

Access to Information

Topic Guide

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What are access to information assessments¹?

We define access to information assessments as those tools which aim to: (a) identify gaps in access to information (A2I) or freedom of information (FOI) legislation², and/or (b) assess the extent to which such legislation is effectively implemented in practice³. Effective access to information legislation is key to fighting corruption as it empowers civil society, the media and citizens to monitor how public resources are managed and hold their governments to account.

Purpose and context of the assessments

The primary purpose of access to information assessments is to measure the level of transparency of public institutions, with a view to:

- providing evidence for advocacy efforts on reforming A2I/FOI legislation,
- providing evidence for advocacy efforts on improving systems and processes for facilitating access to information,
- raising public awareness on their right to information and building citizen demand for greater transparency,
- monitoring the extent to which public access to information changes over time.

The majority of assessments are undertaken at the national or sub-national level, often to compare performance across government departments or between local governments. Other tools are designed to compare across countries⁴, whilst others still are carried out at

¹ The terms 'access to information' and 'freedom of information' are used interchangeably in this topic guide

² Whilst the principle unit of analysis tends to be A2I and FOI laws, some tools assess the 'openness' of government more broadly.

³ Given that this topic guide focuses on assessments and diagnostics, we do not include toolkits which provide guidance on how to make use of access information laws or comparative analyses of access to information legislation in different countries. Neither do we include media analysis per se, although the role of the media as an important user of access to information legislation is addressed in a number of the assessments.

⁴ E.g. Article 19 - Global Right to Information Index, OSI - Transparency and Silence: A Survey of Access to Information Laws and Practices in 14 Countries

the supra-national level to assess the transparency of, for example, international organisations or aid delivery processes⁵.

Assessment approaches

Broadly speaking, the three principle assessment approaches involve: (a) examining the supply side of access to information (i.e. legal provisions), (b) monitoring the demand side (i.e. users' experience), and (c) assessing the institutional set up for implementing the law (i.e. the link between supply and demand).

More specifically, the most common assessment methods include:

- the use of 'in law' indicators to judge the strength/adequacy of existing A2I/FOI provisions based on international standards and principles on transparency and freedom of information⁶
- the use of 'In practice' indicators based on freedom of information requests and/or interviews with key informants to gauge how A2I/FOI laws are actually applied⁷
- combining 'in law' and 'in practice' indicators to gain a fuller picture of both supply and demand constraints⁸
- complementing the above methods with an assessment of the capacity of different government institutions to implement A2I/FOI legislation (ie leadership, rules, systems, resources and incentives)⁹
- examining citizen's awareness and understanding of right to information legislation¹⁰, or their views on proposed legislation¹¹, as well as assessing the extent to which authorities publicise, and educate the public on, the existence and use of A2I/FOI legislation¹².

⁵ E.g GTI - Behind closed Doors. Secrecy in International Financial Institutions, Access Info - Not Available! Not Accessible! Aid Transparency Monitoring Report, PWYF - Aid Transparency Assessment 2010

⁶ E.g. Article 19 - Global Right to Information Index, Article 19 - Access to Information Index for Mexico, Access Info and Centre for Law and Democracy - Right to Information (RTI) Legislation Rating Methodology

⁷ E.g. TI Moldova - Monitoring Access to Information in the Republic of Moldova, MISA - Government Secrecy in an Information Age, OSI and RWI - Monitoring of the Disclosures of and Access to Public Information in the Republic of Azerbaijan, Access Info - 6 Question Campaign: Request Protocol

⁸ E.g. OSI - Transparency and Silence: A Survey of Access to Information Laws and Practices in 14 Countries, TI Romania - Campaign to Promote Access to Information in Romania and the Federal Republic of Yugoslavia, Mediacenter Sarajevo - Monitoring Democratic Development in Bosnia and Herzegovina. Accessibility Index of Public Institutions, Organisations and Agencies, Access Info Cyprus - The Right of Access to Information in Cyprus

⁹ E.g. The Carter Center - The Access to Information Legislation Implementation Assessment Tool (IAT), Article 19 - Global Right to Information Index, TI Romania - Report on Free Access to Public Interest Information in Romania: Comparative Analysis 2003-2007, Accion Ciudadana - Índice de Acceso a la Información Pública del Organismo Ejecutivo 2010, PSC South Africa - Implementation of the Promotion of Access to Information Act, (Act 2 of 2000) in the Public Service

¹⁰ E.g. TI Moldova - Monitoring Access to Information in the Republic of Moldova, TI Serbia - Conflict of Public and Private Interest and Free Access to Information

¹¹ E.g. ABA - Report of Findings from Focus Group Research: Public Perceptions of Corruption and Prospects for Anti-Corruption Initiatives in Lebanon

¹² E.g. TI Moldova - Monitoring Access to Information in the Republic of Moldova

Data sources

The principle data sources for access to information assessments include:

- legal institutional analysis to assess the strength of existing laws
- freedom of information requests to measure response rates, relevance and timeliness of information provided, as an indicator of transparency
- review of government data portals and websites to assess the accessibility, accuracy, timeliness and comprehensiveness of information provided, also as an indicator of transparency
- interviews or surveys with public officials to gain information on what systems are in place to respond to information requests, how these operate in practice, and the extent to which government departments are capacitated to provide such information
- surveys to assess users' experience of accessing government information or to gauge citizens' views and knowledge on access to information legislation.

Key issues and challenges

A key consideration when undertaking an access to information assessment relates to the use and representativeness of freedom of information requests. Firstly, it is important to recognise that routine information is easier to access than answers to complex or sensitive requests. Therefore requests should ideally be limited to - and cover a broad range of - the kinds of information that public bodies do, or should, hold, and which they are required to disclose. Secondly, where possible, the wording of requests should be developed in collaboration with a legal expert to maximise the chances of receiving responses, and ideally standardised to allow for comparison throughout the assessment, especially in the case of multi-country/regional assessments. Furthermore, requesters should represent a range of different groups that may wish to access information (citizens, journalists, NGO representatives etc.), and where possible training or guidance on how to best submit requests should be provided¹³.

It is also important to recognise that different government departments will vary in terms of the level of transparency and capacity to respond to information requests. Therefore it is advisable to target a range of government institutions, and to disaggregate findings, even where the purpose is to arrive at an overall government score¹⁴.

Finally, from an anti-corruption perspective, it is also critical to distinguish between transparency gaps resulting from secrecy or lack of political will and those which stem from capacity constraints or inefficiency (e.g. lack of training of public officials, non-appointment of information officers, poor information management)¹⁵, as the risk of corruption will differ depending on the underlying causes. A number of tools do make this distinction, by including an assessment of the human and technical resources which are in place to facilitate access to information¹⁶.

¹³ E.g. OSI - Transparency and Silence: A Survey of Access to Information Laws and Practices in 14 Countries

¹⁴ E.g. The Carter Center - The Access to Information Legislation Implementation Assessment Tool (IAT),

¹⁵ E.g. TI - Using the Right to Information as an Anti-Corruption Tool

¹⁶ E.g. The Carter Center - The Access to Information Legislation Implementation Assessment Tool (IAT), Article 19 - Global Right to Information Index, TI Romania - Report on Free Access to Public Interest Information in Romania - Comparative Analysis 2003-2007, Participacion Ciudadana - Informe del 4to. Monitoreo a la Aplicación de la Ley General sobre Libre Acceso a la Información

Promising practices

- Moving beyond 'in law' and 'in practice': In an effort to build a more complete picture of open government, Involve has developed a set of indicators which aims to go beyond the 'standard' A2I/FOI assessment by focussing not only on the existence and implementation of legislation, but also on its *enforcement* (e.g. to what extent oversight institutions are independent and their findings acted upon), and its *use* by - and *impact* on - non-governmental actors such as businesses, media, civil society organisations and individuals (e.g. what communication channels are used, who benefits from greater accessibility and transparency and who remains excluded) ¹⁷. Similarly TI Romania's Report on Free Access to Public Interest Information¹⁸ and OSI's Report on the Implementation of the Law on Free Access to Public Information¹⁹ go into greater detail to analyse what kind of information is released and how complete it is, whilst OSI's report also evaluates the manner in which requesting citizens are treated.
- Promoting best practice through assessment The Golden Key Awards (GKA) use their assessment of A2I practices in South Africa to reward best practices by public institutions which promote openness, responsiveness and information sharing. Awards are presented for the best performing institution, the best performing Information Officer, the most frequent or prominent user, and the best media engagement²⁰. In a further example, Article 19's Right to Information Index includes some 'progressive' indicators which go beyond compliance with international standards and focus on proactive measures such as the promotion of the right to freedom of information and the active dissemination of public information²¹.
- Comparability: Access Info's 6 Question Campaign Request Protocol sets out detailed procedures for both making and recording requests in order to generate meaningful comparative data about the functioning of the right to access information in different countries²². Likewise OSI's Survey of Access to Information Laws and Practices in 14 Countries targets a similar range of national institutions across countries and standardises a number of requests to allow for comparison²³.
- Backlogs: The Knight Open Government Survey requests and reports on government agencies' oldest active FOI requests, as one of the key metrics to examine FOI statistics. Exploring the causes of such backlogs can reveal systematic problems such as weak tracking systems or resource constraints which need to be addressed. This

Pública (Ley 200-04), PSC South Africa - Implementation of the Promotion of Access to Information Act, (Act 2 of 2000) in the Public Service

¹⁷ Involve - Open Government: Beyond Static Measures

¹⁸ TI Romania - Report on Free Access to Public Interest Information in Romania: Comparative Analysis 2003-2007

¹⁹ OSI - Wall of Silence. A Year Later: A Report on the Implementation of the Law on Free Access to Public Information

²⁰ ODAC and SAHRC - Golden Key Awards 2010 Report,

²¹ Article 19 - Global Right to Information Index

²² Access Info - 6 Question Campaign: Request Protocol

²³ OSI - Transparency and Silence: A Survey of Access to Information Laws and Practices in 14 Countries

metric has been adopted by the US government, and each agency is now required by law to report its ten oldest requests in its annual FOI report²⁴.

- Consultation: The methodology for Article 19's Global Right to Information Index was put out to public consultation to gain feedback based on local, national or international experience. For example, input was solicited on whether some indicators should be given more weight based on country level experience in designing effective legislation law, or whether complimentary outside laws which have had some benefit on the broader right to information should be included in certain contexts²⁵. Similarly, Access info Cyprus undertook a consultation on their report on the Right of Access to Information in Cyprus to provide members of the public and public officials an opportunity to comment on the accuracy of the content and findings of the assessment²⁶.

All tools referenced in this guide are accessible via the gateway tool database:

<http://gateway.transparency.org/tools>

²⁴ George Washington University - The Knight Open Government Survey 2011

²⁵ Article 19 - Global Right to Information Index

²⁶ Access Info Cyprus - The Right of Access to Information in Cyprus

Author:

Andy McDevitt, Transparency International

Reviewed by:

Finn Heinrich, Transparency International

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<http://gateway.transparency.org>

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