

Article 16 on "Freedom of Opinion and Information" of the Constitution states:

- (1) The freedom of opinion and information is guaranteed.
- (2) Every person has the right to form, express, and disseminate opinions freely.
- (3) Every person has the right to receive information freely, to gather it from generally accessible sources, and to disseminate it.<sup>688</sup>

The [Federal Law on the Principle of Administrative Transparency](#) (Loi sur la Transparence, LTrans) was approved in December 2004. It is now scheduled to go into effect in July 2006.<sup>689</sup> The law gives any person the right to consult official documents and obtain information from authorities. The authorities must respond in twenty days.

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<sup>684</sup> Swedish Journalists' Congress Protest Against Lack of Transparency, IFJ Euronews, November 2002.

<sup>685</sup> Gothenburg University chiefs prosecuted by justice ombudsman, *The Local*, 19 January 2005.

<sup>686</sup> Personal Data Act (1998:204). [http://www.datainspektionen.se/in\\_english/personal\\_data.shtml](http://www.datainspektionen.se/in_english/personal_data.shtml)

<sup>687</sup> Homepage: [http://www.datainspektionen.se/in\\_english/start.shtml](http://www.datainspektionen.se/in_english/start.shtml)

<sup>688</sup> Federal Constitution of the Swiss Confederation, 18 April 1999. <http://www.admin.ch/ch/it/rs/1/c101ENG.pdf>

<sup>689</sup> Loi fédérale sur le principe de la transparence dans l'administration du 17 décembre 2004. <http://www.admin.ch/ch/f/ff/2004/6807.pdf>; Département fédéral de justice et police, Mise en œuvre de la loi sur la transparence: les dernières divergences sont écartées, 29 March 2006. <http://www.ejpd.admin.ch/ejpd/fr/home/dokumentation/mi/2006/2006-03-290.html>

The law applies to federal public bodies, other organizations and persons who make decisions under the Administrative Procedures Act and Parliamentary Services. The Suisse National Bank and the Federal Commission on Banks are exempted.

The law does not apply to official documents relating to civil and criminal procedures, international judicial assistance and administration, international relations, jurisdiction of public law, and arbitration, and for access to a dossier by a party in an administrative dispute. Access to documents that contain personal information is regulated by the Federal Data Protection Act. Other laws that declare certain information secret or open beyond the provision of the law are reserved.

There are exemptions if the release would inhibit the free development of opinion; cause harm to: internal or external security, international relations, relations between the federal government and the cantons, political, economic or monetary interests; or reveal professional secrets or break a pledge of confidentiality. The right of access is limited in official documents that affect the personal sphere of a third party when the interest in transparency is not judged to be much greater than the interest of the third party.

If the request for information is limited, changed or denied, or delayed beyond the deadlines, requesters can ask the [Federal Data Protection and Information Commissioner](#) to mediate. The Commissioner must issue a recommendation within thirty days. The Commissioner (formerly the Federal Data Protection Commissioner) also can conduct oversight of public bodies and comment on federal legal projects and measures of the national government that affect transparency.<sup>690</sup>

The [Federal Data Protection Act of 1992](#) gives individuals a right of access to obtain and correct their personal information held by federal public and private bodies.<sup>691</sup> It is enforced by the Federal Data Protection and Information Commissioner. Most of the 26 Cantons also have their own data protection law and data protection commission.

Under the [Federal Law on Archives](#), archives over thirty years old are public.<sup>692</sup> Personal information is protected for fifty years. The Conseil Federal can also intercede to delay the opening of files.

Many of cantons are also working on transparency laws. The Canton of Berne adopted its Law on Public Information in 1993 and Geneve in 2002. In Soleure, there is combination FOI and data protection act. There are also pending efforts in Jura, Neuchâtel and Sierre-Région.

Disclosure of state secrets is prohibited by the Penal Code and the Military Penal Code.<sup>693</sup> Newspaper SonntagsBlick is currently being investigated by the military for violations of the Military Penal Code for publishing in January 2006 an intercepted fax from the Egyptian Government to its London embassy about possible CIA prisons in Eastern Europe.

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<sup>690</sup> Homepage: <http://www.edsb.ch/e/aktuell/index.htm>

<sup>691</sup> Swiss Federal Act on Data Protection, 19 June 1992. <http://www.edsb.ch/e/gesetz/schweiz/act.htm>

<sup>692</sup> Loi fédérale sur l'archivage (LAR) du 26 juin 1998. [http://www.admin.ch/ch/f/rs/152\\_1/index.html](http://www.admin.ch/ch/f/rs/152_1/index.html)

<sup>693</sup> Code pénal militaire (CPM) du 13 juin 1927 (Etat le 1er juin 2004), § 106; Penal Code §293.

## TAJIKISTAN

The Constitution of the Republic of Tajikistan states:

Article 25: Governmental organs, social associations, and officials are obligated to provide each person with the possibility of receiving and becoming acquainted with documents that affect her or his rights and interests, except in cases anticipated by law.

Article 30: Each person is guaranteed the freedoms of speech and the press, as well as the right to use information media. Governmental censorship and prosecution for criticism are forbidden. A list of information considered secrets of the state is determined by law.<sup>694</sup>

The Law of the Republic of Tajikistan on Information was signed by President Rahmonov in May 2002. The law provides for a right of access to official documents by citizens to state bodies. Citizens, state bodies, organizations and associations can ask for access to information on the activities of legislative, executive and judicial authorities and their officials. The request must be in writing and bodies have thirty days to respond. The requestor must pay the costs for the searching, collection, preparation and providing of requests.

There are exemptions for official documents which contain information which is: secret as defined by the Law on State Secrets; confidential including information “of a professional business, industrial, banking, commercial and other nature” as determined by the owners of the information; on operational and investigations; relating to the personal life of citizens; intradepartmental correspondence prior to a decision being adopted; or protected by other Acts.

Denials must include the name of the official and the reasons for denial. Appeals are to a higher-level body in the Ministry or organization and to the courts. Courts have the right to access all of the official documents and can order the release of the information if it is withheld without cause. There are sanctions for unjustified denials, releasing incorrect information, untimely delays, deliberate hiding of information, and destroying information.

State bodies are to provide access to “open information” through publication in official bulletins, the mass media and providing direct access to citizens, state bodies and legal entities.

The law also includes some privacy provisions. The collection, storage and use of information about private life of citizens (which includes documents that they have signed) is prohibited unless it is allowed by law or with the consent of the person. Citizens also have the right to know why information is being collected, by whom and for what purpose and to access personal information held about themselves and demand that it is complete and accurate.

Media organizations report that there are continuing serious problems with access to information. A review by National Association of Independent Media of Tajikistan (NANSMIT) of media freedom from 1999 to 2004 found that denial of access by the media to official information was the most common form of denial of media rights.<sup>695</sup> NANSMIT said the reasons were a low professionalism and competence of officials, fear of officials in giving information, a lack of adequate sanctions in the legislation, the low professional level of

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<sup>694</sup> The Constitution of the Republic of Tajikistan. <http://unpan1.un.org/intradoc/groups/public/documents/untc/unpan003670.htm>

<sup>695</sup> NANSMIT, Report on Freedom of Speech in Tajikistan (1999-2004), November 2004. <http://www.asiaplus.tj/articles/41/58.html> (in Russian)

journalists who do not want to clash with officials, and mistrust of journalists by officials. A monitoring project in 2005 found many denials of basic information including the number of persons sick from typhoid fever, anthrax, brucellosis and flu, statistics of divorce cases, the number of suicides, funds spent for events on Day of the Youth, the total amount of drugs seized by the police, bathing deaths, and natural disasters.<sup>696</sup> The government itself admitted problems in a report to the UNECE stating that access to environmental information was limited, “due to the legal illiteracy of the public itself and the exploitation of the situation by officials.”<sup>697</sup>

The OECD’s Anti-Corruption Network for Transition Economies recommended in January 2004 that the Government:

Consider creating an independent office of an Information Commissioner to receive appeals under the Law on Access to Information, conduct investigations, and make reports and recommendations. Revise the Access to Information legislation, to limit discretion on the part of the public officials in charge, and to limit the scope of information that could be withheld.<sup>698</sup>

The Law on State Secrets was adopted in April 2003. It is largely unchanged from the 1996 version. The law defines state secrets as including “state protected information in the fields of defence, economics, external affairs, state security and protection of public order, the dissemination of which may bring damage to the security of the [Republic of Tajikistan].” This does not include information on natural disasters and other emergencies, environmental conditions and health, and unlawful actions of state bodies.<sup>699</sup> It is overseen by the Main Administration on State Secrets. The “Law on checklist of information referred to state secret” sets out the types of secret information. The law gives broad discretion to officials to classify information including related to the use of the death penalty.<sup>700</sup> The Law allows to appeal the unreasonable classification of information by public officials to a higher level at the agency concerned and then to a court.

The Organization for Security and Cooperation in Europe (OSCE) issued a declaration in September 2004 calling on Tajikistan and other Central Asian countries to amend their state secrets laws to only apply to “information whose disclosure would significantly threaten the national security or territorial integrity of a nation”, to publish the associated state secrets regulations, shorten time durations for classifying information and limit liability for journalists publishing state secrets in cases of public interest.<sup>701</sup>

Tajikistan acceded to the Aarhus Convention on Access to Information in June 2001. An Aarhus Center sponsored by the OSCE was opened in Dushanbe in 2003. The Environmental Protection Act gives citizens a right to obtain environmental information.<sup>702</sup> Access is through the Information Act.

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<sup>696</sup> NANSMIT, Monitoring 2005. [http://old.cafspeech.kz/tj/monitoring\\_en.htm](http://old.cafspeech.kz/tj/monitoring_en.htm)

<sup>697</sup> UNECE, Implementation Report - Tajikistan, 8 April 2005.

<sup>698</sup> Anti-Corruption Network for Transition Economies, Regional Anti-Corruption Action Plan for Armenia, Azerbaijan, Georgia, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine: Tajikistan - Summary of assessment and recommendations, 21 January 2004.

<sup>699</sup> See Niginna Zaripova, Tajikistan – Media Freedom Recommendations (OSI Policy Fellowship project), February 2000. <http://www.policy.hu/discus/messages/102/185.html>

<sup>700</sup> See Amnesty International, Deadly Secrets: The death penalty in law and practice, 2004.

<sup>701</sup> OSCE, Dushanbe Declaration on Libel and Freedom of Information, 24 September 2004. [http://www.osce.org/documents/rfm/2004/09/3645\\_en.pdf](http://www.osce.org/documents/rfm/2004/09/3645_en.pdf)

<sup>702</sup> See UNECE report, *Id.*

## THAILAND

The right to information has been recognized by the Constitution since 1991. Section 48 of the 1997 [Constitution](#) states:

A person shall have the right to get access to public information in possession of a State agency, State enterprise or local government organisation, unless the disclosure of such information shall affect the security of the State, public safety or interests of other persons which shall be protected as provided by law.<sup>703</sup>

The [Official Information Act](#) was approved in July 1997 and went into effect in December 1997.<sup>704</sup> The Act allows citizens to demand official information from any state body including central, provincial and local administrations, state enterprises, the courts for information unassociated with the trial and adjudication of cases, professional supervisory organizations, independent agencies of the State and other agencies as prescribed in the Ministerial Regulation. The Council of State has ruled that independent bodies such as the Anti-corruption Commission are not subject the Act.<sup>705</sup> The body must respond within a “reasonable time.”

Information that “may jeopardize the Royal Institution” cannot be disclosed. There are discretionary exemptions for information that would: jeopardize national security, international relations or national economic or financial security; cause the decline of the efficiency of law enforcement; disclose opinions and advice given internally; endanger the life or safety of any person; disclose medical or personal information which would unreasonably encroach upon the right of privacy; disclose information protected by law or given by a person in confidence; other cases prescribed by Royal Decree. Information relating to the Royal Institution is to be kept secret for 75 years. Other information should be disclosed after 20 years which may be extended in five years periods.

Those denied information can appeal to the Information Disclosure Tribunal whose decisions are deemed final except for appeals to the administrative court by citizens who believe that the decision of the tribunal was unjust. There are five tribunals set up for Foreign Affairs and National Security, National Economy and Finance, Social Affairs, Public Administration and Law Enforcement, Medicine and Public Health, and Science, Technology, Industry and Agriculture.<sup>706</sup>

The Official Information Board supervises and gives advice on implementation, recommends enactment of Royal Decrees, receives complaints on failure to publish information, and submits reports. The [Office of the Official Information Commission](#) (OIC), which is part of the Prime Minister’s Office, is the secretariat of both bodies.<sup>707</sup> The OIC reported that it handled 314 complaints and 164 appeals in 2005, from 214 complaints and 185 appeals received in 2004. Individuals and government officials have been the two largest categories of people appealing to

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<sup>703</sup> Constitution of the Kingdom of Thailand, B.E. 2540 (1997). [http://www.oefre.unibe.ch/law/icl/th00000\\_.html](http://www.oefre.unibe.ch/law/icl/th00000_.html)

<sup>704</sup> Official Information Act, B.E. 2540 (1997), <http://www.oic.thaigov.go.th/eng/statue/Statutedata.htm>

<sup>705</sup> See Article 19 and Forum-Asia, Freedom of Expression and the Media in Thailand, December 2005. <http://www.article19.org/pdfs/publications/thailand-baseline-study.pdf>

<sup>706</sup> Lists of decisions available at [http://www.oic.go.th/new2/ver4/oicnewweb2/content\\_eng/report.htm](http://www.oic.go.th/new2/ver4/oicnewweb2/content_eng/report.htm)

<sup>707</sup> Homepage: <http://www.oic.thaigov.go.th/eng/engmain.asp>

the OIC. The Ministry of Education and local governments are the most complained against. The government has sent mixed signals on giving the OIC more power, denying a request to upgrade it to a Department but placing it under the direct control of the Prime Minister.<sup>708</sup>

State agencies are required to publish information relating to their structure, powers, bylaws, regulations, orders, policies and interpretations. They are also required to keep indices of documents. Historical information is sent to the National Archives Division.

The law also sets rules on the collection, processing and dissemination of personal information by state agencies.

There were many requests in the first three years of the Act. In one well-known incident, a mother whose daughter was denied entry into an elite state school demanded the school's entrance exam results. When she was turned down, she appealed to the OIC and the courts. In the end, she obtained information showing that the children of influential people were accepted into the school even if they got low scores. As a result, the Council of State issued an order that all schools accept students solely on merit. Other information requests have resulted in the partial release of the government report on the May 1992 uprising and the release of investigation reports of the National Anti-Corruption Commission.

Since then, however, interest appears to be slipping, especially with the media, who appear to use the act very infrequently.<sup>709</sup> The Thai government proclaimed 2002 the Year of Access to Official Information. Prime Minister Thaksin Shinawatra in August 2003 called on citizens to use the Act to fight corruption noting "I believe 95 per cent of government information can be disclosed to the public. I myself have nothing to hide". Deputy Prime Minister Vishanu Krua-ngam said that the largest problem was the opposition of government departments: "Government agencies tried to buy time instead of answering right away whether the information could be disclosed or not." However, the government was strongly criticized for withholding information for several months relating to the bird flu epidemic in late 2003 and early 2004.

Problems with the act include time frames are not realistic and need to be extended; enforcing decisions of the Tribunals have been difficult due to overlapping laws; Several of the ex-officio members of the Commission frequently do not attend meetings; The OIC is part of the bureaucracy while the Board and Tribunal are independent.<sup>710</sup>

## **TRINIDAD AND TOBAGO**

The [Freedom of Information Act](#) was approved in 1999 and went into effect in February 2001.<sup>711</sup> Any person may request official documents in any form from public authorities, including public corporations and private bodies that are exercising state power. Response to information requests should be made within 30 days.

There are exemptions for Cabinet documents less than 10 years old, defense and security, international relations, internal working documents, law enforcement, privilege, personal privacy,

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<sup>708</sup> Article 19, *Id.*

<sup>709</sup> *Id.*

<sup>710</sup> See Mark Tamthai, Mechanisms to implement legislation on access to information, 2002.

<sup>711</sup> Freedom of Information Act, 1999. Act 26 of 1999. <http://www.foia.gov.tt>

trade secrets, confidence, and documents protected by another law. There is a public-interest test that allows documents to be released if there is “reasonable evidence” of a significant abuse or neglect of authority, injustice to an individual, danger to the health of an individual, or the unauthorized use of public funds.

The Act does not apply to the President and the judicial functions of the courts. The President may also issue a decree exempting agencies from coverage under the Act. In February 2003, the government issued a decree exempting the National Entrepreneurship Development Company Limited (NEDCO), the Export—Import Bank and other related bodies.<sup>712</sup> It proposed another exemption in December 2003 for the Central Bank following a request by the political opposition for information from the bank and a subsequent lawsuit following the denial of information. The exemption was narrowly approved by the Senate in June 2004. To date, nine organizations have been specifically exempted from the Act.<sup>713</sup>

Those denied can appeal to the [Ombudsman](#) who may issue a recommendation which is not binding on the agency concerned.<sup>714</sup> In 2004, the Ombudsman received 11 complaints of which one was successful and 9 were still outstanding,<sup>715</sup> and in 2005 she received 8 complaints under the Act (only 0.2% of the 1344 complaints received by the Ombudsman in 2005).<sup>716</sup> Appeals can also be made to the High Court for judicial review.<sup>717</sup>

The Act also requires public authorities to publish information relating to the structure and functions of the authority, rules, manuals and other documents on making decisions.

The Act was amended in 2003 to clarify that the minister in charge of the Act would be appointed by the government after the original ministry designated in the Act was abolished. The amendment also clarified which ministry can certify national security documents.<sup>718</sup>

The Act requires that annual reports are published by the Ministry which administers the Act. Thus far, only one report has been released, covering the initial implementation period to December 2003. The report states that there were 337 requests in the period of February 2002–February 2003, up from 66 in the previous year. The total number of requests to December 2003, the last period for which there has been reporting, was 489. During the period February 2001 to December 2003, 53 applications were refused, 11 went for judicial review and 21 resulted in a complaint to the Ombudsman.<sup>719</sup>

Implementation is overseen by the [FOI Unit](#) of the Ministry of Public Administration and Information.<sup>720</sup> The two main functions of the Unit are ensuring stakeholder understanding and participation; and monitoring and reporting.

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<sup>712</sup> Freedom of Information (Exemption) Order, 2003. Legal Notice Number 7. 31 January 2003.

<sup>713</sup> For a list, see <http://www.foia.gov.tt/about/exempt.asp>.

<sup>714</sup> Homepage: <http://www.ombudsman.gov.tt/>

<sup>715</sup> Ombudsman, Annual Report 2004. <http://www.ombudsman.gov.tt/documentlibrary/downloads/70/27AR.pdf>

<sup>716</sup> Ombudsman, Annual Report 2005. [http://www.ombudsman.gov.tt/applicationloader.asp?app=doc\\_lib\\_details&id=143](http://www.ombudsman.gov.tt/applicationloader.asp?app=doc_lib_details&id=143)

<sup>717</sup> Trinidad & Tobago Transparency Institute, Independent Assessment of the Trinidad and Tobago Government’s response to the Committee of Experts’ First Round Questionnaire on the Implementation of the Inter-American Convention Against Corruption, August 2004.

<sup>718</sup> The Freedom of Information (Amendment) Act, No. 14 of 2003. 7 April 2003.

<http://www.ttparliament.org/bills/house/2002/b2002h08.htm>

<sup>719</sup> FOI Unit, Freedom of Information Act: Report to Parliament 2001–2003, <http://www.foia.gov.tt/downloads/Annual%20Report%20FOIA%202001-2003.pdf>

<sup>720</sup> Homepage: <http://www.foia.gov.tt>

The Ministry of Public Administration & Information released a policy paper in December 2005 proposing a Data Protection Act.<sup>721</sup> It would create a Data Protection Commission to enforce it.

## **TURKEY**

There is no specific right of access to information in the 1982 Turkish Constitution.<sup>722</sup> Article 26 gives right of free expression including the right to receive information. Article 74 provides for a right of petition and Article 125 provides for judicial review and compensation of administrative decisions.

The [Law on Right to Information](#) was adopted unanimously by the Parliament in October 2003 and went into effect in April 2004.<sup>723</sup>

Citizens and legal persons have a right to information from public institutions and private organizations that qualify as public institutions. Non-citizens and foreign corporations based in Turkey also have a right to information related to them or their interests if the country they are from allows Turkish citizens to demand information from their authorities. Requests are to be made in writing or in electronic form if the identity of the applicant and their signature can be verified using a digital signature.

Government bodies are required to respond in 15 working days. They must provide either a certified copy of the document or when it is not possible to make a copy, requestors can examine them at the institution. Oral requests are to be treated “with hospitality and kindness” and immediately reviewed and resolved if possible.

There are exemptions for state secrets which would clearly cause harm to the security of the state or foreign affairs or national defense and national security; would harm the economic interests of the state or cause unfair competition or enrichment; the duties and activities of the civil and military intelligence units; administrative investigations; judicial investigations or prosecutions; violate the private life or economic or professional interests of an individual; privacy of communications; trade secrets; intellectual property; internal regulations; internal opinions, information notes and recommendations if determined by the institution to be exempt; and requests for recommendations and opinions. Information relating to administrative decisions that are not subject to judicial review or which affect the working life and professional honour of an individual are still subject to access. Other legal regulations which withhold information are overridden by the law.

There is no internal appeals mechanism. Appeals of withholdings are to the Board of Review of the Access to Information.<sup>724</sup> Its jurisdiction was originally limited to cases relating to national security and state economic interests but the law was amended in November 2005 to allow appeals in all cases. Prior to the amendment, the Board still heard cases relating to the other

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<sup>721</sup> Ministry of Public Administration & Information, “National Policy on Data Protection”, December 2005. [http://www.fastforward.it/media/release\\_detail.asp?id=3749](http://www.fastforward.it/media/release_detail.asp?id=3749)

<sup>722</sup> Constitution of the Republic of Turkey, <http://www.tbmm.gov.tr/english/constitution.htm>

<sup>723</sup> Law on Right to Information; Law No. 4982, <http://bilgiedinnehakki.org/pagesEN/4982.asp>. Implemented by Circular 2004/12 “The exercise of the right of petition and access to information”. Official Gazette No 25356, January 2004. <http://bilgiedinnehakki.org/doc/Prime%20Ministry%20Circular%20on%20Right%20to%20Information.pdf>

<sup>724</sup> Homepage: [http://www.turkiye.gov.tr/sourcedesign/TURK.asp?cont=&pid=&web\\_id=basbakanlik&sayfa\\_id=basbakanlik.bilgiedinmedgerlendi](http://www.turkiye.gov.tr/sourcedesign/TURK.asp?cont=&pid=&web_id=basbakanlik&sayfa_id=basbakanlik.bilgiedinmedgerlendi)

issues. It can set up commissions and working groups and invite government representatives and outside organizations to participate. Its secretariat is headed by the Prime Ministry. The Board received 1566 appeals through March 2006. It accepted 567 cases.

Appeals can then be made to the administrative court. There are a few pending cases mostly related to non-compliance with board decisions by public authorities but there have been no decisions.

Sanctions can be imposed under the criminal law and administratively against officials for negligently, recklessly or deliberately obstructing the application of the law.

Institutions must prepare reports on the application of the law and submit them to the Board of Review. The Board must produce an annual report to submit to the National Assembly which will be made public. As of June 2005, there had been 395,557 requests, 87 percent of which the information was given fully. It was only partially given in 13,300 cases and denied in full in 20,000 cases.

An initial review of implementation made in October 2004 by NGO BilgilenmeHakki.org found that the major ministries had made serious efforts to implement the law.<sup>725</sup> All had set up their FOI units and were taking requests through Internet portals. Over 75 percent of requests were being provided in full, some ministries such as Justice and Trade and Industry replying in the same day. However four ministries had not responded to requests.

A review by BilgilenmeHakki.org in 2004 and 2005 of municipalities and governorships found that few local authorities websites were following the rules while the governorships were somewhat better but still were failing a significant number of times.<sup>726</sup>

The government published drafts of bills on “State Secrecy” and “Trade Secrets” in February 2004. It is expected that the draft bill on “State Secrecy” will codify the existing practice of allowing officials to classify documents with little oversight or restrictions. The bills have not been adopted yet. The Criminal Code prohibits the unauthorized disclosure, obtaining, or publishing state secrets, including of another country.<sup>727</sup> Penalties include jail time up to ten years. Obtaining or publication of “banned documents” (non-public official documents) is also prohibited.<sup>728</sup>

A draft data protection bill was also produced by the Ministry of Justice during 2003. It has also not advanced.

## **UGANDA**

Article 41 Constitution states,

- (1) Every citizen has a right of access to information in the possession of the State or any

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<sup>725</sup> The implementation and application of the Right to Information Act by the Turkish Ministries, 28 September 2004. [http://bilgiedinnehakki.org/index\\_eng.asp](http://bilgiedinnehakki.org/index_eng.asp)

<sup>726</sup> Survey on Central and Local Administrations by Bilgiedinnehakki.Org- 2004 - 2005

<sup>727</sup> Criminal Code §§326-333.

<sup>728</sup> Criminal Code §§338-339.

other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person.

(2) Parliament shall make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access to that information.

The Supreme Court and lower courts ruled a number of times on legislation that limited this access, generally finding in favour of the requestor.<sup>729</sup>

[The Access to Information Act, 2005](#) was approved in April 2005, received Presidential assent in July 2005 and came into force in April 2006.<sup>730</sup>

The Act gives every citizen a right of access to information and records held by state bodies. The request must be in writing unless the person is illiterate or disabled in which case the request can be made orally. The information officer of the government body must respond in 21 days which can be extended for another 21 days in certain circumstances. Notably, the Act specifies that the Chief Executive Officer is ultimately responsible for ensuring that records are accessible under the Act. Requests that are not responded to on time are considered refusals.

The right of access does not apply to Cabinet Records and court records in pending cases. There are exemptions for medical records, Cabinet minutes (a procedure for release after 7, 14 or 21 years is included), protection of privacy, commercial information, confidential information, safety of persons and property, law enforcement and legal proceedings, privilege in legal proceedings, defense, security, and international relations, and very broadly for operations of public bodies if the record is under ten years old. There is a public interest test which allows disclosure in cases where the information would reveal a substantial contravention of failure to comply with the law, an imminent or serious public safety, public health or environmental risk.

Appeals for denials of information are to the Chief Magistrates. Following that, requestors can appeal to the High Court which can set aside decisions and order the release of records. The Rules Committee is supposed to make regulations regarding the procedure in relation to complaints to the courts within six months of the commencement of the Act.

Public bodies must compile a manual describing its structure, contact information, procedures for requests, description and list of categories of information held, and details on processes for participation. The manual must be updated every two years. The information officer (the Chief Executive Officer) must ensure the publication every two years of a list of information published or automatically available. Each minister must prove an annual report to Parliament on the operation of the law in respect of the Ministries under his/her control.

Any person who destroys, damages, conceals, or falsifies records can be fined or imprisoned for up to three years. There is also a whistleblower protection provision that prohibits legal, administrative or employment sanctions for the release of information on wrongdoing or serious threats to health, safety or environment done in good faith.

The law leaves in place the Official Secrets Act of 1964 which sets rules on the classification and

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<sup>729</sup> See Image Consult, *The State of the Right of Access to Information in Uganda*, March 2004.

<sup>730</sup> Access to Information Act, 2005. 12 July 2005. [http://www.freedominfo.org/documents/uganda\\_ati\\_act\\_2005.pdf](http://www.freedominfo.org/documents/uganda_ati_act_2005.pdf)

protection of secret information.

In the week leading up to the Act coming into operation, the Permanent Secretary in the Office of the President in charge of the Directorate of Ethics and Integrity advised that all government departments and agencies had been notified of their duties under the Act. The Head Public Service and Secretary to the Cabinet had directed all permanent secretaries to designate information officers in their ministries to be contact persons under the law.<sup>731</sup>

Under the National Records and Archives Act, 2001, records over thirty years old that are not classified as secret or restricted are to be publicly available. Classified records are to be reviewed and declassified. Records can be withheld for longer periods for reasons of national security, maintenance of public order, safeguarding the revenue or protecting privacy of living individuals.

## UKRAINE

The 1996 [Constitution](#) does not include a specific general right of access to information but contains a general right of freedom of collect and disseminate information and rights of access to personal and environmental information.<sup>732</sup> Article 34 states that “Everyone has the right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice.” Article 32 states that “Every citizen has the right to examine information about himself or herself, that is not a state secret or other secret protected by law, at the bodies of state power, bodies of local self-government, institutions and organisations.” Article 50 states that “Everyone is guaranteed the right of free access to information about the environmental situation, the quality of food and consumer goods, and also the right to disseminate such information. No one shall make such information secret.”

The 1992 [Law on Information](#) is a general information policy framework law that includes a citizen’s a right to access information.<sup>733</sup> It sets 5 principles:

- guaranteed right to information;
- transparency, accessibility, and freedom of information exchange;
- unbiased and authentic information;
- complete and accurate information;
- legitimacy of receipt, use, distribution and storage of information.

The law allows citizens and legal entities to request access to official documents. The request can be oral or written. The government body must respond in 10 calendar days and provide the information within a month unless provided by law.

Documents can be withheld if they contain state secrets, confidential information, information on law-enforcement authorities or investigations, personal information, interdepartmental correspondence for policy decisions prior to the final decision, information protected by another law, and information on fiscal institutions.

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<sup>731</sup> Charles Ariko, Access to Information Law Takes Effect This Week, The New Vision, 17 April 2006.

<sup>732</sup> Constitution of Ukraine, 1996. <http://www.elaw.org/assets/word/Ukraine%2D%2DConstitution%281996.06.28%29.doc>

<sup>733</sup> The Law on Information, N 2657-Xii, 2 October 1992, As amended by the Law N 1642-III of 6 April 2000 and N 3047-III of 7 February 2002. <http://www.archives.gov.ua/Eng/Law-base/Legislations1991-1994.php#03>

Denials can be appealed to a higher level at the agency concerned and then to a court.

Government bodies are required to set up information services, systems, networks, databases and data banks to facilitate information needs.

Citizens are also given rights to access their personal information and know what is being collected by whom and for what reasons. They can also demand its correction and limits on its use. Appeals of this are to a court.

A review of the law by the OSCE/Council of Europe described it as “confusing” and noted problems with the lack of a definition of official information and overly discretionary exemptions.<sup>734</sup> The OECD’s Anti-Corruption Network for Transition Economies recommended in January 2004 that the Government improve the functioning of the law:

In the area of access to information and open government, consider creating an independent office of an Information Commissioner to receive appeals under the “Law on Information”, conduct investigations, and make reports and recommendations. Consider adopting a Public Participation Law that provides citizens with an opportunity to use information to affect government decisions.<sup>735</sup>

While President Kuchma was in power, there were significant problems with access to information.<sup>736</sup> Many regulatory acts and decisions were regularly stamped as non-public. Since the Orange Revolution, there have been some recent improvements. In 2005, there were a number of minor amendments to the Law on Information, and the Civil Code was also amended in December 2005 to remove a provision which prohibited the collection of state secrets or confidential information.<sup>737</sup> Following a prolonged campaign by the Kharkiv Center, the government in 2006 released a list of decrees issued between 2001 and 2005 that had previously been stamped “Not to be Printed” or “Not to be Published”.<sup>738</sup> The Ministry of Justice admitted that the use of the stamps was illegal. The use of the stamps had significantly declined since the Orange Revolution. The group is recommending amendments to the Law on Information to better define what information can be restricted. President Yushenko has recently announced that a new law will be drafted but a number of NGOs recommended that the government focus on properly implementing the current one.

The 1994 [Law On State Secret](#) sets broad rules on the classification information relating to defense, foreign affairs, state security and other areas that disclosure would cause harm to the state.<sup>739</sup> It was expanded in 1999 to cover other non-military areas. It create three categories of protections “Specially Important”, “Top Secret” and “Secret”. Information can be classified for 30 years in the top category. The List of Information that belongs to State Secrets (LLISS) defines what can be classified. The LLISS was substantially revised and expanded in 2005 but

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<sup>734</sup> Helena Jäderblom, Commentary on the Ukrainian Law on Information, December 2001. [http://www.osce.org/documents/rfm/2001/12/2266\\_en.pdf](http://www.osce.org/documents/rfm/2001/12/2266_en.pdf)

<sup>735</sup> Anti-Corruption Network for Transition Economies, Regional Anti-Corruption Action Plan for Armenia, Azerbaijan, Georgia, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine: Ukraine - Summary of assessment and recommendations, 21 January 2004.

<sup>736</sup> See Kharkiv Group for Human Rights Protection, Freedom of Access to Governmental Information, 2001.

<sup>737</sup> Oksana Nesterenko, An Overview of Changes in Legislation regulating the activities of the Mass Media and freedom of information in Ukraine in 2005.

<sup>738</sup> Kharkiv Group, Secret Material Which the Regime Concealed Under Stamps “Not To Be Printed” and “Not To Be Published”, 22 April 2006. <http://www.khpg.org/index.php?id=1145710178>

<sup>739</sup> Law of Ukraine on State Secret. no. 3856-12 of 21 January 1994, Law No. 1079-XIV (1079-14) of 21 September 1999, BBP, 1999. Law No. 971-IV (971-15) of 19 June 2003. <http://www.archives.gov.ua/Eng/Law-base/Legislations1991-1994.php#05>

still retains many problematic sections.<sup>740</sup>

The [Law On National Archival Fund and Archival Bodies](#) allows for access to records once they are in the possession of the Archives.<sup>741</sup> Documents containing state secrets can be withheld until they are declassified by the public authority. Personal information can be withheld for 75 years.

The Law on Access to Court Decisions was approved in December 2005. It gives a right of access to court decisions and requires that courts create a register of all court decisions and make it freely available via the Internet.

Ukraine signed the Aarhus Convention in 1998 and ratified it in November 1999. Access is under the Law on Information.

## UNITED KINGDOM

The [Freedom of Information Act](#) was adopted in November 2000 and went fully into effect in January 2005.<sup>742</sup> The Act gives any person a right of access to information held by over 100,000 public bodies.<sup>743</sup> The bodies are required to respond within 20 working days. The time frame can be extended to allow for consideration of release on public-interest test grounds as long as it is within a time period that is deemed “reasonable in the circumstances.” There are no fees for requests which cost less than £600 for central government bodies or £450 for local authorities except for copying and postage.

The act contains 13 pages of exemptions in three categories. Under the absolute exemption category, court records and information that is about the personal life of individuals, relating to or from the security services, where disclosure would constitute a breach of confidence, or protected under another law cannot be disclosed. Under the “qualified class exemption” category, information can be withheld if it is determined to be within a broad class of exempted information including relating to government policy formulation, safeguarding national security, investigations, royal communications, legal privilege, public safety, or was received in confidence from a foreign government. A “public-interest test” applies and provides that information can be withheld only when the public interest in maintaining the exemption outweighs the public interest in disclosure. The third category is a more limited exemption where the government body must show prejudice (harm) to specified interests to withhold information. This includes information relating to defense, international relations, economy, crime prevention, commercial interests, or information that would prejudice the effective conduct of public affairs or inhibit the free and frank provision of advice. The public interest test also applies to information in this category.

Initial appeals for withholdings are made to the authority. Once that is completed, an external review to the Information Commissioner is available.

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<sup>740</sup> See Yevhen Zakharov and Iryna Rapp, What kind of information is deemed a state secret. <http://www.khpg.org/index.php?id=1141117178>

<sup>741</sup> Law On National Archival Fund and Archival Bodies of 24 December 1993 N 3814-XII in the redaction of the Law of 13 December 2001 No 2888-III. <http://www.archives.gov.ua/Eng/Law-base/Legislations2001-2003.php>

<sup>742</sup> Freedom of Information Act 2000. <http://www.cfoi.org.uk/foiact2000.html>. See Campaign for Freedom of Information, Briefings on FOI. <http://www.cfoi.org.uk/briefingpack.html>

<sup>743</sup> See list of covered bodies at <http://www.dca.gov.uk/foi/coverage.htm>

The [Information Commissioner](#) oversees and enforces the Act.<sup>744</sup> The Commissioner has the power to receive complaints and issue binding decisions. The Commissioner received a total of 2,385 complaints in 2005. He issued 135 decision notices. The Commissioner has also issued guidance for many of the exemptions and practices.

Appeals of the Commissioner's decisions are made to the [Information Tribunal](#). To date, the Tribunal has issued seven decisions, including several that were critical of the Commissioner and ordered the release of information.<sup>745</sup> Appeals of the Tribunal's decisions on points of law are made to the High Court of Justice. No cases have yet been brought.

When the Commissioner orders the release of information based on the public interest test, the decision can be overruled with a ministerial certificate. The Commission has said it will publish all decisions of its use. The government announced in December 2004 that this would be a collective cabinet decision. The certificate will be announced in Parliament and under the law is subject to judicial review.

Public authorities are also required to have publication schemes which provide information about their structures and activities and categories of information that will be automatically released. Most organizations adopted model schemes developed with the approval of the Commissioner.

The [Department of Constitutional Affairs](#) (formerly the Lord Chancellor's Department) is in charge of implementing and monitoring the Act for central government.<sup>746</sup> It is responsible for a statutory code of good practice authorities must follow, provides advice and guidance to public bodies, and submits an annual report on implementation to Parliament. In 2004, the DCA set up a controversial Access to Information Clearing House for coordinating and assisting central government departments' responses to sensitive and complex requests. This has raised concerns that officials are attempting to control the release of subjects that would embarrass the government. It has provided advice over 3,000 cases but refuses to release information on its activities, claiming that it would prejudice the effective activities of the Act.<sup>747</sup>

The FOIA allows the government to repeal provisions in other laws that restrict the release of information by Statutory Instrument. A 2005 review by the DCA identified 210 other pieces of legislation that limit the disclosure of information.<sup>748</sup> 27 cannot be eliminated because they are either obligations under international treaties (20 total) or were adopted after the FOIA law (7). The remaining ones are under review or have been repealed.

Implementation of the Act was extremely slow. The publication schemes were phased over several years starting in 2002 but the right to demand information from bodies did not go into force until January 2005, nearly five years after the adoption of the Act and the slowest of any country in the world. Rather than implementing the Act in phases, all national and local departments simultaneously provided access in a "big bang". Probably owing to the long wait in adopting the Act and its implementation, there was substantial interest in the law once it came into force. In central government, there was an initial burst of 13,000 requests in the first three

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<sup>744</sup> Homepage: <http://www.informationcommissioner.gov.uk/index.htm>

<sup>745</sup> Information Tribunal Decisions. [http://www.informationtribunal.gov.uk/our\\_decisions/our\\_decisions.htm](http://www.informationtribunal.gov.uk/our_decisions/our_decisions.htm)

<sup>746</sup> DCA FOI Page: <http://www.lcd.gov.uk/foi/foidpunit.htm>

<sup>747</sup> See written Evidence submitted by Professor Alasdair Roberts to Constitutional Affairs Committee, March 2006. Freedom to interfere? No minister, it's too sensitive, The Times, 3 October 2005.

<sup>748</sup> DCA, Report on the Review of Statutory Prohibitions on Disclosure, June 2005. <http://www.dca.gov.uk/StatutoryBarsReport2005.pdf>

months. In 2005, there were an estimated total of between 100,000 and 130,000 requests across all bodies, including 38,108 requests to central government bodies. The DCA estimates that there will be around 25,000 requests to central government bodies in 2006.

Initial reviews have generally been positive.<sup>749</sup> The biggest problems with the Act thus far has been delays on responses and decisions both by the authorities and the Information Commission.<sup>750</sup> There are no fixed time limits for the bodies to decide public interest balances or internal appeals and the Commission has so far declined to impose deadlines. Many users also report problems with the excessive use of exemptions by public bodies. There was also controversy over a significant increase in the number of files that were destroyed and a new policy on email retention that called for all email to be deleted after 90 days after printing out important messages just prior to the commencement of the Act.<sup>751</sup>

The Commission has been strongly criticized by national experts.<sup>752</sup> A serious backlog of unresolved cases is still awaiting resolution and many cases have been pending for over six months. There are also substantive issues. Few of decisions issued by the Commissioner thus far have dealt with substantive issues and many of the early decisions were lacking in detail and did not describe the reasons. The Tribunal has been critical of the Commission's decisions in several of its cases. The Commissioner was also forced to issue a decision in June 2006 criticizing his own office for failing to follow the requirements of the law.<sup>753</sup> Environmental NGO Friends of the Earth, which is a heavy user of the FOIA and the Environmental Regulations, described the Commission as "increasingly shambolic [...]Its failure in cases such as this makes it increasingly difficult for it to carry out its enforcement function with any credibility."<sup>754</sup>

Prior to the FOIA, a non-statutory "Code of Practice on Access to Government Information" first introduced in 1994 provided some access to government records held by central government departments. A code covering the National Health Service was adopted in 1995. Dissatisfied applicants could complain, via a Member of Parliament to the Parliamentary Ombudsman if their request was denied.<sup>755</sup> Both were superseded by the FOIA.

The Official Secrets Act, which still includes provisions originally adopted in 1911, criminalizes the unauthorized release of government information relating to national security.<sup>756</sup> It has been frequently used against government whistleblowers and the media for printing information relating to the security services. The House of Lords ruled in 2002 that there is no public interest defense in the act.<sup>757</sup> In the past year, a number of newspapers have been threatened for publishing information about the Prime Minister's meetings with US President Bush where a discussion of bombing newscaster Aljazeera was discussed. Two officials were arrested in that case. An employee of the Police Complaints Commission who revealed controversial shooting of a Brazilian immigrant on the Tube was also charged in 2005 under the OSA. The UN Human

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<sup>749</sup> Holsen, First pulse check on UK FOI community indicates good health. Open Government: a journal on Freedom of Information. Volume 1 Issue 3. December 2005.

<sup>750</sup> See Heather Brooke, *Your Right to Know*, 2<sup>nd</sup> Ed (Pluto, 2006).

<sup>751</sup> Shredded: Hundreds of thousands of government documents, *The Independent*, 23 December 2004. Purge of e-mails will deny the right to know, *The Times*, 18 December 2004.

<sup>752</sup> See Evidence submitted by Maurice Frankel, Campaign for Freedom of Information to Constitutional Affairs Committee, March 2006.

<sup>753</sup> BBC News, Information boss admits mistake, 7 June 2006.

<sup>754</sup> Friends of the Earth, Information Commissioner Admits He Failed to Comply with Freedom of Information Act, 7 June 2006.

<sup>755</sup> Code of Practice on Access to Government Information, 4 April 1994, revised in January 1997. <http://www.cfoi.org.uk/coptext.html>. See Parliamentary Ombudsman, Access to Official Information Monitoring of the Non-statutory Codes of Practice 1994-2005. May 2005.

<sup>756</sup> Official Secrets Act, 1911 (Section 1); OSA 1920; OSA 1939; OSA 1989 (c.6).

<sup>757</sup> Regina v Shayler. [2002] UKHL 11. 21 March 2002. <http://www.parliament.the-stationery-office.co.uk/pa/ld200102/ldjudgmt/jd020321/shayle-1.htm>

Rights Committee expressed concern over the broadness of the Act in 2001, stating:

The Committee is concerned that powers under the Official Secrets Act 1989 have been exercised to frustrate former employees of the Crown from bringing into the public domain issues of genuine public concern, and to prevent journalists from publishing such matters. The State Party should ensure that its powers to protect information genuinely related to matters of national security are narrowly utilised, and limited to instances where it has been shown to be necessary to suppress release of the information.<sup>758</sup>

Previously, under the [Public Records Act](#), files that were 30 years old were released by the National Archives.<sup>759</sup> This rule has now been amended by the FOIA which designates files to be “historical records” after 30 years and disallows most exemptions at that time. Access to newer files is governed by the FOIA.

The UK signed the Aarhus Convention in June 1998 and ratified it in February 2005. [The Environmental Information Regulations 2004](#) replace the Environmental Information Regulations 1992 and implement the EU Directive 2004/4/EC on public access to environmental information and Aarhus Convention.<sup>760</sup> The new regulations provide greater access to information than the FOIA. The Information Commission is the external appeals body. Appeals of the Commission’s decisions are also to the Information Tribunal, which has made one decision so far ordering the reduction of fees that can be imposed for requests under the regulations.

Regulations to implement the requirements of the EU Directive on the re-use and commercial exploitation of public sector information (2003/98/EC) were adopted in June 2005 and went into effect on 1 July 2005.<sup>761</sup>

Individuals can access and correct files that contain personal information about themselves under the [Data Protection Act 1998](#). Appeals can be made to the Information Commission or the courts. The Lord Chancellor’s Department (now the DCA) held a consultation in 2003 on expanding the exemptions in the Act after several prominent figures obtained records under the Act which were embarrassing to the government.<sup>762</sup> The right of access to non-electronic records was broadened by the FOIA.

[The Freedom of Information \(Scotland\) Act](#) was approved by the Scottish Parliament in May 2002 and went into effect in January 2005.<sup>763</sup> It has a stronger prejudice test for restricting information and the ability of Ministers to veto the Commissioner’s decisions is more limited. It is enforced by a separate [Information Commissioner](#).<sup>764</sup> Appeals from the Commissioner’s

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<sup>758</sup> Concluding Observations of the Human Rights Committee : United Kingdom of Great Britain and Northern Ireland. 05/11/2001. CCPR/CO/73/UK,CCPR/CO/73/UKOT.

<sup>759</sup> Public Records Act, 1958. <http://www.pro.gov.uk/about/act/act.htm>

<sup>760</sup> The Environmental Information Regulations 2004, Statutory Instrument 2004 No. 3391. <http://www.legislation.hmso.gov.uk/si/si2004/20043391.htm>

<sup>761</sup> Statutory Instrument 2005 No. 1515. The Re-use of Public Sector Information Regulations 2005. <http://www.opsi.gov.uk/si/si2005/20051515.htm>.

<sup>762</sup> A Lord Chancellor’s Department Consultation Paper Data Protection Act 1998: Subject Access, October 2002. <http://www.lcd.gov.uk/consult/foi/dpsacons.htm>. See Ashcroft memos may spur data law repeal, The Guardian, 5 February 2002; MP challenges secrecy culture, The Guardian, 27 June 2001.

<sup>763</sup> Freedom of Information (Scotland) Act 2002. <http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts2002/20020013.htm>. See the Campaign for Freedom of Information in Scotland site for more information <http://www.cfoi.org.uk/scotland.html>

<sup>764</sup> Homepage: <http://www.itpublicknowledge.info/>

decisions are to the Court of Session. There are also separate Environmental Information (Scotland) Regulations 2004 on access to environmental information.<sup>765</sup>

The Local Government (Access to Information) Act provides a right of access to meetings of local authorities and disclosure of “background papers” about the policies and practices of local bodies.<sup>766</sup> An order amending the Act to bring the exemptions in line with FOIA was approved in January 2006 and went into effect in March 2006.

## UNITED STATES

There is a long history of access to public records in the United States. Some states have provided access to records for over a century. Court records and legislative materials have been long open. The Federal Register began publishing in 1936. In 1946, Congress enacted the Administrative Procedures Act. Section 3 of the APA required that government bodies publish information about their structures, powers and procedures and make available “all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.” However, the APA allowed withholding of information relating to “any function [...] requiring secrecy in the public interest” and for internal management. It also authorized the disclosure of information to persons “properly and directly concerned except information held confidential for good cause found.”<sup>767</sup> Little information was released under this provision and beginning in the 1950s, media groups and Congress began advocating for a more comprehensive law.

Following a long period of hearings and unsuccessful bills, the [Freedom of Information Act](#) (FOIA) was enacted in 1966 and went into effect in 1967.<sup>768</sup> It has been substantially amended several times, most recently in 1996 by the [Electronic Freedom of Information Act](#).<sup>769</sup> The law allows any person or organization, regardless of citizenship or country of origin, to ask for records held by federal government agencies. Agencies include executive and military departments, government corporations and other entities which perform government functions except for Congress, the courts or the President’s immediate staff at the White House, including the National Security Council. Government agencies must respond in 20 working days.

There are nine categories of discretionary exemptions: national security, internal agency rules, information protected by other statutes, business information, inter and intra-agency memos, personal privacy, law enforcement records, financial institutions and oil wells data.<sup>770</sup> There are around 140 different statutes that allow for withholding.

Appeals of denials or complaints about extensive delays can be made internally to the agency concerned. The federal courts can review de novo (without respect to agency decision) and overturn agency decisions. The courts have heard thousands of cases in the 40 years of the

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<sup>765</sup> Environmental Information (Scotland) Regulations. Scottish Statutory Instrument 2004 No. 520. <http://www.hms.gov.uk/legislation/scotland/ssi2004/20040520.htm>

<sup>766</sup> Local Government (Access to Information) Act 1985. See CFOI, Access to Local Government Information. <http://www.cfoi.org.uk/localgov.html>.

<sup>767</sup> See Attorney General’s Manual on the Administrative Procedure Act, 1947. <http://www.law.fsu.edu/library/admin/1947cover.html>

<sup>768</sup> Freedom of Information Act, 5 USC 552, 1966. [http://www.epic.org/open\\_gov/foia/us\\_foia\\_act.html](http://www.epic.org/open_gov/foia/us_foia_act.html)

<sup>769</sup> Electronic Freedom of Information Act Amendments of 1996. [http://www.epic.org/open\\_gov/efoia.html](http://www.epic.org/open_gov/efoia.html)

<sup>770</sup> For a detailed review of the FOI and other open government laws, see Hammit, *Litigation under the Federal Open Government Laws 2002* (EPIC 2002).

Act.<sup>771</sup>

Management for FOIA is mostly decentralized. The US Justice Department (DOJ) provides some guidance and training for agencies and represents the agencies in most court cases.<sup>772</sup>

The FOIA also requires that government agencies publish material relating to their structure and functions, rules, decisions, procedures, policies, and manuals. The 1996 E-FOIA amendments required that agencies create “electronic reading rooms” and make available electronically the information that must be published along with common documents requested. The DOJ has issued guidance that documents that have been requested three times be made available electronically in the Reading Room.

In 2004, there were over 4 million requests made to federal agencies under the FOIA and the Privacy Act, up from 3.2 million in 2003.<sup>773</sup> However, a significant number of these requests were to bodies such as the Department of Veterans Affairs and the Social Security Administration by individuals seeking to obtain their own records and should have been treated as Privacy Act requests. Law enforcement and personal privacy are typically the most cited exemptions for withholding information.

The FOIA has been hampered by a lack of central oversight and long delays in processing requests. In some instances, information is released only after years or decades. The General Accounting Agency found in 2002 that “backlogs of pending requests government wide are substantial and growing, indicating that agencies are falling behind in processing requests.”<sup>774</sup> A review by Associated Press in 2006 found that nearly all executive departments had increasing delays ranging from three months to over four years, national security-related agencies were releasing less information and 30 percent of departments had not submitted their annual reports on time.<sup>775</sup> The National Security Archive found that the oldest request on record was 17 years old.<sup>776</sup> Some agencies had improved their backlogs since a 2003 review by the Archive but many of the oldest requests pointed out in the review had still not been resolved. The review also found that there was an increase in withholding from 2003 to 2005, many agencies did not have adequate tracking systems, and many lost requests.

The Bush Administration has engaged in a general policy of restricting access to information.<sup>777</sup> In October 2001, Attorney General John Ashcroft issued a memo stating that the Justice Department would defend in court any federal agency that withheld information on justifiable grounds.<sup>778</sup> Previously, the standard was that the presumption was for disclosure. However, surveys done by the National Security Archive and General Accounting Office found that for the most part the memo had not caused substantial changes in releases.<sup>779</sup> The Administration has also refused to release information about the secret meetings of the energy policy task force;

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<sup>771</sup> See Hammit et al, *Litigation Under the Freedom of Information Act (EPIC 2004)* for an excellent review of the case law.

<sup>772</sup> See U.S. Department of Justice Office of Information and Privacy. <http://www.usdoj.gov/oip/oip.html>

<sup>773</sup> U.S. Department of Justice, Annual FOIA Reports. [http://www.usdoj.gov/04foia/04\\_6.html](http://www.usdoj.gov/04foia/04_6.html)

<sup>774</sup> General Accounting Office, Update on Implementation of the 1996 Electronic Freedom of Information Act Amendments, GAO-02-4/93, August 2002. <http://www.gao.gov/new.items/d02493.pdf>

<sup>775</sup> AP, Agencies missing FOIA deadlines, 12 March 2006.

<sup>776</sup> National Security Archive, A FOIA Request Celebrates its 17<sup>th</sup> Birthday: A Report on Federal Agency Backlog, March 2006.

<sup>777</sup> See e.g. Government Reform Committee Minority Office. *Secrecy in the Bush Administration*, 14 September 2004. [http://democrats.reform.house.gov/features/secrecy\\_report/index.asp](http://democrats.reform.house.gov/features/secrecy_report/index.asp);

<sup>778</sup> DOJ FOIA Post, New Attorney General FOIA Memorandum Issued. <http://www.usdoj.gov/oip/foiapost/2001foiapost19.htm>

<sup>779</sup> See National Security Archive, *The Ashcroft Memo*, *ibid.*; General Accounting Office, *Freedom of Information Act: Agency Views on Changes Resulting from New Administration Policy*. GAO-03-981, 3 September 2003. <http://www.gao.gov/cgi-bin/getrpt?GAO-03-981>

ordered federal Websites to remove much of the information that they had that could be sensitive<sup>780</sup>; issued a controversial memo limiting access to records under the Presidential Records Act in November 2001 which allows former Presidents and Vice-Presidents to prevent access to records<sup>781</sup>; and refused to disclose information on the Patriot Act and the names of those arrested after September 11. Many of these decisions have been successfully challenged in court.

Several bipartisan bills have been introduced in Congress to improve the workings of the FOIA. Some improvements include the creation of an ombudsman and the introduction of a public interest test. In December 2005, President Bush issued a new executive order on [“Improving Agency Disclosure of Information”](#).<sup>782</sup> The order proposes making some minor changes to the practices of agencies, including appointing a Chief FOIA Officer who will do an agency review and develop a plan for improving access. The Executive Order has been seen by many observers as an effort to head off the adoption of legislation.

The [Government in the Sunshine Act](#) requires the government to open the deliberations of multi-agency bodies such as the Federal Communications Commission.<sup>783</sup>

The [Federal Advisory Committee Act](#) requires the openness of committees that advise federal agencies or the President.<sup>784</sup> The Supreme Court ruled in June 2004 that Vice-President Cheney was not required to turn over documents relating to a secretive energy task force that he organized.<sup>785</sup>

The [Privacy Act of 1974](#) works in conjunction with the FOIA to allow individuals to access their personal records held by federal agencies.<sup>786</sup>

There is no Official Secrets Act in the US. A proposal to create a criminal violation for the unauthorized release of classified information was vetoed by President Clinton in 2000 who stated “There is a serious risk that this legislation would tend to have a chilling effect on those who engage in legitimate activities...”<sup>787</sup> Currently, two former employees of the American Israel Public Affairs Committee (AIPAC) are being prosecuted under the 1917 Espionage Act for receiving classified information which has generated considerable controversy and interest.<sup>788</sup> A Defense Department employee who provided the information pled guilty and was sentenced to 12 years in prison.

The [Executive Order on Classified National Security Information](#) sets standards for the classification and declassification of information.<sup>789</sup> The Order was issued by President Clinton in 1995 and amended by President Bush in 2003 to somewhat restrict release. It sets three categories of classification: Top Secret, Secret and Confidential. The Order also requires that all

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<sup>780</sup> See OMB Watch, Access to Government Information Post September 11<sup>th</sup>. <http://www.ombwatch.org/article/archive/104/>

<sup>781</sup> Executive Order 13233 of 1 November 2001. <http://www.fas.org/irp/offdocs/eo/eo-13233.htm>

<sup>782</sup> Executive Order 13,392, Executive Order: Improving Agency Disclosure of Information, 14 December 2005. <http://www.whitehouse.gov/news/releases/2005/12/print/20051214-4.html>

<sup>783</sup> Government in the Sunshine Act, 5 U.S.C. 552b. <http://www.epic.org/foia/21/appendixc.html>

<sup>784</sup> Federal Advisory Committee Act, 1972, 5 U.S.C. App II. <http://www.epic.org/foia/21/appendixd.html>

<sup>785</sup> Cheney v. US District Court. No. 03-475. 24 June 2004. <http://supct.law.cornell.edu/supct/html/03-475.ZS.html>

<sup>786</sup> Privacy Act of 1974, 5 U.S.C. 552a.

<sup>787</sup> See Statement by the President to the House of Representatives. 4 November 2000. <http://www.fas.org/spp/news/2000/11/wh110400.html>

<sup>788</sup> See FAS Secrecy News, Volume 2006, Issue No. 56, 10 May 2006.

<sup>789</sup> Executive Order 12958, as amended by Executive Order 13292, 68 Federal Register 15315 (28 March 2003). <http://www.archives.gov/isoo/policy-documents/eo-12958-amendment.html>

information 25 years and older that has permanent historical value must be automatically declassified within five years (since extended until December 2006) unless it is exempted.<sup>790</sup> Individuals can make requests for mandatory declassification instead of using the FOIA. Decisions to retain classification are subject to the Interagency Security Classification Appeals Panel. There has been a substantial expansion of classification in the past several years. In 2004, there were 15.6 million decisions for classification, up 10 percent from 14.2 million in 2003 and nearly double the 8.5 million in 2001. The duration of secrets has also been increasing. 34 percent of documents were classified for 10 years or less, down from 57 percent in 2002. Since 1995-2003, over a billion pages have been declassified.<sup>791</sup> In the past several years, declassification has substantially decreased with only 28.4 million pages released in 2004 (down 34 percent from 2003). The [Information Security Oversight Office](#), a division of the National Archives, has policy oversight of the Government-wide security classification system.<sup>792</sup> A review in 2004 by ISOO found that 51 percent of the classified document examined were erroneously classified.<sup>793</sup>

Over 55,000 pages were reclassified at the National Archives under a secret agreement with the CIA, US Army and other agencies. An ISOO audit of those files found that over one third were not eligible for classification.<sup>794</sup> It also found a “significant number of instances when records that were clearly inappropriate for continued classification were withdrawn from public access”. Many were documents that had never been classified in the first place.

There has been a large expansion in the creation of “sensitive but unclassified” categories of information. There are over 50 different categories used by agencies, largely unregulated. These are often used to justify withholding information even though they are not largely recognized in the FOIA as legitimate exemptions. A review by the National Security Archive found that the protections are “vague, open-ended, or broadly applicable”.<sup>795</sup> Only 22 percent of the categories it examined had been authorized by law. It found broad inconsistency among agencies on how to apply them in the context of FOIA. Nearly 30 percent allow any employees to designate something as sensitive while 43 percent do not set standards on how to remove the classification.

There have also been specialist bodies created to review large numbers of classified documents on certain topics. The John F. Kennedy Assassination Records Collection Act of 1992 ordered the creation of a special board to review and release information related to the assassination of President Kennedy.<sup>796</sup> Over four million pages were released, including thousands of previously classified records under the Act.<sup>797</sup> The Nazi War Crimes Disclosure Act created a review board to review and release all classified information on Nazi war criminals and was amended to extend its remit to include classified information on the Japanese Imperial Government.<sup>798</sup> Over eight million pages have been released under the Act. In February 2005, the CIA agreed to release its

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<sup>790</sup> Executive Order 12958-Classified National Security Information, as Amended.

[http://www.archives.gov/about\\_us/basic\\_laws\\_and\\_authorities/appendix\\_12958.html](http://www.archives.gov/about_us/basic_laws_and_authorities/appendix_12958.html)

<sup>791</sup> Information Security Oversight Office 2001 Report to the President, September 2002.

<sup>792</sup> Homepage: <http://www.archives.gov/isoo/>

<sup>793</sup> ISOO Annual Report 2004

<sup>794</sup> ISOO, Audit of the Withdrawal of Records from Public Access at the National Archives and Records Administration for Classification Purposes, April 2006. <http://www.archives.gov/isoo/reports/2006-audit-report.html>

<sup>795</sup> National Security Archive, Pseudo-Secrets: A Freedom of Information Audit of the U.S. Government's Policies on Sensitive Unclassified Information, March 2006. <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB183/SBU%20Report%20final.pdf>

<sup>796</sup> President John F. Kennedy Assassination Records Collection Act of 1992.

<sup>797</sup> Final Report of the Kennedy Assassination Records Review Board, 1998.

<sup>798</sup> Nazi War Crimes Disclosure Act. Public Law 105-246; Japanese Imperial Government Disclosure Act of 2000, 6 December 2000

records on Nazi war criminals following Congressional pressure.<sup>799</sup>

Under the 1986 [Emergency Planning and Community Right-to-Know Act](#) (EPCRA), companies must inform the federal government of toxic chemicals that they release into the environment.<sup>800</sup> The Environmental Protection Agency annually releases the information in an online database.<sup>801</sup> This has resulted in a substantial reduction in the amount of chemicals released into the environment. The EPA has proposed reducing the amount of information available by making the reporting bi-annual and increasing the threshold for chemicals that need to be reported.<sup>802</sup> Over 70,000 comments against the proposal have been submitted.<sup>803</sup>

There are also laws in all fifty states on providing access to government records, some dating back to the 19<sup>th</sup> century.<sup>804</sup> A number of states have information commissions or other review bodies which can issue opinions or review decisions. State laws on freedom of information have also been under threat since September 11 due to terrorism concerns.

## UZBEKISTAN

Article 30 of the 1992 [Constitution](#) states:

All state bodies, public associations, and officials of the Republic of Uzbekistan shall allow any citizen access to documents, resolutions, and other materials, relating to their rights and interests.<sup>805</sup>

The [Law on the Principles and Guarantees of Freedom of Information](#) was adopted in December 2002 and went into effect in February 2003.<sup>806</sup> It replaced the 1997 Law on Guarantees and Freedom of Access to Information.<sup>807</sup> The law sets a general principle for freedom of information of “openness, publicity, accessibility and authenticity.” It also states that “Information must be open and public except for confidentiality.”

Under the law, every person has a right to demand information. The right to information cannot be limited based on sex, race, ethnic origin, language, religion, ascription, and personal beliefs as well as personal and social rank. State bodies are given 30 days to respond to written requests. Oral requests must be responded to as soon as possible.

However, the statute sets broad areas where information can be restricted. Confidential information is defined as that for which disclosure can cause damage to the rights and legitimate interests of the individual, community and state. It can also be limited by law to protect the

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<sup>799</sup> C.I.A. Defers to Congress, Agreeing to Disclose Nazi Records, *The New York Times*, 7 February 2005.

<sup>800</sup> Overview and laws at <http://yosemite.epa.gov/oswer/ceppoweb.nsf/content/epcraOverview.htm>

<sup>801</sup> See <http://www.rtknet.org/>

<sup>802</sup> See OMB Watch, EPA Proposes Rollback on Toxic Pollution Reporting. <http://www.ombwatch.org/article/articleview/3117/1/241?TopicID=1>

<sup>803</sup> See OMB Watch, EPA Gets an Earful on Plan to Reduce Toxic Reporting. <http://www.ombwatch.org/article/articleview/3250/1/97?TopicID=1>

<sup>804</sup> See Reporters Committee for Freedom of the Press. <http://www.reporters.net/nfoic/web/index.htm>

<sup>805</sup> Constitution of the Republic of Uzbekistan, 1992. <http://www.uta.edu/cpsees/UZBEKCON.htm>

<sup>806</sup> The Law on the Principles and Guarantees of Freedom of Information, 12 December 2002. <http://pi.gn.apc.org/countries/uzbekistan/foi-draft-02.doc>

<sup>807</sup> The Law on Guarantees and Freedom of Access to Information [http://www.iinet.org/img/assets/1033/Uzbekistan\\_Access\\_to\\_Information\\_Law.doc](http://www.iinet.org/img/assets/1033/Uzbekistan_Access_to_Information_Law.doc)

“fundamental rights and liberties of individuals, fundamentals of constitutional regime, moral values of the community,” national security, and “the nation’s spiritual, cultural and scientific potential.”

Information relating to rights of citizens, legal status of government bodies, the environment, emergency situations, or which is available in libraries, archives and information systems cannot be made confidential.

Refusals of information can be appealed to the courts. The requester can receive compensation if information is unlawfully withheld or inaccurate information is given.

The law in practice does not seem to be effective at providing rights to information, which is not surprising given the totalitarian methods used by the government to suppress human rights, especially following the 2005 Andijan massacre. Human Rights Watch reports that the government refused to provide any information on the trials of those accused in Andijan including their names and charges.<sup>808</sup>

The 1993 Law on the Protection of State Secrets sets broad rules for the classification of information. The Uzbekistan law adopts categories on state, military and official secrets but does not distinguish time limits or levels of sensitivity. Only information which threatens the “personal security” of individuals cannot be classified. The regulation and list of information that is classified are themselves classified. This lack of a published list of state secrets allows officials to create new categories without limit and is used to threaten media outlets from publishing without permission of government officials. Amnesty International reports that information on the use of the death penalty is considered a state secret while the International Helsinki Committee reports that the level of unemployment is also classified.<sup>809</sup> There are also provisions in the Criminal Code for the unauthorized release of classified information.

The UN Human Rights Committee reviewed the law as part of their analysis of human rights in 2001:

The Committee is particularly concerned about the definition of "State secrets and other secrets" as defined in the Law on the Protection of State Secrets. It observes that the definition includes issues relating, inter alia, to science, banking and the commercial sector and is concerned that these restrictions on the freedom to receive and impart information are too wide to be consistent with article 19 of the Covenant.

The State party should amend the Law on the Protection of State Secrets to define and considerably reduce the types of issues that are defined as "State secrets and other secrets", thereby, bringing this law into compliance with article 19 of the Covenant.<sup>810</sup>

The Organization for Security and Cooperation in Europe (OSCE) issued a declaration in September 2004 calling on Central Asian countries to amend their state secrets laws to only apply to “information whose disclosure would significantly threaten the national security or territorial integrity of a nation”, to publish the associated state secrets regulations, shorten time durations for classifying information and limit liability for journalists publishing state secrets in

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<sup>808</sup> Human Rights Watch, Uzbekistan: Access to Andijan Trials Blocked, 30 November 2005.

<sup>809</sup> Amnesty International, Uzbekistan : Unfair trials and secret executions, 18 November 2003. <http://web.amnesty.org/>

<sup>810</sup> Concluding observations of the Human Rights Committee: Uzbekistan. 26 April 2001. CCPR/CO/71/UZB.

cases of public interest”.<sup>811</sup>

Uzbekistan is the only country in the region which has not signed the Aarhus Convention.

## **ZIMBABWE**

The situation in Zimbabwe offers an example of when a FOI law can be a negative force in society. The [Access to Information and Privacy Protection Act](#) (AIPPA) was signed by President Mugabe in February 2002.<sup>812</sup> While the title refers to FOI and privacy and does provide for those rights in the text, the rights appear to be dormant. The main provisions of the law give the government extensive powers to control the media and suppress free speech by requiring the registration of journalists and prohibiting the “abuse of free expression.” These powers have been widely abused.

On paper, AIPPA sets out rights and procedures for access that are similar to other FOI laws around the world. The Zimbabwe Government told the African Commission on Human Rights that the procedures were “moulded along the lines of Canada's laws on the same subject.”<sup>813</sup> There has only been one reported instance of the access to information provision being used by the opposition party.<sup>814</sup>

The right of access may be exercised by any citizen or resident (but not an unregistered media agency or foreign government) to records held by a public body. Under the rules, the body must respond to a request in thirty days. There are exemptions for Cabinet documents and deliberations of local government bodies, advice given to public bodies, client-attorney privilege, law-enforcement proceedings, national security, intergovernmental relations, public safety, commercial information, and privacy. There is an unusual public-interest disclosure provision that allows the government to release information even if there is no request for a variety of reasons, including matters that threaten public order; the prevention, detection or suppression of crime; and national security. The law also includes provisions on access and use of personal information.

The Act created a Media and Information Commission which has mostly been functioning to restrict freedom of expression. Individuals can ask the Commission to review the decisions or actions of an agency. The Commission can conduct inquiries into the Act and order release of documents. Appeals can be made to an administrative court.

The controversial law was opposed by many governments, NGOs, media organizations and the UN Special Rapporteur on Freedom of Opinion and Expression because of the extreme restrictions it places on freedom of expression. Nearly all independent papers have been shut down and many journalists have also been arrested and jailed under the Act. It was amended again in January 2005 to allow for the imprisonment for two years of journalists who had not

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<sup>811</sup> OSCE, Dushanbe Declaration on Libel and Freedom of Information, 24 September 2004.  
[http://www.osce.org/documents/rfm/2004/09/3645\\_en.pdf](http://www.osce.org/documents/rfm/2004/09/3645_en.pdf)

<sup>812</sup> Access to Information and Protection of Privacy Act (AIPPA), 15 March 2002 (General Notice 116/2002). Amended in June 2003 by the Access to Information and protection of Privacy Amendment Act, 2003, No. 5 of 2003  
<http://www.kubatana.net/html/archive/legisl/030611aippaamd.asp?sector=LEGISL>

<sup>813</sup> Seventeenth Annual Activity Report of the African Commission on Human and Peoples' Rights 2003 – 2004, Comments by the Government of Zimbabwe on the Report of the Fact Finding Mission.

<sup>814</sup> MDC Demands Forex Receipts From RBZ, Financial Gazette (Harare), 13 June 2002.

registered with the Commission.

The Media Institute of Southern Africa (MISA) has reported that the passage of the Criminal (Codification and Reform) Act in June 2005 further narrowed the space within which journalists could operate. Under the law, Zimbabwean journalists now risk spending 20 years in jail for reporting on certain stories, as the new Act introduced harsher penalties than those provided for under the Public Order and Security Act (POSA) and the Access Act.

In December 2005, the African Commission on Human and Peoples' Rights (ACHPR) issued a damning report on the suppression of fundamental rights through misuse of the Act, as well as the Public Order and Security Act and the Broadcasting Services Act (BSA). The ACHPR based many of its findings on a report provided by the Media Institute of Southern Africa (MISA), which argued that the Act “is a repressive piece of legislation enacted primarily to undermine the right to freedom of expression and stifle the exchange of ideas and information”.<sup>815</sup> Subsequently, the Zimbabwean Attorney General advised that the Minister for Information would be reviewing the Act to remove offending sections.<sup>816</sup>

The [Official Secrets Act](#) also sets strict limits on the disclosure of government information without permission.<sup>817</sup> Like the AIPPA, it also is used abusively. In January 2005, five officials were arrested under the OSA for breaching the Act by revealing the internal disputes of the ruling Zanu PF party to foreign governments in a case widely seen as an internal power struggle.

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<sup>815</sup> *Id.*

<sup>816</sup> IFEX, “Repressive media law under review following criticism from regional commission”. <http://www.ifex.org/fr/content/view/full/71543/?PHPSESSID=37b8f676>

<sup>817</sup> Official Secrets Act [Chapter 11:09], 1970. [http://www.kubatana.net/html/archive/legisl/041231osa.asp?sector=LEGISL&range\\_start=151](http://www.kubatana.net/html/archive/legisl/041231osa.asp?sector=LEGISL&range_start=151)