

Informed Citizens Participating in the Constitutional Process:

Transparency and Access to Information in Nepal

*A Memorandum Prepared on Behalf of the Public
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September 2009

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1. INTRODUCTION

This report contains a comparative analysis of the approaches taken to freedom of information laws in 12 constitutional democracies, namely: Australia, Canada, France, Germany, Hong Kong, India, the Netherlands, Singapore, Spain, Sweden, the United Kingdom and the United States of America (these are referred to throughout this report as the 'surveyed' jurisdictions, countries or regimes). That analysis is then used as the basis for an assessment of the effectiveness (in theory and practice) of Nepal's new freedom of information regime.

The policy decisions that need to be made when designing a freedom of information regime need to be decided in the context of local circumstances, customs and norms. What the "right" approach to freedom of information is in Nepal is, therefore, a question for the citizens of Nepal and we do not opine on it in this report. However, we have noted where the approach taken in Nepal departs markedly from what appears to be a consensus "best practice" approach in the surveyed jurisdictions.

Our report also assumes that the primary intention of the freedom of information regime in Nepal is the promotion of better government through transparency.

The report is broken into eight main sections (which follow this introduction (**Section 1**) and the summary (**Section 2**)) and looks at the following issues:

- **Section 3** addresses the foundational approach taken by the freedom of information regimes surveyed. Is there a starting presumption that all government information should be accessible or is the opposite the case, namely that government information is confidential unless specifically exempted?
- The parts of government and other bodies which are subject to disclosure requirements under the regimes are examined in **Section 4**.
- **Section 5** looks at who is entitled to access information under the freedom of information regimes surveyed.
- While **Section 6** looks at what types of information those entitled can access.
- **Section 7** then addresses what exceptions apply to exclude some categories of information from disclosure.
- **Section 8** analyses the key procedural aspects of the freedom of information regimes surveyed which impact upon the effectiveness of those regimes in practice.
- Following-on from this, **Section 9** looks at the appeal rights and mechanisms that the surveyed regimes have enshrined in their laws.
- Finally, **Section 10** deals with certain additional matters noted in respect of certain of the surveyed regimes which may be relevant for Nepal.

This report has been prepared jointly by lawyers from Google (in Australia, India, the Netherlands, the UK and the US) and Baker & McKenzie (in Australia, Canada, France, Germany, Hong Kong, the Netherlands, Singapore, Spain, Sweden, the UK and the US) and not by lawyers qualified or licensed in Nepal.

In this report, the following abbreviations are commonly used:

"**Applicant**" means a person entitled to make an information request under a FOI regime

"**Body**" or "**Bodies**" means entities that are subject to the disclosure requirements of the FOI regime

"**FOI**" means Freedom of Information

"RTI Act" means the draft Nepali Right to Information Act

2. EXECUTIVE SUMMARY

Nepal already has a FOI regime enshrined in the RTI Act. This in itself is an achievement for such a young constitutional democracy. Many of the jurisdictions surveyed did not take this step until many years (in some cases hundreds of years) after their establishment. Some of the jurisdictions surveyed, such as Hong Kong, do not have a specific piece of legislation that governs the rights of the public to access information held by the Bodies, but instead have an administrative code.

In many respects, the Nepali regime complies with the best practice identified amongst the surveyed jurisdictions. In particular:

- The RTI Act starts from a general presumption of openness, which is common amongst most of the surveyed jurisdictions.
- The timelines within which disclosure must be given are some of the shortest amongst the jurisdictions surveyed.
- The fees for access are limited to the actual costs of providing the information.

There are, however, certain instances where the RTI Act departs from the best practice we have identified in this survey. These departures may impact the effectiveness of the Nepali FOI regime in practice. Of particular note:

- The scope of the Nepali regime includes NGOs and political parties (e.g. NGOs and political parties are subject to disclosure obligations under the RTI Act). This raises the spectre that the regime could, in the wrong hands, be used to intimidate NGOs and opposition parties who might be critical of the government.
- The definition of information covered by the Nepali regime is very narrow and, indeed, seems to exclude information held electronically. If that is how the definition is applied in practice, then it will exclude much of the information held by government from disclosure.
- Unlike most of the surveyed jurisdictions, Nepal's regime requires Applicants to disclose their motive for requesting access to information. This can deter the making of requests and is arguably inconsistent with a presumption that government information should be available to the public, unless specifically excepted.
- There is no avenue independent of the Body concerned to which an Applicant may appeal a decision not to disclose information.
- While not alone amongst jurisdictions surveyed, the Nepali regime also limits access to the regime to individual citizens, excluding corporations and foreigners. This is a comparatively narrow approach in the context of most of the jurisdictions surveyed and may not deliver to Nepal all the governance and economic benefits that effective FOI regimes can offer.

The detail underlying each of the above observations can be found in the relevant sections below.

3. PRESUMPTION OF OPENNESS

Issue

This section considers the basic principles underlying FOI legislation. In particular, is there a presumption that government held information should be accessible to the public or is the opposite true?

Discussion

It is a frequent criticism of governments, including democratic governments, that they promote a culture of official secrecy. The public interest in open government (improves decision making, exposes inefficiency and corruption, etc) is therefore often cited as the driving force behind FOI legislation, which is seen as a practical way of redressing this tendency towards official secrecy. The perception of openness in government improves confidence in the regime and promotes a greater public understanding of the reasons behind official action.

Accordingly, it is common for FOI legislation to start from the premise that *all* information held by government should be accessible by the public unless exempted from disclosure justified in the public interest. For example, in Canada the purpose of their FOI law is expressly stated to be:

"to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government."

It is, however, possible to start from the other end of the spectrum, working from the basis that government information should generally not be available to the public except in specific, defined circumstances. For example, in Singapore there is no general FOI legislation. Instead, disclosure of certain information is deemed illegal and/or gives rise to a criminal offence being committed, resulting in a much more insulated regime. An alternative approach is demonstrated by the Netherlands where, despite the existence of FOI legislation, the FOI regime does not start from a general presumption of openness. Instead, only information that is laid down in documents (in written format or otherwise) which relates to an administrative matter is subject to the FOI regime.

Where a particular jurisdiction comes out on this issue requires a balancing of the interests of the State and the necessities of governance with the interest of the public in having access to State held information.

With the exception of Singapore, all of the surveyed jurisdictions start from a 'presumption of openness' from which a number of exceptions are carved out. We conclude that best practice is to start from a presumption of openness.

Nepal

The existence of the RTI Act in itself goes some way towards demonstrating Nepal's commitment to freedom of information. Section 2(e) of the Act grants a general right of access to information. This accords with what seems to be the prevailing approach amongst the jurisdictions surveyed.

However, the presumption of openness cannot be considered in isolation. The interpretation of exceptions, who the law applies to and what constitutes "information", as well as the ease with which an individual can request information and the oversight of the system, will all impact how effective the general presumption of openness is in upholding individual's rights to access information. A presumption of openness will only be as valuable as the protections that are in place to uphold it.

4. SCOPE OF THE REGIME

Issue

The extent to which Applicants are able to benefit from a FOI regime is determined in part by the range of persons and entities that come within the disclosure requirements of the regime. The narrower the scope of the regime, the less information is potentially available to the public; the more liberal the scope, the more information is potentially available.

The fact that an entity comes within the scope of a FOI regime does not necessarily mean that all information held by that entity is discloseable. The question of exceptions to disclosure is dealt with in section 7 below.

Discussion

Government/public entities

In most of the surveyed jurisdictions, government entities (e.g. executive entities, legislative entities, judicial authorities, ministries, government departments, public authorities, etc), at all levels are subject to the regime, although it is common for certain government entities to be specifically exempted from the regime. For example, entities responsible for security, intelligence and finance (or at least some categories of documents held by those bodies) are commonly exempted. Also see Hong Kong, where information held by courts, tribunals and inquiries is specifically exempted from the regime. In connection with this, it is interesting to note that several jurisdictions specifically exempt certain documents held by the relevant national broadcasting corporation (see Australia, Canada, the Netherlands and the UK)¹.

Our survey discloses some variety in the way that government entities are defined:

- (a) some FOI regimes specifically list the institutions that are in scope (see Canada² and Hong Kong). This is a relatively narrow approach, which exempts those entities that are not listed from disclosure requirements. It also requires a significant level of ongoing scrutiny from both government and the public in order to ensure that the relevant list is maintained and includes all relevant entities;
- (b) other FOI Laws use a more general description (e.g. "all government departments"), sometimes combined with a specific list of named entities; for an example of this approach see the UK. The potential weakness of this approach is that a description may be framed in such narrow terms that certain public entities (or entities discharging public functions) are still outside of the scope of the regime.

Germany reflects perhaps the most liberal approach to scope, including all natural or legal persons that fulfil governmental functions (and accordingly the scope is not restricted by the form of the entity that holds that information). On this basis, any natural or legal person is treated as equivalent to an "authority" (e.g. a government entity) if an authority instructs that person to discharge all or part of the authority's duties under public law.

Non-government/private bodies

There is greater variety in the approaches that surveyed jurisdictions take to non-government/private entities (although none of the surveyed regimes encompass all private entities):

- In some cases, only government entities (including government ministers) and government owned entities are subject to disclosure requirements. Private entities are not in scope at all

¹ It is likely this is motivated in part by the importance of preserving effective journalism. Journalists can play a key role in the scrutiny of the government and public servants: subjecting journalists to disclosure obligations would potentially undermine their ability to fulfil that function.

² Note that in Canada, the FOI Law contains a Schedule listing the government institutions that are in scope. This Schedule is frequently updated to include new institutions or to remove obsolete or superseded institutions.

(even if they are hired by the government to conduct public functions). For examples of this approach see Australia and the UK.

- Some regimes use a test of government ownership (full or part) of an entity (e.g. government owned corporations) to determine whether that entity is within scope. This approach has limitations in that it does not extend to private entities that the government has instructed to carry out public functions (and potentially allows the government to hide certain information from the public by outsourcing the relevant function to the private sector). An example of this concern might result from the outsourcing of core public services to private contractors.
- Other regimes cast a wider net and encompass privately owned entities that have some involvement with a government entity e.g. a privately owned entity that provides services to a government owned entity, or is party to a contract with a government owned entity. For example, in Canada the obligations that apply to public entities may be imposed on private entities by contract where they provide services to government/Crown entities, or where government functions are outsourced. Similarly in the Netherlands, where private bodies are carrying out work for which they are accountable to an administrative body, requests for disclosure of information contained in documents concerning an administrative matter may also be made to these bodies. This moves closer towards the German approach (discussed above).
- India demonstrates an alternative approach, bringing into scope entities that are financed in some way by the government. In addition, if an entity within the scope of the FOI regime can access information held by a private entity under any law, the government entity is required to obtain the information from the private entity, though such disclosure would be subject to the exceptions set out elsewhere in the FOI Law (and in accordance with the prescribed procedure for obtaining third party information)³.

Please note that in some jurisdictions (such as Canada) privately owned entities can come within scope to the extent that a public entity holds information relating to that private body.

Nepal

The RTI Act applies to "public agencies", employing a combination of the approaches outlined above in defining this term. It does not include a specific list of the entities that come within scope (as in Canada and Hong Kong); instead it includes an exhaustive list of the types, or categories of entities that come within scope⁴. Accordingly it appears that the drafters intended to subject a broad range of public entities to disclosure obligations under the Act. We would suggest that in principle this is an improvement on the "named list" approach taken in Canada and Hong Kong, the weaknesses of which are outlined above. However, by listing specific categories of entities that come within scope (rather than simply asking whether the entity in question discharges a public function - the approach demonstrated by Germany), there is still a risk that not all entities discharging public functions are subject to disclosure requirements⁵.

Although as a general rule private entities are not in scope, "public agencies" includes entities that receive funds (directly or indirectly) from the Nepal government or foreign government or international organisations or institutions. On balance, in this respect the Act improves on the position in jurisdictions such as the UK, where no privately owned entity may be compelled to disclose information under the FOI regime. However, it is not clear whether at present the RTI Act would in every case bring in scope entities to which the government has "outsourced" public functions,

³ Note this extension derives from a decision issued by the Chief Information Commission, and is not set out in the law itself.

⁴ "The definition covers constitutional and statutory bodies, agencies established by law to render services to the public and agencies operating under a government grant or owned or controlled by the government. It also covers political parties and organisations, and non-governmental organisations (NGOs) which operate with funds obtained directly or indirectly from the Nepali government, a foreign government or an international organisation. Pursuant to Article 2(a)(9), the government can bring further bodies under the ambit of the Act through a notification in the official gazette." (<http://www.article19.org/pdfs/analysis/nepal-rti-act.pdf>).

⁵ This is highlighted by in one commentary, which suggests that the legislature and the judiciary may fall outside "public agencies" as it is currently defined (<http://www.article19.org/pdfs/analysis/nepal-rti-act.pdf>).

particularly if those entities did not received government funds or "grants". This may give the government the opportunity to use entities that are not within scope to fulfil those functions that it would prefer to hide from the eyes of the public. Again, this potential loophole would be addressed if all entities that perform a public function were brought into scope (regardless of the source of their funding).

Finally, we note that the term "public agencies" also extends to political parties and organisations, and non-governmental organisations (NGOs). This is unusual (very few other jurisdictions surveyed explicitly bring these entities within scope, although see India, which contemplates the inclusion of NGOs to the extent that they receive government funding). It is easy to see possible concerns with the inclusion of these categories in the scope of the FOI regime. For example, there is at least a hypothetical danger that the government could use this right to access information about these entities to which the government otherwise would not have access, and that the right of access could ultimately be used to undermine or oppress entities engaged in socially useful activities. Nepal may wish to consider deleting the specific reference to these entities from the scope of the statutory regime. To the extent that these entities fulfil public functions (the ultimate justification for the inclusion of a body in an FOI regime), they could be brought within scope with the use of a more general provision, such as that used in Germany. The extension of disclosure obligations in the RTI Act to entities that receive foreign government or international funding potentially raises similar concerns.

5. WHO MAY ACCESS INFORMATION/WHOM DOES THE REGIME EMPOWER?

Issue

This section considers the range of Applicants that have a right to access information, and the impact that this scope has on the effect of FOI regimes as a whole. The broader the right of access to information, the greater the potential for information to pass into the public domain. This portion of our survey revealed a wide range of possible approaches to this question.

Again, as highlighted in section 3 above, any apparently broad approach to this question must be read in conjunction with any relevant exceptions and restrictions to the FOI regime. In addition, enforcement plays a key role: a broad right to make requests is of limited use if the obligation to respond to those requests is not enforced in practice.

Discussion

Considerations under this head include whether there is any definition in the relevant legislation of the natural or legal persons that may access information, and whether the term is broadly or narrowly defined. The majority of jurisdictions take an extremely broad approach here, with the effect that the right is open to everyone (both natural and legal persons). For example, in Germany, "everyone" has an unconditional right to access information; as there is no definition of "everyone" legal persons (such as corporations), as well as natural persons, may apply. Importantly, natural persons do not need to be a citizen or even a resident of Germany in order to apply.

By contrast, India provides an example of a relatively narrow (and unusual) starting point, where Applicants must be both a natural person and a citizen of India in order to access information - it is not sufficient simply to be a resident of India (and indeed, residency is not a requirement), and legal entities such as corporations may not make requests⁶. Only one country (Spain) limited the right to access information with reference to the age of the Applicant.⁷

Identity and location of the Applicant

Several responses noted that even where in theory the right is restricted in some way (for example, the right to apply only extends to natural people), in practice this may be of limited importance, if the regime does not require the Applicant to state a purpose⁸ for their request (see Sweden). In addition, in Sweden public authorities are generally prohibited from enquiring as to the identity of the Applicant, and the purpose of their request. Our respondents pointed out that even persons that do not technically have a right of access (such as corporations) could use this liberal aspect of the regime to access information nonetheless.

In contrast, we note that in some cases Bodies are entitled to know the identity of the Applicant. For example, although the UK regime is said to be "applicant blind"⁹, the FOI Law often assumes that the relevant entity will be in possession of information as to the identity of the Applicant. For example, a request may be refused if it is vexatious or repeated: clearly, in most cases the identity of the Applicant must be known in order to make this assessment.¹⁰ Similarly, some countries require that the Applicant has an address within the jurisdiction to which notices may be sent (see Australia). Whether the Body should be entitled to know the identity or location of the Applicant is a potentially

⁶ Although on this latter point, note the comment made in relation to Sweden in relation to the identity and location of the Applicant. Although the right of access in India is limited to natural persons, presumably an individual (such as an employee or a director of a company) could make a request on behalf of the company. Accordingly in practice this restriction is potentially of limited effect.

⁷ In Spain, individuals may only exercise the right of access from the age of 16, in line with the Spanish civil framework

⁸ Note that Spain was the only example of a jurisdiction that requires the applicant to have a "legitimate interest" before making the application.

⁹ http://www.informationtribunal.gov.uk/Documents/decisions/Svinformationcommissioner_9may2007_.pdf

¹⁰ The identity and known circumstances of the Applicant can also be taken into account when looking at other provisions in the UK regime. For example a request may be refused if it is considered that the response may endanger the health and/or safety of the individual. Information that is "reasonably accessible" to the Applicant is also exempt.

difficult question. As in the UK example, this information is useful in identifying Applicants that abuse the FOI regime rather than using it in the way it is intended. Such abuse potentially damages the level of access that the public has to FOI, to the extent that the abuse wastes public resources. However, this restriction also potentially allows the relevant Body to locate the source of the request, which raises potential security considerations (and may deter individuals from making a request); the extent to which this is a concern will depend in part on the political environment in the relevant jurisdiction.

The requirement to have an address within the jurisdiction to which notices may be sent could become relevant where the Applicant is an expatriate or a national of the country in exile e.g. this requirement may prevent a citizen from accessing information to which he would otherwise be entitled. Such requirements also limit (although presumably do not entirely rule out) requests from foreigners with no connection to the country. On this point, it is conceivable that non-citizens/non-residents could have a legitimate interest in accessing information (for example, if their country is party to an agreement with the government of the country in question).

Personal Information - Distinctions made

It is interesting to note that some countries make specific distinctions in relation to personal information. For example in Australia, to the extent that the information that is the subject of the request contains personal information, then it must relate to the Applicant. By contrast, in the UK an application for information constituting personal data relating to the Applicant themselves is exempt, as it will automatically be covered by the parallel regime of the Data Protection Act 1998. The UK example demonstrates that a consideration of an FOI regime must often take into account other corresponding pieces of legislation.¹¹

Access By Persons with Disabilities

Some countries (such as Canada) specifically allow for assistance to persons with disabilities under the FOI regime. In other countries (such as Germany and Sweden), there is no specific provision under the FOI regime to assist Applicants with disabilities, although other local laws ensure that persons with disabilities who make requests to public authorities will be given a reasonable level of assistance. In some jurisdictions no specific provision is made for this portion of Applicants (for example France).

Nepal

Under RTI Act, Nepal falls firmly toward the most narrow end of the spectrum set out above. Only citizens of Nepal have the right to file an application to seek information (and consequently, only natural persons have such a right; legal persons do not benefit). This restrictive approach is unusual in the context of our survey, and significantly limits the potential benefits of the FOI regime in Nepal.

One of the oft-stated benefits of a liberal approach as to who can make applications is that allowing foreigners and foreign corporations to make requests encourages foreign investment in a country. Investment is ultimately dependent on confidence in transparency and the ability to measure and manage risk. FOI laws aid understanding of the way that government decisions are made and therefore are directly relevant to that risk assessment.

Internally, restricting access by Nepali corporations to government information also reduces the information available on, and therefore the predictability of, the making of government decisions. Experience shows that predictability and stability of regulation is a key contributing factor to economic development.

One positive aspect of the current approach is that there is no requirement that the Applicant is a resident of Nepal (which may in theory allow citizens that are exiled from the country to make applications), and no further restrictions (such as an age limit) are placed on the Applicant, aside from the citizenship requirement.

¹¹ Note in particular that several countries specifically noted the existence of in their jurisdictions "data protection" regimes (which work to give individuals rights in relation to the information relating to them that certain entities hold), and the way that these regimes interact with the local FOI regime.

No assistance is given to persons with disabilities under the RTI Act. Again, this is unusual by comparison with most of the surveyed jurisdictions (where Applicants with disabilities are likely to receive assistance either under the FOI regime, or under a parallel law).

6. HOW IS INFORMATION DEFINED?

Issue

This section considers the range of possible approaches to the definition of "information" under various FOI laws and the impact that this definition has on the right to access information.

The definition of "information" is one of the key factors in determining the reach of the regime. In principle, a broad definition of information encourages the widest level of disclosure under a regime, and a limited definition will potentially seriously limit the right to information. Note that this section relates purely to the definition of information, and should be read in conjunction with the following section which addresses the exceptions to the rights of access to the information which comes within the scope of the regime.

Discussion

Definition of Information

The surveyed jurisdictions demonstrate a range of possible approaches to this issue (although in most cases it appears that the intention is for the definition to apply to a broad range of information). For example:

- Some use an exhaustive list of the categories of information in scope. For example in France documents of any "shape or medium" are in scope. "These documents may be files, reports, studies, records, minutes, statistics, orders, instructions, ministerial circulars, notes and ministerial answers, correspondences, notices, forecasts and decisions". Although it is clearly the intention that the law applies to a wide range of documents, by including this type of list there is perhaps a danger that formats not listed may unintentionally fall outside the scope.
- Australia also defines "document" using a detailed list of the record types that come within scope. The list includes "any other record of information"¹², clearly indicating that the list is not intended to be exhaustive, and is broad enough to extend to all information (including new categories of information that may be developed in the future). Note that this definition expressly extends to parts of the document in question (as opposed to the whole), and to copies or reproductions of the document in question.
- The UK regime applies to information "recorded in any form". Elsewhere, the UK's FOI Act extends to information in an unrecorded form¹³. For an example of a similar approach, see Canada, where a "Record" is "any documentary material, regardless of medium or form".

Although the UK approach is perhaps simpler than that taken in Australia, in practice these approaches are likely to amount to a similar result, and bring all information held by the relevant Body within scope (regardless of its provenance, format, status, author, date of creation, official status, and whether or not it was created by the Body that holds it).

The German regime places an unusual limitation on its scope. The regime applies to "official" information, which is defined as "every record serving official purposes, irrespective of the mode of

¹² "Documents" includes: (a) any of, or any part of any of, the following things: (i) any paper or other material on which there is writing; (ii) a map, plan, drawing or photograph; (iii) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; (iv) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device; (v) any article on which information has been stored or recorded, either mechanically or electronically; (vi) any other record of information; or (b) any copy, reproduction or duplicate of such a thing; or (c) any part of such a copy, reproduction or duplicate; but does not include: (d) library material maintained for reference purposes; or (e) Cabinet notebooks.

¹³ Both Section 51 of the Freedom of Information Act 2000 (which deals with Information Notices), and Section 75 (which deals with the power to amend or repeal enactments prohibiting disclosure of information) expand the definition of information to include information in an unrecorded form).

storage". Given that the German regime is progressive in many other areas (for example, see Section 3 (Scope of Regime) above), it is surprising to note that this definition excludes drafts and notes that are not intended to form part of a file. This exclusion would appear to allow the subjective intention of the author to be taken into account when determining whether a particular document is in scope, and would appear to present a danger that a Body may choose to conceal information in documents that do not form part of the file in question. The Dutch definition is also more restrictive on this point than the majority of the jurisdictions surveyed; the Dutch FOI regime only applies to information that is laid down in documents which relate to an administrative matter (it also appears that in order to fall within scope, the documents must reside with an "administrative authority" and be addressed to that authority). In addition, personal public policy opinions and personal data are generally excluded from disclosure.

Time Limit

The majority of jurisdictions surveyed place no time restriction on the information that falls within the scope of the regime. In particular it would appear that most FOI laws have retrospective effect, and apply to information created prior to their enactment. Australia provides an example of an exception to this statement: here, the right to information applies to documents no older than 1 December 1977 (although older documents will come in scope if they are related to documents that are themselves within the scope of the FOI regime). For another example of such an exception, see India. Presumably this limitation is put in place with a view to limiting the administrative burden on the Body. However, this type of limit seems to place a fairly arbitrary restriction on the right to information.

Format

The majority of regimes extend disclosure requirements to all record formats (e.g. soft copy, hard copy, electronic, sound). Some jurisdictions (such as France) explicitly state this scope. Other jurisdictions do not specifically address format (although note that in some cases, local counsel commented that although the relevant legislation does not specifically address format, the approach that has been taken in the past suggests that it is likely that the courts will embrace new formats in the future; for an example, see Sweden).

Nepal

The RTI Act uses a relatively narrow definition of information as follows: "any written document, material or information related to the functions, proceedings thereof or decisions of public importance made by the public agencies". The RTI Act also provides that "written documents" may include any audio visual materials collected and updated through any medium or that can be printed or retrieved.

This definition reflects a far more restrictive approach than that taken in other countries:

- **Format:** The scope is limited to a specific, narrow range of formats, all of which are hard copy. By virtue of this approach a certain portion of information held by Bodies in Nepal is automatically excluded from scope, which is in contrast with the approach taken in the majority of countries surveyed. Even if the list of formats was expanded to include a broader range, this approach (e.g. including an exhaustive list of formats) is more restrictive than those countries that use a non-exhaustive list. For the right to information to extend as far as possible, a general description such as that used in the UK is ideal.
- **Subject matter:** In addition, the Nepali definition is expressly limited to information relating to "the functions, proceedings thereof or decisions of public importance made by the public agencies". This contrasts to jurisdictions where the FOI law extends to any information held by the Body in question, without regard as to the subject matter of the record or whether the record in question was created by that Body. The reference to "decisions of public importance" in particular suggests that the question of whether a certain record is in scope is a matter of subjective consideration (e.g. in each case it will be necessary to consider whether the matter that is the subject of the request relates to a decision of public importance). It is quite possible that the Body's assessment of whether a certain matter is of public importance may be different to the assessment of the relevant Applicant to the same question, and it is potentially a serious limit on the right to information that the Body is able to

apply this criterion. It also appears likely that the process of making this decision would lead to an additional administrative barrier and level of delay in the Applicant's receipt of a response. For the right to information to have maximum effect, the scope would extend to all information held by the Body, without need for any further assessment.

7. EXCEPTIONS TO DISCLOSURE

Issue

The extent to which Applicants can benefit from a FOI regime is determined, in part, by the existence of any exceptions to the relevant Bodies' disclosure obligations, and how any such exceptions are construed.

Discussion

Please see the table attached at Appendix 1 (Exception Summary Table) for a high level summary of the common exceptions found in the surveyed jurisdictions.

In general, the majority of the surveyed jurisdictions make a distinction between "absolute" exceptions (where disclosure of information is excused per se) and "qualified" exceptions (where the disclosure of certain information is permitted only in certain circumstances). In jurisdictions that employ qualified exceptions, information is often excepted from disclosure requirements if disclosure would be contrary to the public interest.

As discussed in section 3 above, most of the FOI regimes in the surveyed jurisdictions start from a presumption of openness, and look to construe any disclosure exceptions narrowly. By contrast, the relevant FOI laws in Sweden do not start from this premise. Instead, the Swedish FOI laws only apply to documents (and information contained therein) deemed to be "official documents" (these are documents that are held by a public authority and deemed to have been received or drawn up by such an authority). This therefore limits the extent of the Swedish FOI regime in comparison to, for example, the UK regime, which, as discussed further above (see section 6) includes a very broad definition of "information" and is not restricted to documents categorised as "official".

In general, we have found that the following matters are commonly excepted from disclosure under FOI regimes:

- matters of national security
- matters of defence/internal security/international relations
- matters relating to law enforcement
- law enforcement records
- matters of personal privacy
- certain classes of information on the economy or economic policy

Interestingly, the FOI regimes in a number of the surveyed jurisdictions also contain an exception for information contained in records if, in fact, the existence of the records themselves is classified. Whilst such an exception clearly addresses a need for the protection of highly confidential State information, the inclusion of such an exception could significantly diminish the effectiveness of the whole FOI regime if it was applied too broadly.

Further, with regard to matters of national security, our survey has noted that very few jurisdictions specify a time limit as to how long such documents are insulated from disclosure. Arguably, the imposition of a time period after which documents concerning matters of national security may be disclosed is something that should be encouraged as the specification of a time limit would allow for more information to be released to the public in the long-term. In jurisdictions that do specify a time period after which matters relating to national security may be disclosed, this period ranges from 40 years (in Sweden) to up to 100 years in France (specifically for documents whose communication is likely to endanger people who are either identified within the document or are otherwise easily identifiable).

The common exceptions listed above narrow the scope of information that can be disclosed under the respective FOI regimes. In order for a FOI regime to be truly effective, it is therefore necessary for the number of absolute exemptions to be kept to a minimum, and for any qualified exceptions to be construed narrowly so as to retain the effectiveness of the regime.

Another challenge to the administration of FOI regimes is the influence of the government in power at the time on the Bodies' decisions regarding any discretionary exceptions to disclosure. For example, following the September 11, 2001 attacks on the United States, the Canadian government was generally less open about disclosing certain information pertaining to Canadian military operations abroad. Whilst such a reaction is understandable, it is important that the effectiveness of a FOI regime is not overly affected by the reaction by the government in power at any one time.

Absolute exceptions

Our survey has shown that it is common for FOI regimes to include a short list of absolute exceptions to the right of access to information (e.g. matters of national security). By contrast, there are no absolute exceptions to the right of access to "Official Documents" under Swedish FOI laws. Instead, the Swedish FOI laws prescribe a distinction between two categories of secrecy: (1) official documents/information to which publicity is presumed; and (2) official documents or information to which secrecy is presumed. With regard to documents/information falling within the first category (e.g. matters of national security), such documents/information are only subject to secrecy if there is reason to believe that disclosure would jeopardise, harm or damage the particular interest. By contrast, official documents/information in the second category (e.g. some matters of personal privacy) are always subject to secrecy unless it is clear that they can be disclosed without risk of jeopardising, harming or damaging the particular interest.

Qualified exceptions

Our survey has also shown that the range of qualified exceptions to FOI regimes varies widely between jurisdictions. For example in Australia, documents pertaining to relations between the Commonwealth and the States fall under a qualified exception so that disclosure will not be permitted if disclosure would be contrary to the public interest, whilst in Sweden information regarding the national fiscal, monetary or currency policy are exempt from disclosure only if there is reason to believe that disclosure of the information would jeopardise the purpose or intentions of any determined or anticipated measures. In the UK, information that is held by a public Body under a legal duty of confidence is exempt (where disclosure would constitute an actionable breach of confidence), and trade secrets (and other commercially sensitive information) are protected where their disclosure is likely to prejudice the commercial interests of any person. Whilst this latter exemption is qualified and difficult to obtain in practice, both of these exceptions are aimed at protecting private entities who would not, in and of themselves, be a Body subject to the UK FOI regime.

Nepal

Whilst the FOI law in Nepal does start from a presumption of openness, we understand that there is no explicit provision in the FOI law or any guidance to suggest that the exceptions to disclosure should be narrowly construed. This, therefore, could limit the effect of the FOI law if the exceptions to disclosure were in fact broadly construed. As a result, we would caution that Nepal's exceptions regime fails to strike the right balance between the right of the public to information and the need to protect individual and social interests.

Importantly, unlike the majority of the surveyed jurisdictions, Nepal does not distinguish between absolute and qualified exceptions. Accordingly, if a matter falls within one of the exemptions, no disclosure of the requested information would be justified, without any need to have regard to public interest (or similar) considerations.

It is positive to note that the list of exceptions to disclosure is shorter than the lists of exceptions contained in the FOI laws of the majority of jurisdictions surveyed. For example, the RTI Act does not contain an exemption for information that is exempt by other laws (e.g. Official Secrets legislation) or inter or intra agency communications that are subject to a deliberative process, litigation or other privileges.

8. PROCESS AND PROCEDURE ISSUES

Issue

This section considers the process by which requests for information may be made and the procedure which those holding information must follow in considering a request and ultimately making disclosure.

Governments hold huge amounts of information, concerning a vast range of subjects. Due to the large amount of information that is opened up to the public under a FOI regime based on a presumption of openness, consideration must logically be given to whether dealing with FOI requests will impact on the administrative efficiency and the day to day running of government.

As well as the practical necessities of having a clear and structured procedure for dealing with FOI requests there are also more fundamental concerns. For example, whether the process is easy to understand and follow by the public and is adequate to ensure that Applicants can properly exercise the rights to FOI.

A theoretical right to FOI may be of little value if Applicants do not have the necessary tools at their disposal to secure access to information. On the other hand, if the Bodies providing the information do not have procedures in place for the handling of such requests, they will be unable to handle them effectively and efficiently.

Consideration may also be given to those who, for reason of disability, or linguistic differences, may find it more difficult to exercise their rights to FOI.

As well as ensuring that requests are properly dealt with, a clearly defined procedure will also allow public Bodies to eliminate at an early stage those requests which are frivolous or made vexatiously.

Discussion

The following is a consideration of the various stages starting from a request being made to the disclosure of information or the refusal of disclosure.

1 Format Requirements for Request

Generally the more requirements with which an Applicant must comply in order to make a FOI request, the more prohibitive the process will be deemed to be.

The surveyed countries vary in the formalities that need to be complied with by the Applicant. In the UK, the request simply needs to be in writing and contain sufficient contact details of the Applicant to allow the body to communicate the information to them. In the US there are no formal requirements as to the form of the request, but many Bodies have published rules requiring that requests be (1) made in writing, (2) addressed to a specific official or office, and (3) expressly identified as a freedom of information request. In Canada, although there is no obligatory form for requests, a standard request form is available should Applicants wish to use it¹⁴.

In the UK, a request need not be made to any particular person within the Body but in other jurisdictions such as Hong Kong, the request should be made to the designated information officer within the Body (although a failure to observe this requirement must not by itself be used by the Body concerned as a reason for refusing to consider the request)..

None of the surveyed countries require the Applicant to give the reasons for their request, the justification for this being that the right to information should exist regardless of the motives of the Applicant in making the request. Generally an Applicant need only provide sufficient information to allow the Body to identify the requested information. A broad requirement to give reasons for making

¹⁴ The form contains details of the process and the steps that Applicants need to take to make an information request. The form can be accessed here <http://www.tbs-sct.gc.ca/tbsf-fsct/350-57-eng.pdf>

a request is inconsistent with a presumption of openness and would deter individuals from making use of the FOI regime.

However, there may be certain exceptions to this general principle. For example in Germany, reasons for the application must be given where the request concerns the personal information (generally information that allows a person to be individually identified) of third persons.

Nepal

Article 7 of the RTI Act obliges Applicants requesting information to state the purpose for which their request is being made. This clearly deviates from the presumption in the surveyed jurisdictions that there should be a right to access information regardless of the Applicant's motives. This requirement is generally inconsistent with the practice identified in the surveyed jurisdictions and is likely to undermine the usefulness of the regime in the promotion of good governance in Nepal.

2. Fees

The fee structure for making requests varies across the surveyed jurisdictions. The below table sets out the range demonstrated in the surveyed jurisdictions for which fee information is available:

Country	Fee
Canada	<p>Canada demonstrates a common fee structure:</p> <ul style="list-style-type: none"> • A small fixed fee (CDN\$5) is payable at the time a request is made. • A discretionary copying fee is payable. This fee is calculated with reference to the volume of copies made and the medium in which the copies are made e.g. for photocopying a page with dimensions of not more than 21.5 cm by 35.5 cm, CDN\$0.20 per page is charged; for a page of Braille, on paper with dimensions of not more than 21.5 cm by 35.5 cm, CDN\$.05 per page is charged¹⁵. The majority of jurisdictions use a similar cost orientated structure with reference to the level of materials consumed.
Australia	<p>Australia demonstrates a slightly different approach:</p> <ul style="list-style-type: none"> • Again, a small fee (AUS\$30) is charged for making a request, and a fee is charged with reference to the numbers of copies made. • In addition, Bodies charge for their time e.g. locating documents at a rate of AUS\$15 per hour and for consultation and decision making time at AUS\$20 per hour. An additional fee of AUS\$40 applies for review of a decision and AUS\$6.25 per half hour of supervised inspection.
Sweden	<p>Information must be provided free of charge at the location at which it is held. If the Applicant wishes to make a copy of any documents or information then a charge may be made for this (again, with reference to the amount of materials used).</p>
UK	<p>The UK has a rather unique fee structure. The total fee payable is capped:</p> <ul style="list-style-type: none"> • £600 for central government and Parliament; and • £450 for other public authorities. <p>The fee payable is calculated on the basis of an hourly rate multiplied by the estimated staff time required. Where dealing with the request would cost MORE than the appropriate limit, the Body can choose to provide the information for free, charge for the information (at the above hourly rate) or refuse the request.</p>

¹⁵ Canada also permits a discretionary fee to be charged for time spent: for non-computerized records, CDN\$2.50 per quarter hour in excess of five hours; or where requested information does not exist but can be produced from a machine-readable record, CDN\$5 per quarter hour for computer programming and CDN\$16.50 per minute for computer processing time required to produce the record.

Some countries (such as Australia and Canada) grant the Body a discretion to waive the fees, for example taking into consideration the financial position of the Applicant and whether the cost would be prohibitive to the Applicant in making the request. In India, those below the poverty line are expressly exempted from the payment of any fees. In the US fees may be reduced where the request is made by educational or non-commercial scientific institutions whose purpose is scholarly or scientific research, or where disclosure of the information is in the public interest rather than in the financial interest of the Applicant.

In India where a Body fails to provide the requested information within the timeframe required by the legislation (see the discussion of Response times below), then the information must be provided free of charge.

Generally fees that are to be charged are made known either to the public in advance¹⁶ or to the Applicant making the request in advance¹⁷. Fees for duplication should be based on the actually-incurred costs and not the content of the documents requested.

Nepal

Article 8 of the RTI Act provides that Applicants shall pay the prescribed fee when requesting information and that the fee shall not exceed the actual cost of providing the information. We understand that the structure for such fees is not published. It is clear that Nepal provides less detail about the fees charged of making FOI requests than the majority of the surveyed countries. Consideration may also be given to the circumstances, if any, in which it would not be appropriate to charge the Applicant a fee in relation to the information request for example in some of the situations highlighted above.

3. Response

In this section we consider in what form the Body must disclose, in what time it is expected to respond to a request and what a Body must do if it decides not to disclose information.

(a) Time

The surveyed jurisdictions in general impose obligations on Bodies to respond to Applicants within a set time limit.

There are two time periods to be considered: the first is the time the Body takes to initially respond to the Applicant and the second is the time the Body takes to disclose the requested information (assuming it is obliged to do so). Some jurisdictions do not distinguish between the two and simply provide that information will be provided or refused within a certain time-frame, and do not provide for any interim response.

Country	Response Time	Time to Provide or Refuse Information
Australia	14 days	30 Days
Canada	None	30 Days (subject to possible extension)
France	None - Refusal deemed implicit after the passing of one month from the request.	1 Month
Germany	None	1 Month
Hong Kong	Interim reply must be provided if information cannot be disclosed within 10 days.	Initially 10 days after which if the Body cannot provide the information the Applicant should be informed and in which case the target response time will be 21 days. Response may only be deferred beyond 21 days in exceptional

¹⁶ For example in Canada at http://www.infocom.gc.ca/acts/view_article-e.asp?intArticleId=96

¹⁷ In Australia and the UK

Country	Response Time	Time to Provide or Refuse Information
		cases which should be explained to the Applicant. Any deferral should not normally exceed a further 30 days.
India	None	Generally 30 days although within 48 hours if the information sought concerns the life or liberty of a person.
Nepal	None	15 days (or 24 hours where the request relates to the security or life of any person)
Netherlands	2 Weeks	2 Weeks - The authority may defer the decision by up to a further 2 weeks but the applicant must be notified of the deferment with reasons within the first 2 weeks following the application.
Spain	10 Days	3 months (although the Spanish Ombudsman has recommended that this be reduced to 30 days).
Sweden	None	Information should be disclosed as soon as possible, taking into account the nature of the requested document.
UK	None	20 Working Days
US	10 Days	20 Working Days

A number of jurisdictions such as the US require the Body to acknowledge receipt of the request and indicate how long it will take for the request to be processed.

Nepal

We understand that the RTI Act provides that a response should be made in 15 days (or 24 hours where the request relates to the security or life of any person), which is at the more expeditious end of the spectrum of surveyed countries and particularly so in relation to the security or life of any person.

(b) Form of Disclosure

Where information is disclosed consideration must be given to the form in which the information is disclosed. The majority of the surveyed jurisdictions allow the Applicant to request that the information be disclosed in a particular format. Requesting that information be provided in a particular format may of course have cost implications and impact fees charged for the disclosure (see fees section above). In some circumstances it may be inappropriate or disproportionate to convert a record into another format. Several jurisdictions (for example Canada) provide that in such cases a request for a particular format may be rejected and the information is provided in a form held by the Body (or in a form the conversion to which the Body considers reasonable)..

In general, an oral disclosure of the information will not be sufficient. However, in Germany, oral disclosure is adequate unless the Applicant expressly requires the information to be given in writing.

Nepal

We understand that RTI Act disclosures must be made in writing. Consideration may be given to instances in which information is not originally stored in written form, for example where it consists of video or audio tapes or photographs, or where information can be provided electronically or orally (the definition of 'writing' could be extended to include these media). As in France, Applicants should be able to obtain the information in the form in which it is held by the Body. Special consideration may be given where an Applicant's disability requires that information be delivered in a specific or alternative format¹⁸.

¹⁸ For an example of this see s12 of the Canadian Freedom of Information Law.

(c) Redaction of excepted information

The majority of jurisdictions surveyed provide that if only part of a document is excepted from disclosure obligations (by virtue of a legislatively enacted exception), then that part of the document may be redacted and the remainder of the document disclosed (in the event that it is the subject of a relevant request). For example, in Canada any part of the relevant record that does not contain information or material that qualifies under one of the statutory exceptions to access provided in the FOI Law must be disclosed if it can reasonably be severed.

Nepal

We note that the RTI Act compares favourably in this respect, providing that in such situations an information officer shall separate out the information that can be made public and furnished to the Applicant. However, from this description it is not clear what form the separated information will be provided to the Applicant. Ideally, the remainder of the record will be disclosed to the Applicant with an indication that there has been a redaction, in order to maximise and helping to ensure that the relevant legislatively enacted exception is applied.

(d) Where an information request is refused or there is no response.

Generally the surveyed jurisdictions provide that where information is not provided, for example where an exception applies, the Applicant must be informed of the decision not to disclose the information.

Some countries FOI law considers the situation in which no response is received from the Body. In France for example, a month's silence from the Body is to be deemed as a refusal to disclose the information.

In some cases it may be inappropriate to acknowledge to an Applicant whether a document exists if to do so would effectively amount to answering the information request, or, where the disclosure of the existence of the document itself would compromise an exception. For example, in Australia and the UK there are certain cases where the Body need not disclose whether a document exists. In Canada, where a Body decides it is not required to disclose any of the contents of a document, it generally has discretion whether or not to disclose the existence of the document.

Generally where information is not disclosed the reasons for the refusal must also be given, for example by giving details of the exception under which the information falls.

For the options open to an Applicant who has had a request refused, please refer to Section 8 below.

Nepal

We understand that the RTI Act requires Nepali Bodies to give reasons why an information request is refused within the time limit for disclosure. Consideration may also be given to circumstances where it may be appropriate to withhold disclosure of the existence of the document all together. Please see Section 7 for more detail.

9. APPEAL AND OVERSIGHT

Issue

This section will consider FOI oversight mechanisms and provision for allowing Applicants who feel that their request has been inadequately dealt with to appeal decisions.

Discussion

Appeals

In a number of the surveyed jurisdictions, for example Germany, Sweden and the UK a refusal to disclose must also be accompanied with details of how the decision may be appealed.

All the surveyed countries allow appeal of some kind of decisions to withhold information made by Bodies.

In several of the surveyed jurisdictions the first avenue of appeal is to the Body who has refused to make the disclosure¹⁹. Many of the surveyed jurisdictions also provide a mechanism for independent appeals which may be made to a specific regulatory body²⁰, a general administrative tribunal²¹ or through the administrative courts²². Generally there is a right to appeal a decision to the courts even where the issue is first considered by a commissioner, ombudsman or tribunal. By contrast, in Hong Kong, after recourse to the Ombudsman there is no further right of appeal to the courts. In India, courts are barred from entertaining legal proceedings relating to any order made under the Indian Freedom of Information Law.

Sweden is unusual in refusing appeals of decisions made by specific Bodies in particular: Parliament, the Government, the Supreme Administrative Court and the Supreme Court.

Nepal

We understand that the RTI Act does not provide for the immediate independent appeal of decisions made by Bodies to refuse to disclose information. Instead, appeals must be made internally to the chief executive officer of the Body within 7 days. This is a short timescale to appeal. We understand that decisions of the chief executive officer may be considered by the commission and ultimately by the courts.

Oversight

A number of countries²³ have established a specific authority which has been assigned the task of overseeing the application of the principles of FOI.

Such Bodies vary in their power and how proactive they are in enforcing and raising awareness of freedom of information. As discussed above, this authority may also be involved in the appeal and enforcement of FOI decisions.

Other jurisdictions such as Australia require Bodies to report directly to the legislature on FOI issues.

Many of the surveyed jurisdictions require Bodies to publish or report data on their compliance with FOI requests, in particular and for example:

- the number of requests made;
- the time taken to respond to requests; and
- the number of requests which are refused.

¹⁹ Netherlands, UK, USA

²⁰ UK, Canada, France, Germany and India.

²¹ Australia and the US where the process follows the normal administrative review procedure.

²² Netherlands

²³ For example the UK, Canada, France, Germany and India.

At least once a year Canadian Bodies are required to publish details of the types and classes of information which they hold.

Some jurisdictions, such as the US and the UK, require each Body to appoint an official who has responsibility for monitoring and upholding FOI within the Body.

The FOI laws in the majority of jurisdictions surveyed do not contain "whistleblower protection" e.g. provisions in the legislation that are designed to protect any officials who disclose alleged violations of the law or who assist in investigations about alleged violations. Note that in both Canada and the US other pieces of legislation may be used to protect whistleblowers. In the UK and Sweden the FOI law specifically provides for forms of whistle blower protection²⁴.

Sanctions imposed for breach of obligations under the FOI regime vary. For example:

- In some countries²⁵, it appears that a breach of the FOI law incurs no sanction. Where no sanction is in place it could be suggested that the incentive for the relevant Body to observe its obligations under the FOI law are materially reduced.
- Several jurisdictions impose sanctions on Bodies or individuals that breach FOI law. Some countries²⁶ impose fines, whilst others²⁷ can impose fines, terms of imprisonment or both, depending on the nature of the breach. It seems unlikely that a fine (unless it is extremely large) would be effective in deterring large Bodies from breaching their FOI obligations. On the other hand, imposing criminal liability on individuals involved, in a breach would likely act as a more effective deterrent.
- Again, in some countries²⁸, although there are not specific sanctions set out in the FOI law, other laws in that jurisdiction impose sanctions (including criminal sanctions) on Bodies or individuals (for example, in the event that they knowingly and wilfully destroying or falsifying records).

Nepal

We understand that the Nepali Commissioner has an annual reporting requirement to the Nepali Parliament but that individual Bodies are not required to report statistics as set out above. One area worth considering is whether assigning individuals within relevant Bodies responsibility for information requests might facilitate the objectives of the Nepali regime.

Note that Nepal compares favourably to the majority of countries surveyed in that the RTI Act provides for a "whistleblower protection" policy for officers of the Body who provide information on any ongoing or suspected corruption or irregularities that may be an offence under the prevailing laws. Provided that this protection is uniformly applied, this is potentially a useful tool in strengthening the right to information in Nepal.

Nepal also compares favourably in that it contains specific sanctions for certain breaches of FOI obligations. These breaches are punishable by fine, and in some cases the person responsible may be individually punished by the relevant Body. The position in Nepal might further be improved in this latter area if criminal sanctions (with the possibility of imprisonment) are attached to the breach, as it appears that generally criminal sanctions act as the most effective deterrent against breach.

²⁴ The Swedish Freedom of the Press Act contains provisions that apply to officials (as to they do to any individual) which provide for the freedom to communicate information and intelligence on any subject, and a prohibition on revealing the identity of the person who has communicated the information in question. In the UK whistleblowers are protected provided that they report the breach to the relevant body (the Information Commissioner).

²⁵ Such as Hong Kong

²⁶ Such as the UK

²⁷ Such as Canada

²⁸ Such as France, Germany and Australia

10. ADDITIONAL OBSERVATIONS

This section addresses additional points of interest noted as a result of the survey, which may be useful to consider in connection with the framing of the final RTI Act:

- **Publication of statistics:** In several jurisdictions, statistics on the FOI regime are regularly published. For example, in Australia the Federal Government releases an annual report on the operation of the FOI Act. The report contains statistics on the number of requests received, the action on requests, response times, fees and charges notified and collected, internal reviews and appeals. In the US, Bodies must submit an annual report to the Attorney General detailing various prescribed data around the Body's administration of FOIA requests. In the UK, such statistics are published quarterly.

Nepal: At present no such obligation exists in the RTI Act; this type of obligation is potentially very useful (to the extent that it is enforced) in maximising transparency, and in raising the profile of the right to information, and it may be that the RTI Act should include a similar obligation.

- **Profile of FOI Law:** The previous point links to a challenge to FOI raised by India. In particular, the Indian response highlights that one of the main challenges of the regime in India is a lack of awareness of the FOI law. If people are not aware that they have the right to access information, this will undermine the aim of the law.

Nepal: It is not necessarily the case that the national profile of FOI law can be addressed solely in the terms of the law itself e.g. it is the responsibility of government and other relevant bodies to ensure that all potential Applicants are aware of their rights under the RTI Act. However, as noted above the regular publication of statistics on the FOI regime may contribute to raising the profile of the RTI Act, and it may be that the Act could include a specific provision requiring this publication.

- **Insufficient Resources:** In some countries, the relevant FOI enforcing body is insufficiently resourced. This materially impacts the time that it takes for a request to be processed. For example, in the UK some decisions from the Information Commissioner are reported to have taken over three years to be made, and the average wait is reported to be 20 months. It seems inevitable that this level of delay will discourage potential Applicants from exercising their right to information, and will potentially damage the profile or reputation of the FOI Act.

Nepal: Again, this comment does not necessarily relate to the framing of the RTI Act itself, but highlights a challenge that government must address when it is implementing the Act.

APPENDIX 1: EXCEPTION SUMMARY TABLE

	Australia	Canada	France	Germany	Hong Kong	India	Nepal	Netherlands	Singapore	Spain	Sweden	UK	US
National Security	✓	✓*	✓	✓	✓*	✓	✓	✓	✓	✓	✓*	✓	✓
Defence/Internal security/international relations	✓*	✓*	✓	✓	✓*	✓	✓	✓*	✓	✓	✓*	✓*	✓
Internal administrative rules and practices of the Bodies	✗	✓*	✗	✗*	✗*	✓*	✗	✗	✓*	✗*	✗*	✓*	✓*
Information that is exempt under other applicable laws (e.g. official secrets)	✓	✓	✓	✓	✗*	✗	✗	✗	✓*	✓*	N/A	✓	✓*
Inter or intra agency communications that are subject to deliberative process, litigation or other privileges	✓	✓*	✓*	✓	✓*	✗*	✗	✓*	✓*	✓*	✓*	✓*	✓*
Matters of personal privacy	✓*	✓*	✓	✓*	✓*	✓*	✓	✓	✗*	✓	✓*	✓	✓
Matters related to law enforcement and/or law enforcement records	✓*	✓*	✓*	✓	✓*	✓	✓*	✓	✓*	✗*	✓*	✓*	✓*
Geological Institutions	✓*	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✓*	✓
Cost of complying with Applicant's request is excessive	✓*	✗*	✗	✗	✗*	✗*	✗	✗*	N/A	✗	✗*	✓*	✗*
Information provided in confidence	✓	✓*	✓	✓*	✓*	✓	✗	✓	✗*	✗	✗*	✓*	✓*
Information intended for future publication	✓*	✓*	✗*	✗*	✓*	✗	✗	✗	✗*	✗*	✓*	✓*	✗
Information concerning the economy/economic policy	✓*	✓*	✗	✓*	✓*	✓	✓	✗	✓*	✓	✓*	✓*	✓
Health and safety information	✗*	✗*	✗*	✗*	✗	✗*	✓*	✗*	✗*	✓*	✗*	✓*	✗*
Environmental information	✗	✗*	✗	✗*	✓*	✗	✗	✗	✗*	✗	✗	✗	✗*
Information regarding the formulation of government policy and other governmental interests	✓*	✓*	✗*	✗*	✓*	✓	✓	✗	✓*	✓*	✗	✓*	✗*
Information reasonably accessible by other means or information already in the public domain	✗	✗*	✓	✓	✗*	✗	✗	✗	✗	✗*	✗	✓	✓*
If the existence of the records is, in itself, classified	✓	✗*	✓	✓	✗*	✗*	✗*	✗	✓	✓	✗	✓	✓

Key:

✓ = Absolute exception

✓* = Qualified exception. Please refer to the completed questionnaires for more detail

✗ = No exception

✗* = Generally no exception. However, please see the completed questionnaires for further details.