

## The principles should affirm the public's right to information held by public bodies

Sandra Coliver, senior legal officer at the Open Society Justice Initiative, says the right to information is essential for freedom of expression.



Access to information held by public bodies is a crucial component of freedom of expression and warrants a separate principle dedicated to it for several reasons.

First, and most importantly, access to information held by public bodies, as well as by private entities that perform public functions or receive public funds, is essential if people are to be able to participate in informed debate; hold governments accountable; protect human rights, health, public safety, and the environment; and ensure access to public goods and services on an equitable basis.

There are two broad categories of information that people need from the government. We need information as consumers and users of government services, including how to access services and entitlements, and how to evaluate what services – hospitals, schools, means of transportation – are best for us. The public, and especially the watchdogs, also need information about how government agencies are functioning – their budgets, their outputs, their policies, the salaries of officials, contracts for outsourcing, reports of oversight bodies – in order to evaluate whether

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agencies are providing value for money and complying with international law, and constitutional and statutory requirements.

Public agencies are particularly reluctant to make information available that the public could use to hold them, or key officials, accountable. They may also not want to make some consumer information available simply because it's cumbersome to compile and double-check, or because disclosure of the information could expose wrongdoing or mismanagement by entities that press for secrecy. For instance, the US Consumer Agency for a long time resisted publishing complaints about products, citing the concern that some complaints might be ill-founded and that publishing the information could unfairly prejudice the manufacturer and/or lead to defamation actions. The agency finally agreed to publish the information in June 2011 noting that they would include a disclaimer.

Second, concepts such as the freedom to "receive and impart information and ideas", mentioned in Principle 1 do not encompass the full meaning of "access to information held by public bodies". The "freedom to receive and impart information", set forth in the Universal Declaration of Human Rights and subsequent UN and regional treaties, has generally been understood to apply only to the freedom of willing entities to exchange information free from government interference, but not to address the claims of citizens and others to get information from public bodies that those bodies don't want to disclose.

Third, international and national experts, institutions and laws have only very recently affirmed that the right to freedom of expression includes a right of access to information held by public bodies. For instance, only in 2011 did the UN Human Rights Committee declare that Article 19 of the International Covenant on Civil and Political Rights embraces a right of access to information held by public bodies. The committee, comprised of 18 experts elected by UN member states, is the body tasked with authoritatively interpreting and applying the Covenant, a treaty that codifies parts of the Universal Declaration of Human Rights. Given the newness of the international recognition of this right, its importance, and the proclivity of governments to deny an obligation to make information available, a separate principle is warranted.

Constitutions of more than fifty countries now grant constitutional status to the right to information; and nearly 90 countries have national-level rights to information laws or regulations in force – including the population giants of Brazil, China, India, Indonesia, Russia and the United States, most countries in Europe and Central Asia, more than half of the countries in Latin America, more than a dozen in Asia and the Pacific, seven countries in Africa, and three in the Middle East and North Africa. More than 5.2 billion people now live in countries that include in their domestic law an enforceable right, at least in theory, to obtain information from their governments. (Citations to all of these constitutions and court judgments can be found on a [website](#) maintained by the Open Society Justice Initiative.

Accordingly, I would add a new principle, worded as follows:

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“We require information, including from public bodies, in order to be able to participate in informed debate; hold our governments accountable; protect our human rights, public safety, health and the environment; and ensure our access to public goods and services on an equitable basis.”

That principle responds to the points above, and also implicitly makes two additional points. First our need for information includes, but is not limited to, information held by public bodies. The UN Human Rights Committee and numerous national laws recognise that people also need information from non-public entities that perform public functions, receive public funds, are substantially government-controlled or are established by law. A few modern laws and constitutions, including South Africa's, recognise that people also may need information from any entity that impairs their rights. Second, the need for information held by public bodies is not limited to citizens; rather, it is a human right, which, as freedom of expression, has both an instrumental as well as an essential value. It is as essential to our humanity and freedom to be able to make informed choices as it is to be able to express ourselves. At the instrumental level, residents of a country (whether or not citizens), as well as individuals that are in other ways impacted by a government's actions, certainly have a need and a right to information held by that government.

Finally, I also suggest that Principle 10 should be expanded to expressly refer to freedom of information:

“We must be free to challenge all limits to *freedom of information* and expression justified on such grounds as national security, public order and morality.”

This addition makes clear that people must be allowed not only to express opinions that offend the government of the day, but also to challenge secrecy based on national security and related public interests.

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