

RTI Manual

January 2021





Transparency Maldives, National Contact of Transparency International (TI), is a non-partisan organization that promotes collaboration, awareness, and other initiatives to improve governance and eliminate corruption from the daily lives of people. Transparency Maldives views corruption as a systematic issue and advocates for institutional change that will punish and prevent corruption.

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Layout Design and Illustrations by Aminath Sofeenaz.

H. Fennaage, 2nd Floor, Buruzu Magu, Male', Maldives, Republic of Maldives

Phone: +960 330 4017, Fax: +960 300 6062, Email: office@transparency.mv

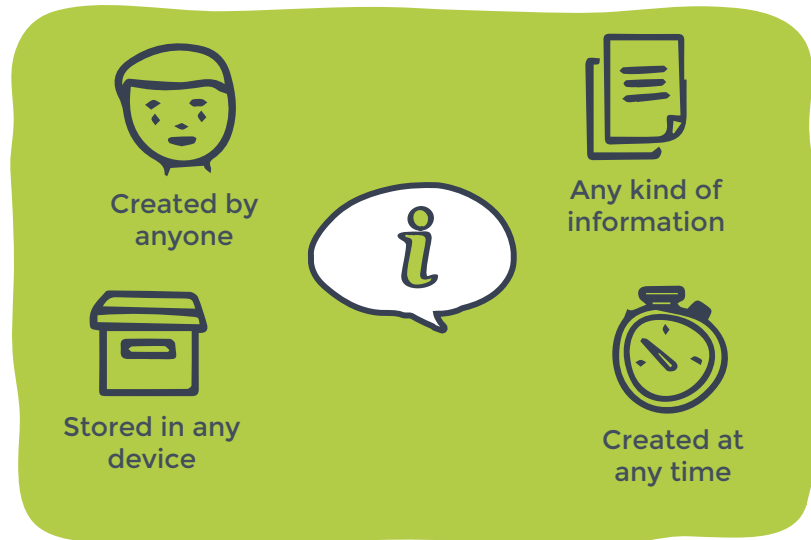
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What is Right to Information (RTI)?

Right to Information is a fundamental human right that empowers citizens to request for information from any government body.

Any information held and managed by State Institutes belong to the people and this information can be any material in any form.

WHAT IS INFORMATION?



RTI IS A FUNDAMENTAL HUMAN RIGHT:

- Article 19 of the Universal Declaration of Human Rights
- Article 29 of the Constitution of the Maldives



WHAT DOES INFORMATION CONSTITUTE?



WHY IS RTI IMPORTANT?

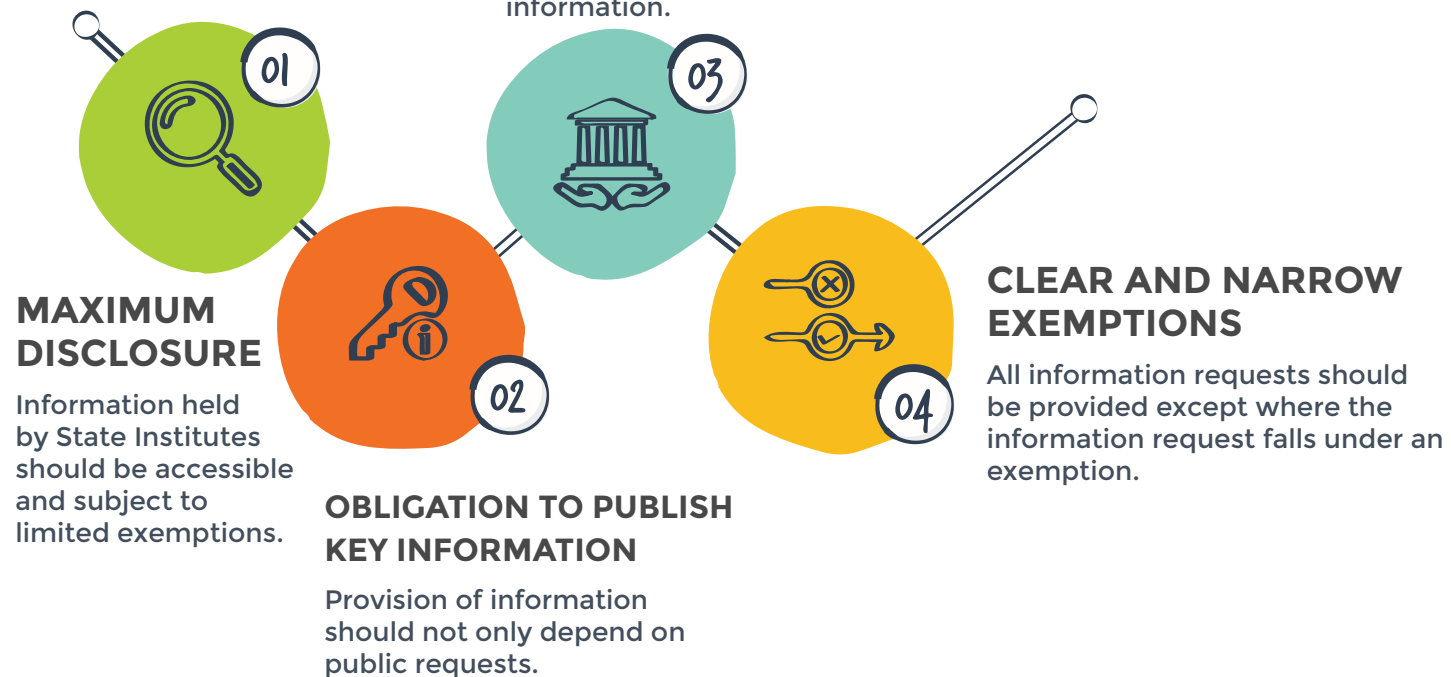
- To eliminate corruption and abuse of power
- To hold the government accountable for their actions
- To promote transparency and good governance
- To participate in governance and advocate for yourself
- To ensure protection of other rights
- To be informed of government policies and decisions
- To have a better representation of society and a healthier economy



Best Principles of RTI

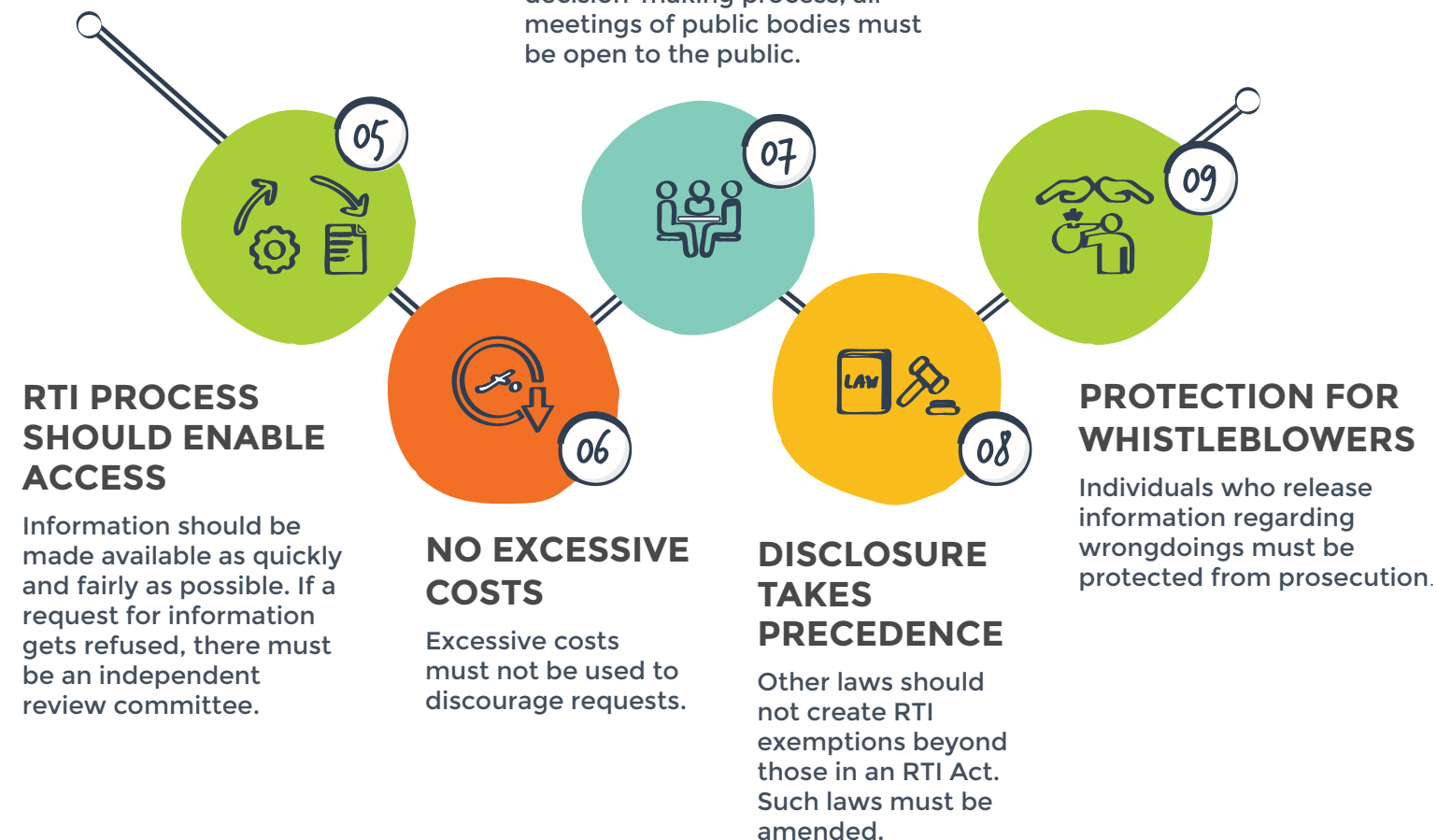
PROMOTION OF OPEN GOVERNMENT

State Institutes are responsible for promoting the goals of the RTI Act such as through public education or adopting a culture of openness and access to information.



OPEN MEETINGS

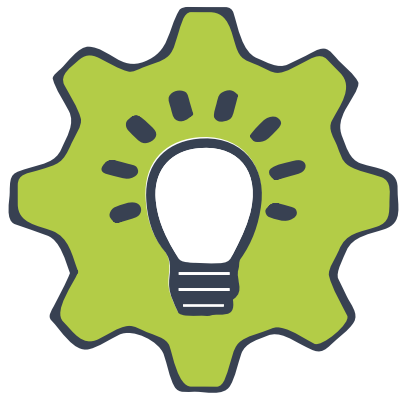
As the right to information provides the opportunity for the public to participate in the decision-making process, all meetings of public bodies must be open to the public.



Right to Information Act

Maldives passed the RTI Act in January 2014. In order for the RTI Act to realize its full potential of transparent governance, it is important that citizens engage their right to access information. It is also important that the government remove all barriers that may prevent citizens from being able to make full use of their right to information.

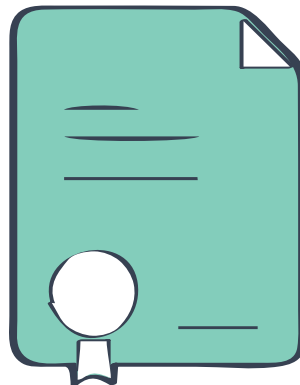
WHAT IS INCLUDED IN THE RTI ACT?



Proactive Disclosure



RTI Process



Exemptions

STATE INSTITUTES



Information Officers

- Each State Institute must have a designated Information Officer.
- Responsible to disclose information under the RTI Act.
- Provide assistance to those seeking to obtain information.

Executive

- President's Office
- Ministries
- Attorney General's Office

Legislative

- Parliament

Judiciary

- Courts

Security Services

- MNDF
- Maldives Police Service

Councils

- City
- Atoll
- Island

More features of a State Institute:

- Takes responsibility of the State such as the provision of public services.
Eg: water, electricity, transport
- Those who operate under the State budget and receive assistance from the State budget.

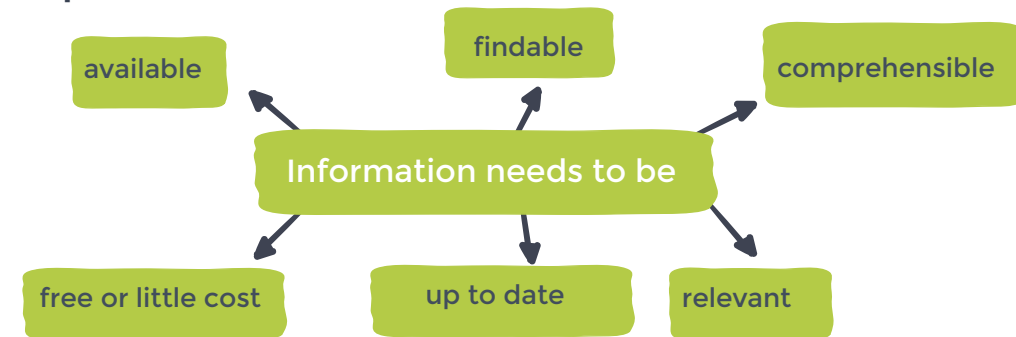


Proactive Disclosure



Proactive or voluntary disclosure is the act of releasing information before it is requested. This information is usually disclosed publicly on the website of the State Institute. Proactive disclosure makes information available to the whole public, so that the public do not have to request for such information.

Principles of proactive disclosure:



The following information have to be **proactively** disclosed by State Institutes under the Right to Information Act:

1. Functions, responsibilities, structure, duties and contact information of public officials
2. Direct services provided to the public
3. Responsibilities of high-ranking officials, their powers and scope of discretion
4. Budget allocated to the State Institute and details of expenditure and disbursements
5. Public procurement procedures
6. Salaries and benefits to employees.
7. Rules, regulations, policies, principles and norms used to perform its duties and functions
8. Details of decisions taken that affect the public with reasons and implications
9. Information on accessing information and details of the information officer





Chile implemented the Chile Compra electronic public procurement system. All public bodies are required to disclose information on contracts, public spending, recruitment of employees etc.



Russian Federal Agency for Technical Regulation and Metrology: provided hard copies of information regarding national consumer product standards and charged a fee for this. However, the applicant appealed, arguing that the information should be made publicly available for the use of both consumers and producers. The court ordered them to make the information publicly available on their official website. Citizens are not only given the right to request for information, but they have a right to be able to access information of significant interest to them for free from the websites of State Institutes.



South Africa established Thusong Centers to bring government services and information closer to the people to promote access to opportunities. Thusong Centers are distributed across South Africa including more remote and rural areas. Some of these centers do not have internet due to lack of infrastructure. This shows the importance of disclosing information in traditional methods.



Stages of RTI Process

01



Information Officer of the State Institute

02



Review Committee of the State Institute

03



Information Commissioner

04



High Court



Stage 1: Information Officer

HOW CAN YOU REQUEST FOR INFORMATION?

Step 1:

IDENTIFY THE STATE INSTITUTE



RTI request must be made to the State Institute that is most likely to have the information you require.

Step 2:

CHECK WHETHER THE STATE INSTITUTE HAS AN RTI FORM ON THEIR WEBSITE



If not, a general RTI form can be found on the Information Commissioner's Office website. The form can be submitted via email or in person.

- If by email, send the form to the Information Officer of the State Institute. Details of the Information Officer can be found on the State Institute's website or the Information Commissioner's Office website.
- The form should also be copied to the State Institute's general email, which can be found on their website.

Step 3:

FILL OUT THE FORM



With the following information:

- Details of the information you are requesting.
- State how you would like to receive information – address, email or fax. State Institutes cannot insist on providing the information using any other method except for the one which you have specified.
- Fee payable or assurance that the fee will be paid, if there is a fee to be paid.
- Name, address and phone number. State Institutes cannot request any information additional to this.

Things to consider when submitting:

- ✓ **According to the RTI Act, you do not need to include an ID card number or copy when making an RTI request.** If your request is rejected for not including details of the ID card, inform the State Institute that according to section 6 (e), State Institutes are prohibited from asking for information which are not specified in section 6 (a) – such as ID card information.
- ✓ **You do not need to state the reason for requesting information** and not providing this is not a justification to reject the RTI request.
- ✓ **Avoid phrasing your request as a question to which a yes/no answer could be given.** Instead, request the specific information you want. For example: instead of asking whether the minister travelled abroad, ask for a list of countries with details of travel within a specific period of time.

WHAT SHOULD YOU EXPECT FROM THE STATE INSTITUTE AFTER SUBMISSION?

- ✓ You must get a **receipt** acknowledging that the application has been received.
- ✓ The Information Officer has to ensure that the **information is provided to you within 21 days.**
 - If the Information is requested to **save the life and liberty of a person**, the Information Officer must respond within **48 hours**.
 - If the information cannot be provided within 21 days, the Information Officer **must inform you this in writing** and the State Institute is given an **additional 14 days** to provide the information.
- ✓ If a fee is due, the Information Officer must let you know the amount.
- ✓ If an application gets rejected, the Information Officer must inform this and **provide a justification.**
- ✓ If a State Institute does not have the information requested, the Information Officer must **transfer the request** to the relevant State Institute and **inform you within 7 days** of making the request.
- ✓ If a State Institute **fails to respond within 21 days**, the request for information **is considered to be rejected**. In this case, you will be able to **appeal to the Information Commissioner.**



RTI EXPERIENCE IN MALDIVES AT THIS STAGE

Between January 2017 and August 2019, TM staff and volunteers sent out 100 RTI requests



For over **54%** of the requests, no information was received

Reasons why Information Officers rejected the requests did not fulfill the conditions of the RTI Act



70% of the applications did not get a receipt despite the RTI Act stating that State Institutes must provide a receipt acknowledging the request



Of the **57** requests that received a response, **17%** of the Information Officers responded after **60** days. The longest waiting time for a response was **287** days.



19 appeals sent to ICOM



ICOM responded to **16%** and rejected **53%**

WHAT HAPPENS AFTER RECEIVING A RESPONSE?

- The RTI process ends at the point at which you have received your information before the expiration of the 21 days and you are satisfied with the information you received.
- However, if you received incomplete information or you are dissatisfied, you can then appeal to the Review Committee of the State Institute.

REVIEW COMMITTEE

RTI Act requires every State Institute to set up a Review Committee who will examine and review complaints made by people unsatisfied by the Information Officer's decision.

Review Committee consists of employees at a higher rank than the Information Officer.





Stage 2: Review Committee Stage

HOW CAN YOU APPEAL TO THE REVIEW COMMITTEE?

Step 1:

APPEAL TO THE REVIEW COMMITTEE WITHIN 30 DAYS OF THE DATE YOU RECEIVED THE INFORMATION OR SHOULD HAVE RECEIVED THE INFORMATION



Step 2:

AS THERE IS NO FORM FOR THIS PROCESS, YOU MUST SUBMIT A LETTER



CONTAINING THE FOLLOWING CONTENT:

- Details of the RTI request which was made to the State Institute.
- The response which you received from the Information Officer.
- Explain the reasons for your appeal with reference to the RTI Act.

WHAT HAPPENS NEXT?

The Review Committee is required to complete their review and notify their decision in writing within 30 days. However, if for any valid reason more time is needed to make their decision, they are entitled to extend this period by an additional 15 days, before the expiration of the initial 30 days. If this is the case, the Review Committee is required to inform you about this in writing.









If you are unsatisfied with the decision of the Review Committee, you can then appeal to the Information Commissioner within 90 days from the date the decision was made or should have been made.





Stage 3: Information Commissioner

WHEN SHOULD YOU APPEAL TO THE INFORMATION COMMISSIONER?

- ✓ If you are dissatisfied with the decision made by the Review Committee 
- ✓ If the Information Officer of the State Institute failed to respond to your RTI request 
- ✓ If you are unable to access information because the State Institute has failed to appoint an Information Officer 
- ✓ If the State Institute refuses to accept a request for information without justifiable reason 
- ✓ If the Information Officer fails to provide a receipt 
- ✓ If the Information Officer fails to meet the time limit to respond to an RTI request 
- ✓ If the Information Officer fails to comply with the directive issued by the Information Commissioner 
- ✓ If the Information Officer or State Institute breaches the procedure stated in the RTI Act to access to information 

WHAT IS THE PROCEDURE TO APPEAL TO THE INFORMATION COMMISSIONER?

- An appeal form must be submitted. This form is available on the Information Commissioner's website.
- The Information Commissioner is required to **decide on the matter within 30 days**. However, if more time is required to make a decision, **an additional 15 days may be taken** after informing the applicant in writing before the expiration of the initial 30 days.



OPEN HEARINGS

- The Information Commissioner's Office is required to hold appeal hearings in order to decide whether or not the information should be disclosed. The hearings could be held even if the applicant or respondent are not present.
- The hearings must be held in open sittings. However, in cases where the information requested is exempt from disclosure, the proceedings can take place in sittings closed to the public.
- The decision by the Information Commissioner must be announced in an open sitting.

In preparation for the hearing, the applicant should keep track of:

- The date when the RTI application was submitted.
- When (if at all) a response was received.
- Reasons for the State Institute deciding to withhold the information.



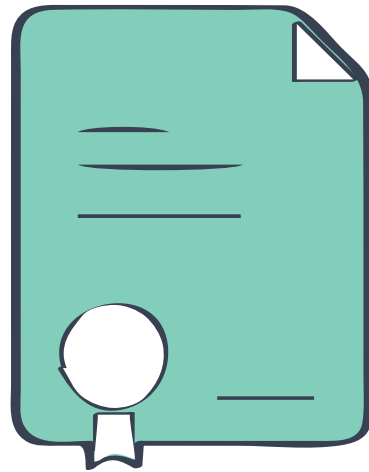
Stage 4: High Court

WHAT HAPPENS IF YOU ARE DISSATISFIED WITH THE DECISION OF THE INFORMATION COMMISSIONER?

- You may appeal to the High Court within 10 days of the date the decision was made or should have been made.



Exemptions



The right to information is conditional and is subject to certain limitations. However, these restrictions should be defined as narrowly as possible to protect the right to access to information. State Institutes have the right to withhold certain information - these are called **exempted information**.

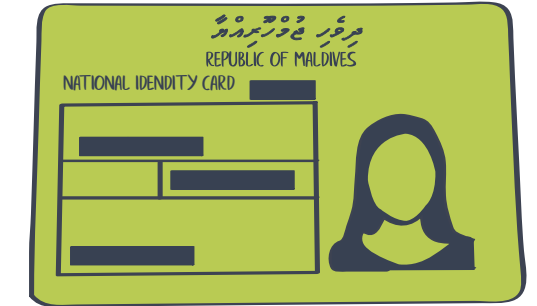
Although there are exemptions to disclosure of information, the RTI Act requires State Institutes to disclose information if the public interest outweighs the interest protected by nondisclosure. Any information which has been held for 10 years is also not exempt from disclosure.

MOST COMMON EXEMPTIONS USED IN THE MALDIVES

To find out more about the other exemptions, please refer to Chapter Seven of the Right to Information Act.

1) Personal information regarding a third party

Personal information of a third party is any information that can be used to identify them. If requested information contains personal information of a third party, the information officer is required to seek consent of the third party before disclosing the information. However, if there is a greater public interest in disclosing the information, consent is not required.



The Federal Department of Public Welfare in Argentina refused to disclose information regarding the financial assistance and the subsidies beneficiaries received as it could infringe upon the privacy of the beneficiaries.

It was decided that the requested information must be released based on the following reasons:

1. There is a **difference between personal and sensitive data**. In this case, the applicant requested for personal data which is not protected from disclosure.
2. The management of public funds must be made public and the complete list of subsidies provided by the public authority must be **proactively disclosed**
3. The information was requested **not to infringe upon the privacy** of the beneficiaries but rather, to determine whether the decisions of the officials when assigning the subsidies meet the criteria determined the social welfare program.



2) Information regarding an investigation or a court trial Information which could:

1. Prejudice:
 - an investigation
 - a person's right to a fair trial
2. Endanger:
 - a person's life or physical safety
 - security of a building, structure, vessel or vehicle
3. Expose the identity of a confidential source of information
4. Impede the arrest of a person or facilitate their escape from custody



The applicant requested a certified copy of the entire file of a preliminary investigation regarding the forced disappearance of an individual during the Mexican Dirty War Period. The Procuraduría General de la República (PGR) refused to disclose the information, stating that it was considered “reserved information”, as disclosure could endanger law enforcement activities or the prevention and prosecution of crimes. PGR was required to disclose the requested information based on the following:

As the investigation related to **grave violations of fundamental rights or crimes against humanity**, there was an **overriding public interest** in the disclosure of the requested information.



3) Information which could endanger national security

There are certain circumstances under which information can be withheld to protect national security interests. However, few of the national RTI laws define national security for the purposes of withholding information. In 2013, multiple organizations came together to create a set of principles to provide guidance on the State's authority to withhold information on national security grounds. These are called the Tshwane Principles.

Based on the Tshwane Principles, the national security restriction cannot be imposed without demonstrating that:

- 1) The restriction is prescribed by law, where the law is clear and accessible to the public – when using the national security exemption, State Institutes cannot cite laws which are inaccessible to the public.
- 2) The restriction is necessary in a democratic society – the harm caused from disclosing the information must outweigh the public interest of disclosure.
- 3) The restriction must be to protect a legitimate national security interest – the type of information that may be withheld on national security grounds must be clearly defined by law.



The Secretariat of National Defense in Mexico refused to disclose information regarding the content of military defense plans based on the national security exemption.

The Secretariat of National Defense was ordered to elaborate on their publicly available information regarding their national defense plan based on the following reasons:

1. Unlike logistic and strategic information regarding national defense (such as the location of ongoing operations, tactics and weapons used), the **country's general approach to defense is not protected by secrecy.**
2. It was found **that many countries provided a detailed report of the general information regarding their defense plan.** This publicly available report should include the basic guidelines of the defense legal framework, identification and generic description of foreign and domestic threats, an evaluation of the national, regional and international geopolitical content and a brief description of the national defense policy.



4) Information on Business Affairs

Information on business affairs include trade secrets and confidential information of public and private companies. Information which can be withheld under this exemption are those that can negatively impact the competitive position of a business. However, information must be disclosed if there is no competitive advantage in disclosing such information.

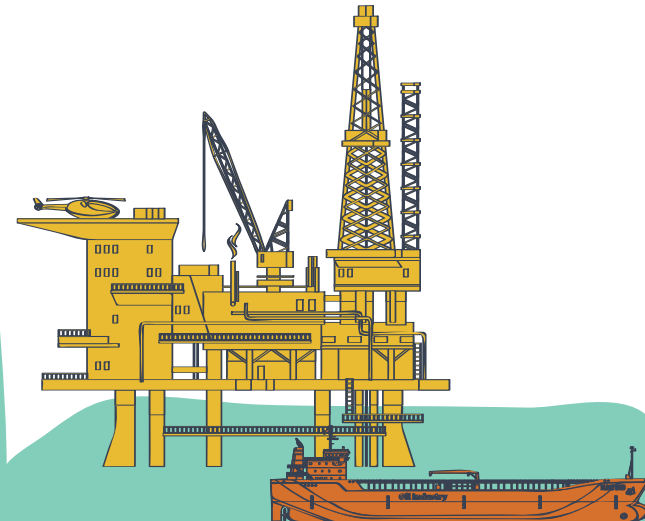
In addition, the information must be disclosed if there is a greater public interest in doing so.



An Argentinian Company called Yacimientos Petroliferos Fiscales (YPF) refused to disclose an investment agreement with Chevron regarding the exploitation of hydrocarbon/oil resources, stating that it did not need to be disclosed under the trade or scientific secrets exemption of the RTI Law.

The court established the following, in ordering YFP to disclose the requested information:

1. 51% of YFPs holdings are assigned to the State and YFP carries out **public functions**. This means that as a company which is **under the control of national executive power**, they are subject to disclosing information under the Argentinian RTI Law.
2. It was found that YFP did not justify why disclosing the contract would negatively impact the interests protected by the exemption which they had cited. Exemptions such as trade secrets **cannot be cited without providing a proper justification** as to why disclosing the information would harm the interests protected by the exemption.



If the requested information contains parts that are exempt, then the remaining information should be disclosed after the removal of exempted parts.



What are trade secrets?

World Intellectual Property Organization defines trade secrets as intellectual property rights on confidential information that may be sold or licensed.



Public Interest Override test

Should all the information relating to these categories be kept secret? The answer is no.

If the public interest outweighs the harm contemplated by these exemptions, then the information has to be disclosed. A simple three-part test can be used to identify if the public interest outweighs the possible harm:

Part 1: Does this information relate to a legitimate aim specified in the RTI Act (eg. national security, privacy)?

Part 2: Would the disclosure do substantial harm to that aim?

Part 3: Would it nevertheless be in the public interest to disclose the information?

References:

Article 19, 2016, ‘The Public’s Right to Know: Principles on Right to Information Legislation’

Article 19, 2016, ‘The Public’s Right to Know: Principles on Right to Information Legislation’, p. 7

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