

Unit 6: General Principles of Access to Information

Learning Objectives Why the right to know matters

After studying this unit you should be able to:

- Define the concept of access to information;
- Understand the different terminology used in the debate;
- Appreciate that access to information is the practical implementation of the right to information.

Introduction and Overview

The purpose of this unit is to introduce participants to the notion of access to information and some of the themes canvassed in different pieces of access to information legislation around the world. In addition, initiatives parliament can undertake in order to become more open and transparent are outlined.

Definition of Access to Information

Access to Information is the notion that the public can obtain information in the possession of the state, and in some countries private entity information, for the purpose of being informed about the activities of the state. Invariably, there are some limitations on the public's ability to access certain types of documents and information; however, decision-makers should always presume disclosure and parliament should promote a culture of openness.

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

-Article 19 of the Universal Declaration of Human Rights

Right to Information compared to Access to Information

The right to information is a fundamental human right enshrined in Article 19 of the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*, and is a component of the broader right to freedom of expression. Ultimately, the freedom of opinion and expression can only be realized when those who are meant to enjoy this right have access to the information they need in order to form opinions. An individual is only able to enjoy the right to information when they are free to access relevant information. As such, access to information is the practical implementation of the right to information.

The right to information is usually enshrined by governments in access to information or freedom of information legislation and regulations. The terms "access to information" and "freedom of information" are often used interchangeably to describe the same type of legislation. However, in this module the term "access to information" is used as it better describes what these pieces of legislation provide.

The first access to information legislation was enacted in Sweden in 1766 when the government passed the *Swedish Freedom of the Press Act*. Since then, over fifty countries around the world have enacted legislation to facilitate access to records for press research and reporting and dozens of countries have legislation pending. Access to information facilitates the public's 'right to know' and helps build an informed society.

Access to information legislation and regulations implemented in countries around the world address a number of similar thematic areas that are reflected in international declarations and recommendations from Study Groups, such as the *Conclusions of the*

CPA-WBI Study Group on Access to Information, held in partnership with the Parliament of Ghana, 5-9 July 2004. These thematic areas are:

- *Maximum Disclosure*

The purpose of access to information legislation is to provide the framework or process through which the public can access either general information or information pertaining specifically to the person seeking the information, which is held by public authorities. When deciding whether to release information to a person seeking access, decision-makers should always proceed from a presumption in favor of disclosure and parliament should promote a culture of openness in order to facilitate this presumption. A presumption in favor of disclosure is based on the public's 'right to know.'

- *Routine Publication*

The legislation should promote the regular publication and dissemination of key information and documents in a manner that is easily accessible to the public. The more information routinely published the less likely citizen will need to make an application to public authorities to access specific documents, thereby reducing the administrative burden.

- *Processes to Facilitate Access*

No citizen should have to state a reason for requesting public information. In order to facilitate the 'right to know' public authorities should be required to respond to a request for information within a set period of time. If the public authority refuses to release documents to a citizen they should provide reasons for their refusal.

- Costs

Citizens should only have to pay for the cost of reproducing the information and costs should not be so high as to deter people from accessing the information in the first place. Preferably costs should only be charged where there is a request for large amounts of documents or for complex requests. Personal information should be provided for a low cost or for free.

- Independent Administrative Body and Right of Review

Access to information legislation should include provision for the formation of an independent administrative body or for an already established administrative agency, which is independent, to take on responsibility for adequate implementation of the legislation. The administrative agency should also hear appeals from any refusal by a public authority to provide access to information. The independent administrative body should be adequately resourced and shielded from interference.

- Exceptions

Exceptions to the public's right to access information held by state authorities should be narrow and should only apply where the harm of disclosing the information is greater than the public interest in having the information disclosed. Legislation should identify categories of information to which access is guaranteed.

The content of access to information legislation will vary from country to country. However, the above thematic areas form the basis of any comprehensive legislation.

In addition to assisting in the passing of access to information legislation that meets the thematic standards above, parliament can work in other ways to help build an informed society through greater access to information. For instance parliamentarians should

play a leadership role in addressing the pervasive culture of secrecy that is present in many democratic institutions and public authorities. Parliament should lead by example and open up parliamentary business as much as possible, including through committee deliberations. Not only should parliamentarians be exemplars of openness, but they should also encourage all elected officials and those in charge of the public authorities to follow suit.

Furthermore, parliaments have a key role in providing oversight of access to information regimes and ensuring an informed society. Access to information legislation should be reviewed regularly to ensure that it is meeting its objective of facilitating the public's right to know. In order to ensure the smooth operation of an access to information regime, all public authorities should table an annual report in parliament outlining their activities in relation to fulfilling the objectives of the access to information legislation. Furthermore, parliament, in its oversight capacity, should hold ministers to account for any failures or delays with respect to implementing the access to information regime.

Parliament, by embracing a twofold strategy of facilitating the passage of well drafted access to information legislation and then showing leadership by making parliament more open, can make a large contribution to building an informed society based on the right to know.

Unit 6 Questions

Please answer each of the following questions. If you are taking this course in a group you may then meet to discuss your answers.

1. How does the concept of Access to Information differ to what you thought it was prior to undertaking this unit?
2. What is the right to information and how does it differ to access to information?
3. If access to information legislation has been passed or is pending in your country, examine your legislation and identify how the legislation addresses the thematic areas noted in the commentary and in the reading?
4. If access to information legislation has not been passed or is not pending in your country, outline how the thematic areas could be addressed in potential legislation for your country – for instance what exceptions to disclosure would be acceptable in your country and why?

Select Bibliography

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