

FREEDOM OF INFORMATION: LAW AND PRACTICE
A Comparative Study of Norway and Vietnam



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ABBREVIATION

| | |
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| CEDAW | Convention on Elimination of Discrimination and Advancement of Women |
| CRC | Convention on Right of Child |
| CSO | Civil Society Organization |
| ECHR | European Convention of Human Rights |
| ECtHR | European Court of Human Rights |
| HRC | Human Right Council |
| IESCR | International Covenant on Economic, Social and Cultural Rights |
| ICCPR | International Covenant on Civil and Political Rights |
| ICT | Information-Communication-Technology |
| FOI | Freedom of Information |
| FIOA | Freedom of Information Act |
| PAA | Public Administration Act |
| UN | United Nations |
| UDHR | Universal Declaration on Human Rights |
| UNESCAP | United Nations Economic and Social Commission for Asia and the Pacific |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| UPR | Universal Periodical Report |
| VMOJ | Ministry of Justice of Vietnam |

1 Introduction

Norway has recognized the right to information by law¹, while Vietnam is in the process of drafting a similar law. In the process of writing a law on the access to information in Vietnam, there is a need for conceptual as well as contextual background knowledge about the human right to information. This master thesis is an assessment of the legislation and practice of right to information in Norway and Vietnam. The thesis explores whether there are moral justifications of the right to information, taking societal values and type of regimes (the state) into account. The thesis poses the question *if we have an international human right to information, is there a universal moral right to information? and how is that implemented domestically? - using Norway and Vietnam as comparative case studies.*

When both universal moral right and contextual/ societal values exist, then the right to information should be made into law, being necessary for a democratic society. Such a law should address the emerging societal needs in the country and be implemented under an institutional reform towards openness and transparency.

In discussing the above questions, this paper engages in an empirical comparative study of Norway and Vietnam. It aims to spell out an understanding and rationale of the right to information and aims to provide constructive suggestions on how to enhance the implementation of such right in the process of law making in Vietnam, and how to learn from the assessment of laws. Finally, the thesis aspires to be of use to the continued human rights dialogues and cooperation between Vietnam and Norway.

1.1 Background

The general terms of 'right to information' or 'freedom of information' are increasingly used, but their legitimacy in different contexts is vague or

¹ New Freedom of Information (FOIA), effective on 1st Jan 2009, replaced the 1970 Act. See <http://www.regjeringen.no/n/dok/Laws/Lover/offentleglova.html?id=546797>

undefined and unexplored. Freedom of information can also be seen in light of a social contract theory of John Locke. He argued that human right is only legitimate to the extent that it meets the general interest: general will that benefit of all by the duty of the civil government. Political power, derived as it is from the transfer of the power of individuals to enforce the law of nature, has with it the right to kill in the interest of preserving the rights of the citizens or otherwise supporting the public good.² Freedom of information historically and naturally flows into other areas such as freedom of speech or/and freedom from censorship. It is also commonly understood as the right to access information held from public bodies.³ On the one hand, the fundamental principle of freedom of information is that of maximum disclosure, on the other hand, free flow of information and ideas lies at the heart of the very notion of democracy and human rights. In many countries, there have been paradigm changes contributing to growing acceptance of the right to information or to know as the result of transitions to democracy. In addition, the massive advancement in communication technology has changed the ways societies relate to and use information. Finally, the changes derived from a more engaged civil society, especially through the free flow of media. These factors can put pressure on government officials and trigger a normative shift, holding that information belongs to the public and that public bodies keep information not for themselves, but on behalf of the public.

The right to information is codified in international human rights law. For example, the Universal Declaration of Human Right (UDHR) has freedom of expression/information in its art 19. The right was fully recognized as a human right in article 19.2 of ICCPR in 1966: *“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information.”*

Many national constitutions and national laws also reflect this right. The

² Locke. J. Ssource from Stanford Encyclopedia of Philosophy. On Social Contract Theory. Reference to <http://plato.stanford.edu>

³ Patrick Birkinshaw (1988) p3.

Norwegian Constitution (art 100)⁴ and the 1992 Constitution of Vietnam (art 69) also provided this right. In Norway, the Freedom of Information Law was adopted in 1976. A new law on freedom of information became effective as of 2009. In Vietnam the government is, at the time of writing (May 2010), in the process of drafting a pioneering law on access to information.

Freedom of information legislation contributes to bringing society's inherent values into the open. However, the right codified in the text of a law may not be fulfilled in practice unless political acceptance inspires a change in the mindset of the entire public sector and establish an effective legal framework and protection mechanisms. In Norway, freedom of information carries important values of social democracy that are well-rooted in the political system and in the public administration. Such legislation protects equality and freedom for citizens rather than secrecy and control. On the contrary, in the case of Vietnam, the right to access to information is limited by a system characterized by long-standing attitudes of secrecy and non-transparency reserving power to authorities. Despite differences in democratic ideology and system of governance, both countries value community welfare and are facing with the challenges of market economies and globalization that create new societal values and put pressure on the state for more transparency and openness.⁵

Many states restrict the right to information under the provisions of ICCPR and their respective domestic law.⁶ Reasons for such restrictions may include the protection against harm to the societies on the ground of public orders, national security as well as difference in human rights culture.⁷ So, it is therefore important to understand how states respond to such challenges in order benefit from the values of freedom of information. These factors motivate the author to explore the above research question.

⁴ Constitution, amended in 2004. (art 100 a)

⁵ To support these statements, I shall provide more analysis in the chapter 4 and 5 of this thesis.

⁶ ICCPR (art 19 (3))

⁷ Francis Sejersted (2005). pp. 297–398

In chapter 2 and chapter 3, I provide a broader understanding of the concept of right to information and its general principles to justify that the right to information is legal and moral universal right. In chapter 4 and chapter 5, I explain the right to access to information in the context of Norway and Vietnam. In chapter 6, I provide the analysis of the law on access to information in a comparative manner: both similarities and differences. In the end, I will draw some concluding remarks on each country's experiences in the law making.

1.2 Objective and relevance

Before embarking upon the substantive issues of the study, I want to explain why I have chosen to work on this topic. As a comparative study, the thesis explores the understandings on the law and the practice of freedom of information in Norway and Vietnam, based on the common knowledge that right to access to information is a universal moral human rights.

A primary motive is the possibility of facilitating the legislative process in Vietnam in the area of access to information. It is submitted that such a domestic process should be well informed about the human right to information as codified in international laws. The law making process in Vietnam will be provided with a conceptual clarity a moral human right to information as a basis for discussion. As Norway has adopted its Constitutional Amendment on Freedom of Information in 2004 and recently (early in 2009) adopted its new Freedom of Information Act. The assessment of the law and the implementation of the right to information in Norway in this paper will provide insight experiences for the law making process in Vietnam. In addition, both the processes and experiences may be of relevance to other states.

1.3 Methodology

The theoretical framework that I shall apply throughout the thesis focuses on the linkage between societal values and the right to access to

information in Vietnam and in Norway. As a comparative study, that explores differences and similarities between Norway and Vietnam regarding freedom of information. The thesis is a multidisciplinary research, which contains socio-political and legal aspects.

The sources that I use in this study are international and national laws on freedom of information, related international and domestic case law, and scholarly literature, books and papers. In addition, I conducted semi-structured interviews with interviewees in particular target groups such as government officials and media people (in Norway). I also conducted interviews and group discussions with citizens (in Vietnam). Other sources are survey reports and the Governments' reports.

2 Significance of Freedom of Information

Freedom of information is, I shall explore, an underpinning of both *democracy* and *good governance*,⁸ both being important values for many present-day societies. This chapter discusses the significance of and the need for freedom of information to societies aspiring to realize the values of democracy and good governance. This chapter also explores some key conditions for freedom of information. In particular, this chapter examines how state institutions, legislative schemes, the development of civil society, media and Information- Communication-Technology (ICT) and a culture of openness that can contribute to the realization of the freedom of information.

2.1 Significance of freedom of information

Freedom of information is a fundamental human right that supports democracy. In support of this proposition, the non-governmental organization ARTICLE 19 describes freedom of information as the “oxygen for democracy”.⁹ In addition, freedom of information enhances good governance by making government more open, more transparent and more accountable. Section 2.1 analyzes linkages between freedom of information to democracy and good governance.

2.1.1 Freedom of information promotes democracy

With regard to freedom of information and democracy, I want to refer to the theory of democracy of Jürgen Habermas: participatory, representative and deliberative democracy.¹⁰

⁸ By democracy, I refer to the model of Democracy in part 2.1.1, By good governance, I mean an open, transparent and accountable government for more people participation.

⁹ See <http://www.article19.org/> [visited 10 Dec 2009]

¹⁰ Jürgen Habermas, (1998 []

Freedom of information in a participatory political process provides citizens with more and better information, facilitates their political will effectively monitor the exercise of power by holders of political and administrative offices. When people have access to relevant information can they, through active participation in political processes, be able to restrict the abuse of office holders' power, thus safeguarding public interests. The participatory democracy involves people in the decision making process, either in the form of direct participation or in less direct forms of consultations.

The representative democratic model also stresses the importance of access to information and of well informed citizens to cast their votes discriminatively and able to evaluate their representative's performance □ should they be re-elected or not? David Held shares the same understanding of democracy as "the way the people govern".¹¹ His opinion is that under both participatory and representative modes of democracy, information belongs to people, not just to the government.

The third model is deliberative democracy. Under this model, people may exercise communicative power vis-à-vis their government in an inclusive public sphere. Habermas discussed the role of Power in regard to the legitimacy of law. As a legitimizing force behind administrative power, communicative power is positive, necessary, and co-original with administrative power and legitimate law. The communicative power here allow for the flow of information. In Habermas' deliberative paradigm, law stabilizes society, but only through the universal voice of democracy.¹²

Democracy requires the availability of alternative and independent sources of information. Like freedom of expression, the availability of alternative and relatively independent sources of information is required by several of the basic democratic criteria to consider the need for enlightened understanding. Citizens acquire the information they need in order to understand the issues. They can not do so if the government control information or if any single group enjoys a monopoly in providing

¹¹ David Held (2006)

¹² J.Habermas (1996) p 482-483.

information. Citizens must have access, then, to alternative sources of information that are not under the control of the government or dominated by any other group or point of view.¹³

Regarding the balancing of unrestricted freedom of information against public or community interests, Freeman argues that all societies have to weight the interests of individuals against the interests of the community.¹⁴ Freedom of information must also be balanced against national security. Cuillier commented that those who most value national security express less support for freedom of information.¹⁵

In summary, free flow of information strongly contributes to the functioning of democracy. Freedom of information is an individual right. It enlightens public opinion, but imposes duties. There are legitimate restrictions on freedom of information, grounded in national security and other public interests. A freedom of information policy must take into account the circumstance and conditions requiring specific limitations on the right.¹⁶

2.1.2 Freedom of information enhances good governance

James Madison, a father of the US Constitution and co-author of the U.S. Bill of Rights, explained the linkage between information and governance as follows:

"A popular Government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives".¹⁷

¹³ Dahl R. (1998). P.97

¹⁴ Michael Freeman (1996). p.352-366

¹⁵ David Cuillier, Blythe Duell and Jeff Joireman. (2009) []

¹⁶ Limitations are provided in Art 19 (3) of ICCPR

¹⁷ Letter from James Madison to W.T. Barry (August 4, 1822), in The Writings of James Madison (Gaillard Hunt ed.).

Freedom of information promotes good governance. This section introduces the concept of good governance and addresses connections of freedom of information and good governance.

Good governance refers to how public institutions conduct public affairs and manage public resources in order to guarantee the realization of human rights in conjunction with other basic goals of modern states. Good governance means participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and follows the rule of law.¹⁸ In the scope of this study, the terms of open, transparent and accountable government are often used so they can be understood as follows:

Openness of the system of government means that its public bodies can and must conduct public affairs in a manner that permits oversight of government. Openness means that media and general public are able to access information, that they are able to find out about potential wrong-doings or misconduct of public officials and, hence, that public officials are less likely to engage in illegal activities.

Transparency refers to the degree to which information is available from government (duty holder). Though transparency is widely used, there is hardly a fixed definition for how it should be measured. However, an example of transparency can be seen in the increasing adoption of anti-corruption convention by many states.¹⁹

Accountability refers to ethics and governance. It has been applied to internal aspects of official behavior and institutions can make officials responsive to public wishes and demands. As an aspect of governance, it relates to public sector and other actors like non-profit and private sectors.²⁰

¹⁸ UNESCAP.

<http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp>

¹⁹ Convention Against Corruption, (art 13) This article requires state to promote participation of civil society and ensure public access to information..

²⁰ Mulgan, R (2000). p 555–573

Joseph Stiglitz stressed that the improvement of information and of dissemination of information could reduce abuse of power by public officials, hindering them from pursuing their own interests above those of the public.²¹ A study by the Danish Institute of Human Rights has pointed out that information helps build a dynamic and democratic society and sustains economic growth as a result of a more efficient public sector.²²

In sum, freedom of information helps promote democracy and good governance. Being informed, the public can actively participate in the public affairs and decision making process. In addition, public officials are less likely engaged in illicit activities by conducting public affairs openly rather than secretly.

2.2 Realization of freedom of information

Section 2.1 provided views on the significance of freedom of information with regard to promotion of democracy and good governance. But how can such freedom be realized? I am using a sociology of law to explain the conditions of freedom of information. I look at 'Push and Pull' factors for the right to information from the angles of Power and People, respectively. Pull factors include (i) the state power and institutional settings (ii) the legislation of freedom of information; (iii) culture of openness shall be taken into account as the pull factors. Push factors include (i) development of civil society; (ii) demand for information and (iii) development of ICT and media.

2.2.1 Pull Factors

State Power

The state represents *Power*. The state, as type of regime²³ decides whether there is freedom of information. An authoritarian regime controls the information that the people should receive. The liberal democratic states are

²¹ Stiglitz, J. (2002)

²² Stiglitz, J. (2002) Ibid

²³ Krasner (1983). *International Regimes* (1983). In this: Regime can be defined as implicit or explicit principles, norms, rules and decision making procedures

more successful with a set of standards of open government. In contrast, for the most autocratic regimes, free press/freedom of information is negative.²⁴ Most Western states see freedom of information as an important factor to ensure democracy and to promote open government. On the contrary, in many Asian countries, the government often claims the Asian values for not disclosing information..

The political barriers raise questions of what conditions are needed for wider freedom of information and who are the actors to promote the right. Burkingshaw suggested that a changing relationship between the state and society may be needed to allow more access to information and public sector.²⁵

Legal framework for freedom of information

Since the Age of Enlightenment, freedom of information has been rooted in national constitutions and legislations. Nordic countries were some of the first countries to have a law on freedom of information.²⁶ After freedom of information was codified in UDHR and ICCPR²⁷ and other international law instruments, there was a massive global trend to adopt this right in domestic laws as well as to constitutionalize it.²⁸ In 1990, only 13 countries had adopted the law on right to information. Now, approximately 90 countries have done so, and about 20-30 countries have laws under consideration.²⁹ In Asia, China and India, South Korea, Japan and Thai Land have the law. The above shows that the right to information is trending toward universal acceptance and more and more made into domestic laws.

²⁴ Jenifer Whitten-Woodring. (2009) p. 53, 595–625

²⁵ Patrick Birkingshaw.(1988). P.3

²⁶ Sweden with Code on Freedom of Press in 1766, The new law on Freedom of Information is effective in 2009. Finland had Law on Freedom of Press and Law on Access to Public Records in 1810 after independent from Sweden. Norwegian Constitution 1814 was amended in 2004 art. 100 and the first Law on Freedom of Information 1970.

²⁷ UDHR (art 19) and ICCPR (art 19)

²⁸ For example, Japan Constitution (art 21), South Korea Constitution (Art 21), India Constitution (art 19). The US First Amendment Constitution was made for freedom of press and freedom of speech.

²⁹ Article 19 Statistics. <http://www.article19.org>.

Culture of openness and accountability in public sector

“... the law can only play a minimal role in opening up closed societies or secret relationships. Freedom of information legislation is important but unless the legislation is accompanied by wide range change in constitutional culture, institutions and practices it must be questioned whether it will be of lasting utility to all but powerful organized interests who have the resources to use it,an FOIA must be accompanied by a more widespread changes in attitude and in major institutional reform if we are to better informed and more open...”

(Birmingham Shaw ³⁰)

As Birmingham Shaw argued, the right to information must be realized by a widespread change in the attitude and mindset of public servants – as preconditions for shifting power -towards greater openness. The change in mindset of public servants presents an explicit knowledge that information is a public good and therefore, public bodies should not act to hold information for themselves but only as custodians of the public goods. ³¹

Access to information is only possible when public servants no longer believe in the practice or withholding of information. At the same time, the public sector system reinforces the provision of information on its own initiative. To nurture a culture of openness against a long standing secrecy attitude of civil servants, the state often undertakes an institutional reform. First, such a reform needs to generate a system of organizational values, policies and procedures whereas resources and the power are exercised on openness. Secondly, the reform needs to generate an enforcement mechanism ie. the complaint and appeal systems which is independent from the administration. In many countries, there exists an Ombudman system or judicial control that oversees the performance of administrative bodies and deals with citizens' complaints to ensure the check and balance in the society.

³⁰ Birmingham (1988). id. p 238.

³¹ Ibid. Also DIHR (2005) , ibid, p 61

2.2.2 Push Factors

The *People* represents the 'Push' factor who demands information. The people want accountability and transparency from public institutions which are acting on their behalf. The people therefore enquire information to be able to participate in decision-making; or to control the resources and the performance of the public authorities. Public interests – what people wants to know - may range from social, economic and environment issues of the public spheres to personal information as well as the performance of public sector and private sector.

The push factors for freedom of information I want to highlight in this paper are the level of development of civil society, the evolvement of free media and the ICT development that are crucial for openness and free flow of information in the society.

The development of civil society

Civil society organizations (CSOs) are important actors to participate and push for good governance and democracy. They uphold values of human rights, promote participation, accountability as well as hold governments responsible of their policies, programmes and actions.

CSOs has been actively involved in process of formation of the European Union and NAFTA, the United Nations and the World Trade Organization. In 2001, some of CSOs groups formed the Communication Rights for the Information Society (CRIS) campaign, playing a pivotal role in coordinating a civil society voice in the World Summit on the Information Society (WSIS) process.

In contrast to Europe and North America, in postcolonial societies, there are divisive lines between the state and the civil society. However, the neo-liberal transformation of the nation state throughout the developing world has reconfigured state capacity and authority in this context, creating new

modes of state and non-state governmentality.³²

An example of a CSO which advocates for Freedom of Information is ARTICLE 19.³³ This NGO works for global coalitions including civil society, NGOs, regional instruments, the UN and governments to lobby for positive changes in freedom of expression and access to information. ARTICLE 19 also coordinates national and regional partners and stakeholders to highlight cases of censorship and bring national laws in line with international standards. Other good examples of CSOs demanding for information are the case of NGO involved in the climate negotiations in Bolivia, the Songosongo Gas Pipeline Project in Tanzania and the Texaco/Chevron lawsuits in Ecuador.

Independence of media

Free flow of information and independence of media are two norms of democracy. Media in all forms plays an important role in providing information to public and ensuring the right to know. Media also helps the public to access government-held information.

Nelson Mandela appraised the independence of media as a lifeblood for democracy and embraced the independence of media as follows³⁴

A critical, independent and investigative press is the lifeblood of any democracy. The press must be free from state interference. It must have the economic strength to stand up to the blandishments of government officials. It must have sufficient independence from vested interests to be bold and inquiring without fear or favour. It must enjoy the protection of the constitution, so that it can protect our rights as citizens. ...It is only such a free press that can be the vigilant watchdog of the public interest against the temptation on the part of those who wield it to abuse that power. ...”

³² P. Chakravartty. (2007), p 297-317

³³ See more on www.article19.org

³⁴ Madela. N (1994), Speech to the Interantional Press Institute congress. Capetown, 1994. See further <http://www.anc.org.za/ancdocs/history/mandela/1994/sp940214.html>

However, free press depends on regime type. Many governments put censorship on media or they use media as a tool to control the society. In the debate, Dahl argued that free press - as an independent source of information needed for society - needs to be protected by law against forms of government ownership or political censorship.³⁵

Several court cases also stressed the needs for free press. European Court of Human Right³⁶ has ruled

“... Freedom of press affords the public one of the best means of discovering and forming opinion of the ideas and attitudes of their political leaders..... It thus enables everyone to participate in the free political debate which is at the very core concept of a democratic society...”

Growth of Information Communication Technology (ICT)

ICT is a powerful tool to flow information to the public. It helps public institutions disseminate information widely to the public and vice versa. It also helps the state and the public communicate better within the public fora, eg. through cybernets/social networks. Media can use ICT to seek and provide information better to public interests eg. e-news (online news). The increasing use of media TV like CNN, Fox News or Al Jazeera opens up the access to information.³⁷ On one hand, such media TV facilitates flow of information wider and faster, but the criticism is that these types of news sources feed the public lots of information in their own ‘sauce’ to make it tastes the way they want it.

ICT is applied to make government more efficiently. Dag Wiese Schartum noted that strong application of ICT in e-government initiative enhances the efficiency of public services, thus promoting openness and transparency of the public sector, in addition to the function to provide the flow of information to public.³⁸

³⁵ Dahl, A.R. 1998.. p97

³⁶ *Castells v. Spain*, 24 April 1992, Application No. 11798/85 para 43

³⁷ Navia. P and Zweifel D. (2004).

³⁸ Dag Wiese Schartum (2005)

2.3 Chapter conclusion

This chapter has presented various discussions about the importance of Freedom of Information in the society – in so far as it promotes democracy and good governance. In addition, the chapter explains the realization of Freedom of Information depends on both the ‘People’ side and the ‘Power’ side. The Power side, represented by the state needs to meet the demand from the People side. If there is participation of civil society, free media and the use of ICT in the public sector, freedom of information will be better exercised. On this theoretical background – I shall argue – that if freedom of information is important for the society, it needs to be made in the law as a human right. The next chapter will explore how the right to access to information could become an universal moral human right. Then chapter 4 and 5 will provide more contextual application of this right in case of Vietnam and Norway.

3 The Human Right to Access to Information

This chapter provides justifications for freedom of information as a universal moral human right. The legal sources and case laws are used. I shall argue that such moral universal human right is only valid when it is legalized into domestic legislation.

3.1 *The Right to Access to Information as a Human Right under International Laws*

This section clarifies the notion of freedom of information as a human right under the light of international laws. In addition, other regional human rights instruments shall be explored to substantiate that whether universal laws are in fact universally-held rights. There are relevant legal sources and on cases giving a broader understanding of the notion of freedom of information/freedom of expression.

The notion “*freedom of information*” is widely used throughout the years. In recent times, the terms of the ‘right to information’ or the ‘right to know’ are increasingly used. The terms are often closely related to the meaning of ‘open government’. Even more, the right to information has moved beyond the administrative governance reform as it was during 1990s, to be increasingly viewed as a fundamental human right.³⁹ The right to “seek information” relates to all generally accessible information.

To recognize the human right to information, the UN General Assembly’s first Session in 1946 called for the International Conference of Freedom of Information.⁴⁰ However, the Universal Declaration of Human Rights (UDHR) of 1948 became the first international human rights instrument to guarantee freedom of information in terms of seeking, receiving and imparting information. In 1966, the International Covenant on Civil and Political Rights

³⁹ Freedom of Information, A comparative legal survey, UNESCO. 2008

⁴⁰ <http://www.un.org/documents/ga/res/1/ares1.htm>

(ICCPR) was adopted by General Assembly, which is legal binding.⁴¹ The right is defined as a freedom “to seek, receive and impart information and ideas”. Article 19 of UDHR reads:

“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...”

The 1966 International Covenant on Civil and Political Rights (ICCPR) - which is a binding international legal instrument – provides a similar provision on freedom of information in Article 19 (2), making right to information universally recognized. Article 19 (2) of ICCPR reads:

‘Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

To clarify the definition with regard to freedom of expression and right to access to information in article 19 of ICCPR, the General Comment 10⁴² reads:

‘...Paragraph 2 requires protection of the right to freedom of expression, which includes not only freedom to "impart information and ideas of all kinds", but also freedom to "seek" and "receive" them "regardless of frontiers" and in whatever medium, "either orally, in writing or in print, in the form of art, or through any other media of his choice....”.

Freedom of expression/information is a positive human right which requires state obligations to respect, protect and fulfill the right. The legal and political arguments for the state to “respect, protect and fulfill” the right have been made during the codification of the Freedom of Opinion, Expression and Information to ICCPR. It is argued that freedom of expression and information is a component of the individual’s privacy that requires absolute protection. The liberals saw that the state is not required to ensure the right

⁴¹ General Assembly Resolution 2200A (XXI), 16 Dec, 1966. As of now, ICCPR received 165 party members and 72 signatories.
http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en&clang=en#EndDec

⁴² Human Rights Council. A/38/40 (1983) 109 at para. 2

with positive measures so states only have obligations to *respect*. However, according to the socialist view, the right to information – which is also a political right – is guaranteed under the socialist democracy framework to *fulfill* the right.⁴³ Some Western European countries as well as America argued the state's responsibility to *protect* the right to seek information, because this right can help prevent the authority to abuse power.⁴⁴ Although the right to access to information is still not absolutely clear, the term of positive obligation could include granting access to information in certain cases.

Even if there exists *right to seek information*, it is still uncertain whether the states take positive measures to make information accessible.⁴⁵ The "*right to be informed*" – as many countries use - is still largely unrecognized in the case law under ICCPR.⁴⁶ However, in the rapid development of modern information and communication society and progressive public administration, states often undertake statutory duties to provide information.

To clarify the meaning of right to information, in many case law and concluding observations, the Human Rights Committee called for "greater freedom to seek information"⁴⁷ including equal treatment to access to information⁴⁸; right of a person to access to his/her personal files like the medical record.⁴⁹

Right to Information, however, is not an absolute right. This right contains certain limitations as defined in art. 19 (3) of ICCPR; "(a) respect for rights

⁴³ Manfred Novak (2005).p. 436-467. Subsequently, the Socialist states constitutionalized the right: eg. 1918 Soviet Constitution Art. 14, Bulgarian Constitution of 1971 Art. 54 (2), GDR Constitution of 1968/74 Art 28(2) and Vietnam Constitution 1992 Art. 69

⁴⁴ Novak (2005) *ibid.*p. 436-467

⁴⁵ Frowein & Peukert. p. 447

⁴⁶ Manfred Novak.(2005) p. 447

⁴⁷ Human Rights Council ICCPR,A/48/40 vol. I (1993) 102, para. 510. ICCPR, A/53/40 vol. I (1998) 38, para. 243

⁴⁸ *Pezoldova v. The Czech Republic*, ICCPR, A/58/40 vol. II (25 October 2002) 25 (CCPR/C/76/D/757/1997)

⁴⁹ *Zheludkov v. Ukraine*, ICCPR, A/58/40 vol. II (29 October 2002) 12 (CCPR/C/76/D/726/1996)

of others, respect for reputations of others and (b) protection of national security, public order (*ordre public*), public health, public morals. It is noted that the right must be restricted only under certain conditions such as ‘be provided by law’ and “necessary” and also accompanied with the notion of ‘proportionality’. The condition on ‘be provided by law’ aims to prevent the state to arbitrarily restraint the right. Limitations may be accepted as a necessity of democracy and aims to protect the public interests. With these conditions, other conventions have expanded the list to protect national security, to ensure public safety, to protect public health or moral, and to protect rights and freedoms of others. But the state has flexibility in interpreting the right, whether to respect or limit the right in the proportional basis.

Freedom to seek information has negative aspects in case an individual is not protected against interference by state organs with respect to generally accessible information. For instance, when the security forces took a journalist’s documentary film about a violence clash between a demonstration and the police away, this certainly presents a violation of freedom of information.⁵⁰

The case of *Gauthier v. Canada*⁵¹ also illustrates the violation of the right to information of journalists. Mr. Gauthier of National Capital News of Canada was restricted to access to Canadian Parliament’s media facilities on the ground of National Capital News being a private press association. Canadian Government refused to provide the tape recordings of the Parliament. The HRC stated a violation of right to access to information of press including the right to take note of a media representative under article 19 (2) of ICCPR, reading together with the right to take part in conduct of public affairs in art. 25 of ICCPR. The Committee also emphasized the importance of access to information for the democratic process, in particular

⁵⁰ Malfred Novak. Ibid, p447. Also see Decicion by the Austrian Constitutional Court on Art. 10 of ECHR. 16/3/1987. EuGRZ 237f

⁵¹ *Gauthier v. Canada* (633/1995), ICCPR, A/54/40 vol. II (7 April 1999). Also refer the *Guardian case, Sunday Times case and Bladet Tromso and Stensaas v. Norway*.

for citizens to be informed of activities of elected bodies through the media.

Other UN instruments specify the right as equal access to educational information to women and children and access to information for migrant workers and their family members such as Convention on Elimination of Discrimination against Women (CEDAW), Convention on Rights of the Child, Convention on Migrant Workers.⁵² Beyond the application in the international human rights instruments, the right to information are also codified in some regional human rights instruments, ie. Art. 10 of ECHR, Art. 13 (1) of ACHR and Art. 9 (1) of ACHPR .

Limitations of Right to Information can be cited in many case law of European system, which I provide here as an example of regional application of international human rights. In the case *Leander v. Sweden*,⁵³ the applicant was refused access to information about his private life held by secret police register. The ECtHR in this case did not find a violation of article 8. The court reasoned that though the storage and refusal of information by the police was an interference with his right to private life, it was justified as necessary to protect Sweden's national security. Keeping confidential information in government files was not an obstruction of access to information.

Access to information is also reflected in other international and regional instruments such as the Joint Declaration of the OSCE and Organisation of American States (OAS),⁵⁴ the 1998 Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus Convention). The Council of Europe has a non-binding Recommendation (rec. (2002(2) on access to official documents⁵⁵ and the recently approved Convention on Freedom of

⁵² CEDAW art. 10(h), CRC Art 9(4) and art 17, CMW art 13, respectively.

⁵³ 9 EHRR 433, 26 March 1987

⁵⁴ InterAmerican Declaration and the 2003 Resolution on Access to Public Information dd. 6/12/2004 <http://www.cidh.org/Relatoria/showarticle.asp?artID=319&IID=1> . See also the Art 2,3, 4 of the: Strengthening Democracy. http://www.oas.org/dil/AG-RES_1932_XXXIII-O-03_eng.pdf

⁵⁵ the Council of Europe's Recommendation R (2002(2), adopted on 21 February 2002.

Information of Europe regarding Access to Official Documents.⁵⁶ European Union also provides the right to access to information in its 1992 Maastricht Treaty and its Declaration 17 on the Right to Access to Information.⁵⁷ Charter of Fundamental Rights of the Union was adopted as an integral part of the European Constitution, which states a general right to freedom of information (Art II-71) and a specific right of access to documents.

There are also international standards and principles for the Right to Access to Information. A set of principles for Access to Information was developed, such as 25 Principles under The Johannesburg Principles on National Security, Freedom of Expression and Access to Information⁵⁸. The 'Declaration of Brisbane' issued by the UNESCO in Brisbane Australia sets out principles for national governments, media professionals and UNESCO to promote the Right to Information.⁵⁹ These principles give guidance for the national legislation in its making and suggest that states shall consider conditions for such principles in order to recognize the right to information.

In sum, the Right to Information is an universal human right, as part of the freedom of expression, as articulated in the article 19 (2) of the ICCPR and other international and regional instruments. The right is also a right with positive state obligations to respect, fulfill and protect it. The case law and other legal sources provide clarifications of the concept of Freedom of Information, or Right to Information. It is undoubted then that the right becomes legally justified.

3.2 Morality of Freedom of Information

⁵⁶ Convention on Freedom of Information of Europe, passed on 27 Nov 2008. Also ref. to the EC Directive 98/03 on the re-use of public sector documents.

⁵⁷ Declaration 17 on the Right to Access to Information annexed to the Final Act of the Treaty on European Union signed in Maastricht on 7 February 1992. See <http://www.ena.lu/treaty-european-union-declaration-right-access-information-maastricht-february-1992-020302606.html>

⁵⁸ U.N. Doc. E/CN.4/1996/39 (1996).

⁵⁹ UNESCO, Brisbane Declaration, 3 May 2010. See http://portal.unesco.org/ci/en/ev.php-URL_ID=30318&URL_DO=DO_TOPIC&URL_SECTION=201.html

The first conception on human rights may originate from moral norms and behavior in the societies, deeply rooted in culture and traditions. Human rights, in many cases, are found under the customary rules that require respect of freedom and liberty of people. Through out the development progress of human rights, even when legalized in national laws and international laws, human rights are under influence of moral norms. In other words, human rights reflect the moral values of a society. Chan argued that the legitimacy of the right for the Asian societies depends on political morality that is connected to a particular society. There are no universal principles of political morality suitable for all because the principles are based on the historical situation and the captures of contemporary values of that particular society.⁶⁰

Ghai also recognized the importance of political moralities with regard to the recognition of human rights. Political values, in his opinion, shape the regime which decides the application of freedom of information.⁶¹

Freedom of information has the moral justifications being for an equal and freedom of human right. . Birkinshaw argued that freedom of information raises complex questions of legal and political theories but also a moral controversy.⁶² The liberal school of democracy stresses the view of human liberties as individual right of freedom of information as ‘everyone’ and ‘of his choice’. – the same as that is reflected under the present-day international human rights law.⁶³

With regard to the ideological differences between conservative and liberal school of international law regarding human rights and moral differences between the East and the West, there are circumstances that explain the similar moral justifications of freedom of information.⁶⁴ Under the Western

⁶⁰ Joseph Chan (2000) , Freeman. (2000) p.43-65

⁶¹ Yash Ghai, (1997)

⁶² P. Birkinshaw..ibid, p3-5

⁶³ ICCPR Art. 19

⁶⁴ According to J.A Andrews in *Human Rights: a common or a divisive heritage?* Thesaurus Acroasium, Vol XXI. Institute of International Public Law and International Relations of

moral ideology, the legitimacy of FoI could be embedded within the society's morals of diverse cultures and traditions⁶⁵. Such legitimacy might not be conceived as a universal claim under the Asian values.⁶⁶

For instance, in Asia, many authoritarian regimes often use Asian values as a claim of not disclosing information or they only release information they think the people should receive. In Asian culture, pornography is heavily censored in some Asian countries for the sake of community's morals while this conduct is defended by the liberals of Western who say that the state has no business to enforce society's morals or to interfere in the individual liberties.⁶⁷ On this background, I shall argue that freedom of information is attached with the moral aspect of the society.

However, in many case, the Western and Eastern can share same view that may limit freedom of expression for the sake of community' morality. A good example is *Handyside v. UK case*. The applicant is the publisher of the book "The Little Red Schoolbook" which urged young people at whom it was directed to take a liberal attitude in sexual matters. The applicant claimed a violation of art 10 of ECHR. The Court, using the doctrine of margin of appreciation, ruled that the interference in Handyside's freedom of expression was both defined by law, having a legitimate aim and also that it was necessary in a democratic society, thus there was no violation of Article 10 ECHR. The Court referred to the Art 10 (2) of the ECHR (para 42) as "*the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society,... for the protection of health or morals..*". The Court reasoned that '*Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the*

Thessaloniki. 1994. The book cited that the European Court of Human Rights found it impossible to have a uniform European conception of morals to guide on interpretation of rights

⁶⁵ An-Na'im (eds) (1995), p. 9-10

⁶⁶ The concern raised during the 1995 Conference on Confucianism and Human Rights

⁶⁷ This view is also understood that FoI is a liberal right that State has no obligation to ensure the right with positive measures. See also Manfred Novak.(2005) p. 439

*development of every man. ... it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.'*⁶⁸ This case implies that the state may take the margin of appreciation on the principle of proportionality to decide on limitation of freedom of expression, if it is reasoned to protect the public morals and other necessary conditions.

3.3 Chapter conclusion

To conclude, the codification of the freedom of information, as part of the freedom of expression in 'seek, receive and impart' information in many international and regional legal instruments, has proved to be a valid legal universality of the right to information. In addition, and equally important, the right to information is founded on the ground of moral and political values.

However, this leads me to explore in the following chapters, that if the right to information is a universally moral right, how the right is implemented domestically, taking considerations of local contexts of Norway and Vietnam.

⁶⁸ ECHR 5493/72 5, Strasbourg, 7 December 1976. para 49

4 Practical Considerations: Freedom of Information in Norway

4.1 Introduction

This chapter is about the freedom of information in the Norwegian society. I will provide the history and process of legalization of the right to information of Norway. I will also discuss on what basis the right has become morally accepted ie. the societal values that underpin this right. Moreover, I will provide elements on the aspects of the existing legislation on freedom of information and the existing institutional settings that enable the realization of the right to information. Finally, by analyzing the challenges and such existing mechanisms, I shall point out some areas of experiences from Norway when Norway implements the Freedom of Information Act. The sources for this chapter are from legal documents, case laws and point of views of some stakeholders from my personal interviews.

4.2 Context

Norway is a constitutional democracy with a parliamentary system of government. The Constitution, along with constitutional customary law, has provided the framework for a sustainable democratic political system for almost 200 years. The paramount objective of a constitutional state is to protect individuals against abuse of power and arbitrary treatment by public authorities and to ensure equal treatment, welfare and democracy.

Norway is the party to most of the major UN human rights conventions, including the International Covenant on Economic, Social and Cultural Rights (ICESC), the International Covenant on Civil and Political Rights (ICCPR) and others. Norway is a member of the Council of Europe, and has thereby acceded to the European Convention on Human Rights (ECHR) and its protocols and a number of other Council of Europe human rights conventions. To strengthen the status of human rights in Norwegian law, the Storting passed the Human Rights Act in 1999, thereby incorporating the

ECHR, ICESR, ICCPR, CRC and CEDAW into the Norwegian legislation.

The idea of freedom of information in Norway was traced back to 1856, while Sweden's right to access to public documents was formed as part of the Freedom of Press Act in 1949.⁶⁹ In 1967, the public administration act (Forvaltingsloven) (PAA) - was passed to allow the inspection of records in administration cases. There was a lot of tension and skepticism from the public sector about the need to have FOIA since one already had the PAA. There was a debate on the two acts regarding the scope of freedom of information and function of public administration. Many people stated the public administration law is the key to regulate performance of public officials and require the attitude on openness. Some thought that the FOIA if pushed too far, might bring some adverse effects ie. abuse of information, too big burden on the public sector, necessity to protect specific interests or privacy etc. ⁷⁰ Later in 1970, the Government decided to have a new Freedom of Information Act, in addition to the Public Administration Act.

Norway then became one of the first few countries in 1970s to adopt the law on access to information namely the Norwegian Freedom of Information Act, or Public Access Act (Offenlighetsloven). The FOIA however has gone through several reforms (in 1982, 1983, 1993). The first Act of 1970 gave more right to the media to demand information from public sector. On one hand, this law help Norway cope with rapid expanding administration and administrative discretion which was likely leading to undermining of rule of law. The law also reflects a stronger delegation of power from Parliament to Government. These two major changes – that is the creation of Parliament Ombudsman (1962) and the Public Administration Act of 1967.⁷¹ The

⁶⁹ Other 4 main acts are the 1974 Instrument of Government, The 1810 Act of Succession, the 1949 Freedom of the Press Act and the 1991 Fundamental Law on Freedom of Expression

⁷⁰ Views from officials at Department of Public Management and Reform on the 1970 Offenlighetsloven and FOIA. Interview conducted on 7/12/2009.

⁷¹ Public Administration Act amended in 2003. Ombudsman for Public Administration can investigate any public matter that has not been processed by an elected body, the courts or within the military.

Government had a radical push for openness and democratic right to information.

In 2004, the Ministry of Justice of Norway presented the proposal for new law on right to access to information to replace act of 19 June 1970 no. 60 relating to public access to documents in the public administration. The proposal aims to strengthen freedom of information and also to implement of the EU directive 2003/98/EF on re-use of information from the public sector.

4.3 *The right to information is a legal human right*

Norway has an extensive constitutional protection for the right to information. The Constitution provides the entirety of right to access to information as part of freedom of expression under article 100 of the Constitution. The Norwegian Constitution new article 100 §5 says: *«Everyone has a right of access to documents of the State and municipal administration and a right to follow the proceedings of the courts and democratically elected bodies. Limitations to this right may be prescribed by law to protect the privacy of the individual or for other weighty reasons.»*. The same article 100 of the Constitution also states that *“...it is the responsibility of the authorities of the State to create conditions that facilitate open and enlightened public discourse”*.

The constitution therefore defines that the right to information is given to everyone. The state ie. the administration has obligations to provide information and also legal protection against any unreasonable denial of the administration on access to information. The amendment of the Constitution provides legal ground to maintain the right to access to information and the new FOIA even allows for a wider scope of access.⁷²

⁷² *Offentleglova* Innst.S.nr.270 (2003-2004) s.59-60. Refer to at <http://www.lovdata.no/all/hl-20060519-016.html>

4.4 The Right to Information is morally grounded on societal values

The principle of the right to demand access to case documents in the public administration is grounded in three main considerations: *Democracy, Control and Rule of Law*.⁷³ *Human Rights* and *Truth* are also defined as key elements of the fundamental values of Norwegian society⁷⁴ with a perception that the “Norwegian democracy comes from within”.⁷⁵ The public pursues the values of *Truth* and *Democracy* as well as *Personal Liberty* and *Privacy* through means of accessing information.

The right of access to information can in many ways contribute to strengthening democracy. The right of access to public documents of citizens is a precondition for an informed social debate and a realization of the democratic right to participation – a fundamental value in our democracy.⁷⁶

The importance of respect of transparency, accountability and openness is embedded in the Norwegian system, as well as other Nordic countries.⁷⁷ An open government strengthens the citizens' insight in social questions and thereby strengthens the public interests for participating in political debates and processes.

Free press acts to ensure democracy. However, there are examples that the Norwegian law is not in line with the international human rights standards on freedom of expression. The case *TV Vest*⁷⁸ presents this view. In 2003, Rogaland Pensioners Party contracted TV Vest to air three different political advertisements for their political party on the local TV channel. Upon notify-

⁷³ Innst.S.nr.270 (2003-2004) <http://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Innstillinger/Stortinget/2003-2004/inns-200304-270/>

⁷⁴ UPR Report of Norway to Human Rights Council. 2009.

⁷⁵ View of Kjell Dragnes – Foreign Editor of Aftenposten, interview 10 Dec 2009

⁷⁶ Ministry of Justice and police of Norway. Rettleiar Til Offentleglova. 11.01.2010

⁷⁷ Fredrik Sejersted. *ibid*. The terms of “*open government*” is more or less viewed as Nordic invention and Nordic model of openness is well developed, relatively liberal and tested by time-.

⁷⁸ *TV Vest AS Ltd. And Rogaland Pensjonistparti v. Norway*. Application no. 21132/05 of 11 December 2008. ECtHR

ing the Norwegian Media Authority about the commercials, the Media Authority warned the broadcaster that broadcasting political advertising is illegal in Norway and considered fining TV Vest if the commercials were aired. The Supreme Court ruled that the ban on political advertising itself did not constitute a violation of Article 10, since its target were to avoid large parties with large funding from achieving more airtime than other parties who lacked fund. The reason for the ban was that ‘ *Norwegian society preserve pluralism and a democratic society so that there is no favorable conditions that a bigger party can take advantages over other minor parties*’. The European Court of Human Rights (ECrHR) noted the absence of European consensus in this area giving rise for state to decide the necessity of the ban for the reason of a democratic system. However, in this case the Court ruled in favor of the television station. In the Court’s view, the state can not use ‘ margin of appreciation’ and claim a legitimate aim pursued by the prohibition because the fact is that paid advertising on television had been the sole means for the Pensioners Party to get its message across to the public in contrast to the major political parties, which had been given wide edited television coverage. This case is a good example implying that freedom of information may be defined differently in the domestic law based on the ground of the Norwegian values.⁷⁹

The other law case, - *The Sjolie case*⁸⁰ - presents the relationship of freedom of expression and exceptions of such freedom on the ground of public morals where Norway has different interpretation with the ECHR. In

79 Also refer to Case number: 2005/09135, EO ATV / TRR: Marketing Act (art 2) Constitution § 100, ECHR, Article 10 concerning Ministry of Children and Family Affairs letter of 21 December 2005 where it requested an assessment of the ability to give consumers the right to opt-out of inserts and advertising contributions in newspapers and other printed matter. The case have assumed that to be in compliance with the Convention, the procedure must respond to a compelling societal needs ("*pressing social need*") and it must be proportionally in relation to the purpose sought achieved through restriction of Convention rights. Also referring to sett. S. nr. 270 (2003-2004) punkt 8.4 og St.meld. S. No. 270 (2003-2004) Section 8.4 and the White Paper. nr. 26 (2003-2004) punkt 4.8, s. 81-86. No. 26 (2003-2004) Section 4.8, p. 81-86. Freedom of Speech Commission for its part considers that commercial speech should, in principle, subject to constitutional protection, but that the threshold for intervention would be lower than for statements on matters of public interest, see NOU 1999: 27 "*Freedom of speech should be above and upload place*" Section 6.3.4.2 's'. 155-156.

⁸⁰ *Jewish Communities of Norway v. Norway* CERD/C/67/D/30/2003

August 2000, a group known as the Bootboys marched in commemoration of the Nazi leader Rudolf Hess. The leader of the march, Mr. Terje Sjolie, made a speech in the town square. In his speech, Mr. Sjolie stated that "our people and country are being plundered and destroyed by the Jews, who suck our country empty of wealth and replace it with immoral and un-Norwegian thoughts. The Norwegian Supreme Court overturned the Bogarting Court of Appeal that hatred speech for Neo Nazi of Mr. Sjolie is not a violation of art 35 and protected under the constitution art 100 – Freedom of Expression. The ECtHR ruled that such hatred expression is not protected by Art 10 of ECHR because there are exceptions on ground of public morals, and thus it should not be protected under the Norwegian law. Subsequently to the ECHR ruling in 2006, the Norwegian government has amended art 100 of the Constitution and the Penal Code art 135a.

The public seeks for truth, that should be provided by function of media. Other example is the case of *Bladet tromsø and Stensaas v. Norway*⁸¹ which presents public concern in the environmental protection vis-a-vis freedom of information and defamation of individual privacy. Mr Lindberg appointed by the Ministry of Fisheries to be seal hunter issued the report of 30 June 1988 that alleged a series of violations of the seal hunting regulations and made allegations against five named crew members. The Ministry of Fisheries subsequently decided that the report should not be published, relying on a provision of the Act on Public Access to Official Documents 1970 according to which reports containing allegations of statutory offences should not be made accessible to the public. Nord-Troms District Court statements published by Bladet Tromsø on 15 July 1988 and four statements published on 20 July were defamatory, "unlawful". ECtHR received the case and review the grounds whether there is true fact carried by the press based on the report and whether it could constitute to defamatory of individual as well as public concern of the fact. ECtHR ruled over the Nord-Troms District Court, which implies that freedom of information and expression of individual and press is protected as far as the information bring truth

⁸¹ Application no. 21980/93, judgement of ECHR 20 May 1999.

to public, addressing the public concern. The case also implies that information about environment belongs to the public and therefore should not be kept by authority (in this case Ministry of Fisheries) and media's public watch-dog role should not be undermined.

These law cases imply that Norwegian law may lag behind the international standards, in this case, on protection of freedom of expression/information.

⁸² In 2009 it was decided that a provision concerning prosecution for blasphemy will not be included in the new Penal Code. Though the provision has not been applied for several decades, it was viewed to indicate limits for freedom of expression that were not regarded as being in accordance with the role of freedom of expression in a democratic society. At the same time, the provisions relating to hateful expressions in the Penal Code were strengthened.⁸³

4.5 What have been the challenges for the FOIA?

The challenges to Freedom of Information in Norway are identified in the law making process.⁸⁴

First, challenge is to balance state control and freedom of information in respect of a democratic society. The right to information should balance the public interests and other private interests and intellectual property. An informant has shared this view and agreed that the Government needs to have a cohesion policy to protect privacy and public morals.⁸⁵

Secondly, there are institutional challenges including building motivation of the public sector to provide information on its own initiative. The challenge

⁸² The European Court of Human Rights (ECtHR) has delivered 20 judgments against Norway finding violations of the European Convention on Human Rights . more information. <http://www.norway-coe.org>

⁸³ Norway UPR report 2009. p 17

⁸⁴ Ministry of Justice and Police of Norway(2006) Proposition paper (RETTLEIAR TIL OFFENTLEGLOVA). See more <http://www.lovdato.no/cgi-wift/ldes?doc=/sf/sf/sf-20081017-1119.html>.

⁸⁵View of Prof. Vaagan, Journalism Department, University College of Oslo. Interviewed on 10/12/2009.

is to maintain the encouragement for public officials whereas certain legal conflict under the Norwegian laws in terms of duty of secrecy and duty of providing information still exist. For instance, the PAA stresses the duty of public officials to provide information to public on their own initiative and upon requests. But, at the same time, the duty of secrecy is regulated as the criminal act with possibility for penalties.⁸⁶

Thirdly, the challenge is that the legal rules on access to information must be clear to guide citizens on what information they can access and what should not, as well as to have the correct interpretations of the public document system. In the *Ny Tid case*,⁸⁷ in 1979, resulted in the criminal prosecution of a writer who published information in a newspaper, which he had collected from public sources about surveillance activities of the security service. The *Gleditsch case*⁸⁸ two researchers published an English in a report entitled "Technical intelligence installations in Norway: their number, locations, functions, and legality". They proceeded to re-publish the information in Norwegian in a chapter of a book called *Onkel Sa m's Kaniner* (Uncle Sam's Rabbits), by Wilkes and Gleditsch. They were criminally prosecuted for publishing information they had collected from public sources to document Norwegian technical intelligence installations connected with NATO.

Fourthly, there is a challenge in the application of technology and in allocating resources and availability of ICT in modern government system to maximize disclosure of information (in accordance with art. 15 of the PAA). However, in addition to the application of ICT in the public administration, there is also a challenge to information control since ICT is widely applied in the public administration that might make mistakes by disclosing confidential

⁸⁶ Penal Code (art 86, 90 and 13) Section 86, para 4 that authorises punishment for anyone who "incites or induces to treachery, carries out propaganda work for the enemy or spreads false. Section 135 provides penalties for statements that threaten, deride, or expose to hatred, persecution, or contempt any person or groups of persons because of their creed, race, colour of skin, or national or ethnic origin or misleading information that is likely to weaken people's will to resistance."

⁸⁷ 1979 NRt 1492

⁸⁸ 1982 NRt 436.

information or disturbance of privacy.⁸⁹

Lastly, Norway faces a challenge in incorporating human rights standards into domestic laws – in so far as it still respects the Norwegian values thus it has certain different interpretation of international human rights standards by its rule of law. In addition, Norway is in the process to adapt the domestic legislation to European system (such as EU Directive 2003/98/EC on the re-use of public sector information, the Norwegian join into EEA agreement, the Aarhus Agreement (ECE treaty). With such integration, as some argued that, the traditional transparent system like Norway, might pose a threat to the national openness.⁹⁰

4.6 What steps have been taken to reinforce the right to information?

Following the amendment in the Constitution art.100 (§5), the FIOA of 2009 continues to uphold the value of openness, transparency and accountability and incorporate major principles of international human rights law and of other legal international and regional instruments. In the process of making the current FOIA, the Ministry of Justice recognized the need to have open government and access to information is tool to raise public interests and democratic right to participation. They also emphasized that such a FOIA should provide stronger mechanisms to protect human rights including respect of public interests and protection of privacy.⁹¹ Beside the amendments in the legislation, the government has continued reforms in the institutions and the public administration to cope up with challenges and new requirements. .

The domestic legislation system

The freedom of information act, being effective as of 1 Jan 2009, has made some following major changes:

⁸⁹ Recently on news, disclosing that list of intelligence employees which is the strictly classified information on Brønnøysundrestrene. According to Dagbladet.no [visited 12.04.1020]

⁹⁰ Fredrik Sejersted *ibid.* p

⁹¹ *Supra* note 83

First, the new FOIA (the Act) regulates stronger accountable conduct of the public administration and encourages public officials to take initiative to provide information (art. 30) and to respond the requests from citizens, especially making information more accessible by the media (art. 10). The provision fulfill the obligation to publish (art. 10 &30).

Secondly, the Act also extends the scope of the information provision beyond the public services in principle of maximum disclosure (art. 2). In the mean time, it upholds the principle of minimizing the scope of limitations (art. 12) by specifying clearer list of exemptions (art 13 to 23)

Thirdly, the Act incorporates the requirements of EU Directive 2003/98/EC on the re-use of public sector information (art. 2 reading together with art. 6, 7, 8 and 30).

Other domestic laws and institutions related to freedom of information were also strengthened. Under the Personal Data Act (2001), the Data Inspectorate was set up to conduct inspection, guide and receive complain from citizens. The Norwegian Media Authority and Norwegian Press Association function to ensure the free press and receive complaints of media. The Broadcasting Act regulates on licensing to broadcast, advertising regulation and content regulation. In addition, in addressing the requirement in Aarhus Agreement (ECE treaty), Norway also undertook the amendment of the constitutional provision of 110b in 1992 and issued a new Environmental Information Act.⁹²

Institutional arrangements

Norway has established stronger institutions – such as the parliamentary control mechanism, free media, civil society and a modern public administration (ie. e-government and a culture of openness) for the

⁹² Right to Environmental Information and Public Participation in Decision-making Processes Relating to the Environment, Act of 9 May 2003 No.31

implementation of the Freedom of Information Act. The followings explained briefly about institutions for the FOIA.

The Parliament (Storting) upholds the protection of human rights and control over the executives

The Storting Civil Ombudsman is a constitutional body, but has role to ensure that 'injustice is not committed against individual by public administration'. Storting applies its rule on openness.⁹³ The Ombudsman has power to deal with the case either by complaint and appeal from citizens⁹⁴ or by its own initiative', which including investigation of the case.⁹⁵ The Storting Civil Ombudsman stresses that active democracy depends on openness, access and transparency regarding to responsibility of exercising authority.⁹⁶ The Ombudsman pointed out that (i) both head of the public agencies and officials needs to develop positive attitude in FOI as civil servants and to conform with the objective in the principle of FOI; (ii) There must be wider scope of freedom to provide information to overcome fear of breach of duty of confidentiality and fear of making wrong decisions.⁹⁷ In practice, this parliamentary mechanism supports effectively to ensure openness and to protect Norwegian public interests.

The media

The media, being a part of civil society, remains with a strong role in disseminating information to the public and examining facts and criticizing the public authorities on behalf of the community. Media confirms to secure

⁹³ FOIA (art 2) – Scope of the Act says: “*This Act does not apply to the Storting, the Office of the Auditor General and Storting’s Ombudsman for Public Administration or other institutions of the Storting*”.

⁹⁴ the FOIA (Art 1 , art 32) PAA of 2003 (art 29)

⁹⁵ Storting’s Ombudsman for Public Administration, Act of 22 June 1962 No. 8, §3, 5,7

⁹⁶ The role of Storting Ombudsman is ruled under the Constitution (art 5 and art 82). Art 82 reads: *The Government is to provide the Storting with all information that is necessary for the proceedings on the matters it submits. No Member of the Council of State may submit incorrect or misleading information to the Storting or its bodies.* Also Refer to Annual Report 2008 of The Parliament Ombudsman of Norway, Summary in English, p 33.

⁹⁷ Civil Ombudsman 2008, p 32,33

the truth for public⁹⁸. It has undergone a dramatic change in increasing independence of media since 1980 due to political will and Nordic trend to combine the “market model” and “public sphere model” of media⁹⁹. At present, Norway ranks number one in free press ranking.¹⁰⁰ There exists a system of legal protection of right to complain against refusal of information by public agencies¹⁰¹.

The Editorial Independence Act (became effective on 1.1.2009 same date with the FIOA) confirmed the efforts. The Act is intended to prevent dominant shareholders in the media sector from limiting freedom of expression and information, and to prevent ownership positions from being used to promote the owners’ own political or financial interests. Monopoly and political pressure on press has been ceased since 1980 which turned newspaper media to more commercialized and independent.¹⁰² The Media Ownership Authority exercises its power under the Media Ownership Act is independent from the Government. The Mass Media Authority is a subordinate body under Ministry of Culture to give license to local broadcasting on the evaluation of broad represented advisory board, including media¹⁰³. The Norwegian Press Complaints Commission (PFU), which was established by the Norwegian Press Association, monitors and promotes ethical and professional standards in the Norwegian press. In connection with these activities, the PFU considers complaints about the

⁹⁸ Interviews of NRK and MorgenBladet newspaper. [interviewed 12 Dec 2009]. Also refer to the Proposition paper of Ministry of Justice to the Odelsting, *ibid.* §3.3.2 stressing the central role of media for exercising control over the authorities.

⁹⁹ Robert Vaagan (2008) p22-25

¹⁰⁰ Reporters Without Borders, *FreePress Index*. Online statistics <http://en.rsf.org/press-freedom-index-2009,1001.html>

¹⁰¹ Public Administration Act 2003 (art. 14)

¹⁰² For example: NRK which is now still 100% government owned, with public broadcasting mandate, ceased its monopoly in 1981, with the born of some local broadcasting and later a national broadcasting TV2 in 1992. So far, NRK still is number one broadcasting TV and achieving well its objective on public broadcast, by means TV, radio, internet (interview with Editor of NRK, dated 8/12/2009). Other example is the more commercialized and independence of newspapers during 1980s away from political parties because of the drop of political support and subsidy of political parties to press offices. On one hand, numbers of newspaper in Norway has reduced (5 national dailies and 223 local daily/weekly as of now)

¹⁰³ This institutional set-up has been reviewed by the Council of Europe in Dec 2000 in Recommendation Rec 23 (2000), as a result, the Government adjusted the Act no. 127 of 4 Dec 1992 relating Broadcasting amended by Act. No 98 of 17 June 2005

conduct of the Norwegian press and publishes its opinions.

The modern e-government in the public administration

The society becomes so independent and well access to broadband internet. Electronic documents and internet are demanded for the purpose of lower costs and effective use. Therefore, the government takes on radical policies and strategies to use ICT to bring public information into public digital commons.¹⁰⁴ The political will and actions are laid down in the Soria Moria Declaration for a modern government. All government branches have put public information on the website.¹⁰⁵ Norway ranked number 2 after Ireland in number of people using E-government (57% in 2008) and using internet for interacting with public authority (52%).¹⁰⁶ The government could use ICT to enhance promote right to access to public information but also the right to receive guidance from the authorities and right to participate in public as “a precondition to welfare state” on inclusive and equal access for all.¹⁰⁷ E-government and ICT all contribute to larger dissemination of knowledge about the political and administrative authority, which can be a strong incentive to democratic participation¹⁰⁸.

The society adopts technology change

In the meantime, Norwegian society now is growing fast with information technology. Social networking and online communities.¹⁰⁹ Accordingly,

¹⁰⁴ in particular by archives, libraries and museum. The survey of Norwegian Archive, Library and Museum Authority 2005 indicates that 80% of the catalogues have been digitalized. Report in Norwegian. This means the review of Copy Right Act was required to be aligned with the use of public information.

¹⁰⁵ For example, <http://www.norway.no> is the gateway to public sector . <http://www.regjeringen.no> posts all journals and public documents. Any ministries and localities have their websites. Some agencies facilitate the dialogue function with the citizens and use technology that citizen can enquire information and apply services on line. (example of social welfare and tax and government loans (see <http://www.nav.no/> <http://www.skatteetaten.no/> <http://www.lanekassen.no/>) Other new initiative to facilitate provision of social services information to public is Min ID – a public ID (at <http://minid.difi.no/minid/minid.php?lang=en>).

¹⁰⁶ Robert Vaagan (2008) *ibid*. Cited sources from Eurostate Yearbook 2008.

¹⁰⁷ Ministry of Government Administration and Reform, Report nr. 17 (2006-2007)

¹⁰⁸ Dag Wiese Schartum (1999) *ibid*

¹⁰⁹ Robert Vaagan (2008) cited source from Statistics Norway 2009

there is tendency that information provided printed newspaper sharply reduced (just in 2008, all 10 largest newspaper in Norway reduced their circulation, mostly by VG, Aftenposten and Dagbladet) but increased sharply via internet.¹¹⁰ About 670,000 people among 4.5 million population of Norway participate in electronic social networks.¹¹¹ The Cyber Societies in Norway with dramatic usage from 13% to 26% from 2007 to 2008. These social networks include varies of individuals and organisations, including politicians.¹¹²

In summary, in Norway, the right to information is legally articulated in the constitution and is provided by law. The right is better protected by both judicial and parliamentary controls – the controls over the executive bodies. The Government commits to openness, transparency and accountability being backed up with political will as the means to gain public trust. Accordingly, a culture of openness has been developed by value within the public sector and in the society at large. The government has been making great efforts to use modern technology for e-government as a driving force to function a modern government thus to serve the public better. The media and civil society both play their important role of the watchdog thus can facilitate information for public interests and social debates in a democratic society.

4.7 Impacts of the Freedom of Information Act

FIOA, on one hand, helps facilitate an open and transparent public administration, and on other hand to safeguard for individual freedom on information, their democratic participation in public affairs or the control of the public and confidence in the public authorities¹¹³.

¹¹⁰ Statistics of Medianorway 2009. (while online newspaper in 2008 is used by increasing percentage of population: 33% with VG, 22,2% with Dagbladet and 11,1% with Aftenposten) compared with only 0.5% in 1996

¹¹¹ Alexa.com 2009. Facebook, youtube ranked number 2 and 3 in usage only after google.no and the cyber net such as neetby.no ranks number [visited 1 Dec 2009]

¹¹² One example is The Norwegian Prime Minister opens facebook to communicate with public and share information about his activities and policies to the public, including video and images, besides the government website which provide official public information.

¹¹³ FOIA of Norway (Section 1) and the Proposition paper of Ministry of Justice to the Odelsting, *ibid*. It says ' *the proposed preamble stresses that the law shall arrange for pub-*

First, the public gain more trust on public bodies and therefore the relationship between state and public is strengthened because the government has provided information on its own initiative to maintain an open and transparent public sector, in addition to the access rights on requests of every citizen. In the meantime, the performance of the public bodies and authorities is improved because the law promotes accountability and transparency of public sector and control by the public through wider provision of information and higher responsiveness on request of access to information from citizens. Norwegian administration sector sees that both public access right and public information activities by the government's own initiatives and in an active way are two aspects of the open and transparent public sector.¹¹⁴ There is an increasing trend in openness practices by officials and facilitated well by application of ICT and e-government function.¹¹⁵ There is also a change in attitude of government officials. *"We like to look at ourselves as not to be the tool of the Government"*.¹¹⁶ There has gradually changes in the perception on duty of secrecy and thus public officials can provide necessary information to public. Number of access to documents from all ministries and branches via the Journals also increases, with only 69,600 documents of 2008 and 41,700 only first half of 2009. Among all ministries and branches, the Ministry of Justice, Ministry of Transport, Ministry of Foreign Affairs, Ministry of Culture, Ministry of Health, Police Directorate are most requested.¹¹⁷

Second, the impact of FIOA is increased transparency and control as necessary for a democratic society and rule of law because media can work more effectively to serve the public interests by applying the right to access to information under the current FOIA. Statistics show very high amount and

lic entities to be open and transparent thereby strengthening freedom of information and expression, democratic participation and individual legal protection and control'.

¹¹⁴ Dag Wiese Schartum (2005)

¹¹⁵ An officer and information coordinator at Ministry of Foreign Affairs, interviewed 12 Nov 2009

¹¹⁶ Interviewed the officials at Ministry of Foreign Affairs and DIFI, interviewed on 10 December 2009

¹¹⁷ Statistics on Access to Information by Ministry of Justice and Police, Dec 2009

increase of requests from media to public authorities on access to information. Requests to access by press in 2008 was 353 while it was 787 by Oct 2009 (the central media has much higher requests – Aftenposten, NRK, Studenten, Nrk – Dagsrevyen, Klassekampen, NTB, Bergens tidende, VG, Tv2 – Oslo, Dagbladet in subsequent ranking).¹¹⁸

4.8 Learnings from the Freedom of Information Act of Norway

The Freedom of Information of Norway has been the success because the right has been more legitimized on the ground of societal values into the law, taking accounts of the international human rights standards. Norway can maintain a strong public administration to ensure transparency, openness and accountability. The current FOIA of Norway provides some practical experiences for the policy makers.

First, FIOA ensures legal protection of the citizens' right to access to information including mechanism to receive complaints: the legal right of citizens also extends to media where all parties can exercise their right to request for information to examine the cases, or gain knowledge of administration practices, hence to be able to unveil malpractice or abuse of administration. Media can seek information from public bodies and share information wider on behalf of the community, therefore, citizens' right of access to information is protected.

Second, FOIA regulates and also encourages the public administration and bodies to serve as an information bank and provide information on its own initiative therefore shall reduce costs of handling cases and requests on access to information. Internet (website) and other ICT tools (media TV, e-newspaper etc) are powerful tools to maximize access. Resources have been allocated so that the administration can improve its operations to assure the good and efficient use of information.

¹¹⁸ Ministry of Justice and Police (2009), *ibid*

Finally, FIOA ensures balance between the public interests and private interests. There are considerations and regulations to protect private interests and any harm to state security or other reason of exemptions. The other acts are made in line of FIOA, that, on one hand promote maximizing disclosure, on other hand, minimize exemptions following the principles of necessity and proportionality.

5 Practical Considerations: The development of access to information in Vietnam

5.1 Introduction

This chapter provides a picture of freedom of information in Vietnam with the context of Vietnamese society that justifies the need for a new law on access to information. I start with the Vietnamese the socio-political situation. I shall argue that, for Vietnam, even under the socialist democracy and with a strong culture of authoritarian and secrecy, there are many factors that push the right to access to information become more legalized and morally accepted. I will analyze some challenges and the current scope and contents of the draft law, as the time of writing in order to provide some food for thoughts to the draft law and the law implementation in Vietnam. I have used sources from news, current surveys on access to information and legal sources as well as my interviews and group discussions with citizens.¹¹⁹

5.2 Context

Vietnam has been a long time in feudalism and colonial under French colony before the August Revolution in 1945. In such context, Vietnam remain being high authoritarian system. The first Constitution in 1946 born a new republic and democratic. However, in all three decades of war after the new nation until 1975, Vietnam was led by the Communist Party in light of Marxist-Leninist ideology in all fields of socio-political life, economics and governance system. The Constitution of 1959 and then of 1980 brought Vietnam to be into socialist state. Since then, Vietnam remains to be authoritarian under the one party system. The nation continues to be state-centric under the framework of socialist democracy. After the Renovation “*Doi Moi*” in 1986 and the collapse of Soviet Union, the nation shifted radically to open door and integration to the world.

¹¹⁹ I have conducted in from 13 – 16 April 2010 in Ha Tinh Province, Vietnam.

In Vietnam, the knowledge of human rights is complex with interrelation of cultural contested and political moralities.¹²⁰ The concept of human rights in Vietnam has influenced by the Chinese-political-moral system, under which the Confucian values stressed social duties, hierarchies and obligations. The French colonial legalism imported Western rights-based law and political morality into Vietnam. Ho Chi Minh then argued for human rights in the first Constitution of 1946 when he made the revolutionary government opposed the colonization. Later the party leaders embraced Confucianism and the Marxist Leninist principles of the socialist ideals into power and ruling morality. After *Doi Moi*, The state more frequently engages in human rights discourse. The legal reform is progressing to ensure that human rights are not only framed in moral and nationalistic terms, but towards a rule of law state.¹²¹

At present, Vietnam is still ranked low level of development with regard to access to information. According to the survey of Global Integrity in 2006¹²², Vietnam was ranked 47 meaning Very Weak in general regarding Governance and Corruption. Civil society, media and public access to information were ranked 28 (ie. very weak) and public access to information received only 5 score. By the Press Freedom Index, Vietnam ranks 166 (81.67 score) in 2009, up from ranking of 168 in 2008 but down from 158 ranking of 2005.¹²³

Vietnam now becomes wealthier, but in terms of transparency in the economy, Vietnam still ranks low and is developing. The one party system and lack of 'check and balance' mechanism have delayed the nation's development. In addition, recently, the control of information and limit the participation of citizens in decision-making has become more popular.¹²⁴ In

¹²⁰ Gammeltoft T. and Hernø R. (2000). p. 159

¹²¹ Gillespie. p 452-478

¹²² <http://www.globalintegrity.org/reports/2006/VIETNAM/scorecard.cfm> [visited December 2009]

¹²³ Reporters Without Borders. Online service <http://en.rsf.org/press-freedom-index-2009.1001.html>

¹²⁴ Prof. Carl Thayer (2009). Also noted that a server by PFT has a notice to all bloggers registered into this webserver that it is " not a forum for discussions of politics. Source [visited 17 July 2009] and BBCVietnamese

such context, the legal reform is progressing to ensure that human rights are not only framed in moral and nationalistic terms, but towards a rule of law state.¹²⁵ Vietnam has been undertaking the Legal Reform (LSDS 2001-2010) and the Law on Access to Information was included in the National Assembly's "Plan of Law Building" for 2007-2011.

5.3 Legal Ground for Access to Information

The first 1946 Constitution of Vietnam was radical that provided for the democratic values and political right such as freedom of expression. The preamble and Article 1 of 1946 Constitution reads "*Vietnam is a democratic nation*" and article 10 (2) provided for freedom of expression. 1992 Constitution reflects the new need to reform the country to be modernized. Nevertheless, the 1992 Constitution still has provisions for freedom of expression, freedom of press, right to be informed (or right to information). The art 69 reads: '*The-citizen shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed, and the right to assemble, form associations and hold demonstrations in accordance with the provisions of the law*'.¹²⁶ However, the 'right to be informed' may mean the 'right of access to information' or the 'right to receive information'.¹²⁷

However, in Vietnam, there are many existing laws and legal normative documents regarding access to information, such State Budget law 2002 (art. 3), Statistics Law (art. 4), Law on Securities 2006 (chapter VIII, art. 5 &100r); Investment Law 2005 (art. 82), Law on Construction 2003 (art. 32, 33), Law on Urban Planning (art. 16), the 2003 Land Law (art. 28&56), the 2005 Law on Environment Protection (art. 104); Law on Organization of National Assembly (art 4, regarding to the principle of central democracy); Law on Organization of People's Court (art. 7); Law on Anti Corruption of

http://www.bbc.co.uk/vietnamese/vietnam/2009/10/091005_viet_congress.shtml [visited 12/12/2009]

¹²⁵ Gillespie. id p454. The Six Party Congress in 1986 says: 'management of the country should be performed through laws rather than moral concepts'.

¹²⁶ 1992 Constitution (art 69)

¹²⁷ Novak Manfred (2005) . p 391 It is noted that these terms are still largely unrecognized in the case law, under the meaning of ICCPR, art. 19 (2).

2005; Grass root democracy Decree of 2003 and Press law of 1998.

Vietnam is the party member of the ICCPR since 1982. In addition, Vietnam has also ratified the International Covenant on Economic, Social and Cultural Rights (CESCR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child, the Convention on Anti-corruption in 2005 and other 17 ILO conventions. Vietnam is now the 150th member of the WTO in 2007.

In summary, access to information is a constitutional right. Since this right is also a universal right recognized in ICCPR and other international laws, Vietnam must recognize it stronger in the domestic legislation.

5.4 Significance of Access to Information

Access to information can bring benefits to the society. It helps build a good governance system – such as accountability, transparency and openness in the public sector, trust between state and citizen, and other economic, social and cultural benefits. Access to information is also a precondition to promote other human rights through active participation of the citizens. The flow of information between the state and society can help build the citizens' trust on state and the stakeholders' consensus and thus achieve stability and sustainable development of the nation.¹²⁸ A recent survey in Vietnam also confirms that access to information help people to participate in discussion and decisions of the State, local and society (76% agreed) and to raise citizens' responsibility, prevention of corruption and violations of the laws (83% agreed).¹²⁹

In the law making process, the Government of Vietnam recognizes the importance of a new law on access to information that aims to “realize the constitutional right” and to build a transparent, open and accountable public

¹²⁸ MOJ (2009) id. p. 95

¹²⁹ VLA (2009) p2-5.

sector thus to reduce corruption. Such a law will need to provide a legal protection mechanism and facilitate the participation of citizens into the state management process as well as to encourage conduct of public servants more open and efficiency.¹³⁰

5.5 Driving forces for a new Access to Information Law

5.5.1 Public interests

The public wants to know about information. The survey from Vietnam Lawyers' Association reveals that nearly 100% interviewees responded that there is a need for a new access to information law. They particularly want to know about community health, environment and education (70% of informants); new state policies, land (88%); policy and law (86%), draft laws and regulations (62%); state fund management (81%); public administration procedure (79%). The public also has opinion that the information related to state secrecy should not be provided (90,6%); privacy (78%) and business intellectuals (63%) should not be disclosed, 71,7 % informants say that there is need to disclose the category of information of the state and public sector that can be accessed by the public.¹³¹ However, few people at local levels know about the state and local policies (70% informants said that they have little knowledge on this).¹³²

5.5.2 Evolving media

Media in Vietnam plays more important role in the society. Their mandate is to inform the public about issues, including promoting anti-corruption activities. Media also conveys the correspondences between the states and the citizens.¹³³ People can use media to express their concerns and exercise their "right to be informed".¹³⁴

Along with growing numbers of press agencies in Vietnam, media is using

¹³⁰ VMOJ (2009). *ibid*

¹³¹ VLA (2009) *id p. . 7*

¹³² PPWG (2010) p 8.

¹³³ 1989 Press Law (Art 4 and 8)

¹³⁴ 1989 Press Law (Art 2)

diverse and powerful ways of communication such as e-newspaper, internet news, TV media in addition to traditional means like paper newspaper, radio and TV. As of 2008, there are over 700 press agencies with 850 publications, nearly 15,000 licensed journalists, 68 radio and television stations at the central and provincial levels and land-based digital TV stations, 80 e-newspapers, thousands of news websites and 55 publishers.¹³⁵ The numbers of electronic newspaper increased from 5 in 2005 to 10 in 2007, paper newspapers increased from 564 in 2004 to 813 in 2007.¹³⁶

Many journalists have been playing more actively for detection of truth to respond to the public demand for information. They found themselves wanting for information from official sources.¹³⁷ A case that supports this statement is the case of *PMU 18*.¹³⁸ Bui Tien Dung, the then PMU18 chief, was arrested in 2006 on charges of gambling away US\$759,800 and offering bribes of nearly VND1.2 billion (\$75,000). During the investigation for truth, journalist Chien of the Thanh Nien Newspaper met Major General Pham Xuan Quac, the then chief of the Central Social Crimes Department and head of the team investigating the PMU18 case. Chien asked how many people Dung “chief” –and Quac said, “Dozens...” Chien then broke the “Disgraced official reveals 40 others ...” story on April 16, 2006. But the news did not give enough evidence to prove Bui Tien Dung’s bribery. Chien and journalist Nguyen Van Hai of *Tuoi Tre* newspaper who also involved in this case were then convicted guilty for ‘abuse of power’ under art 281 of the Penal Code. After the investigation and the correction was run, another senior police officer, Major General Pham Quy Ngo, deputy head of the Police General Department, told *Thanh Nien*: “ In the PMU18 case, 40 officials indeed took bribes from Bui Tien Dung.” This case obviously shows that public and media were demanding for information on use of state resources handled by several government officials. In addition, the case

¹³⁵ Human Right Council. (2009). Vietnam UPR. para 25

¹³⁶ Vietnam Development Report 2009. p.134

¹³⁷ Human Rights Council. §15 (c) of the annex to human rights council resolution 5/1. Ref. http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/VN/A_HRC_WG6_5_VNM_3_E.p df.

¹³⁸ Internet sources. [visited 12 Dec 2009] Noted that the case facts provided are news coverage in Vietnam because in Vietnam case laws concerned are not required to be published.

indicated that the government can limit the right to access to information of the media and act to punish government officials who provided information.

With the above case, I shall stress that, with its growing importance in the society, the Vietnamese media needs to be better regulated in a amended Press Law, with *“clear provisions on press freedom, free speech in the press, the leadership of the party, the state’s management over press activities, the tasks of press officials, and the provision of information to the press.”*¹³⁹

5.5.3 Booming Information Society for a Modern Government

ICT such as internet, TV media etc. enhances the information sharing, forums for debates.¹⁴⁰ At this time, Vietnam has over 23% of population access to internet (of 85 million population, there are about 20 million internet users and 1.5 million are bloggers), with 30%-40% growth a year.¹⁴¹ Even in 2004, the ICT indicators of Vietnam was compatible with countries like India, China and Malaysia. These facilities and resources are very crucial to accelerate the freedom of information in Vietnam.

As Vietnam has been undertaking the public administration reform with high political will since the last ten years. As now, all ministries and the local authorities have websites and in the process of developing their information database to communicate via internet and websites. Many public agencies and public services are in the process of developing internet interaction with citizens (eg. Tax office, customs office, schools etc.)¹⁴² ITC becomes a powerful tool to pave away culture openness in public sector and also to promote dialogues between the state and the society.

¹³⁹ Hop, LD (2010) internet <http://english.vietnamnet.vn/politics/2009/04/839669/> visited 7 may 2010

¹⁴⁰ Ministry of Justice, *ibid*, p. 21

¹⁴¹ Vietnam UPR to HRC, 2009, § 25

¹⁴² World Bank (2009). p73.

5.5.4 More active civil society

Vietnam is known to be long standing state centric. However there is increasing numbers of so-called civil society, namely the socio-political organizations including women's union, youth union, farmers' union etc. working at central to local levels and other the non-government organizations with 400 national CSO and 6000 provincial CSOs.¹⁴³ CSOs support well to the Government in dissemination of information at local network.¹⁴⁴ Civil society development in Vietnam is a positive indicator for Vietnam to promote access to information.

In sum, Vietnam is moving fast in the economic development and integration. In this progress, Vietnam needs to respond to the public interests. There are advantageous conditions – such as media development, availability of modern communication technology and a more active civil society. Such conditions can facilitate better access to information.

5.6 Challenges to Vietnam's New Access to Information Law

Despite certain advantageous conditions for access to information in Vietnam, the challenges the right to information or the right to be informed remain to be political, cultural, legal, and institutional challenges.

Political challenge remains in the political morality that decides how to balance the practice of freedom of information and the political stability. The transformation from the socialist democracy to a more open market economy is slowly moving to more recognition of human rights. There is also a question of cultural relativity regarding human rights, including the right to information. In practice, the political trials still happens for reasons to main-

¹⁴³ Irene Norlund. (2007) . p 68-90

¹⁴⁴ PPWG (2010) p.5.

tain peaceful orders and to protect rule of socialism.¹⁴⁵ For that, the freedom of information is still restricted.

The Vietnamese culture carries a big constraint to the exercise of freedom of information. A great influence of Confucianism has remained in the way people respect moral and pragmatic expediencies, which might undermine legal rules.¹⁴⁶ The culture of Confucianism in practice does not encourage people to seek for information actively. People are often happy with what information they are provided by the state. This culture makes citizens ignorant about know how to access information or know if they wrongly exercise the right. A recent survey also showed that not all people (only 84%) know about their constitutional right to know.¹⁴⁷ However, pointing out this challenge, I shall argue that the even with strong localized culture and long tradition of thought and practices against freedom of information, universal standards need to be set.

The existing legal conflicts and legal gap for freedom of information remain because there are many laws provided different provisions for this right and there is not overarching law.¹⁴⁸ In addition, up to date, there is not a clear definition of “right to be informed” with the same common understanding of access to information to the” right to know”. In other cases, the government can limit the right or punish the exercise of the right.¹⁴⁹ Other legal challenge is lack of a protection mechanism for the right in law and in practice.

In Vietnam, even with rather radical public administration reform for almost ten years, there still exists a culture of secrecy and lack of openness in public sectors. There is a cultural barrier in public services since government

¹⁴⁵ Human Right Watch, cited of undisclosed documents of the Politburo of Meeting of August 6, 2007. undisclosed. <http://www.hrw.org/en/news/2008/03/11/united-states-and-vietnam-examining-bilateral-relationship> [visited 10 May 2010].

¹⁴⁶ Pham and Nguyen (2003). Pham Duy Nghia, Nguyen Duc Lam and John Gillespie

¹⁴⁷ PPWG, *ibid.* p5

¹⁴⁸ Ministry of Justice, *ibid.* p. 39-84.

¹⁴⁹ Refer to the case of PMU 18. The two concerned journalists were charged under the Criminal Penal Code. (Art 88,258, 281).

officials do not consider provision of information to citizens their responsibility as provided by law and regulations. They do not acknowledge that information that they are holding indeed belongs to the public. In addition, there is an accountability barrier such that officials are afraid if they release information they could be punished if they make a mistake.¹⁵⁰ Meanwhile, if they provide information, they are not awarded for that.¹⁵¹ There is also a big room for public authorities at national and provincial levels to decide the list of confidential information or not to publish the list of classified information.¹⁵²

Finally, in Vietnam, press is not fully independence. Most of media and press are still censored by the state. 700 news outlets, all of which are state-controlled.¹⁵³ Media also lack of protection mechanism for journalist. Freedom of expression and sharing opinion by press have been even stricter controlled recently. The government provides bans on using internet for sharing information related to state secrecy, military secrecy or defamation or hacker.¹⁵⁴ The HR Committee was concerned at reports of the extensive limitations on the right to freedom of expression in the media and the fact that the Press Law does not allow the existence of privately owned media. It recommended Viet Nam to put an end to restrictions on freedom of expression and that the press law should be built into compliance with article 19 of the ICCPR.¹⁵⁵ The growth of internet, beside the advantage for an open society, however, creates challenges for Vietnam to maintain the social and peaceful orders.

¹⁵⁰ The case of Major General Quac in *PMU18*: Later, after the interview with journalist Chien, Quac declined of disclosing such information. He was then charged with provisions on "Abuse of freedom and democratic rights harming state interest, legal rights and interests of organisations and citizens" and "Intentionally disclosing state secrets" under Article 258 and 263 of the Penal Code. <http://english.vietnamnet.vn/social/2008/05/782837/> [visited 10 May 2010]

¹⁵¹ Ministry of Justice (2009) *ibid*.

¹⁵² 1991 State Secrecy Ordinance

¹⁵³ Human Rights Council (2009) A/HRC/WG.6/5/VNM/2.Vietnam UPR. Para 40

¹⁵⁴ The new Circular of 07/2008/TT-BTTTT regulates internet management

¹⁵⁵ Human Rights Council (2009) *ibid*.

5.7 Practical considerations for a future access to information law

In the sections from 5.2 to 5.5, I have explored a comprehensive analysis on freedom of information in Vietnam. I shall argue that despite the political constraint and cultural barriers, Vietnam needs to recognize better the right to information in a new overarching law. Since the government has shared its plan make a draft law for further review since May 2009. At the time being, it is still an opportunity to provide the Government some assessment of the current draft (as I described in details in the annex 2 - table 2). I take into considerations of the identified challenges and possible conditions for the implementation of the new law in order to give some impression for improvement. The major remarks on the draft law's contents are as follows:

The draft law has stated the principles of transparency, openness, equality, public interests, preserving privacy, national security, etc. (art 5) as it aligns with the Constitution and principles of ICCPR.¹⁵⁶

The draft extends wider scope of the public funded institutions including state owned enterprises (art. 1)

The draft law has provided provisions to clarify the terminology of "access to information" (Art 4) and type of information for access (art 14) &19). It provides procedures and regulates the the responsibility of the public officials to provide information on its own initiative and upon requests (art. 9 to 11 and art 16-20 respectively). The draft law also provides clearer right of media to access information to provide for public for the sake of community interests (art 13).

However, the draft law has no specific list of exemptions but provides the provision on "forbidden actions" (art 7) requiring public offices to exclude state secrecy, privacy and business secrecy from the list to provide for the public. As such, the law has still to refer to other laws (art 7 reading together

¹⁵⁶ VMOJ (2009). id p. 1

with art 8) such as Law on State Secrecy, Law on Achieve, Law on Criminal Procedure, Press Law. This implies that the Vietnam need to amend other laws before the Law on access to information becomes effective.

The draft law articulates that the Parliament is an oversight body to monitor and supervise the law. However, the draft does not provide a clear provision that Parliament can receive complaints from citizens.¹⁵⁷ The current provision limits the function of the Parliament to “consider report of the Government on the situation of exercising rights on access to information of the citizens” (art 29). Neither the draft mentions the role of the court in this law.

In my opinion, the draft law has many positive provisions for the realization of the right to access to information. However, some of my key impressions for the implementation of the law are that;

- (i) Before the law becomes effective, the Government needs to review all concerned existing laws to make a legal coherent framework, and the protection mechanism for the right to access to information should be strengthened.
- (ii) With stronger political will, the Government will need to invest resources and accelerate the public administration reform towards a modern public administration that is functioned with e-government and a culture of openness to maximize disclosure of information from the public sector.
- (iii) In order to achieve a balance of public interests, public order and privacy vis-a-vis freedom of information, the Government may need to look for other alternative mechanism rather than limit the use of ICT instead of using some political actions that may hinder the right to information.

¹⁵⁷ This implies that the complaint system is provided under other law such as the Law on Complaint and Denunciation

5.8 Chapter Conclusion

Vietnam is moving fast into the world integration with domestic legal reform. Freedom of information becomes more important for the society: such as to strengthen good governance with an open, efficient, and transparent public sector. There are increasing public interests in access to information and thus the right to access to information becomes more morally accepted in the Vietnamese culture. Despite the cultural differences in concept of the right, there are possibilities that Vietnam can recognize the right under the international human right standard. There are legal justifications to recognize the right stronger in the domestic legal system. The conditions of ICT development and media could allow for an opener flow of information in Vietnam.

However, in the making as well as the implementation of the law, Vietnam can speed up the public administration reform or the legal reform. However, given the efforts made, the law will depend on the state's political will. Perhaps, to achieve a political consensus on the law, a more thorough dialogues, consultation and preparation will be required.

6 Freedom of information in Norway and Vietnam and a comparative perspective

Norway has passed a new law on freedom of information (the 2009 FIOA) that strengthens the right to access information. The Government of Vietnam has recently decided to legislate on access to information for the first time. The law was planned to be presented to the National Assembly for review and approval in late 2010. The table in annex 2 provides a comparison of the laws: 2009 FIOA of Norway and the current draft of Access to Information Law of Vietnam, with regard to the purpose, the scope, the right to access to information and limitations, types of information, rules and procedures of access to information, and control mechanisms. I shall hereby highlight some key comparative remarks on Freedom of Information of the two countries.

6.1 Reflecting societal values and societal needs

Freedom of information contributes to good governance, namely openness, transparency and accountability of the public sector as well as democracy what the society demand for. Public information helps people to improve their standards of living, health, safety, privacy and other public interests.

In European welfare societies like Norway, dissemination of information is an important task of the public authorities. Norway has a long tradition of social democracy, which, with the help of freedom of information, is built by trust between the state and active participation of citizens. In addition, the Norwegian society and citizens are well aware of their individual rights and how to exercise their right to information.

Vietnamese government and society, operating as a socialist welfare state,

maintain the values of “of people, by people, and for people”.¹⁵⁸ By providing more information to the open, the administration performs to seeks to serve the society more efficiently and be more accountable.

As analyzed in previous chapters, the need for freedom of information is justified on the ground of democratic values of democracy and truth, which, together, contribute to promote public participation in the society and preserve public interests. In that process, free media is crucial.

In Norway, media becomes stronger and highly independent, irrespective of political leadership or change of government. There is also a clear protection mechanism for media in law so that media can fulfill its duty of bringing truth to the public, and not violate privacy or misuse of information. The state control previously existed but now the state better regulates the media and leaves more room for media’s self-censorship. The Freedom of Information Act gives the broader right to media to access information. In addition, other acts regulate freedom of media.¹⁵⁹

In Vietnam, there is growth of media in numbers and stronger influence of media in the society. This allows greater participation of public to the media forums in different fields of the society’s lives. By law and by practice, media has a strategic role in communication with the public with regard to state policies as well as in maintaining public order. The law text provides freedom of expression without any state censorship but also provides limitations of access to information and limitations of the press.¹⁶⁰ This strongly suggests that the law on access to information must strengthen the right of access to information for media. The Press Law as it is now will also need to be amended to protect journalists’ right to seek for information.

¹⁵⁸ Vietnam 1992 Constitution (art 2)

¹⁵⁹ For example, Media Ownership Act 1997, the Broadcasting Act and recently the Act of 13 June 2008 No. 41 on editorial freedom; Personal Data Act regulates the right and duty of the press.

¹⁶⁰ Press Law 1989, art 6 and art 10

In a more open society, privacy (including personal privacy and business privacy or intellectual property rights) has to be protected. The current Norwegian Freedom of Information Act clearly limits the right when it may jeopardize personal privacy or may create possible harms to the society or infringe the national security.¹⁶¹ Similarly, the Vietnamese draft law on access to information provides for these limitations, including those of privacy and clear application of national security and public morals. However, because of the booming of information technology (ie. Internet, detective devices, media mobiles etc. and the existing of social networks who can use such information technology to seek and disseminate immense information), both countries may need to take pre-cautionary steps to prevent the possible misuse of information that harms the society.

6.2 Reflecting international standards on human rights for freedom of information

Both Norway and Vietnam have acted to meet international standards on human rights with regard to the right to access to information. The current Norwegian FOIA basically was amended to adopt the EU guidelines on re-use of information (art 2 – Scope, art 6, 7,8, 30) and encourage the adoption of information technology in ensuring access to information (art 10, 30). However, Norway's path has been relatively easier to make a new law, provided that there existed a comprehensive 1977 FOIA and long tradition of democracy. Vietnam, though it commits itself to international civil and political rights including right to information (as provided in ICCPR), still faces challenges in completing its legal framework. For Vietnam, the upcoming law should not only incorporate international standards to give rise to the right to information, but it has to consider a coherent domestic legal framework and proper conditions to implement access to information.

Nurturing the cultures of openness, transparency and accountability

¹⁶¹ FIOA art 10, 23, 25, also Personal Data Act art 2

Both Norway and Vietnam have undertaken public administration reform to build a modern government in order to nurture the culture of openness.

Norway has developed a modern e-government to achieve maximum openness in the public sector. Public entities can use modern communication technology to provide information on their own initiative.¹⁶² Public Information and documents are put in archive and on the websites of the entities. Even receiving and responding to requests are handled faster and more efficiently by emails. As a way of incentive, the public entities even compete each other in modernizing the information system.

A culture of openness has been stronger developed in public agencies and it has accepted by most of public officials. By law, new FIOA makes clarification of the duty of secrecy.¹⁶³ As far as officials are confident to make decisions and disclose information, the public trust in the government will increase. PAA stresses the duty of officials to provide information and at the same time, strictly enforces the punishment if public officials do not provide public information.¹⁶⁴

Vietnam commits to take up stronger public administration reform by means of a modern government. Vietnam considers transparency and openness as dual factors for an efficient public sector as well as for economic growth. Vietnam has, however, poor technological infrastructure especially at local levels and the capacity in maintaining a digital archive system access to internet in many remote areas are significant barriers. Over the last 10 years, Vietnam has made positive progress in public administration reform and devolving government to local levels. However, there is still great concern about the capacity of localities to handle the quantity of information and applying modern technology in information sharing.

In Vietnam, there are added factors, a strong culture of duty of secrecy and

¹⁶² FIOA (art 10 and 30)

¹⁶³ FIOA (art 11, 13) and PAA (art 13).

¹⁶⁴ PAA (art 13).

fear of punishment for violating state rules and regulations amongst public officials to due strong state control and the existence of widespread criminal action against to wrongful release of public information. To deal with these considerable challenges to the exercise of the right to access to information, the law can be clarified to both regulate the duties of public officials and encourage them to share information and be responsive to the information needs of citizens.

6.3 Maximizing disclosure of information

Maximizing disclosure becomes a standard for good governance in the today's modern world. Norway meets the standards under the current Law, which broadens the scope of the law to local government, companies and local elected municipality. It especially narrows down exemption categories.¹⁶⁵ By such declassification and limiting secrecy as a part of the accessible documents, the scope of access has been widened.¹⁶⁶

Vietnam still faces institutional obstacles in removing culture of secrecy amongst the public officials, which greatly hinders them from providing documents and dealing with confidential documents. There are also conflicts in the legal system. Obviously and importantly, the Vietnamese Law will need to provide a protection mechanism for both citizens and public officials. This implies that, in order to maximize disclosure, the future law will need to have clear provisions on what information must be provided by the government, and what can be accessed by the citizens. In addition, the information that belongs to state secrecy category should be narrow and clear in such law.

6.4 Continuing the institutional reform for the law on freedom of information

Norway strengthens the legal protection of the right to access to information by law and by rule of law. It has established both a control system and a

¹⁶⁵ FIOA (art 3,14,15,16, 17-23).

¹⁶⁶ FIOA (art 12)

protection mechanism. Parliamentary Control (namely Storting Civil Ombudsman) deals with complaints and appeals on access to information.¹⁶⁷ It also assesses the executive's performance which shows a strong measure to ensure a democratic right in representative democracy.

Vietnam, at present, has a parliamentary control system. The Parliament (National Assembly) has a role of oversight and representation for the citizens in all matters. However, the protection mechanism by the National Assembly has not been enacted to protect the right to information.¹⁶⁸ This implies that in order to realize and to protect the right to access information, Vietnam will need to take both legal action and the institutional development that can protect the freedom of information.

¹⁶⁷ FOIA (art 32) and Law on Storting

¹⁶⁸ Also as above mentioned, the right to information is also not well protected under the current Press Law in connection to the Penal Code.

7 Conclusion

I have explored the concept of the human right to information under legal and moral perspectives. I stress that when both universal moral right and contextual society values exist, then the right to information should be made into law. Through examination of the case of Norway and Vietnam, I could conclude that although there are differences in politic, culture and level of development, the right to information is a universal moral right.

In the implementation of the right to information, though Norway is a democratic country, there are still limitations based on societal values. However, Norway has made progress in adopting its domestic legislative system to the international human right standard. The question is that whether the state needs to be politically sincere to take on the reform to maintain the rule of law.

Vietnam, in the process of making a new law and posing questions on how to implement the law, can learn from Norway's experiences. Vietnam can become even better when it has dynamic and active human resources in the public sector and potentials of the growing economy. However, it all depends on whether Vietnam has the necessary political will. Perhaps, the state will be more decisive when the state converse with society to seek an optimum solution.

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AND

ANNEXES



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Annexes

Annex 1 - Review of Norwegian FOIA 2009

Annex 2 - Comparative law on access to information
of Norway and Vietnam

Annex 3 - Summary of interviews

Annex 4 - Freedom of Information Act of Norway

Annex 5 - Draft law on Access to Information of
Vietnam

Annex 1 - Review of Norwegian FOIA 2009 ¹⁶⁹

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|--|---|
| <p>PRINCIPLE 1. Maximum disclosure</p> | <p>The purpose of the act is to strengthen the FOI/E §1 The scope is enlarged: incl. administration bodies and public companies (with more than 50% public ownership, §2) Enlarge to apply to publicly elected municipal bodies and its documents (§16) clarify that documents from the municipality sent to central government bodies are not internal documents with possible exemption. Still not applied to Storing and Storing bodies (§2) – as this entity is under the constitutional control and function under other act The act applies to ‘anyperson’ (§3) and without any discrimination (§6) regarding to agencies to request and purpose of using information. Access to ‘information’ including documents (defines documents and information, incl. Case documents, journals and registers.. – §3,4 this is still unclear on type of documents and what need to be registered)</p> |
| <p>PRINCIPLE 2. Obligation to publish</p> | <p>Duty to keep journal (§10) and maintain Archieve system (electronic documents), available public on the internet. Decide how a document to be made public (§30) – this encourage public bodies to take initiative in providing information</p> |
| <p>PRINCIPLE 3. Promotion of open government</p> | <p>The act aim to strengthen confidence in the public authority (§1) Empower public officials regarding their duty of confidentiality, secrecy should not be kept if with consent of the person (PAA §13(a)1, there is no legitimate interest (13(a-3) and by reason for private and public interest (§13(b) and also §11 and §13 parpa 3 of FOIA. Further electronic communication is encouraged (§15a) of PAA to strengthen openness government and communication of public administration to the public</p> |
| <p>PRINCIPLE</p> | <p>Exemption can be made on the basis of partial information in the</p> |

¹⁶⁹ The principles are consolidated in many international and European documents on Access to Information, presented in Introduction to Openness and Access to Information published by Danish Institute of Human Rights, 2005

| | |
|---|---|
| <p>4. Limited scope of exceptions</p> | <p>document, not to the whole document (§12)</p> <p>Strengthen the protection of privacy, of personal data, Intellectual property rights §10 para 3, also cf. Personal Data act §2. Information on criminal offence that would possibly jeopardize individual or harmful to environment (§24 para 3), information regarding appointment (§25) and examination (§26)</p> <p>More clarification of exemptions under FIOA (§13,14,15,16 regarding internal documents) and §17-§23 regarding other matters.) these provisions are overlapped with provision on restricted access, as provided in §19 of PAA</p> |
| <p>PRINCIPLE</p> <p>5. Processes to facilitate access</p> | <p>Public administration body has to give reason and ground for refusal in writing and advise on appeal procedures (§31)</p> <p>Response to request is dealt without undue delay (§29 para 1) and within 5 working days (§32 para 2). Details procedures of case preparation refers to PAA (Chapter IV)</p> |
| <p>PRINCIPLE</p> <p>6. Costs</p> | <p>Free of charge (§8) for reasonable amount for documents requested, otherwise, rate can be applied in particular cases not exceeding the costs of copying and dispatching documents. Control the fee to re-use information services to not exceeding the actual costs of collecting and reproducing and dissemination of information.. (§8 para 3) and standard license may be applied (§7)</p> |
| <p>PRINCIPLE</p> <p>7. Open meetings</p> | <p>Limitation to Court documents (§18) but Public hearing at court referring to the administration of justice is allowed</p> <p>Same applied to Storing document, but Assembly meetings are public and White Papers (final decision or policy paper) of the Storing are public.</p> |
| <p>PRINCIPLE</p> <p>8 monitor and safeguard openness</p> | <p>Control by the public and legal safeguards provided (purpose §1,</p> <p>Appeal mechanism is the choice of Parliament Ombudsman or the Cabinet (§32para 1) Appeal shall be prepared without undue delay (§32 para 3) and up to 3 weeks (§29 of PAA) to submit the appeal. Details procedures of case appeal to Public Administration is referred to PAA (Chapter VI), and also Enforment Act Chapter 13</p> |

Annex 2 : Comparative law on access to information of Norway and Vietnam

| <u>Domain</u> | <u>Norway</u> <u>(reference to the 2009 FOIA)</u> | <u>Vietnam</u> <u>(reference to draft law, version 4, July 2009)</u> |
|--|--|---|
| Purpose | To enhance openness and transparency and control of public authorities with conditions for public discussion that can facilitate a democratic society. In addition, to regulate on re-use of information and accommodate the new technological tools | To enhance the transparency and openness of the public authorities and ensure the right to information of the public (art 1) To ensure the community interests (art 13) |
| Scope on institutions (which authorities/institutions should the act apply to) | All public (governmental and administrative) bodies of national, regional and local levels. Private bodies with function like administrative authorities, or with majority of shares owned by the government. | Wider - All public bodies at all levels, including Parliament Office, Committees, Presidential and Governmental office, Court, Procuracy, State audit. State own enterprises (provided with requirement to have particular guideline – art 31) |
| Scope on who may access | All person or legal entity, regardless of nationality | All citizens and entities |
| Limitation of the rights | Yes. Mentioned the principle of minimized limitations as possible. | Refusal on the ground of national financial policy, national security, international relations, harmful to community interests, internal documents/information (art 24 (2)) |
| Secret rule/ Exemp- | Very clear on list of exemp- | The principles of community |

| | | |
|---------------------|--|---|
| tions | <p>tions Documents exempted on ground of public interests ((national security, international relations, prevention of crimes, public safety) and private interests (privacy and intellectual property rights)</p> <p>Internal documents – art 13-16</p> <p>Applied on partial of documents (only exempt part of confidential information – art 12)</p> | <p>interests to safeguard state secrecy, privacy and business privacy (art 5 (4)) and art 9 (1) – but no specific categories of exempted information/documents</p> |
| Type of information | <p>Official documents in all forms which is retrievable, incl. paper based, electronic, emails, tape recordings, films, photographs etc. but only related to public body functioning, not to privacy of public officials</p> | <p>Specific types of information (not only documents) to be publicized (art 9, art 11)</p> |
| Open rules | <p>Regardless of reasons</p> <p>No discrimination on dealing with requests</p> | <p>Same – principle of equality of access - art 5 (2)</p> <p>Engage Media to inform public information (art 13 (2))</p> |
| Procedure of access | <p>Most simple as possible, in form of writing (letter, fax or email) or orally (phone or in person) – art 28</p> <p>Applicants To specify the documents or types of cases</p> <p>Free of charge or min charge over excessive amount of documents</p> <p>To respond to the request</p> | <p>Same. No need to state reason of request</p> <p>Clear on state Obligations (incl. providing, guiding) art 4 (2); art 26</p> <p>With fee</p> <p>Yes – procedure for public body to actively provide information to public in specific forms (journal, internet, me-</p> |

| | | |
|--|---|--|
| | <p>within 5 days, stating reasons of rejection if denying the request (art 31)</p> <p>Public body to maintain public register accessible on internet (art 10)</p> | <p>dia</p> <p>To respond the request (in verbal, phone, in person, electronic emails, copies)</p> <p>Time: within 3 days (art 21 (3)) to 15 days (with complicate request)</p> |
| Control of FOIA practice/ Judicial review | <p>Complain to superior administrative body, or Ombudsman (Independent Parliamentary body)</p> <p>Ombudsman also inspect and report on the performance of the public bodies</p> | <p>Yes for complaint and appeal. But not yet clear on institution. Refer to other current law</p> <p>Judicial and performance review by Parliament, people elected bodies at local level (art 29)</p> |
| Other relevant laws or regulations | <p>List of related legal instruments</p> <p>1814 Norwegian Constitution Art 100</p> <p>Freedom of Information Act, Norway, 1970, 2009</p> <p>Privacy Act and Personal Data Act of 2000</p> <p>Act on Public Procedure (Public Administration 2003)</p> <p>Media Ownership Act 1997</p> <p>Broadcasting Act</p> <p>Act of 13 June 2008 No. 41 on editorial freedom in the media. Entered into force in 2009</p> <p>Act of Civil Procedure and Act of Criminal Proceedings</p> <p>Law on Achieve 1992</p> <p>Intelligence Act 1998</p> <p>Law on Local Government</p> <p>Law on Environment</p> <p>Law on Product Control</p> | <p>1992 Vietnam Constitution 1992, amended 2001 (Art 19, 69,78, 76)</p> <p>Press Law of 1999 and Decree no. 51/2002/ND dd 26 April 2002</p> <p>State Secrecy Ordinance of 1991</p> <p>Ordinance on Grass Root Democracy 79/2003/NĐ-CP dd 07/7/2003</p> <p>Anti-Corruption Law of 2005</p> <p>Law on audit of 2005</p> <p>Penal Code of 2001</p> <p>Law on Publications of 2004</p> <p>Strategy for information development to 2010 (Decision no. 219/2005/Ttg)</p> <p>The draft law on A21 (starting March 2008, planned to be passed by NA in Dec 2010)</p> |

Annex 3: Summary of interviews *

Norway: Individual interviews

(The informants' names are not disclosed, due to their requests)

Interview #1. Official at Ministry of Justice and Police

The grounds on societal values that MOJ used to argue for legitimacy of the FoIA is:

- Basic democratic principles so that people can participate in decision making when they have information
- External control (mainly by media) so that media can report on cases of corruption and hence there is more trust of the public
- Rule of law
- Information sharing and the reuse of information (as inline with EU Directive/05)

How does the FoIA reflect societal values?

2 big changes:

- + include public companies in the scope, because public is more interested to know about their public money is spent. They want to see more transparency.
- + Limit the scope of exceptions under the law. It is still a good way to ensure the right is more protected, though ministry is more flexible to set up list of exceptions or declassification. But because the overall trend is openness hence ministry mostly narrow the exceptions rather than expand it.
 - Even though there is not much change in the scope of state security because it is bound by other law, but the scope of exception is narrowed.
 - Not much change in democracy thinking by public because democracy is thought like granted in the society.

FoIA and state-media relation

The law makers do not think there is much change in such relation or the societal values brought by the media under the scope of the law, because the media role or control of media is under other act. The law somehow facilitates more to media to function.

The law is more of state responsibility.. to enhance accountability. It still gives the public body flexibility to apply the law which depends on how they interpret the law. But the concurrent law has improved because it is clearer and more precise than the 1970 act.

Excuses that used to be used by public bodies under the old act are:

- More work and procedure
- Difficult to apply limitation provisions
- Ignorance of the act

To function the law, there needs to have cooperation between civil society and the public body. Without the civil society and media, the law does not work. It is also important that the officials knows about the law and apply the law. There needs to be monitoring system and independent oversight mechanism.

Regarding independence of monitoring of the act, it is core principle of a democratic society in power sharing. Norway chose the Ombudman mechanism even though it is

non binding because of the trust under parliamentarism and it is more effective, less costly than the court system. However, the government still holds strong control but the control is good if government follows the principle of openness.

Norms for openness and transparency in Norwegian public sector:

The overarching principle of democracy influences the formation of the norms. It may include positive attitude of public servants to openness and to think that government-held documents belong to public, pro-activeness towards transparency, the practice of disclosure of public documents, the increasing attention on communication with public and media and via internet; pressure from press by statistic based critics, commitment and responsibility of the top leadership in the institution; downward delegation of authority in the public body.

Interview #2 – official at Ministry of Foreign Affairs

There has been a tremendous trend in openness compared with 10 years ago. Withhold information from public was easier with more excuses. Eg. The excuse of secrecy in relations between state to state in foreign services is no longer valid all the time to give some example of the handing cases on foreign policy issues. But there has been big change in attitude, moving away from risk-adverse attitude to more responsibility and accountability. The ground for this is the law and regulations in place and the political and administrative action to delegate authority to individuals.

The facility such as IT and webpages really helps to promote the openness. Journalists are much easier to find journals and know the procedures well how to ask for documents. Citizens here are well informed about their rights and as well as the procedures. Even they are easy to complain under the law. This is one factor that that change the civil servants to higher professionalism and responsiveness. They do not like to receive complaints not because of the possible sanction within the body, but because dealing with complaints even takes more time and complicate.

Internet is empowering public but it does not threaten the public body because the government created the competition and ambition to share public information by internet. The key success factor of using internet and e-government in A2I is that they can keep check and control balance by mutual cooperation in maintaining ethics of media and accountability of public body.

Change in the organization to openness:

- Culture with more positive and proactiveness attitude to wards disclosure of documents (increase)
- More attention to external communication strategy, ie. with internet use and media (increase)
- Pressure by press critics is an incentive

Key driving factors for change in attitude are:

- The law: ie. much easier for journalists access info through journals.
- There have been remedious requests!!
- IT technology: There is ambition to share information by internet by all public agencies and officials

Some factors that may hamper and destroy good information flow in public sectors are:

- Ignorance
- Fear of participating or making decision
- Culture of secrecy and immunity are NOT the crucial factors.

Interview #3 – Media/Journalist

Media role are

- Explore fact and truth: Giving true story to the public... but it needs to be indepth, or creates debates instead of bombarding headlines
- Challenge the power
- Scrutiny by media put pressure on government away from keeping secret
- Media-Government should be in the “mutual respect”

“Media, we like to look at ourselves as not to be the tool of the Government”

Media talks about politics and power. Eg. About the **Health Minister** holding power for long time so media reminded him about his ability...

A Journalist thinks that Politicians do accept more critical role of media because media tends to balance their critical view

History/development of media in Norway: during 50s and 60s, there was a lot of control over media by government. The global trend for independence of media came about 1980s. Now, more media become commercialized, not financially dependent on the government.

Comments About FOIA:

- the right of journalists are improved under the law
- Journalists still think government officials are holding information way for the reason of not taking “risk”.
- Still the law is not so clear on what is private and official. Eg.

Eg. DNB Bank director (former labor party politician) sending SMS to PM office about solution of financial crisis, when requested to disclose SMS, such request was refused. This created a public debate on possible link to big power...!! This is confirmed by an official of MFA.. “there is still grey zone (eg. Phone, email, other info) to be disclosed by law or not”

Journalist agreed that media contribute to (i) strengthen democracy and promote transparency but lesser to serve public interest and privacy.. compared with government officials' view...

Problems for media:

More commercialization of media due to financial crisis and demands for profit (ranked 4/5)

Informants try to exploit and manipulate media (rank 3/5)

Interview #4: Information Coordinator (official of MFA)

Why FOIA? Together with Public Administration Act (1967)

- Press wish to have “less exception” , and able to achieve max. disclosure at first distance
- Public Administration should be more open

New about FIOA:

- Any one
- Information is larger than documents
- More clearer and more option for Complaint: administrative immediate superior, Cabinet and Ombudsman

Change in officials handling the case:

- More discretion and authority so it subjects to officials attitude on duty of secrecy and their consent or participation or “good faith”.

Challenges:

- Quality control by ministry is heavier
- More work load
- Easy to get pressure of complaints

Constraints:

- Huge documents to find/need good archive and tracking system. Still problem of archive when the title of document is too vague, which might be difficult for officials to decide if it is classified or not...
- Require more skills: eg. Giving advise or guide applicants on their requests if the request is too general
- “Officials are still afraid of giving wrong decision”
-

Comments on principle of openness:

- Ministry tends to give maximum disclosure, because to avoid complaint, critics by press eg.
- But about 29% refusal rate of 2009, the roughly same rate as 2009

Interview #5: official at Directorate of Public Administration and Reform, DIFI

Views in FOIA

- Regulators at DIFI think that the law should not be pushed too far, as it might cause the adverse effects
- It is still unclear in discretion: eg. Email, informal meetings, cabinet meeting is not disclosed, that might make public officials afraid of making decisions.

Connections between PAA and FOIA

- After debated during mid 1960, the PAA of 1967 was separated from FOIA 1970. PAA proved to be more effective regulated on public sector

- PAA gives the right to claim eg. Complaint system under PAA is strict and clear so it creates duty and discipline of public officials, also forms public officials attitude about public services
- FOIA is more related to media use and demand for information.

Some other comments:

We need to go back to the basic concept of the right and need to have analysis of how the law is enacted and implemented to make the law effective and understandable. Reflection from experiences from transition countries is that the law can not be adopted over night.

Practices of FOIA:

ICT is the key to enable the Public Administration to provide information according to FOIA

eg. New innovations – eg. Min ID, website to have function better

- Municipalities are not forced, but inspired to apply ICT
- Its important that political will makes all agencies to move in one direction of reform

Vietnam: Group discussion with Citizens – from 12 – 14 April, Ha Tinh Province

| Information under the draft | Information most needed by the citizens |
|---|---|
| <ul style="list-style-type: none"> • Legal documents • Strategy, policy, plans and budget • Administration (function, mandates and organization) • Management of fund, social activities • Statistics • Planning, Land • Goods | <ul style="list-style-type: none"> • Legal documents • New policies of state and localities • Socio-Economic Information • Social welfares • Management of Funds • Environment • Education • Production (agriculture, industrial production) • Services • Transportation • Labor and Jobs • Contacts of Adminsitration system |

Ranking of the need for information by types of provision (Group discussion conducted on 13 April 2010, Ha Tinh province)

| | Scores (lowest :least) |
|---------------------------------------|------------------------|
| Leaflets | 76 |
| Telephone (Callcenter) | 90 |
| Internet Portal | 99 |
| Newspaper, Books at Commune's library | 117 |
| Printed Documents | 132 |
| Postings at commune offices | 138 |
| Posters | 156 |
| Radio | 159 |
| Village communication group | 168 |
| Mass media (TV) | 175 |
| Art performance, clubs | 182 |
| Village meetings | 210 |

Mr. Tran Van Thang – Deputy Head of Father Front Organisation of Can Loc District – Hatinh province, interviewed 12/4/2010

‘ Where people can access to more information, where the administration performed better. If citizens know policies well, the complaints and denunciation will reduce.’

Chairman of Binh Lu Commune, Tam Duong, Lai Chau Province, interviewed 14/4/2010

‘We also use the radio system to give live meetings of the Local Councils so that people can listen to their representatives who are raising questions to increase transparency in the local activities’

Annex 4 Freedom of Information Act of Norway

)Act relating to right of access to documents in the public administration (short title:

*Note: The English version is unofficial note from Ministry of Justice and Police.

The Norwegian version is Offentleglova (LOV 2006-05-19 nr 16: Lov om rett til innsyn i dokument i offentlig verksemd, <http://www.lovdata.no/all/hl-20060519-016.html>

Chapter 1 Introductory provisions

Section 1 Purpose

The purpose of this Act is to facilitate an open and transparent public administration, and thereby strengthen freedom of information and expression, democratic participation, legal safeguards for the individual, confidence in the public authorities and control by the public. The Act shall also facilitate the re-use of public information.

Section 2 Scope of the Act

This Act applies to

- (a) the state, the county authorities and the municipal authorities,
- (b) any other legal person in cases where it makes individual decisions or issues regulations,
- (c) any independent legal person in which the state, county authority or municipal authority directly or indirectly has an equity share that gives it more than half of the votes in the highest body of that legal person, and
- (d) any independent legal person in which the state, county authority or municipal authority directly or indirectly has the right to elect more than half of the voting members in the highest body of that legal person.

Subparagraphs (c) and (d) above do not apply to legal persons which mainly carry on business in direct competition with and on the same conditions as private legal persons. For entities which after public acquisition or the like come under (c) or (d) above, this Act applies from and including the fourth month-end after the month when the conditions were met.

The King may make regulations providing that this Act shall not apply to independent legal persons or to certain documents in the possession of independent legal persons encompassed by the first paragraph (c) or (d) insofar as such provision must be considered necessary based on consideration of the nature of the entity, the competitive situation or other special factors. The same applies where the great majority of the documents of the entity are exempt from access and particularly weighty considerations so indicate. The King may make regulations providing that this Act shall wholly or in part apply to independent legal persons that are owned by the state or a municipal authority without meeting the conditions of the first paragraph (c) or (d), or that are exempt under the first paragraph, second sentence.

This Act does not apply to the Storting, the Office of the Auditor General, the Storting's Ombudsman for Public Administration or other institutions of the Storting.

This Act does not apply to the functions of courts of law pursuant to the statutes relating to the administration of justice. Nor does this Act apply to the functions of other public agencies pursuant to the statutes relating to the administration of justice in their capacity as justice administration agencies. Moreover, this Act does not apply to functions exercised by the police or the prosecuting authority pursuant to the Criminal Procedure Act. The King may by regulations make provision in regard to which statutes are to be regarded as statutes relating to the administration of justice, and to the effect that some functions under the statutes relating to the administration of justice shall nonetheless be encompassed by this Act.

This Act applies to Svalbard unless otherwise prescribed by the King.

The provisions of section 6, section 7 second paragraph, section 8 third paragraph second sentence and fourth and fifth paragraphs, and section 30 first paragraph third sentence and second paragraph, apply irrespective of the provisions of this section to all entities encompassed by the EEA Agreement Annex XI point 5k (Directive 2003/98/EC) on the re-use of public sector information.

Chapter 2 Main rules on access

Section 3 Main rule

Case documents, journals and similar registers of an administrative agency are public except as otherwise provided by statute or by regulations pursuant thereto. Any person may apply to an administrative agency for access to case documents, journals and similar registers of that administrative agency.

Section 4 Definitions

'Document' means any logically limited amount of information stored in a medium for subsequent reading, listening, presentation, or transfer or the like.

The case documents of an administrative agency are documents which have been received by or submitted to an administrative agency, or which the administrative agency itself has drawn up, and which relate to that agency's area of responsibility or activities. A document is considered to be drawn up when it has been dispatched by the agency. If this does not take place, the document shall be considered to have been drawn up when it has been finalised.

The following shall not be regarded as case documents of an administrative agency:

- (a) any document forming part of a library or museum collection,
- (b) any documents which a private legal person has handed over to public archives for safekeeping,
- (c) any document handed over to an administrative agency for disclosure in a periodical journal that is published by that agency,
- (d) any newspaper, journal, advertising matter and the like which an administrative agency receives without being connected to a specific case at that agency, and
- (e) any document which an employee of an administrative agency has received in a capacity other than that of employee of that administrative agency.

In this Act the term 'administrative agency' embraces all entities to which this Act applies.

Section 5 Deferred access

An administrative agency may determine in a particular case that access to documents shall not be given until a later stage in the preparation of the case than that stipulated in sections 3 and 4, provided there is reason to believe that the documents available give a directly misleading impression of the case and that access to them could therefore be detrimental to obvious public or private interests.

For case documents drawn up by or for the Office of the Auditor General in cases that the said Office is considering presenting to the Storting as part of the exercise of constitutional control, access will not be given until the case has been received by the Storting or when the Office of the Auditor General has notified the administrative agency concerned of the conclusion of the handling of the case, see section 18 second paragraph of the Act of 7 May 2004 No. 21 relating to the Office of the Auditor General.

Where significant private or public interests so indicate, access to a document may be deferred until it has reached the person whom it concerns, or until the event at which it is to be made public has taken place.

Section 6 Prohibition of discrimination

In cases dealt with pursuant to this Act or in other cases where access to information is given, no discrimination may be made between comparable requests for access and no agreement may be made granting any person an exclusive right to information. Where the entity making the request is an administrative agency or an agency owned by the state, this is not a valid basis for discrimination if the purpose of the request is unrelated to the official tasks of the agency.

The prohibition in the first paragraph does not prevent the conclusion of agreements granting exclusive rights where such agreement is necessary for the provision of a service in the public interest. The validity of the reason for concluding such agreements shall be reviewed every three years. Agreements on exclusive rights that are concluded pursuant to this paragraph shall be made public. No agreement may be concluded on exclusive rights to information to which the public have a statutory right of access pursuant to provisions of law or regulations.

Unless otherwise prescribed by the King in regulations, the provisions of this section only apply to entities encompassed by the EEA Agreement Annex XI point 5k (Directive 2003/98/EC) on the re-use of public sector information.

Section 7 Use of public information

Information to which access is given pursuant to this Act or to other legislation that gives the public right of access to documents in the public administration may be used for any purpose unless this is prevented by other legislation or the rights of a third party.

At entities encompassed by the EEA Agreement Annex XI point 5k (Directive 2003/98/EC) on the re-use of public sector information, any standard licences for the use of public information shall be available in digital format and it must be possible to process them electronically. The King may by regulations provide that the same shall

apply to entities not encompassed by the EEA Agreement Annex XI point 5k (Directive 2003/98/EC) on the re-use of public sector information.

Section 8 Main rule regarding access free of charge

An administrative agency may only require payment for access under this Act insofar as it is authorised to do so by regulations pursuant to the second or third paragraphs.

The King may make regulations concerning payment for transcripts, printouts or copies. The rates of payment shall be such that the total income does not exceed the actual costs of copying and dispatching documents.

The King may make regulations providing that payment may be demanded for documents where particular aspects of the nature of the documents or the entity make it reasonable to do so. The rates of payment shall be fixed such that the total income does not exceed the actual costs of collecting, producing, reproducing and disseminating information, together with a reasonable return on investment.

In the case of entities that fall outside the scope of this Act, but which are encompassed by other legislation giving the public access to documents in the public administration, or under the EEA Agreement Annex XI point 5k (Directive 2003/98/EC) on the re-use of public sector information, the total income in respect of information delivery must not exceed the actual costs of collecting, producing, reproducing and disseminating information, together with a reasonable return on investment.

Entities that require payment for information shall make the rates of payment public electronically if this is possible and expedient. Entities shall on request also provide information on the basis for calculating the rates of payment and, where appropriate, on the factors on which such calculation will be based in particular cases.

Unless otherwise provided by the King in regulations, the provisions of the third paragraph second sentence and of the fourth and fifth paragraphs only apply to entities encompassed by the EEA Agreement Annex XI point 5k (Directive 2003/98/EC) on the re-use of public sector information.

Section 9 Right to request access to a collation of information from databases

Any person may request access to a collation of information that is electronically stored in the databases of an administrative agency insofar as the collation can be done using simple procedures.

Section 10 Duty to keep a journal. Making journals and documents available on the Internet

Administrative agencies shall keep a journal pursuant to the rules of the Archives Act and associated regulations.

The King may make regulations providing that administrative agencies that keep an electronic journal shall make such journal available to the public on the Internet, and providing how this shall be done.

Administrative agencies encompassed by this Act may make documents available to the public on the Internet, except documents which are subject to a duty of confidentiality by or pursuant to law. The King may make regulations concerning the making avail-

able of documents on the Internet and to the effect that certain types of personal data, see the Personal Data Act section 2 subsection 1, and documents to which a third party has intellectual property rights, shall not be made available by this means.

Section 11 Access based on a weighing of interests

Where there is occasion to exempt information from access, an administrative agency shall nonetheless consider allowing full or partial access. The administrative agency should allow access if the interest of public access outweighs the need for exemption.

Section 12 Exemption in respect of the remainder of the document

Where an administrative agency exempts parts of a document from access, it may also exempt the remainder of the document if

- (a) these parts alone would give a clearly misleading picture of the content,
- (b) it would be unreasonably demanding for the agency to separate them, or
- (c) the exempted information constitutes the most essential part of the document.

Chapter 3 Exemptions from the right of access

Section 13 Information subject to a duty of confidentiality

Information that is subject to a duty of confidentiality by or pursuant to law is exempted from access.

The provisions of the Public Administration Act concerning the duty of confidentiality give independent legal persons as mentioned in section 2 first paragraph (c) or (d) of this Act the right to make exemptions in respect of documents and information to the same extent as they give administrative agencies such right.

Where a request for access concerns a document containing information that is subject to a duty of confidentiality, and this duty of confidentiality ceases when the consent of the person entitled to confidentiality has been obtained, the request for access together with any reasons given shall on request be submitted to the person concerned allowing a suitable period for reply. Failure by the person concerned to reply shall be considered a denial of consent.

Section 14 Documents drawn up for an administrative agency's internal preparation of a case (internal documents)

An administrative agency may exempt from access any document which it has drawn up for its internal preparation of a case.

The first paragraph does not apply to:

- (a) any document or part of a document containing the final decision of the administrative agency in a case,
- (b) general guidelines for the administrative agency's case processing,
- (c) preparatory work for cases decided by the King in Council, and
- (d) brief descriptions of the content of documents and the like, but not if such a description reproduces internal assessments.

The King may make regulations providing that exemptions may not be made pursuant to the first paragraph of this section in respect of specific documents in specific state or state-owned agencies.

Section 15 Documents obtained externally for internal preparation of a case
Where it is necessary in order to ensure proper internal decision processes, an administrative agency may exempt from access any document that the agency has obtained from a subordinate agency for use in its internal preparation of a case. The same applies to documents which a ministry has obtained from another ministry for use in its internal preparation of a case.

Moreover, exemptions may be made in respect of parts of any document containing advice on and assessments of how an administrative agency should stand on a case, and which the agency has obtained for use in its internal preparation of the case, where this is required in the interest of satisfactory protection of the government's interests in that case.

The exemptions in this section apply correspondingly to documents concerning the acquisition of a document as mentioned in the first and second paragraphs, and to notices of and minutes from meetings between a superior and subordinate agency, between ministries and between an administrative agency and any person who gives advice or assessments as mentioned in the first paragraph.

This section does not apply to documents obtained as part of the general procedure of consultation on a matter.

Section 16 Access to internal documents of the municipal authorities and county authorities

The exemptions in sections 14 and 15 do not apply to:

- (a) case documents with enclosures presented to a publicly elected municipal or county body,
- (b) the agenda for any meeting of a publicly elected municipal or county body,
- (c) documents from or to any municipal or county control committee, audit body or appeals board, and
- (d) documents in cases where a municipal or county entity acts as an external party in relation to another such entity.

Section 14 nonetheless applies to documents that are exchanged between any municipal and county control committee and the secretariat to such committee.

The exemption in section 14 does not apply to documents from or to a municipal or county body established by special statute or a municipal or county undertaking pursuant to Chapter 11 of the Local Government Act.

Nor does the exemption in section 14 apply to documents from or to any municipal or county entity in areas where such entities have independent power of decision. The exemption in section 14 nonetheless applies to documents in cases where the chief executive or the municipal executive board implements control measures vis-a-vis an entity, and to draft decisions and recommendations put before the chief executive or the municipal executive board before a decision is made, or before a recommendation

is put before a publicly elected body. The exemption in section 14 also applies to comments from the chief executive or the municipal executive board on such draft as mentioned in the preceding sentence.

Section 17 Exemptions in respect of certain documents relating to the Royal Court
Exemptions from access may be made in respect of documents concerning speeches which members of the Royal Family shall hold or have held, and in respect of documents relating to travel itineraries for members of the Royal Family. However this does not apply to a final speech after it has been officially delivered, or to any document relating to travel itineraries, after the tour has been carried out or the travel itinerary has been made public.

Section 18 Exemptions in respect of court documents
Exemptions from access may be made in respect of documents which an administrative agency has drawn up or received as a party in legal proceedings in a Norwegian court of law.

Section 19 Exemptions in respect of documents that are exchanged during consultations with the Sami Parliament etc
Exemptions from access may be made in respect of documents that are exchanged between state agencies and the Sami Parliament and Sami organisations as part of consultations in accordance with ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, Article 6. This does not apply to documents which are exchanged as part of the general procedure of consultation on any matter.

Section 20 Exemptions out of regard for Norway's foreign policy interests
Exemptions from access may be made in respect of information when this is required out of regard for Norway's foreign policy interests where:

- (a) Norway is obliged under rules of international law to deny access to the information,
- (b) the information has been received on condition that, or it follows from established practice that, the information shall not be made public, or
- (c) the information relates to Norwegian negotiating positions, negotiating strategies or the like and such negotiations have not been concluded. After conclusion of negotiations, exemptions may still be made in respect of such information where there is reason to believe that negotiations on the same matter will be resumed.

As regards information in official documents which are exchanged between Norway and an international organisation in matters relating to the international development of standards which may have effect for Norwegian law, exemptions pursuant to the first paragraph (b) may only be made if this is required out of regard for weighty foreign policy interests. The same applies to information about Norwegian negotiating positions after such positions have been presented at the negotiations.

In cases other than those mentioned in the first and second paragraphs, exemptions from access may be made in respect of information when this is required by particularly weighty foreign policy interests.

Section 21 Exemptions out of regard for national defence and security interests

Exemptions from access may be made in respect of documents when this is required by national security interests or the defence of the country.

Section 22 Exemptions in certain budget matters

Exemptions from access may be made in respect of documents drawn up by a ministry, and which relate to government budget matters. The same applies to information about preliminary budget allocations established by the government or a ministry in documents from subordinate bodies and agencies, and from The Royal Court, the National Courts Administration and the Sami Parliament.

Section 23 Exemptions out of regard for the government's negotiating position, etc.
Exemptions from access may be made in respect of information where this is required in the interests of proper execution of the financial, pay or personnel management of the agency concerned.

Exemptions from access may be made in respect of information relating to negotiations on framework agreements with agriculture, fishery or reindeer husbandry organisations where this is required in the interest of proper execution of the negotiations.

Exemptions from access may be made in respect of tenders/quotes and minutes under rules made in pursuance of the Act of 16 July 1999 No. 69 relating to Public Procurement, until a choice of supplier has been made.

Exemptions from access may be made in respect of documents relating to companies in which the state or a municipal authority or county authority has owner interests, and which are treated by the agency concerned as the owner, unless the company falls within the scope of this Act.

Section 24 Exemptions in respect of regulatory or control measures, documents relating to offences and information liable to facilitate the commission of an offence, etc.

Exemptions from access may be made in respect of information when this is required because access would counteract public regulatory or control measures or other administrative orders or prohibitions, or endanger their implementation.

Exemptions from access may be made in respect of reports, tip-offs or similar documents relating to offences by private individuals. Other documents relating to offences, including reports and tip-offs from public agencies, may be exempted from access until the case has been decided.

Exemptions from access may be made in respect of information when this is required because access would facilitate the commission of criminal acts. The same applies to information where exemption is required because access would jeopardise individuals, or facilitate the commission of acts that may harm parts of the environment that are particularly vulnerable, or which are threatened with extinction.

Section 25 Exemptions in respect of cases concerning appointments, etc.
Exemptions from access may be made in respect of documents in cases concerning appointments or promotions in the civil service.

The exemption in the first paragraph does not apply to lists of applicants. The agency concerned shall as soon as possible after the final date for submitting applications draw up a list of applicants which shall contain the name, age, position or professional title and municipality of residence or employment of each applicant. Exemption from access may nonetheless be made in respect of information concerning an applicant if the applicant himself or herself so requests. In the assessment of whether such a request should be complied with, importance shall be attached to whether the position is of particular public interest. The vacancy announcement shall point out that information about the applicant may be made public even if the applicant has requested not to have his or her name entered on the list. If the request is not complied with, the applicant shall be notified thereof. The list of applicants shall state how many persons have applied for the post and their sex.

The exemption in the first paragraph does not apply to nomination decisions or results of voting in connection with the appointment of bishops.

Section 26 Exemptions in respect of examination papers and grades, etc.
Exemptions from access may be made in respect of answers to examinations or similar tests and entries submitted in connection with competitions and the like. The same applies to appurtenant tasks until the examination or test concerned has been held or the competition concerned has been announced. Exemptions from access may also be made in respect of grades and certificates of educational qualifications.

Exemptions from access may be made in respect of information about someone who is to receive a prize, a mark of honour or the like until the award has been made. Where information about someone who has been considered for a prize, a mark of honour or the like is concerned, exemption from access also applies after the award is made.

Exemptions from access may be made in respect of photographs of persons entered in a personal data register. The same applies to information obtained by continual or regularly repeated personal surveillance.

Section 27 Basis in regulations
The King may by regulations provide for exemption from access in respect of journals and all documents in types of cases where exemption from access may or shall be made in respect of the great majority of the documents. Such regulations may only be made where there are particularly weighty reasons for doing so.

The King may by regulations provide for exemption from access in respect of documents in archival repositories when this is necessary on conservation grounds.

Chapter 4 Procedure and appeal

Section 28 Request for access
Requests for access may be made orally or in writing.

A request for access must relate to a specific case or within reasonable limits to cases of a specific type. This does not apply where access is requested to a journal or similar register.

Section 29 Administrative agency responsible for deciding a request for access, etc.

An administrative agency that receives a request for access shall consider the request on a concrete and independent basis. The request shall be decided without undue delay.

The King may by regulations make rules in regard to which administrative agency shall make decisions in the various types of cases pursuant to this section.

Section 30 How an administrative agency shall provide access

An administrative agency shall, with due regard for the proper procedure, decide how a document is to be made public. A paper copy or electronic copy of the document may be requested. At entities encompassed by the EEA Agreement Annex XI point 5k (Directive 2003/98/EC) on the re-use of public sector information, and at other entities where it is prescribed by the King in regulations, the right to a copy applies to all existing formats and language versions. The right to a copy does not apply to formats or versions of a document that are publicly available. The King may make regulations providing that the right to an electronic copy shall not apply to documents to which a third party has intellectual property rights, and to documents where this is required on conservation grounds.

Where entities encompassed by the EEA Agreement Annex XI point 5k (Directive 2003/98/EC) on the re-use of public sector information provide access to information to which intellectual property rights attach, the administrative agency shall, if it knows, disclose the owner of the rights, or the licence holder from whom the agency has obtained the information. However, this does not apply where it is clearly unnecessary to provide such information. The King may by regulations prescribe that the provisions of this paragraph shall also apply to entities not encompassed by the EEA Agreement Annex XI point 5k (Directive 2003/98/EC) on the re-use of public sector information.

Section 31 Refusal and justification for the same

Refusal of a request for access shall be in writing. An administrative agency shall always indicate the section on which the refusal was based, and any further subdivision of that section that has been applied. Where refusal is based on section 13, the agency shall also refer to the section imposing a duty of confidentiality. Where refusal is based on regulations, the agency must state this and indicate the item in the regulations on which the refusal is based. The refusal notice shall also inform the applicant of the right of appeal and the time limit for lodging an appeal.

Any person whose request for access has been refused may, within three weeks of receiving the refusal notice, request further justification for the refusal in which the main considerations that were decisive for the refusal shall be mentioned. The administrative agency shall provide such justification in writing at the earliest opportunity and not later than ten working days after receiving the request.

Section 32 Appeal

Decisions made pursuant to this Act may be appealed to the administrative agency that is immediately superior to the administrative agency that has made the decision. However, decisions to provide access may not be appealed. Where the refusal is made by a municipal or county agency, the County Governor shall be the appellate instance. The King may make regulations prescribing which body shall be the appellate instance in respect of decisions made by central government agencies. The King may also make regulations prescribing which agency shall be the appellate instance in respect of

decisions by legal persons encompassed by section 2 first paragraph (b) to (d). Where an appeal is lodged against a decision made by a ministry, the ministry shall inform the appellant that the right to appeal to the Parliamentary Ombudsman for Public Administration does not apply to decisions made by the King in Council.

If the person who requested access has not received a reply within five working days after the administrative agency received the request, this shall be regarded as a refusal which may be appealed against under the first paragraph. However, this does not apply where the King in Council is the appellate instance. Nor does the rule in the first sentence apply to cases falling within the scope of section 13 third paragraph or where the question of declassification must be put before another agency.

An appeal shall be prepared and decided without undue delay. Otherwise, the provisions of chapter VI of the Public Administration Act shall apply insofar as they are appropriate.

Decisions of the appellate instance constitute special grounds for enforcement under the Enforcement Act chapter 13 in regard to municipal and county authorities and legal persons encompassed by section 2 first paragraph (b) to (d).

Chapter 5 Concluding provisions

Section 33 Commencement and transitional rules

This Act enters into force on the date prescribed by the King. The Act of 19 June 1970 No. 69 relating to public access to documents in the public administration will be repealed on the same date.

In the case of legal persons coming under section 2 first paragraph (c) or (d) of this Act, the right of access and the duty to keep a journal only apply to documents which are received or drawn up by such legal person after this Act came into force.

Any agreement on an exclusive right to information that exists when this Act comes into force, and which does not satisfy the conditions of section 6 second paragraph, shall cease to apply when the agreement expires, but not later than 31 December 2008.

Annex 5 - The draft law on access to information of Vietnam

NATIONAL ASSEMBLY

Law number: 20../QH12

(Draft 4 – 20 July 2009)

THE SOCIALIST REPUBLIC OF VIETNAM

Independence – Freedom – Happiness

Hanoi,...

THE NATIONAL ASSEMBLY OF THE SOCIALIST REPUBLIC OF VIETNAM

LAW ON ACCESS TO INFORMATION

Based on the Constitution of the Socialist Republic of Vietnam dated 1992 which was amended and supplemented under the Resolution number 51/2001/NQ10 dated December 25, 2001 of the 10th session of the National Assembly's 10th tenure.

Chapter I

GENERAL PROVISIONS

Article 1. Purpose of the Law

This Law is promulgated with aim to ensure right to access to information of citizen, organisation; strengthening transparency and openness in the state operation.

Article 2. Scope of application

1. This Law provides for right to access to information of citizen, organization; responsibility of state bodies in ensuring rights to access to information, forms, procedures, sequence, and measures to ensure the implementation of rights to access to information.

2. Access to information on state secrecy will be accessed in accordance with law on state secrecy; information relating to privacy, business secret will be accessed in accordance with relevant laws and regulations; information which have been transferred to Archive Agency will be accessed in accordance to laws and regulations on archive; access to information during the processes of inspection, audit will be implemented in accordance with laws and regulations on inspection and audits; information relating to

investigation, prosecution, and trial will be implemented following regulations on procedural.

3. The exchange, provision of information between state bodies during their process of implementation of state obligation will be implemented in accordance with laws and regulations on administration.

Article 3. Interpretation of terms

The following terms in this Law are interpreted as follows:

1. *Information to be accessed* means the data included in the dossiers or documents created or received by regulating bodies during the operation of their functions and responsibilities and is held by those bodies.

Information created by state bodies means information identified during the operation of their functions and responsibilities.

Information received means information acquired from other sources during their operation and cooperation with other agencies, organisation, and individual in order to implement their functions and responsibilities.

2. *Dossiers, documents* include hand written documents, printed documents, slides, pictures, drawings, images, photos, video tapes, recorded tapes, floppy disks, memory cards or any other materials containing information and data.

3. *Access to information* means reading, seeing, listening to, taking note, citing, copying, photocopying, extracting contents of dossiers, documents.

4. *Organisation* having rights to access to information means organisations established operated in accordance with laws.

Article 4. Agencies in charge of providing information

1. The following agencies are in charge of providing information:

a) Office of the National Assembly provides information of the National Assembly, Standing Committee of the National Assembly, Council of Ethnic Minorities, and Committees of the National Assembly and Office of the National Assembly;

b) Office of the State President provides information of State President and of the Office of the State President;

c) Office of the Government provides information of the Government, Prime Minister and Office of the Government;

- d) Ministries; ministerial equivalents; government subordinated agencies;
- đ) Subordinated agencies of ministries; of ministerial equivalents; and of government subordinated agencies;
- e) People's Courts, People's Procuracies at all levels;
- g) State Audit;
- h) Office of Delegations of the National Assembly's Deputies and People's Councils of provinces and cities under central management provide information of People's Councils, Committees of the People's Councils, Delegation of National Assembly's Deputies and Office of People's Councils;
- k) Functional agencies belong to People's Committee of provinces and cities under central management;
- l) Office of People's Councils and People's Committee of district, township or cities under provincial management provide information of People's Council, People's Committee, functional agencies belong to People's Committee;
- m) People's Committee of communes, precincts provide information of People's Council and People's Committee of the same level.

2. State bodies/agencies provided for in Paragraph 1 of this Article have responsibilities:

- a) Proactively in widely publicise and provide information created by them;
- b) Provide or give instruction for citizens, organisation to access the original agencies that created information;
- c) Exclude information relating to state secrecy, privacy, business secret before widely publicise or provide for upon request of citizens, organisation;
- d) Promulgate rules on provision of information.

Article 5. Principles to ensure rights to access to information

- 1. Every individual, organisation or agency is equal in access to information.
- 2. Information provided have to be accurate, complete; the provision of information have to be open, transparent, and timeliness;

3. Ensuring rights and legitimate interests of the citizens, organisations to access to information and officials, ensuring rights and legitimate interests of public servants to provide information.

4. Implementation of rights to access to information of citizens, organisations have to ensure interest of community, to protect state secrecy, privacy and business secrets.

5. State facilitates citizens, organisations to access to information appropriate to circumstance of socio-economic, scientific and technologic development of the country; promote the application of information technology in protection of rights to access to information.

Article 6. Mode of accessing to information

Individuals, bodies, and organizations access information with the following modes:

1. Access to information that is widely publicised;
2. Access to information upon requests.

Article 7. Forbidden Actions

1. Provide falsified the information, obstruct the access to information of citizens, organisations;

2. Disclose state secrecy, private secrecy and business secret;

3. Threaten, revenge, repress the information requesters and/or providers;

4. Make corrupt use of information to undermine the united national solidarity, derogate habits and customs of the people, and incite acts of violence, war, social evils.

5. Make corrupt use of information to slander individuals, agencies, organizations; offend the dignity, honor and credibility of individuals; violate the rights and interests of agencies, organizations, individuals.

Article 8. Relationship between Law on Access to Information and other relevant laws and regulations

This Law applies generally to access to information.

In the case that other laws have provisions of broader scope of information to be accessed, more favorable in terms of procedures and sequences of access to information

to citizens, organisations, such provisions prevail.

In the case that other laws stipulate only responsibilities of provision of information for citizens, organisations but do not stipulate procedures and sequences of access to information, relevant provision of this Law shall be applied.

Chapter II

INFORMATION WIDELY PUBLICISED

Article 9. Information widely publicised

1. Agencies are encouraged to publicise the information they hold, except for the information relating to state secrecy, privacy and business secrets:

- a) Legal normative documents, administrative documents of general application;
- b) International treaties, an international agreement of which Vietnam is a member, a signatory party or takes part in;
- c) Draft legal normative documents in accordance with laws and regulations on promulgation of legal normative documents;
- d) Functions, duties, powers, organizational structures, and organizational charts of the agencies and their subordinated units; Administrative procedures and the formalities of handling affairs of the agency; Rules and regulations issued by agencies; address, telephone number, fax, email address of the information holding agency to contact in the case of requesting for information provision;
- đ) Annual working program of the agencies;
- e) Status of budget management and use, financial expenditure reports, audit reports (if any); information on allocation, use of budget, properties of the State for target projects, programme approved by competent authorities; information on allocation of investment funds, budget estimation and liquidation for annual investment fund and after completion of basic construction projects using state funds; information on allocation, utilization, management of official development assistance (ODA) and assistance from foreign and international non-governmental organizations;
- g) Information on management, utilization of emergency aids, social subsidies;

information on management, utilization of contributions by the people and other funds;

h) Strategies, policies, work plans, socio-economic development planning of the state, localities and branches;

i) Information on socio-economic statistics of the state, localities and branches;

k) Planning, plan for land use, land withdraw, site clearance;

l) Information on products, goods, services that may have negative impacts to health, environment; information on inspection, control and monitoring on environmental protection, health care of the community, food safety and labor safety;

m) List of information held by agencies as stipulated in clause (d) Paragraph 1 of Article 26 of this Law;

n) Other information required to be publicised in accordance with laws and regulations or if considered necessary to be publicised by the agency.

2. Besides the information stipulated in Paragraph 1 of this Article, the agencies are promoted widely publicise information of their creation or formation.

Article 10. Forms of wide publication of information

1. The types of information stipulated in Article 9 of this Law shall be widely published in the following forms:

a) Posted on website of the agencies;

b) Published on Official Gazette as stipulated by the law;

c) Published on official publications of the agencies;

d) Public notice at the premise of the agencies in at least 30 continuous days;

đ) Publicised on mass media;

e) Other forms identified by the agencies.

2. Based on actual situation, the agency will decide on one or more forms of information publicisation as mentioned in Paragraph 1 of this Article so that most favorable conditions will be created for the implementation of the right of access to information of individuals, agencies, and organisations.

In the case where the forms of wide publication of the information regulated in Article 9 of this Law are specified by other provisions, then those items of information need to be published in those specified forms.

The Government stipulates concrete regulations on the timing of wide

publicisation of information as provided for in Paragraph 1 of Article 9 of this Law.

Article 11. Information need to be published in the website

1. Amongst information stipulated in Article 9 of this Law, the following information shall be widely posted in the website of agencies holding information:

Legal normative documents, administrative documents of general application;

b) International treaties, an international agreement of which Vietnam is a member, a signatory party or takes part in;

c) Draft legal normative documents in accordance with laws and regulations on promulgation of legal normative documents;

d) Functions, duties, powers, organizational structures, and organizational charts of the agencies and their subordinated units; Administrative procedures and the formalities of handling affairs of the agency; Rules and regulations issued by agencies; address, telephone number, fax, email address of the information holding agency to contact in the case of requesting for information provision;

đ) Annual working program of the agencies;

e) Status of annual budget reports, conclusion of Audit agency and reports on deployment of audit's recommendations (if any);

g) List of information to be widely publicised as provided for in item (d) Paragraph 1 of Article 26 of this Law.

2. The information stipulated in Paragraph 1 of this must be continuously posted, timely updated and easily for access.

3. Besides information as provided for in Paragraph 1 of this Article, the state bodies are promoted to post in their website other information as stipulated in Article 9 of the Law.

Article 12. Information widely publicised on mass media

1. State bodies have responsibilities to proactively coordinate with and facilitate mass media to publicise widely information as stipulated in Article 9 of the Law.

2. Mass media have responsibilities to post timely, accurately, completely information publicised by state bodies and information on feedback of citizens, organisations.

Article 13. Information to be widely publicised for the sake of the community

1. Apart from the information stipulated in Article 92 of this Law, in the cases where wide information publication is necessary to protect human lives and safety, protect the environment, ensuring interests of the community, the head of the information holding agency is responsible for publishing the information on the agency's website or in other forms of publication stipulated in Article 10 of this Law; and timely providing information for newspaper, radio, television agencies to have it widely publicised.

2. Newspapers, radio, television agencies are responsible for timely publishing information to protect human lives and safety, protect the environment, ensuring interests of the community.

CHAPTER III

INFORMATION ACCESSED UPON REQUEST

Section 1

INFORMATION AND FORM OF PROVISION OF INFORMATION UPON REQUEST

Article 14. Information accessed upon request

1. The following information is accessed upon requests of individuals, agencies, and organizations (hereinafter referred to as the requestors):

a. The information created by State bodies but does not belong to the category of information that needs to be widely publicised;

b. The information that needs to be widely publicised but has not yet been publicised;

c. State Secrecy has be declassified;

d. Information relating to the settlement of work/issues relating to requesters and timeline for such settlement is expired as provided by law;

đ) Information on feedback, explanation of requests or opinions of citizens, organisations.

2. Requestors from the mountainous, isolated and remote and island areas have the right to request for the provision of information as stipulated in Article 9 of this Law.

3. Foreigners living in Viet Nam, foreign organisations established and operated in Vietnam have right to request information relating to their own or their area of work.

Article 15. Forms of request information

1. The requester can request for information provision in the following forms:

- a. Spoken form via telephone or face-to-face at the premise of the agency;
- b. Written form via electronic request form, sent via post office, faxed, or in other forms.

2. The information request form must be in Vietnamese language with the following contents:

- a. Full name, address of the requester or representative of the requesting organization; fax number, telephone number, email address (if any);
- b. The information requested;
- c. The form of information provision.

Article 16. Forms of providing information upon request

1. The provision of information upon request is exercised in one of the following forms:

- a) Direct response (verbal response); telephone or face-to-face response at the premise of the agency;
- b) Giving the requester permission to read, see, listen to, take note, make a copy, photocopy, and cite the contents of the documents and records;
- c) Response via electronic network;
- d) Provision of duplicated copy, photocopy of documents;
- đ) Other legitimate forms.

2. State Agencies are requested have responsibility to provide information in the forms requested by the requester in permitted conditions and capacities of the state

agencies, except otherwise regulated by the law.

Article 17. Provision of information by direct response

By the request to provide information that may be directly responded, the requested State Agency shall respond directly, except the requester requests other form.

Article 18. Allow requesters to read, view, and listen to, record and quote contents of documents and dossiers

In the case that requesters put in a request for reading, viewing, listening to, recording, quoting documents, dossiers right in the premises of the information holding agencies, then the respective agencies shall have to spend enough time and create favorable conditions for requesters to access information

Article 19. Provision of information through electronic networks

1. In the case that the request put in a request for information to be sent via electronic networks, the information holding agencies shall take responsibility to provide information in the following cases:

- a) The requested information must be available in existing files and can be transferred via electronic *networks*;
- b) The agencies are technically capable to provide requested information via electronic *networks*.

2. The provision of information through electronic networks is carried out by the following ways:

- a) Sending an attachment with email;
- b) Providing code of access for one time and limit in the scope of information to be requested;
- c) Guiding to the address of access of information;
- d) Responding through electronic networks;
- đ) Other forms.

Article 20. Provision of copies/transcripts of documents, dossiers

In the case the requester request to be provided with copies/transcripts of documents, dossiers, the requested state agencies are responsible for providing with copies/transcripts of documents, dossiers for the requester, except the cases as provided for in Paragraph 1 of Article 24 of this Law.

Section 2

Sequences, procedures of provision of information

Article 21. Receiving requests for information provision

1. The agency receiving requests for information provision needs to take records of the requests into a notebook. In the case the state agencies receive request in verbal form, the receiver of request is responsible to record sufficient contents of request.

2. In cases where the request form does not consist of sufficient information as stipulated in clause 2 of Article 15 of this Law, the agency are responsible to provide guidance in an appropriate way, within 03 working days since the receipt of the form, to have the requestor complete the form. If the request form is not completed by the requester, it will be considered invalid.

Article 22. Deciding on approval or rejection of information provision

1. Regarding request to access to simple information, available and can be provided promptly, the requested agency is responsible to provide information to the requester within 03 working days from the date of receiving legal request.

2. Regarding request to access to more complex information, time is needed for preparation, the state agency shall resolve the request by the following sequences:

a) Within a maximum of 15 days, from the date of receiving legal request, the requested agency send a written notice to the requester about the acceptance of request, including scope of provision of information, timing, venue to access, form of access, fees and or cost to access to information (if any);

b) The requested agency has to provide information to the requester within 15 days, from the date of notice of acceptance in the case of provision of free of charge or from the date the requester has fulfilled the payment for fees or cost to access to information in the case the requester has to pay fees or cost.

In the case the information to be requested with an exceeded amount or the requested agency requires to have more time to seek, compile, cite, treat information, the timeline shall be extended to a maximum 15 days.

Article 23. Fees and costs for provision of information

1. Fees for access to information include:

a) Costs for making copies/transcripts of dossiers, documents;

- b) Cost for searching, treatment of information;
- c) Postal costs for sending information to the address designated by the requester.

2. If the requester is poor, deserving well of the country, the solitary old people, disable people, the ethnic minority people residing in areas of special difficulty in socio-economic condition that have been exempted of all fees and cost as stipulated in the Paragraph 1 of this Article.

3. The Government shall determine specific rate, fee calculation, management and usage of receipts from provision of information.

Section 3

Refuse of provision of information

Article 24. Foundation to refuse the request to provide information

1. The requested agency refuses the request in the following cases:

- a) Information stipulated in Paragraph 2 of Article 2 of this Law;
- b) Secret received from foreign agencies, organisations;
- c) Information that its provision shall violate laws and regulations on intellectual property rights;
- d) Information to be provided twice to the same requester (repetitive request); information to be requested in such a quantity that exceeds capacity of information holding agency to provide, and may influence ordinary activity of state agencies;
- đ) Information that is available in the website of the requested agency, except the requester as provided for in Paragraph 2 of Article 14 of this Law.

In this case, the requested agency has responsibility to give guidance for the requesters on the address, source of information they may access;

- e) Agency has no information as requested.

2. The requested agency can refuse information in the following cases:

- a) Information that the provision may negatively influence to financial and monetary policy, and national economic interests, national security, relationship with other countries or international organisations;
- b) Information that the provision may danger the life, health or safety of

individuals or community; negatively influence the social orders, to prevention and fighting against crimes;

c) Information on internal meeting of the agency; documents drafted by state agencies for their internal affairs.

3. The requested agency may only refuse the provision of information as stipulated in Paragraph 2 of this Article, if the analysis and assessment of such provision prove that such refuse is necessary to protect the interests of the community.

Article 25. Notice on refuse of provision of information

The head of requested agency or his authorised people shall send a notice in written form with clear reasons for refuse of provision of information to the requester within the following timeline:

1. No later than 15 (fifteen) days upon receipt of valid requests, from the date of receiving request, if information is considered as of one of the cases as stipulated in Paragraph 1 of Article 24 of this Law;

2. No later than 30 (thirty) days upon receipt of valid requests, from the date of receiving request, if information is considered as of one of the cases as stipulated in Paragraph 2 of Article 24 of this Law.

Chapter IV

ENSURE RIGHTS ON ACCESS TO INFORMATION

Article 26. Responsibilities of information holding agencies

1. The information holding agencies shall have the following responsibilities:

a) Appoint, arrange public officials, civil servants to act a focal point to receive requests for information provision; arrange adequately officials, civil servants to ensure access to information as stipulated in this Law;

b) Establish and operate the website of the agency;

c) Intensify provision of information through the spokesperson of the agency and through mass media;

d) Establish, update and make public of the list of information widely published information, declassified information, location and forms under which information is made public and send such list to state management agency on ensuring rights to information;

đ) Arrange statistics, establish and publicise list of information provided upon request;

e) Consolidate and strengthen roles of archive and statistic duties; equip technical means, information technology and other adequate conditions to ensure preservation, maintenance, record, update of information, create appropriate conditions for access to information and responses to requests in a timely manner.

2. Heads of the information holding agency shall take responsibility to ensure rights on access to information held by the agency, settle cases where officials, civil servants under their management who block rights on access to information of individuals, agencies, organization in a timely manner.

3. The Government shall provide concrete and specific regulations to implement the Paragraph 1 of this Article.

Article 27. Complaints, Appeals

1. The requesters shall have rights to file complaints, appeals against decision on refuse to requests for information provision in the following cases:

a) Request for access to information is rejected inappropriately as stipulated in Article 24 of this Law;

b) Provided information is not as per requirements;

c) The request for information has not been considered and resolved although time limit is over, reasons for extension of time limits are irrational;

d) The requesters are charge with unreasonable fees other than regulated by the Law.

2. Sequences, procedures of settlement of complaints, appeals against rights on access to information shall be conducted in accordance with existing laws.

3. In the case that complaints, appeals are sent by requesters to the wrong address, the receiving agency shall take responsibility to notify complainants, appealers of appropriate addresses.

Article 28. Settlement of violation

Any person who has action of deterioration, falsification, distortion of contents of dossiers, documents with purpose of restriction of access to information, no provision of information, intentional delay of information provision, depending on scope of violation, shall be subject to disciplinary, administrative sanction or held criminal responsibilities; and shall have to compensate in the case of causing damage.

Article 29. Monitoring of exercising rights on access to information

1. The National Assembly shall monitor to ensure rights on access to information of individuals, agencies, organizations in the whole country to be exercise. Annually, the National Assembly shall consider report of the Government on the situation of exercising rights on access to information of the citizens, organisations in the whole country.

2. The People's Councils monitor to ensure rights on access to information of individuals, agencies, organisations in the local area. Annually, the People's Councils shall consider report of the People's Committee, People's Court and People's Procuracy of the same level on the situation of exercising rights on access to information of the citizens, organisations in the province.

3. The Vietnamese Fatherland Front and other member organizations shall take responsibility to get involved in social supervising exercising rights on access to information.

4. Contents of the report on exercising rights on access to information as stipulated in this Article shall have to state clearly that: the progress of exercising rights on access to information at the agency, number of received requests for information provision, number of requests settled or rejected, number of complaints, number of complaints addressed, difficulties and obstacles faced in meeting requests for information provision and recommendations of necessary methods to help ensure rights on access to information of individuals, agencies, organisations.

Article 30. State management to ensure the exercise of rights on access to information

1. The government shall take responsibility for state management to ensure the exercise of rights on access to information of citizens, organisations and for implementation of the following tasks:

a) Promulgate by its competence or recommend to competent authority to supplement, revise and complete laws and regulations on ensuring rights to information;

b) Give guidance to citizens, organisations to implement their rights to information;

c) Consider, give opinions on the list of widely publicised information of ministries, agencies equivalent to ministries, agencies subordinated to the Government;

d) Check, control the implementation and enforcement of laws and regulations on protection of state secrecy relating to ensuring the rights on access to information of citizens, organisations;

đ) Coordinate with Supreme People's Court, Supreme People's Procuracy in ensuring the rights on access to information of citizens, organisations;

e) Monitor, supervise, and check the exercise of rights on access to information of citizens, organisations; make annual report to the National Assembly on the exercise of rights on access to information.

2.

Option 1: Ministry of Home Affairs shall take responsibility to assist the Government to implement provisions stipulated in items a, b, a, đ and e of paragraph 1 of this Article.

Option 2: Ministry of Justice shall take responsibility to assist the Government to implement provisions stipulated in items a, b, a, đ and e of paragraph 1 of this Article.

Option 3: Ministry of Information and Communication shall take responsibility to assist the Government to implement provisions stipulated in items a, b, c, đ and e of paragraph 1 of this Article.

3. Ministry of Public Security shall take responsibility to assist the Government to implement provisions stipulated in item d of paragraph 1 of this Article. In the case the "Confidential" seals are discovered wrongful, the Ministry of Public Security shall recommend to competent authority to resolve as required by laws.

Head of state agency/body ensures dossiers; documents are sealed as confidential in accordance with laws and regulations on protection of state secrecy.

4. Ministries, agencies equivalent to ministries, agencies subordinated to the Government shall take responsibility to monitor, supervise the agencies under their management to ensure rights on access to information of citizens, organisations; make annual report to Ministry of Home Affairs/ Ministry of Justice/ Ministry of Information and Communication on the exercise of rights on access to information.

5. People's Committees of provinces and cities under central management shall take responsibility to monitor, summarise and make annual reports to Ministry of Home Affairs/ Ministry of Justice/ Ministry of Information and Communication on progress of exercising rights on access to information within their locality.

6. Supreme People's Court, Supreme People's Procuracy, within their scope of responsibilities, powers to ensure the rights to information, coordinate with the Government in exercising rights to information; make annual report to Ministry of Home Affairs/ Ministry of Justice/ Ministry of Information and Communication on progress of exercising rights on access to information within their agencies.

7. Contents of reports shall be made in accordance with regulation at clause 4 Article 29 of this Law.

Chapter V

PROVISIONS OF IMPLEMENTATION

Article 31. Information provision of public services organisations (to chuc su nghiep dich vu cong), state enterprise

Based on principles provided for in this Law and other relevant laws, the Government shall stipulate concrete regulations on provision of information of public services organisations (to chuc su nghiep dich vu cong), state enterprise.

Article 32. Detailed regulation for implementation

The Government shall stipulate detailed regulation for implementation as set forth in paragraph 3 Article 10, Paragraph 3 Article 23, Paragraph 3 Article 26, and Paragraph 2 Article 33 of this Law and stipulate methods to ensure the exercise of rights on access to information of citizens, organisations.

Article 33. Forwarding provisions

1. The Government, Supreme People's Court, Supreme People's Procuracy, within their scope of responsibilities, powers to review or coordinate with other agencies to review legal normative documents on access to information, establish list of legal normative documents having narrower scope of application in comparison to this Law in terms of ensuring rights to access to information of citizens, organisations, recommend revision, supplementation if any before this Law becomes into effect.

2. Agencies responsible to provide information as stipulated in items a, b, c, d, đ,

e, g, h, l, k and l of Article 4 of this Law shall take responsibility to establish and operate website, develop and publicise the list of information of wide publication before this Law becomes into effect.

The Government shall stipulate detailed regulation for publication and posting of information of People's Council, People's Committee of commune, and precincts to the website.

Article 40. Effect of implementation

This Law becomes effective from July 01, 2012

This Law is passed by the National Assembly of the Socialist Republic of Vietnam, XII term,.... on

PRESIDENT