

Information Officer's Handbook




Transparency Maldives (TM), the National Chapter of Transparency International, is a non-partisan organization that endeavors to be a constructive force in society by promoting collaboration and discussion on corruption, transparency, and accountability. TM seeks to engage with stakeholders from all sectors to raise awareness of corruption's detrimental effects on development and society, improve transparency and accountability in governance, and eliminate corruption from the daily lives of people.

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 H. Fennaage, 2nd floor,
Buruzu Magu, Male', Maldives.

 +960 330 4017

 office@transparency.mv

 transparency.mv

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What is the Right to Information?

Access to information is imperative for effective participation of people in a democracy.

Public bodies or State Institutes are established to provide essential services and make decisions that benefit the people they serve. Therefore, any information held by the State Institutes are in principle public information and can only be withheld subject to certain limitations and protection of legitimate interests and other rights. People's Right to Information empowers them to request information from any State Institute.

The Right to Information is a fundamental human right, guaranteed under Article 19 of the Universal Declaration of Human Rights and Article 29 of the Constitution of the Maldives. The Right to Information also plays a crucial role in guaranteeing other rights. This is because it is necessary for citizens to have access to information held in State Institutes in order to determine whether the State is fulfilling their duty to ensure that citizens are equally and fairly being given the basic human rights to which they are entitled.

Examples:



- **The right to vote:** Information such as details of who the candidates are and the location of polling stations are important information that constituents must have access to in order to have complete access to the right to vote. If such information is not available, constituents would not be able to make informed decisions or cast their votes. It is because citizens have the right to information, that they are able to get such information that guarantees their right to vote.

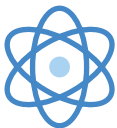


- **The right to housing:** Assuming that the government launched a public housing scheme, citizens must know the criteria that must be met in order to qualify for the public housing scheme and how the evaluation was carried out. Without knowing this information, citizens would not know whether the right to housing is being provided equally or fairly.

The Right to Information has two components:



- **Proactive:** this is the obligation on State Institutes to publish and disseminate important information about the Institute such as the services offered, budget, policies and plans, in order to create an informed public and to allow people's participation in the government's decision-making process.



- **Reactive:** this is the right of the people to request information from State Institutes and the right to receive an answer. However, this is subject to well-defined limitations.

Right to Information in the Maldives

Maldives passed the Right to Information Act in January 2014 and is currently ranked at 17th best globally*. However, in order for the Right to Information Act to realize its full potential of transparent and good governance, it is important that State Institutes negates all barriers that may prevent citizens from being able to make full use of their Right to Information and that citizens engage their right to access information.

Anyone, regardless of their nationality, are afforded the right to request for information from all organs of the State in the Maldives. This includes:

The Executive Branch

President's Office, Ministries,
Attorney General's Office

The Legislative Branch

Parliament

The Judicial Branch

Courts

Security Services

Maldives National Defence Force,
Maldives Police Service

Councils

City, Atoll, Island

Institutes that provide State responsibilities such as the provision of public services

Institutes that operate or receive assistance from the State Budget

Organisations that receive international funding

Information is also broadly defined to encompass all information, held in all forms in State Institutes. This could include documents, records, recordings, emails, reports, videotapes, memos or even samples of materials. Furthermore, the right to access this information must also include the right to obtain true information, as well as the right to inspect and take notes from records held at the State Institutes.

*<https://www.rti-rating.org/country-data> (Accessed: 2021/09/30)

Underlying Principles of the Right to Information

1. Maximum Disclosure

The Right to Information encapsulates the right to receive information in any form, held in any State Institute, to its greatest possible extent. The disclosure of information must be subject to very few restrictions, where State Institutes are obligated to clearly justify the reason for which the information is being withheld. Furthermore, those requesting for information from State Institutes must not be obligated to justify why the request is being made.

2. Obligation to Publish Key Information

The Right to Information does not only obligate State Institutes to respond to requests for information, but to proactively disclose certain key information. Information must be published and disseminated in such a way that it is accessible to the public.

3. Promotion of Open Government

State Institutes are obligated to combat any ingrained culture of secrecy through training their employees regarding the Right to Information and promoting a culture of open governance. In addition to this, governments are also required to raise public awareness about people's right to access information.

4. Clear and Narrow Exemptions

There should be clearly and narrowly defined instances when information can be withheld. However, if the decision is taken to withhold certain information, State Institutes are obligated to clearly justify why there is a greater public interest in non-disclosure. It must also be noted that all information, except that which falls under the exemptions of the Right to Information Act must be disclosed.

5. The RTI Process Should Enable Access

Efficient mechanisms should be set in place in order to ensure that citizens are given their Right to Information equally, fairly and quickly. In order to do so, State Institutes must have a designated Information Officer(s), whose responsibility is to process requests for information as well as to ensure that the State Institute complies with the proactive disclosure requirements stated in the law. In addition to this, there are three appeal stages within the RTI process, to ensure that decisions regarding RTI requests are made as fairly and independently as possible.

6. No Excessive Costs

While a fee can be charged, the cost of accessing information should not prevent people from requesting for information. This violates the very basic principle of enabling access to information, if excessive fees become a barrier to citizen's Right to Information. Information should be provided at little to no cost, with costs being limited to the delivery or reproduction of the requested information (such as for printing).

7. Open Meetings

The Right to Information encompasses the right to know the decisions that are being made on behalf of the public by governing bodies and to participate in the decision-making process. Therefore, all meetings of governing bodies must be open to the public.

8. Disclosure Takes Precedence

Disclosure must be the main priority of State Institutes, where other laws cannot extend the exempted information stated in the RTI Law.

9. Protection for Whistle-blowers

Individuals who disclose information regarding wrongdoings must be protected from any kind of sanctions or prosecution.

Proactive Disclosure

In anticipation of the public's needs and interests, certain key information must be proactively published and disseminated by the State Institutes.

Principles of Proactively Disclosing Information

Information that is proactively disclosed by the State Institutes must be:



1. Available – records should be adequately kept and easily accessible to the public.



2. Findable – there must be no barriers to being able to find the information published by State Institutes.



3. Comprehensible – the information must be disclosed in such way that it is easily comprehensible to the general public.



4. Free or little cost – the cost must not be a barrier to accessing this information.



5. Up-to-date – information disclosed by State Institutes must be regularly updated to reflect the changes within the Institution and update citizens regarding decisions that are made.



6. Relevant – the information published by State Institutes must be relevant to the services provided and work that is conducted.

Advantages of Proactively Disclosing Information:

1. When information is proactively disclosed, information is put in the community faster and citizens are kept well informed.
2. Proactively disclosing information, without citizens having to request for such information means that the time and resources spent processing RTI requests are reduced.
3. When key information that are of great public interest are proactively disclosed, this instils trust and confidence in the State Institute amongst the general public. It also demonstrates that State Institutes are committed to transparency and openness.

Strategies in Proactively Disclosing Information:

1. Information that must be proactively and regularly disclosed must be identified and kept regularly updated. There must also be mechanisms set in place to ensure that such information is disseminated in a timely manner.
2. Information must be published in formats that are easily accessible to the public, with no barriers or difficulty. This includes ensuring that website pathways are designed in such a way that information is easily findable.
3. Information Officers must be given the authority to make decisions to release the necessary information, with the cooperation of other employees of the State Institute.

Information that must be Proactively Disclosed according to Section 37 of the RTI Act

1. Institutional Information

- Vision, mission and mandate of the State Institute.
- Milestones and achievements by the State Institute.
- Details of any changes brought to the State Institute.
- Details of past ministers or heads of the State Institute.
- Organisational structure including employees' name.
- Address and social media profiles of the State Institute.
- Office opening hours and picture of the face of the office building.

2. Organisational Information

- Details of board members and senior officials including full name, position, education and experience, photo, contact number, email and their responsibilities.
- Heads of departments/divisions of the State Institute.
- Employee directory and profiles including email and contact number.
- Details of committees including their work and members.
- Speeches made by the senior officials of the State Institute.

3. Operational Information

- Data/statistics of the State Institute.
- Reports and information on ongoing projects.
- Picture/videos of various activities conducted by the State Institute.
- Strategic plans, strategic action plans, action plan reviews.
- Standards followed by the State Institute (eg: ISO standard).
- Information on signed Memorandum of Understandings, and signed treaties and conventions.
- Information on collaboration with local and foreign organisations.

4. Legislation

- Governing laws and regulations including legislations the State Institute administers.

- Policies and rules including any changes brought.

5. Service Delivery

- Description of services offered.
- Availability of forms required to receive services.

6. Budget

- Information on projected budget, actual income and expenditure including annual and monthly budget reports.

7. Public Procurement

- Procurement and tender announcements.
- Procurement policies and procedures.
- Details of tender evaluation and contract awardees.
- Details on progress and status of tenders including reports.

8. Public Participation

- Information on mechanisms and procedures for lodging complaints.
- Details of complaints lodged including number of complaints received.
- Announcements, circulars, press releases, news letters.
- Information on mechanisms and procedures for making public comments including the number of comments received.

9. Obtaining Information

- Details of the Information Officer including name, designation email and contact number.
- Details of the Review Committee including name and position.
- Details of the Media Officer including name, designation email and contact number.
- Information on how to access information from the State Institute.
- Details of how information is handled and maintained, and type of information proactively disclosed.

10. Remuneration

- Remuneration and benefits received by all employees of the State Institute.

Requests for Information



The Responsibilities of an Information Officer:

The Information Officer must ensure that information is properly maintained and archived. The Officer should also provide assistance to those seeking to obtain information. In addition to this, the Information Officer is also responsible for ensuring that information that must be proactively disclosed are consistently updated and published. If the Information Officer continues to do so on a regular basis, the time and resources spent processing RTI requests can be significantly reduced. However, even if an applicant requests for information that is proactively disclosed, the information officer is still required to respond with details of where the requested information can be found. Having the information proactively disclosed in this instance means that less time is spent trying to find the requested information, as it should already be readily available.

Upon the receipt of an RTI request, information officers are responsible to do the following:

1. Provide a receipt acknowledging that the RTI request has been received.
2. Accept RTI requests, without obligating applicants to provide any additional information if the request includes the following:
 - a. Details of the information being requested.
 - b. Details of how the applicant wants to receive the information .
 - c. Name, address and phone number are provided.

3. If a fee is due, details of the amount to be paid.
4. Provide a response within 21 days.
 - a. If the information is being requested to save the life or liberty of a person, the information must be provided within 48 hours .
 - b. If additional time is required to provide the information requested, the Information Officer may take an additional 14 days after informing the applicant .

It should be noted that even though the RTI Act allows for 21 days and an additional 14 days if it is required, Information Officers should still try to provide the information as soon as possible.

5. If the requested information is not being held at the Institute to which the RTI request was sent, the Information Officer is required to transfer the request to the relevant State Institute. The Information Officer has seven days to do so, and must inform the applicant in writing that the request has been transferred.

6. Provide a clear justification, with reference to the exemptions under the RTI Act, if the Information Officer has made the decision to withhold the information. The Information Officer should be able to clearly explain how and why the information falls under the exemptions of the RTI Act and the interest that is being protected from withholding the information. Additionally, the decisions taken by the Information Officer regarding whether or not information should be withheld should be taken independent of other employees of the State Institute.

It should be noted that if the Information Officer fails to provide any response at all during the 21 day period, the applicant can appeal directly to the Information Commissioner's Office.

Additionally, if the State Institute receives more RTI requests than one Information Officer can handle, the RTI Act does not prohibit State Institutes from appointing more than one Information Officer.

Penalties under the RTI Act

The Information Commissioner has the power to impose a fine of not more than MVR5000 if the Information Officer commits any of the following:

- Refuse to accept an RTI request without a justifiable reason.
- Refuse to provide information without justifiable reasons within the time limits prescribed in the Act.
- Refuse to provide information with bad intention.
- Provide incomplete or incorrect or misleading information.

The Information Commissioner has the power to impose a fine of not more than MVR25000 where any person commits the following:

- The State Institute or the Information Officer obstruct the duties stated in the RTI Act.
- Obstruction of duties of the Information Commissioner.
- Destruction of information related to an RTI request.
- Misappropriation or tempering with the information held at the State Institute contrary to the set procedure.

In addition, if an Information Officer repeatedly breaches the provisions prescribed in the RTI Act, the Information Commissioner has the power to order the State Institute to take disciplinary measures against the Information Officer.

Review Committee's Responsibilities

- The Review Committee reviews Information Officer's decision on RTI requests once an applicant appeals the decision made by the Information Officer.
- The Review Committee must provide a response within 30 days, and can request for an additional 15 days if more time is required to respond. However, despite the RTI Act allowing for this time, a decision should be provided as soon as possible.

- If the Review Committee decides to uphold the decision of the Information Officer, they must provide a clear justification as to why the decision was taken, with reference to the exemptions under the RTI Act.

Information Commissioner's Stage

If the applicant appeals to the Information Commissioner's Officer, an open hearing will be held by the Information Commissioner with the applicant and the representative of the State Institute. The purpose of this hearing is for the Commissioner to review and make a decision on the case, in order to determine whether or not the information should be provided.

Whether or not both parties attend the hearing, the Commissioner can decide to move forward with the hearing and make a decision regarding the case. During the hearing, the State Institute must be ready to answer to the Commissioner regarding why the information was withheld. Therefore, in preparation for the hearing, the State Institute must:

1. Keep note of whether responses were provided within the time limits prescribed in the Act. If not, the reason for why a response was not provided within the time limit should be provided.
2. Provide a clear justification as to why the information was withheld and details of how non-disclosure protects a legitimate interest specified in the Act compared to the public interest in disclosure.

Exemptions

The Right to Information is not an absolute right. It is conditional and subject to certain limitations in order to protect legitimate interests and rights. While State Institutes can withhold certain exempted information, they must be clearly and narrowly defined within the law. While the RTI Act of the Maldives states a list of information that is exempt from disclosure, this handbook will explore exemptions that have most commonly been used in the Maldives.

1. Information regarding a third party

Third party personal information is considered as any information that can be used to identify a third party. Such information can be disclosed with the consent of the third party. However, if there is a greater public interest in disclosing the information, the information officer has the discretion to do so without their consent.

Example:

Information regarding how an employee of a State Institute was evaluated in their performance review was requested. However, the State Institute refused to disclose the information, stating that disclosing this information would mean that the anonymity of the employees who reviewed the employee in question would be revealed.

It is important to note however, that the information was requested in order for the employee to determine how he was reviewed by his peers. Therefore, the information regarding the scores he got in his performance review could be disclosed, after having redacted the names of the employees who evaluated him. Therefore, the Information Commissioner's Officer ordered for the information requested to be disclosed, without the names of the employees who took part in reviewing the applicant who requested the information.

While information requested may contain third party personal information, such information can always be provided after having omitted any personal information.

2. Information regarding an investigation or court trial

Under this exemption, this includes information which could prejudice an investigation or a person's right to a fair trial. This also includes information which could endanger a person's physical safety in addition to the safety of a building, vehicle or vessel. Furthermore, this could also include information which could reveal the identity of a confidential source, impede the arrest of a person or facilitate their escape from custody.

Example:

The applicant requested details of how the leaseholds right transfer of a resort took place, as well as communications between two State Institutes regarding this matter. The applicant was told that the information could not be provided as it pertained to privileged information, as the matter was currently at the Supreme Court. However, despite the case being at the Supreme Court, the Information Commissioner ordered that the information be disclosed. Despite the fact that the information could fall under this exemption, it was found that there was a greater public interest in disclosing the 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.

Example:

The number of Indian military officers as well as the expenditure on these officers was requested. The State Institute responded stating that the information could not be disclosed. They stated that disclosing the information could endanger national security and adversely affect foreign relations with India. While the Information Commissioner decided that the information did not need to be disclosed, it is important to note that State Institutes cannot cite exemptions without clearly demonstrating that there is a greater public interest served in withholding the information.

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.

Example:

An applicant made a request for a contract, in addition to the meeting minutes of a tender evaluation, bid evaluation criteria and the names of those on the bid committee among other information. However, despite there being multiple requests, the applicant was given a blanket response, citing the business information exemption as a reason for nondisclosure.

However, information such as the bid evaluation criteria or the contract between the winner of the bid and the State Intuition are information that must already be proactively disclosed. Furthermore, State Institutes cannot provide a blanket response when multiple requests are made. Instead, each request must be individually answered and if the requested information cannot be provided, proper justifications must be given for each request.

It was decided that all information that was requested, except that which falls under the exemptions of the RTI Act must be disclosed. In such instances, copies of contracts can also be provided after having omitted any information that is specifically stated as being confidential.

Other exemptions in the RTI Act:

- Information received in confidence.
- Information which could endanger a person's health, life or physical safety.
- Information which could hinder the government's ability to administer law.
- Information which could hinder the government's ability to manage the economy of the country.
- Information regarding cabinet secrets.
- Information which could hinder the government's ability to create and implement policy.

Public Interest Override test

A State Institute can withhold information if the requested information falls under an exemption of the RTI Act. However, even in such circumstances, if the public interest in disclosing the requested information outweighs the harm to the public interest by non-disclosure, then the requested information must be disclosed.

The RTI Act does not define what public interest is and therefore, this requires a case-by-case assessment. Generally, information disclosure due to public interest arises usually in matters involving environment, public health and safety, grave human rights violations, public debate and participation, and accountability of public funds.

If a decision is made to withhold information citing harm to the public interest by disclosure, the following grounds will not be considered as justifiable reasons that erode the public interest:

- If the disclosure of information could make it difficult for the State Institute to be answerable.
- Information contains details that may undermine the public confidence in the State Institute.
- If withholding certain information adversely impacts the comprehension of the remaining information.

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. protection of national security, privacy etc).

Part 2:

Would the disclosure of information cause substantial and demonstrable harm to that aim?

Part 3:

Would the harm to the aim be greater than the benefit to the public interest in disclosure?

