CHAPTER-2

RIGHT TO INFORMATION AT INTERNATIONAL LEVEL

The Freedom of information has long been recognized not only as crucial to democracy, accountability and effective participation, but also as a fundamental human right, protected under international and constitutional law of various countries. World-wide movements have begun in democratic countries, for providing to the citizens the right of access to information in order to promote participation of the citizens in the governance of the country and also to ensure transparency and accountability of the Government. A number of countries have enacted legislations for disclosure of information held by public authorities and many more are in the process of enacting the legislations on the subject.

At the International level, the Right to information finds articulation as an inalienable fundamental human right in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights. At the regional level, there are numerous other human rights documents, which include access to information as a fundamental right.

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2 Ibid.
3 For example: Albania, Angola, Argentina, Armenia, Azerbaijan, Australia, Austria, Belgium, Belize, Bosnia and Herzegovina, Bulgaria, Canada, Colombia, Denmark, Ecuador, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Mexico, Netherlands, Norway, Pakistan, Poland, Philippines, Portugal, New Zealand, Romania, Switzerland, USA, United Kingdom, Sweden, South Africa, South Korea, Spain, Thailand, Turkey, Tajikistan, Uzbekistan, Ukraine, Zimbabwe etc.
4 Dr. Shalu Nigam, ‘About your Right to Information’, We the People Trust, New Delhi, 2008, p.20 (For example, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention on Human Rights, the African Charter
A number of international bodies\textsuperscript{5} having the responsibility for promoting and protecting human rights have authoritatively recognized the fundamental and legal nature of the right to freedom of information, as well as the need for effective legislation to secure respect for that right in practice. Collectively, this amounts to a clear international recognition of the right.\textsuperscript{6}

**Right to information: A United Nations Perspective**

The Preamble to the Charter of the United Nations affirms the determination "to promote social progress and better standards of life in larger freedom", Chapter I declares that one of the basic purposes of the United Nations is “to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without discretion as to race, sex, language or religion”\textsuperscript{7}.

The Right to information was recognized by the United Nations at its very inception in 1946, when the General Assembly adopted a Resolution\textsuperscript{8} which stated that:

"Freedom of information is a fundamental human right and the touchstone of all the freedoms to which the United Nations is consecrated."

\textsuperscript{5} These include the United Nations, The Commonwealth, The Organisation of American states and The Council of Europe.


\textsuperscript{7} Article I, Charter of United Nations, Chapter 1: Purposes and Principles.

In ensuing international human rights instruments, freedom of information was not set out separately but as a part of freedom of expression, which includes the right to seek, receive and impart information. In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights, which declares that:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.


The United Nations principles on Freedom of Information set out standards for national and international regimes which give effect to the right to freedom of information. They are designed primarily for national legislation on freedom of information or access to official information but are equally applicable to information held by intergovernmental bodies such as the United Nations and the European Union. ARTICLE 19 has produced this set of international principles. They are the product of a long process of study analysis and consultation overseen by Art. 19

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9. Article 19, Universal Declaration of Human Rights

10. Toby Mendel, (Head of Article 19's Law programme) ‘The public’s Right to Know, Principles on Freedom of Information Legislation’, law@article19.org. www.article19.org. These principles were endorsed by Mr. Abid Hussain, the UN special Rapporteur on freedom of opinion and expression in his report to the 2000 session of the United Nations Commission on Human Rights and referred by the Commission in its 2000 resolution of freedom of expression. They were also endorsed by Santiago Centin, the Organisation of American States (OAS) special Rapporteur on freedom of expression in 1999 report, volume III of the report of the Inter-American Commission on Human Rights to the OAS.

11. Article 19 is an independent Human Rights Organisation that works around the world to protect and promote the Right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees free speech: info@article19.org.
drawing on extensive experience and work with partner organizations in many countries around the world. The Principles are as under:

- **Maximum disclosure:** Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information;

- **Obligation to publish:** Public bodies should publish and widely circulate documents of significant public interest;

- **Promotion of open government:** The law should make provision for public education and the dissemination of information regarding the right and mechanisms to address the problem of a culture of secrecy within government;

- **Limited scope of exceptions:** The law should include a complete list of the legitimate grounds which may justify non-disclosure and exceptions should be narrowly drawn to avoid material which does not harm legitimate interests.

- **Processes to facilitate access:** All public bodies should be required to establish open, accessible internal systems for ensuring the public's right to receive information; the law should provide strict time limits for processing requests.

- **Costs:** Fees for gaining access should not be so high as to deter applicants and negate the intent of the law.

- **Open meetings:** The law should establish a presumption that all meetings of governing bodies are open to the public.

- **Disclosure takes precedence:** The law should require that other legislations be interpreted, as far as possible, in a manner consistent with the provisions of right to information law.
Protection for whistleblowers: Individuals should be protected from any legal, administrative or employment related sanctions for releasing information on wrongdoing.

International Covenant on Civil and Political Rights, 1966

The International Covenant on Civil and Political Rights (ICCPR), a legally binding treaty, was adopted by the United Nations General Assembly in 1966. It declared the right of people to be fully and reliably informed so as to improve their understanding through free flow of information and opinion. The basic liberties under the International Covenant on Civil and political Rights, 1966 are as under:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; the right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided carries with it special duties and responsibilities. It may, therefore, be subject to certain restrictions but these shall only be such as are provided by law and are necessary for,
   a. respect of the rights or reputations of others;

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12 Ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, as of 2010, the Covenant had 72 Signatories and 167 Parties. India is a signatory to the Covenant. www2.ohchr.org/english/bodies/hrc/docs/ngos/DCI
13 Enshrined in Article 19(2) of International Covenant on Civil and Political Rights, 1966
b. the protection of national security or of public order or of public health or morals.\textsuperscript{14}

In 1993, the UN Commission on Human Rights\textsuperscript{15} established the office of the United Nations Special Rapporteur on Freedom of opinion and Expression, and appointed Abid Hussain to the post.\textsuperscript{16} A Part of the Special Rapporteur’s mandate is to clarify the precise content of the right to freedom of opinion and expression. As early as 1995, the Special Rapporteur noted that the right to seek or have access to information is one of the most essential elements of freedom of speech and expression\textsuperscript{17}. In 1997, he strongly opposing denial of information observed that:

\textit{"the tendency of many Governments to withhold information from the people at large through such measures as censorship is to be strongly checked."}\textsuperscript{18}

In his 1998 Annual Report, the Special Rapporteur declared that “The right to seek, receive and impart information, imposes a positive obligation on States to ensure access to information”, particularly with regard to information held by Government in all types of storage and retrieval systems that freedom of information includes the right to access information held by the State, and his views were welcomed by the Commission.

In November 1999, the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-

\begin{itemize}
  \item Resolution 2200 A(XXI), 165 December 1966, entered into force 23 Mar, 1976, Article 19.
  \item The Commission was established by the United Nations Economic and Social Council (ECOSOC) in 1946 to promote human rights and is composed of 53 representatives of the UN Member States, rotating on approximately six weeks to discuss and issue resolution, decisions and reports on a wide range of country and thematic human rights issues.
  \item Ibíd.
\end{itemize}
operation in Europe (OSCE) Representative on Freedom of the Media and the Organization of American States (OAS) Special Rapporteur adopted a Joint Declaration, which included the following statement:

“Implicit in freedom of expression is the public’s right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people’s participation in government would remain fragmented, he further developed his commentary on freedom of information in his 2000 Annual Report to the Commission. Noting its fundamental importance not only to democracy and freedom, but also to the right to participate and realization of the right to development 19, he reiterated his concern about the tendency of Governments, and the institutions of Government, to withhold from the people information that is rightly theirs.” 20 He further elaborated in detail on the specific content of the right to information. After noting the fundamental importance of freedom of information as a human right, the Special Rapporteur made the observation that Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information. Information includes all records held by a public body, regardless of the form in which it is stored. 21 Freedom of information implies that public bodies publish and disseminate widely document of significant public interest, for example, operational information affecting the public.

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20 Ibid, at para.43.
21 The Special Rapporteur directs the attention of Governments to a number of areas and urges them either to review existing legislation or adopt new legislation on access to information and ensure its conformity with these general principles.
Regional Developments
(a) The Commonwealth

The importance of freedom of information, including the right to access information held by the State, has also been recognized by the Commonwealth. Despite strong commitments to openness and transparency, the Official Commonwealth itself however, has failed to lead member state in the area of information sharing. The Commonwealth Secretariat does not have a comprehensive disclosure policy in place other than a rule requiring release of certain documents after thirty years. Despite putting efforts, the Official Commonwealth continues to hesitate to engage & involve civil society in its working or functions.

(i) Commonwealth Law Ministers' Barbados Communique, 1980

The Ministers here expressed the Views that public participation was at its most meaningful when citizens had adequate access to official information. At the same time they recognized that it was necessary to strike a balance between the individual's right to know and the Government's need, in the wider public interest, to withhold certain strategic information from disclosure. This issue had to be addressed adequately while in developing any "Freedom of Information" legislation.

The Report of the Expert Group Meeting on the Right to Know and the Promotion of Democracy and Development, 1999 is built on the statements of the Law Ministers in Barbados and drew on the values enshrined in the 1991 Harare Declaration. These values are:

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22 A voluntary association of 54 countries based on historical links, common institutional and legislative frameworks and shared values.
24 Barry Knight, Hope Bagyendera Chigudu, Rajesh Tandon, Quoted in Political Science, 2002, p.214

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• We believe that international peace and order, global economic development and the rule of international law are essential to the security and prosperity of the mankind;
• We believe in the liberty of the individual under the law for all citizens regardless of gender, race, color, creed or political belief, and in the individual's inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives;
• We recognise racial prejudice and intolerance as a dangerous sickness and a threat to healthy development, and racial discrimination as an unmitigated evil;
• We oppose all forms of racial oppression, and we are committed to the principles of human dignity and equality;

We recognise the importance and urgency of economic and social development to satisfy the basic needs and aspirations of the vast majority of the peoples of the world, and seek the progressive removal of the wide disparities in living standards amongst our members.

The Report contained a strong set of Principles and Guidelines as well as key statements regarding the value of right to Freedom of information. It has many benefits. It facilitates public participation in public affairs by providing access to relevant information to the people who are then empowered to make informed choices and are in a better position to exercise their democratic rights. It enhances the accountability of Government, improves decision-making, provides better information to elected representatives, enhances Government credibility with its citizens, and provides a powerful aid in the fight against corruption. It is also a key
livelihood and development issue, especially in situations of poverty and powerlessness.25

(ii) Commonwealth Freedom of Information Principles, 1999

The Commonwealth Freedom of Information Principles was based on the recommendations in the 1999 Report of the Expert Group. The Principles were noted by the Commonwealth Heads of Government at their Durban Meeting in 1999. Commonwealth Heads of Government (CHOGM) recognized the importance of public access to official information; both in promoting transparency and accountable governance and in encouraging the full participation of citizens in the democratic process. The Commonwealth Freedom of Information Principles state that:

1. Member countries should be encouraged to regard freedom of information as a legal and enforceable right.
2. There should be a presumption in favor of disclosure and Governments should promote a culture of openness.
3. The right of access to information may be subject to limited exemptions but these should be narrowly drawn.
4. Government should maintain and preserve records.
5. In principle, decisions to refuse access to records and information should be subject to independent review.

(iii) Commonwealth Model Law

To assist member countries which have yet to enact laws providing for access to information, the Commonwealth Secretariat prepared a draft

26 Communique, Meeting of Commonwealth Law Ministers (Port of Spain: 10 May, 1999), para 21
model Bill for examination by Senior Officials, drawing on the laws in existence in various member countries and reflecting the principles adopted by Ministers.27

(iv) **Commonwealth Parliamentary Association**

The Commonwealth Parliamentary Association is an association of parliamentarians and legislators from across the Commonwealth concerned with issues of good governance, democracy, gender, youth and human rights. It has taken a keen interest in promoting the right to information as a key issue amongst countries of the Commonwealth. In July 2004, in Commonwealth Parliamentary Association partnership with the World Bank Institute and the Parliament of Ghana, the (CPA) convened a Study Group on Access to Information for this purpose28.

To date, 12 Commonwealth countries have adopted Freedom Of Information Laws (FOI) laws and bills are pending in more than 20 other countries. The Commonwealth of Independent States (CIS) is an association of 12 countries that were previously Soviet Republics.29 The Commonwealth of Independent States (CIS) Parliamentary Assembly has

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28 The Commonwealth Parliamentary Association (CPA) Study Group on Access to Information urges Parliaments to play a leading role in promoting access to information in accordance with these Recommendations. The Group notes international standards in this area, including Article 19 of the United Nations Universal Declaration of Human Rights, the Declaration of Principles on Freedom of Expression in Africa, the Inter-American Declaration of Principles on Freedom of Expression, Recommendation (2002/2 of the Committee of Ministers of the Council of Europe to Member States on Access to Official Documents, the recommendations of the UN Special Rapporteur on Freedom of Opinion and Expression, the freedom of information standards developed by the Commonwealth, and the ARTICLE 19 publication. It also notes the Principles for an Informed Democracy drawn up by the CPA Study Group on Parliament and the Media in Perth. The Group notes the central role of Parliament and its Members in giving effect to the right of access to information, as well as the importance of access to information to Parliamentarians in the performance of their duties.www.rtiinitiative.com.

29 Homepage: http://www.cis.minsk.by/main.aspx
developed model bills on freedom of information, information protection, state secrets and access to environmental information.\(^{30}\)

(b) The African Charter on Human and People’s Rights:

Article 9 of the African Charter on Human and People's Rights, 1981 states that:

(1) Every individual shall have the right to receive information.
(2) Every individual shall have the right to express and disseminate his opinions within the law.

In 2002, the African Union's African Commission on Human and Peoples' Rights adopted a Declaration of Principles in a Resolution which recognised that "public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information". Part IV of this Declaration of Principles on Freedom of Expression in Africa deals explicitly with the right to information, and while it is not binding, still, it has considerable persuasive force representing the will of a sizeable section of the African population.\(^{31}\)

(c) The Organization of American States

In 1948, the Organization of American States (OAS) adopted a seminal human rights declaration, the American Declaration of the Rights and Duties of Man.\(^{32}\) Article IV guarantees freedom of investigation, opinion and expression. This was followed in 1969 by the adoption of legally binding international treaty, the American Convention on Human Rights (ACHR).\(^{33}\)

\(^{31}\) African Commission on Human and People’s Right, 32\(^{nd}\) Session, October 2002, 170.
\(^{32}\) Adopted by the Ninth International Conference of American States, Bogota, Colombia, 2 May, 1948.
Article 13(1) of the American Convention on Human Rights, 1969 states that: "Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice."

Article 13 establishes that those to whom the Convention applies not only have the right and freedom to express their own thoughts but also the right to seek, receive and impart information and ideas of all kinds. It is a right that belongs to each individual. It also implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.

In 1994, the Inter-American Press Association, a regional non-Governmental organization (NGO), organized the Hemisphere Conference on Free Speech, which adopted the Declaration of Chapultepec, a set of principles on freedom of expression. The principles explicitly recognize freedom of information as a fundamental right, which includes the right to access information held by public bodies, every person has the right to seek and receive information, express opinions and disseminate them freely. No one may restrict or deny these rights. The authorities must be compelled by law to make available in a timely and reasonable manner the information generated by the public sector. No journalist may be forced to reveal his or her sources of information.

Although the Declaration of Chapultepec originally had no formal legal status, as Dr. Santiago Canton, the Organisation of American States Special Rapporteur for Freedom of Expression, has noted, “it is receiving

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34 At Mexico City, 11 March 1994.
35 Principle 2 Declaration of Chapultepec (Mexico city) March 1994
growing recognition among all social sectors of our hemisphere and is becoming a major point of reference in the area of freedom of expression”.37 To date, the Heads of State or Governments of 21 countries in the America’s, as well as numerous other prominent persons, have signed the declaration.38

The Special Rapporteur, who’s Office, was established by the Inter-American Commission on Human Rights in 1997, has frequently recognized that freedom of information is a fundamental right, which includes the right to access information held by the State. In his 1999 Annual Report to the Commission, he stated that:40

The right to access to official information is one of the cornerstones of representative democracy. In a representative system of Government, the representatives should respond to the people who have entrusted them with their representation, delegated the administration of public affairs to his or her representatives. In October 2000, the Commission approved the Inter-American Declaration of principles on Freedom of Expression,41 which is the most comprehensive official document to date on freedom of information in the Inter-American system.

The Preamble reaffirms with absolute clarity the following developments on freedom of information:

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38 The Countries are Argentina, Bolivia, Belize, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Puerto Rico, Uruguay, and the USA.
39 The Commission was established in 1960 by the OAS Council and has jurisdiction overall OAS Member States. It has treaty responsibilities for implementation of the human rights obligations set out in the American Convention on Human Rights, which apply to State Parties to the Convention.
Convinced that guaranteeing the right to access to information held by the State will ensure greater transparency and accountability of Government activities and the strengthening of democratic institutions.

Reaffirming Article 13 of the American Convention of Human Rights which establishes that the right to freedom to expression comprises the freedom to seek, receive and impart information and ideas, regardless of borders and by any means of communication.

Reaffirming that the principles of the Declaration of Chapultepec constitute a basic document that contemplates the protection and defense of freedom of expression, freedom and independence of the press and the right to information;

The Principles unequivocally recognize freedom of information, including the right to access information held by the State, as both an aspect of freedom of expression and a fundamental right on its own:

Every person has the right to access information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in data bases or public or private registries, and if necessary to update it, correct it and / or amend it.

Access to information held by the state is a fundamental right of every individual. States have obligations to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established in case of a real an imminent danger that threatens national security in democratic
A Declaration was also approved by the Inter-American Commission on Human Rights in October 2000, which is called the Inter-American Declaration of Principles on Freedom of Expression adopted in 2000.\(^{42}\)

On 10 June 2003, the Organization of American states, General Assembly adopted a resolution on "Access to Public Information: Strengthening Democracy." In August 2003, the Permanent Council instructed the Organization of American states to submit to the Council proposals for operationalizing paragraph 5 of the June 2003 Resolution, which instructs the Permanent Council “to promote seminars and forums designed to foster, disseminate, and exchange experiences and knowledge about access to information so as to contribute, through efforts by the member states, to fully implementing such access.” Consequently, the Special Rapporteur produced two Reports. The First Report on Access to Information was considered by the Permanent Council on 10 September 2003 and the Second Report on Access to Information on 17 December 2003. Chapter IV of the 2003 Annual Report of the Organization of American states Rapporteur for Freedom of Expression specifically discusses access to information throughout the hemisphere. In 2004 the three Rapporteurs issued a second relevant joint Declaration in which it was affirmed, that right to Information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation.\(^{43}\)

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\(^{42}\) Paragraphs 2 and 3 of Inter-American Declaration specifically recognize that "Access to information held by the state is a fundamental right of every individual. States have obligations to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies."

It is, therefore, clear that in the Inter-American system, freedom of information, including the right to access information held by the State, is a guaranteed human right. In October 2006, the Inter-American Court of Human Rights handed down the first decision of any international tribunal to recognize the right to information, to establish an effective legal mechanism that guarantees the right of all persons to request and receive information held by Government bodies, including defining limited exemptions to the right, setting deadlines for providing information, providing reasons where information is not given, and training public officials on the right to information.\(^4^4\)

(d) Council of Europe

The Council of Europe (COE) is an inter-governmental organization devoted to promote human rights, education and culture. One of its foundational documents is the European Convention on Human Right (ECHR),\(^4^5\) which guarantees freedom of expression and information as a fundamental human right. Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 states that:

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers". This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the


\(^4^5\) E.T.S. No. 5 adopted on 4 November, 1950, entered into force 3 September, 1953.
The political bodies\textsuperscript{47} of the Council of Europe have made important moves towards recognizing the right to access information held by the State as a fundamental right. As early as 1970, the Consultative Assembly, the forerunner of the Parliamentary Assembly, passed a Resolution stating: “There shall be a corresponding duty [to the right to freedom of expression] for the public authorities to make available information on matters of public interest within reasonable limits.”\textsuperscript{48}

In 1979, the Parliamentary Assembly recommended that the Committee of Ministers, the political decision-making body of the Council of Europe (composed of the Ministers of Foreign Affairs from each Member State), “invited member states to introduce a system of freedom of information, i.e. access to Government files”\textsuperscript{49}. The Committee of Ministers responded to it by adopting a Recommendation on the Access to Information held by Public Authorities\textsuperscript{50}, which stated:

“Everyone within the jurisdiction of a member state shall have the right to obtain, on request, information held by the public authorities other than legislative bodies and judicial authorities.”

\textsuperscript{46} www.article.19.org/docimages/869.htm, visited on dt. 20th January, 2008.
\textsuperscript{47} European People’s Party, Alliance of European Conservatives and Reformists, Party of European Socialists (PES) European Liberal Democrat and Reform Party (ELDR), European Green Party (EGP), Party of the European Left (PEL), European Free Alliance (EFA), European Democratic Party (EDP)
\textsuperscript{49} Recommendation No. 854 (1970) on access by the public to government records and freedom of information, adopted 1\textsuperscript{st} February 1979, para. 13(a).
\textsuperscript{50} Ibid.
In 1992, the Treaty of Maastricht attached to it a declaration (No. 17) on "the right of access to information" which recommended that the European Commission (EC) should draft a report on "measures designed to improve public access to the information available to the institutions." On the basis of the declaration, a code of conduct was adopted by the Commission and the Council, detailing the conditions under which access could be requested to information held by these institutions.

In 1994, the 4th European ministerial Conference on Mass Media policy adopted a declaration recommending that the Committee of Ministers instruct its Steering Committee on the Mass Media to consider "preparing a binding legal instrument or other measures embodying basic principles on the right to access of the public to information held by public authorities." This was followed by a study for the Steering Committee on the Mass Media, which noted the need for a binding legal instrument on public access to official information.\(^{51}\)

The 1997 Amsterdam Treaty moved a significant step further by granting, in the newly introduced Article 255 European Commission Treaty, a right of access to documents which was, however, subject to detailed rules set out in secondary European Commission legislation. According to Article 255, this secondary legislation was to be adopted within two years of the Treaty of Amsterdam entering into force. The Treaty came into force in 1999 and the Regulation on Freedom of Information was passed in 2001. It covers "all documents held by an institution, that is to say, drawn up or received by it and in its possession, in all areas of activity of the European Union". The Regulation obligates both the European Union Commission and the European Parliament to create

public registers of documents on the internet and to ensure that references are provided to all documents in the register as soon as they are created.

In 2002, the European Ombudsman promulgated a Code of Good Administrative Behavior, which applies to all institutions of the European Union. Under Article 22 of the Code on access to information, officials are required to "provide members of the public with the information that they request", and if they cannot they must state the reasons for non-disclosure. The Code enjoins officials to deal with requests in a timely fashion, and to take effective steps to inform the public about their rights under it.

(e) Other International Standards

The Johannesburg Principles on National Security, Freedom of Expression and Access of Information were adopted in October 1995 by a group of experts in international law, national security, and human rights seeking to create a balance between the citizen's right to information and the state's right and responsibility to protect its integrity and security.

Various International institutions such as Commonwealth, Council of Europe and Organization of American States developed guidelines for implementing Right to information. The process is being accelerated and strengthened the culture of secrecy is being questioned by people around the globe. Some of these campaigns on Right to Information across the world show a growing concern for anti-corruption. Other campaigns are formulated on broader concept and aim for greater transparency, accountability of state machinery and people's participation in governance. In many regions, enactment of Right to information Legislation has
resulted into the fall of authoritarian regimes. Most countries in Southeast Asia have enacted laws to grant freedom of information.52

Access to Information and Environment

Environmental issues at the United Nations were first considered in the 45th session of the Economic and Social Council (ECOSOC), when on 30 July 1968 it recommended that the General Assembly considered convening a United Nations conference on “problems of the human environment”.53 At its 23rd session the General Assembly adopted a resolution convening a United Nations Conference on the Human Environment noting the “continuing and accelerating impairment of the quality of the human environment” and its “consequent effects on the condition of man, his physical, mental and social well-being, his dignity and his enjoyment of basic human rights, in developing as well as developed countries,” thus relating the Charter to emerging environmental issues. The resolution also recognized that “the relationship between man and his environment is undergoing profound changes in the wake of modern scientific and technological developments”.54

The United Nations Conference on the Human Environment took place in Stockholm from 5 to 16 June 1972 and led to the establishment of the United Nations Environment Programme (UNEP), the lead programme within the United Nations working on environmental issues.55

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52 Dr. Shalu Nigam, ‘About Your Right to Information’, Published by We the People Trust, New Delhi 2008, P.23.
54 Resolution 2398 (XXIII) of 3 December 1968
55 At its 1st plenary meeting, held on 5 June 1972, the Conference decided to adopt as the basis for its consideration of recommendations for action at the international level, the framework for environmental action suggested by the Secretary-General of the Conference, which included, Planning and management of human settlements for environmental quality, Environmental aspects of natural resources management, Identification and
In 1983 the United Nations General Assembly welcomed the establishment of a special commission to report on "Environment and the global problems to the year 2000 and Beyond" appointed by the United Nations Commission. In 1987 the World Commission on Environment and Development (WCED) submitted its report (also known as The "Brundtland Report") to the General Assembly. The report, based on a four-year study, developed the theme of sustainable development, the type of development that "meets the needs of the present generation without compromising the ability of future generations to meet their own needs".56

Pursuant to the Report of the World Commission, the General Assembly adopted a resolution, convening the United Nations Conference on Environment and Development (also known as the "Rio Conference" or the "Earth Summit") to "elaborate strategies and measures to halt and reverse the effects of environmental degradation". The resolution listed nine areas of major concern in maintaining the quality of the Earth's environment and especially in achieving environmentally sound and sustainable development in all countries. 57

The United Nations Conference on Environment and Development (UNCED), which took place in Rio de Janeiro from 3 to 14 June 1992, led to the establishment of the Commission on Sustainable Development. At the Conference three major agreements were adopted: Agenda 21 a global plan of action to promote sustainable development; the Rio Declaration on Environment and Development, a series of principles defining the rights and responsibilities of States and the Statement of Forest Principles, a set of principles to underpin the sustainable management of forests worldwide. In

control of pollutants of broad international significance, Educational information, social and cultural aspects of environmental issue, International organizational implications of action proposals.

56 Resolution 2398 (XXIII) of 3 December 1968
57 Resolution 44/228 of 20 December 1988

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addition, two legally binding instruments were opened for signature: the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity. The Earth Summit called for several major initiatives in other key areas of sustainable development, such as, a global conference on Small Island Developing States; negotiations began for a Convention to Combat Desertification and for an agreement on highly migratory and straddling fish stocks.

During its 55th session the General Assembly adopted a resolution convening the World Summit on Sustainable Development (WSSD) (also known as "Rio + 10"), a ten-year review of progress achieved since 1992 in the implementation of Agenda 21. Agenda 21, the “Blueprint for Sustainable Development”, the companion implementation document to the Rio Declaration, states:

“Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information protection measures.”

At the national level, several countries have laws which codify, at least in part, Article 10 of the Rio Declaration. There has also been progress at the regional level. In 1998, as a follow-up to the Rio Declaration and Agenda 21, Member States of the United Nations Economic Commission for Europe (UNECE) and the European Union signed the legally binding Convention on Access to justice in

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58 Resolution 55/199 of 20 December 2000,
59 UN Doc. a/Con (vol.3), paragraph 23.2.
Environmental Matters [the Aarhus Convention]. The preamble, which sets out the rationale for the Convention, States in part that:

Recalling principle 10 of the Rio Declaration on Environment and Development;

Recognizing that every person has the right to live in an environment adequate to his or her health and well-being;

Considering that, to be able to assert this right and observe this right, citizens must have access to information;

Recognizing that, in the field of environment, improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns;

Aiming to further the accountability of and transparency in decision-making;

Recognizing the desirability and transparency in all branches of Government;

Acknowledging that, public authorities hold environmental information in the public interest.

The Convention recognizes access to information as part of the right to live in a healthy environment, rather than as a free-standing right. However, it does impose a number of obligations on States Parties which are consistent with international standards relating to it. For example, it requires states to adopt a broad definition of “environmental information” and ‘public authority’, exceptions must be subject to a public interest test,

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and an independent body with the power to review refusals of request for information must be established. As such, it represents a very positive development in terms of establishing the right to information. A Conference is going to be held in 2012 under the name of Rio+20.

Right to Information in Other Countries

In most of the countries where large-scale administrative reforms have been carried out, emphasis has been laid on liberalizing the extent to which details of policy, performance and other information about Government activities are made available to the general public.

A number of countries around the world have adopted or are in the process of adopting Freedom of Information Laws. Forty countries now have laws that require the disclosure of Government records. Many countries have recently provided for the right to freedom of information in their Constitutions. In other countries, the courts have found an implicit right to freedom of information as an element of freedom of speech.

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62 The United Nations Conference on Sustainable Development (UNCSD) is being organized in pursuance of General Assembly Resolution. The Conference will take place in Brazil on 4-6 June 2012 to mark the 20th anniversary of the 1992 United Nations Conference on Environment and Development (UNCED), in Rio de Janeiro, and the 10th anniversary of the 2002 World Summit on Sustainable Development (WSSD) in Johannesburg. The Conference will focus on two themes: (a) a green economy in the context of sustainable development and poverty eradication; and (b) the institutional framework for sustainable development.
64 Argentina, Brazil, Bulgaria, Columbia, Estonia, Hungary, Lithuania, Moldova, Peru, Philippines, Poland, Russian Federation, South Africa, Sweden, Thailand and Ukraine are among the countries which have constitutional provisions for the freedom of information. Apart from them, Australia, Austria, Belgium, Belize, Canada, Czech Republic, Denmark, Finland, France, Greece, Hong Kong, Iceland, Ireland, Israel, Italy, Japan, Latvia, Netherlands, New Zealand, Norway, Portugal, South Korea, Spain, USA and India are among the countries which have freedom of information legislation in their respective jurisdiction.
(i) Sweden:

Sweden was the first country in the world which guaranteed the right to information in 1766. The people of that country have tasted the fruits of openness in administration for an uninterrupted period of more than 238 years, apparently without causing any harm or loss. In Sweden access to Government documents is a right and non-access to Government documents is an exception. Sweden's long experience with the principle of openness indicates that access to information changes the whole spirit in which public business is conducted. It brings a decline in public suspicion and distrust of officials and this in turn gives them a great feeling of confidence.65

After the breakdown of authoritarian regimes in Eastern Europe at the end of the 1980s and the beginning of the 1990s, many countries of this region integrated the right to information in their newly-formulated Constitutions and introduced special laws related to it. In Poland for example, Article 61 of the Constitution guarantees access to state information: "A citizen has the right to attain information on the activities of organs of public authority as well as persons discharging public functions." Moreover, in September 2001 the Polish parliament in Warsaw passed the Act to Access to Public Information, which came into force in January 2002. The Act allows anyone access to public information, public data and public assets on demand held by public bodies, private bodies that exercise public tasks, trade unions and political parties. In the neighbouring Czech Republic, the Law of Free Access to Public Information was passed in May 1999. It came into force on January 1, 2000 and "adjusts the provisions for free access to information and sets forth the basic conditions.

by which the information is provided”. Six years later, in 2006, this law was amended to make a number of improvements like relaxing the exemptions.

The Freedom of Press Act of 1766

The world’s first freedom of Information Act was the Riksdag’s (Swedish Parliament) Freedom of the Press Act, of 1766. The Act required that official documents should “upon request immediately be made available to anyone making a request” at no charge. The Freedom of the Press Act, now part of the Constitution, decrees that “every Swedish citizen shall have free access to official documents.” Public authorities must respond immediately to requests for open documents66.

The current version of the Freedom of Information Act, 1766 was adopted in 1949 and amended in 1976. Individuals are allowed broad access to “official documents” held by public authorities.67 The documents are available when the matters they refer to have been settled, when they are sent to another authority or are received by an authority from outside parties. Internal documents such as drafts, memoranda and outlines are not considered official documents unless they are filed and registered or they contain new factual information that is taken into account in decision making68. There is no obligation to keep non-official documents. Each authority is required to keep an index of all official documents, most indices are publicly available.

The Act contains discretionary exemptions. Information may be withheld if such is “necessary” to protect national security and foreign relations, economic policy, the supervisory activities of a public authority,

66 Art. 1, Chapter 11 of the Act of 1976.
67 Ibid.
68 Art. 3 chap II. Of the Act of 1976.
the prevention or prosecution of crime, public economic interest, privacy, and the preservation of plant and animal species. All restrictions must be specified by law. An extensive and comprehensive list of exemptions to access is provided in the Secrecy Act, 1980.69

The General rule in Sweden is that all government information is public. Denial of access in matters specifically listed as exemptions is considered as an exception. Sweden’s Secrecy Act, 1980 provides that information can be kept secret between 2 to 70 years. The Act gives an extensive and comprehensive list of exemptions to access of information.70 All restrictions are specified by law. Most of the restrictions require a finding that the release would harm the interest protected.

A government panel in 2003 found that the Act has been continually changed since 1980. The Government classified the list of dead and missing Swedes from the Tsunami in January 2005 because of fears that the houses of the missing would be robbed. The Supreme Administrative Court ruled in February 2005 that the withholding was illegal and the names were released.

Decisions by public authorities to deny access to official documents may be appealed internally. They can then be appealed to general administrative courts and ultimately to the Supreme Administrative Court. Complaints can also be made to the Parliamentary Ombudsman.71 The Ombudsman can investigate and issue non-binding decisions. The government ran an “Open Sweden Campaign” in 2002 to improve public-sector transparency, raise the level of public knowledge and awareness of

69 Art. 2, Chapter II of the Act.
70 Secrecy Act, 1980, Article 2(1),2(2).
71 Art. 1 Chapter 12 of the Act.
information disclosure policies, and encourage active citizen involvement and debate.

Sweden signed the Aarhus convention in June 1998 and ratified it in June 2005. Access to environmental information is under the Freedom of Press Act. Individuals have a right to access and correct personal information held by public and private bodies under the Personal Data Act. Sweden’s long experience with the principle of openness indicates that it changes the whole concept in which public business is conducted.72

(ii) United Kingdom

In United Kingdom the Freedom of Information Act was adopted in November 2000 and came into effect in January 2005.73 The Act gives any person a right of access to information held by over 100,000 public bodies74. The bodies are required to respond within 20 working days75. The time frame can be extended to allow for consideration of release on public-interest test grounds as long as it is within a time period that is deemed “reasonable in the circumstances.”76 There are no fees for requests which cost less than £600 for Central Government bodies or £450 for local authorities except for copying and postage77.

The Act contains 13 pages of exemptions in three categories. Under the absolute exemption category, court records and information that is about the personal life of individuals78, relating to or from the security

75 Sec.10 Freedom of Information Act, 2000.
76 Sec.8 Freedom of Information Act , 2000.
77 Sec.9 Freedom of Information Act , 2000.
services\textsuperscript{79}, where disclosure would constitute a breach of confidence\textsuperscript{80}, or protected under another law cannot be disclosed. Under the “qualified class exemption” category, information can be withheld if it is determined to be within a broad class of exempted information including relating to government policy formulation, safeguarding national security, investigations, royal communications, legal privilege, public safety, or was received in confidence from a foreign government. A “public interest test” applies and provides that information can be withheld only when the public interest in maintaining the exemption outweighs the public interest in disclosure. The third category is a more limited exemption where the government body must show prejudice to specified interests to withhold information. This includes information relating to defence\textsuperscript{81}, international relations\textsuperscript{82}, economy\textsuperscript{83}, crime prevention\textsuperscript{84}, commercial interests, or information that would prejudice the effective conduct of public affairs or inhibit the free and frank provision of advice. The public interest test also applies to information in this category. Initial appeals for withholdings are made to the Public authority\textsuperscript{85}. Once that is completed, an external review to the Information Commissioner is available.

The Information Commissioner oversees and enforces the Act. The Commissioner has the power to receive complaints and issue binding decisions. Appeals to the Commissioner’s decisions are made to the

\textsuperscript{79} Sec.23 Freedom of Information Act, 2000.
\textsuperscript{80} Sec.41 Freedom of Information Act, 2000.
\textsuperscript{81} Sec. 26 Freedom of Information Act, 2000.
\textsuperscript{82} Sec. 27 Freedom of Information Act, 2000.
\textsuperscript{83} Sec. 29 Freedom of Information Act, 2000.
\textsuperscript{84} Sec. 31 Freedom of Information Act, 2000.
Information Tribunal. \textsuperscript{86} Appeals to the Tribunal’s decisions on points of law are made to the High Court of Justice. Public authorities are also required to have publication schemes which provide information about their structures and activities and categories of information that will be automatically released. Most organizations adopted model schemes developed with the approval of the Commissioner\textsuperscript{87}.

The Department of Constitutional Affairs (formerly the Lord Chancellor’s Department) is in charge of implementing and monitoring the Act for Central Government. It is responsible for a statutory code of good practice which authorities must follow it, provides advice and guidance to public bodies, and submits an annual report on implementation to Parliament. In 2004, the Department of Constitutional Affairs set up a controversial Access to Information Clearing House for coordinating and assisting Central Government departments’ responses to sensitive and complex requests. The Freedom of Information Act allows the Government to repeal provisions in other laws that restrict the release of information by Statutory Instrument. A review by the Department of Constitutional Affairs in 2005 identified 210 other pieces of legislation that limit the disclosure of information.\textsuperscript{88} The Implementation of the Act was extremely slow. The publication schemes were phased over several years starting in 2002 but the right to demand information from bodies did not come into force until January 2005, nearly five years after the adoption of the Act. Due to delay in adoption and implementation, there was substantial interest in the law once it came into force. In central

\textsuperscript{86} Information Tribunal Decisions. http://www.informationtribunal.gov.uk/our_decisions/our_decisions.htm
\textsuperscript{87} Sections 50 & 51 Freedom of Information Act, 2000
government, 13,000 requests were made in the first three months. In 2005, there were an estimated total of 100,000 to 130,000 requests across all bodies, including 38,108 requests to central government bodies. The biggest problem with the Act has been delays on responses and decisions both by the authorities and the Information Commission. There are no fixed time limits for the bodies to decide public interest balances or internal appeals and the Commission has so far declined to impose deadlines. There was a controversy over a significant increase in the number of files that were destroyed and a new policy on email retention that called for all email to be deleted after 90 days of printing out important messages just prior to the commencement of the Act.

Prior to the Information Freedom of Act, a non-statutory “Code of Practice on Access to Government Information” first introduced in 1994 provided some access to Government records held by central government departments. A code covering the National Health Service was adopted in 1995. Dissatisfied applicants could complain, via a Member of Parliament to the Parliamentary Ombudsman if their request was denied. Both codes were superseded by the Information Freedom of Act. The Official Secrets Act, which still includes provisions originally adopted in 1911, criminalizes the unauthorized release of Government information relating to national security. This has been frequently used against government

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Section 1, Official Secrets Act, 1911
whistleblowers and the media for printing information relating to the security services. The House of Lords ruled in 2002 that there is no public interest defense in the Act.\textsuperscript{94} The United Nations Human Rights Committee expressed concern over the broadness of the Official secrets Act in 2001, stating that:

"The Committee is concerned that powers under the Official Secrets Act 1989 have been exercised to frustrate former employees of the Crown from bringing into the public domain issues of genuine public concern, and to prevent journalists from publishing such matters."

Previously, under the Public Records Act, files that were 30 years old were released by the National Archives.\textsuperscript{95} This rule has now been amended by The Freedom of Information Act, which designates files to be “historical records” after 30 years and disallows most exemptions at that time. The Access to newer files is governed by the Freedom of Information Act. The United Kingdom signed the Aarhus Convention in June 1998 and ratified it in February 2005. The Environmental Information Regulations 2004 replaced the Environmental Information Regulations 1992 and implement the European Union Directive (2004/4/EC) on public access to environmental information and Aarhus Convention.\textsuperscript{96} The new regulations provide greater access to information than the Freedom of Information Act.

The Lord Chancellor’s Department (now the DCA) held a consultation in 2003 on expanding the exemptions in the Act after several prominent figures, obtained records under the Act, which were embarrassing to the

Government. The right of access to non-electronic records was broadened by the Freedom of Information Act. The Freedom of Information (Scotland) Act was approved by the Scottish Parliament in May 2002 and came into effect in January 2005. It has a stronger prejudice test for restricting information and the ability of Ministers to veto the Commissioner’s decisions is more limited. It is enforced by a separate Information Commissioner Appeals. From there it can be filed to the Court of Session. There are also separate Environmental Information (Scotland) Regulations 2004 on access to environmental information.

The Local Government (Access to Information) Act provides a right of access to meetings of local authorities and disclosure of “background papers” about the policies and practices of local bodies. An order amending the Act to bring the exemptions in line with The Freedom of Information Act was approved in January 2006 and came into effect in March 2006.

(iii) United States of America (USA)

There is a long history of access to public records in the United States. In 1946, The Congress enacted the Administrative Procedures Act. The Administrative Procedures Act required that government bodies publish information about their structures, powers and procedures and make available “all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.” However, the Administrative Procedures

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100 Section 3 of the Act.
Act allowed withholding of information relating to “any function requiring secrecy in the public interest” and for internal management. It also authorized the disclosure of information to persons who are properly and directly concerned to that except information held confidential for any good cause.”

In 1966 the United States Congress passed the Freedom of Information Act. It had evolved after a decade of debate among agency officials, legislators and public interest group representatives. The Act was not, however, entirely novel. The Administrative Procedure Act of 1964 had included a public disclosure section. In 1974 significant amendments to the Freedom of Information Act were made and the Privacy Act was passed. It has been again amended substantially in 1996 by the Electronic Freedom of Information Act. The law allows any person or organization, regardless of citizenship or country of origin, to ask for records held by the federal Government agencies. The Agencies include executive and military departments, government corporations and other entities which perform government functions except for Congress, the courts or the President’s immediate staff at the White House, including the National Security Council. Government agencies must respond in 20 working days.

Under the Freedom of Information Act (1966) individuals are given access to the records of the federal Government and have a right to know

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103 The 1974 amendment considerably narrowed the overall scope of the Act’s law enforcement and national security exemptions. It also broadened many of the act’s procedural provisions, including fees, time limits segregability and in camera inspection by the courts.

about most of activities of the Government. This Act casts a duty on the Government to supply all information and records unless specifically exempted from public access. There are number of exemptions relating to:

1. National Security and Foreign Policy.
2. Internal Agency Personnel Rules.
3. Information exempted from disclosure by statute.
4. Trade secrets and confidential commercial information.
5. Internal Agency Memorandum and Policy Discussions.
6. Personal Privacy.
7. Law Enforcement Investigations.
9. Oil and Gas wells.

However, the documents related to the above exemptions that are to be kept secret have to be specified by the executive. The courts have been given the power to examine even classified documents to see whether they are properly classified or not. This Act has been used very effectively by the journalists, citizens groups and action groups to expose the abuse of power by the government. Under the Act, any person (including a non-citizen) is entitled to access to records of all federal agencies and this applies to every agency, department, government controlled corporation and establishment in the executive branch of the federal government. This includes Prisons, Justice, Defence, Treasury and Federal Bureau of Investigation.

105 Sec 1(A) The Freedom of Information Act, 1966
107 Sec 6 The Freedom of Information Act, 1966
108 Sec 2 The Freedom of Information Act, 1966

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Under the Act, the person seeking information is required to submit a written request to the concerned agency. Once the written request is submitted, it is the duty of the Government to release the document or declare that the information is exempt from disclosure within ten working days. If the agency does not do so, the requester can appeal to the head of the agency. If the agency head denies the appeal or does not reply within twenty days, the requester can file a law suit in the federal court. After examining the case the court can give expeditious consideration under the Act and can recommend sanctions against agency officials who withheld information.

The 1996 Electronic Freedom of Information Act amendments required that agencies create “electronic reading rooms” and make available electronically the information that must be published along with common documents requested. The Department of Justice has issued guidelines that documents that have been requested three times be made available electronically in the Reading Room. In 2004, there were over 4 million requests made to federal agencies under the Freedom of Information Act (FOIA) and the Privacy Act, an increase from 3.2 million in 2003.

The Freedom of Information Act has been hampered by a lack of central oversight and long delays in processing requests. The General Accounting Agency found in 2002 that agencies are falling behind in processing requests. A review by Associated Press in 2006 found that nearly all executive departments had increasing delays ranging from three

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109 Sec 3A The Freedom of Information Act, 1966  
110 Sec 3B The Freedom of Information Act, 1966  
111 Sec 6A The Freedom of Information Act, 1966  
112 Sec 4 The Freedom of Information Act, 1966  
months to over four years in processing requests. The review also found that there was an increase in withholding from 2003 to 2005 as many agencies did not have adequate tracking systems, and many had lost requests. In October 2001, Attorney General John Ashcroft issued a memo stating that the Justice Department would defend in court any federal agency that withheld information on justifiable grounds. In December 2005, President Bush issued a new executive order on “Improving Agency Disclosure of Information”. The order proposes making some minor changes to the practices of agencies, including appointing a Chief Freedom of Information Act (FOIA) Officer who will do an agency review and develop a plan for improving access.

(iv) Canada

In Canada, legislation giving a general right of access to government held-information originated in the provinces. In 1977 Nova Scoria became the first Canadian State to pass such legislation, followed by New Brunswick in 1978, Newfoundland in 1981 and Quebec in 1982. The Federal legislation giving a general right of access to government-held information was passed in June 1982 and was called the Access to Information Act, it was enacted along with the Privacy Act and both the Acts came into force on July 1, 1983. All of the remaining provincial and

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117 The purpose of the Private Act is, broadly speaking, to protect the privacy of individuals with respect to personal information about themselves held by a government institution and to provide individuals with a right of access to that information: Dagg v Canada(Minister of Finance) [1997] S.C.J. 63 at para.61;
territorial jurisdictions subsequently introduced similar legislation. Since its enactment, the Access to Information Act has been amended on three occasions, all of which have been of relatively minor significance.

The 1983 Access to Information Act provides Canadian citizens and other individuals and corporations in Canada the right to apply for and obtain copies of records held by government institutions.

Access to Information Act, 1983

The Act gives Canadian citizens and permanent residents a right of access to records under the control of a government institution which is subject to specific exclusions and exemptions. A request must be made in writing. There is no power given to refuse to answer a request that is frivolous, vexatious or abusive. Where a Government institution receives a request but considers that another government institution has a greater interest in the record, the former institution may transfer the request to the latter institution.

118 Freedom of Information Act 1998 (Manitoba); Freedom of Information and Protection of Privacy Act 1992 (Saskatchewan); Freedom of Information and Protection of Privacy Act 1988 (Ontario); Freedom of Information and protection of privacy Act 1996 (British Columbia); Freedom of Information and protection of Privacy Act 1994 (Alberta); Freedom of Information and protection of privacy Act 2001 (Prince Edward Island); Access to Information and protection of Privacy Act 1996 (Yukon Territory).

119 In 1992, the Act was amended to deal with the provision of records in alternate formats to individuals with, sensory disabilities. In 1999, it was amended to make it a criminal offence to intentionally obstruct the right of access by destroying, altering, hiding or falsifying a record. Or directing anyone else to do so. In 2001, it was amended by the Anti-terrorism Act which provides that a certificate by the Attorney General prohibiting the disclosure of information for the purpose of protecting national defense or national security will override the provisions of the Access to information Act.

120 Published and library manual are generally excluded from the operation of the Act: Access to Information Act, Sec.68 so, too, confidences of the Queen’s privy Council for Canada (i.e. cabinet material); Access to Information Act, Sec.69.

121 Exceptions, which are provided for by Access to information Act, Sections.13-26.

122 Sec.74 Access to Information Regulation (SOR/83-507), r.6.

123 Sec .8 Access to Information Act, Access to Information Regulations (SOR)/83/-507),r.6.
provides for a publication scheme. There is, however, no statutory requirement upon government institutions to give assistance to those making a request for record.

A government institution must inform the applicant within 30 days of a request whether access to the requested record is to be given or not and, if so, to provide it. The 30 days may be extended for a reasonable period of time. If a record is not provided within the original 30 days or the extended period, the request is deemed to have been refused. In refusing a request, the institution is not required to confirm whether any record answering the terms of the request actually exists. An institution must so far as practicable severe exempted portions or records and provide access to the rest.

Exemptions under the Access to Information Act, 1983

The Access to Information Act divides exemptions into mandatory and discretionary exemptions. There are six class-based mandatory exemptions, which are, Information received in confidence from other Governments, Information obtained or prepared by the Royal Canadian mounted Police on provincial or municipal policing services, Personal

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1 Sec.5, Access to Information Act.
2 Sec.7. Access to Information Act
3 Sec.10 (2) Access to Information Act.
4 Access to Information Act, Sec.25 Sheldon Black & Gateway industries v Canada (Minister of Environment) [2001] F.C.A. 374, FCA.
5 Sec.13(1). Access to Information Act, The exemption becomes discretionary if the body from whom the information was obtained either consents to its disclosure or makes it public itself. Sherman v minister of National Revenue [2003] F.C.A. 202 (tax information exchanged under convention).
6 Sec.16(3) Access to Information Act.
information, Trade secrets of a third party, Financial, Commercial, Scientific or Technical information received in confidence from a third party, Information the disclosure of which is restricted by or pursuant to any provision set out in Schedule II to Act.

There are two injury-based mandatory exemptions. Which includes records the disclosure of which could reasonably be expected to cause loss or gain to a third party or prejudice to competitive position, and records the disclosure of which could reasonably be expected to cause interference with contractual or other negotiations of a third party.

There are nine class-based discretionary exemptions. These grant exemption from disclosure for records that contain: Information obtained or prepared by listed investigative bodies, Information on techniques or plans for investigations, Trade secrets or valuable financial, commercial,
scientific or technical information belonging to the Government of Canada, advice or recommendations developed by or for a Government institution or a minister of the Crown, Any account of Governmental consultations or deliberations, Government negotiation plans, Government personnel or organizational plans, Solicitor-client privileged information. Information that is likely to be published within 90 days,

There are nine injury-based discretionary exemptions. These apply to records the disclosure of which could “reasonably be expected” to cause: which includes:

Injury to the conduct of federal-provincial affairs, Injury to the conduct of international affairs, or to the defense of Canada or allied States, Injury to law enforcement or conduct of lawful investigations,
Harm in facilitating the commission of criminal offence,149 Treat to an individual’s safety,150 Prejudice to the competitive position of government151 Harm in Depriving a government researcher of priority of publication,152 Injury to the financial or economic interests of Canada,153 prejudice to the use of audits or tests.154

There is a two-tiered review process. Applicants have the right to complain to the Information Commissioner about an institution’s handling of their request.155 Following an investigation and report by the Commissioner to the head of the institution, both applicant and Information Commissioner have a right to seek a review of a denial of access in the Federal Court of Canada.156 Third parties may also apply to the Federal Court in order to prevent disclosure of a record.157 The appeal to the Federal Court is an appeal on judicial review grounds.158 The Court is entitled to examine any record in dispute159 and it is normally accepted practice to allow counsel for an applicant to see the disputed documents to

149 Sec. 16(2) Access to Information Act.
150 Sec. 17 Access to Information Act.
151 Sec. 18(b) Access to Information Act.
152 Sec. 18(c) Access to Information Act
153 Sec. 18(d) Access to Information Act, This does not extend to information that would result in an increase in legitimate claims for deductions under tax legislation: Canadian Council of Christian Charities v Canada (Minister of Finance) [1999] 4F.C. 245, TD.
154 Sec.22 Access to Information Act. For an example, Bombardier v Canada (Public Service Commission) (1990) 44 F.T.R. 39, FCTD.
155 Sec.30 Access to Information Act.
156 Sec’s.41 and 42 Access to Information Act. There must be a denial of access, so that if the institution claims that it has no documents, the applicant has no right of appeal: a court will not intervene where there is mere assertion that documents are held: Creighton v Canada (Superintendent of Financial Institutions) [1990] F.C.J. No. QL FCTD.
157 Access to Information Act, Sec.44. As to a third party’s rights, see Heinz Company of Canada Ltd. v Attorney-General of Canada [2003] F.C.T. 250.
158 Canadian Jewish Congress v Canada (Minister of Employment and Immigration) [1996] 1 F.C. 268, TD. The role of the Court is more limited where the exemption relied on turns on where the head of a governmental institution reasonably believes that disclosure will result in an identified harm: X v Canada 9Minister of National Defense) (1992) 58 F.T.R. 93, FCTD.
159 Access to Information Act, Sec.46. The purpose of this provision is to enable the Court to have the information and material necessary to ensure that the discretion given to the administrative head has been exercised within proper limits and on proper principles: Rubin v Canada (Canada Mortgage and Housing Corp) [1989] 1 F.C. 265, CA.

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enable the case to be properly heard, but on an undertaking not to disclose them to the client.

(v) Australia

In 1982 the Federal Parliament of Australia passed the Freedom of Information Act 1982. It was the first such piece of legislation in a Westminster system of government. The origin of the Act lay in a report of an inter-departmental committee tabled in the Federal Parliament in November 1976. The first Bill was introduced into the Senate by the Attorney-General in June 1978. That was referred to various committees and inquiries before taking its final form. Since its enactment, the Act has been significantly amended on three occasions, with numerous smaller amendments.161

The Freedom of Information Act 1982 gives every person a legally enforceable right to obtain access in accordance with the Act to a document of an agency and to an official document, of a Minister, other than an exempt document. The right of access does not extend to documents that are publicly available independently of the Act or to certain library, archive or museum collections. An applicant is not required to demonstrate a need to know in order to exercise the general right of

160 Since then each of the six states and one of the two internal territories has passed similar legislation: Freedom of Information Act 1982 (Vic); Freedom of Information Act 1989 (ACT); Freedom of Information Act 1989 (NSW); Freedom of Information Act 1991 (SA); Freedom of Information Act 1991 (TAS); Freedom of Information Act 1992 (QID); Freedom of Information Act 1992 (WA).


162 Freedom of Information Act 1982, S.18. It has been suggested that this does not enable an "unconscientiously" use of the statute, e.g. to ask an agency for documents that would help the applicant in proceedings in an action against the Agency: Johnson Tiles Pty v Esso Australia Ltd. [2000] E.C.A. 495.

163 Sec.12(1), Freedom of Information Act 1982,
access. The Act provides for publication schemes and requires agencies to advise and assist those seeking to use its provisions. 165

A request must be in writing and must be sufficiently specific that the agency can identify the documents answering its terms. Where an agency receives a request but does not hold the documents sought but either knows that another agency has the documents or that the subject matter of the request is more closely connected with another agency then the former agency may transfer the request to the latter agency.

The agency can refuse a request if dealing with it would involve an unreasonable diversion of the agency’s resources 166. The request must be answered within 30 days, but there is power to extend that by a further 30 days. 167 Provided that it is reasonably practicable, access must be given in the form sought by the applicant.168 The agency may charge fees for dealing with the request, which must be paid in order to give rise to the obligation to disclose.169

In the event of the agency refusing to disclose information, whether in whole or in part, it must give reasons for the refusal. In certain cases, the Act permits an agency neither to confirm nor deny the existence of a document.170 The Act specifically provides for discretionary disclosure

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166 Sec.24, Freedom of Information Act 1982, In relation to the use of multiple requests to evade this provision, see: Secretary, Department of Treasury and Finance v Kelly (2001) V.S.C.A. 246.
168 Sec.20 Freedom of Information Act 1982.
169 Sections .18(1)(b) and 29 Freedom of Information Act 1982, The charges regime is set out in the Freedom of Information (Fees and Charges) Regulation 1982. Charges may be remitted but there is no right of review of decision not to remit charges: Re Waterford and Attorney-General’s Departments (1985) 4 A.A.R.159.
170 Sec.25, Freedom of Information Act 1982, The Act uses the device of a notional document containing information as to the existence of documents answering the terms of the request. If that notional document would itself be an exempt document under Sec.33(national security, defense and international relations), Sec.33A (Commonwealth/State relations) or Sec.37 (law enforcement), then the agency is not required to confirm or deny the existence...
and, in relation to certain exemptions, for third parties to be invited to make representations before a decision is made to release documents. Once a valid request has been made and appropriate charges are paid, a document must be disclosed; except it is not exempted.

**Exemptions under the Freedom of Information Act 1982**

There are two types of exemptions. Exemptions which protect a document of a particular class or kind without a need to refer to the effects of disclosure; and Exemptions which depend on demonstrating a certain likelihood that a particular harm would result from disclosure of document.

The harm-based exemptions are those in which disclosure can cause the identified harm. The level or type of harm required in order to engage the harm-based exemptions varies. Although the public interest is a necessary element in some of the exemptions, there is no general public interest override. In relation to certain exemptions, a conclusive certificate may be issued where the relevant Minister is satisfied that a document should not be disclosed. The Act provides for severance of exempt material from a document that generally answers the terms of a request, in certain circumstances, third parties are given rights to be informed that a request for access to documents has been made and to make submission of the actual documents. The Tribunal and Courts have not readily accepted agency claims based on this reason.

The Act employs the concept of the public interest in different ways: (1) as a requisite element before an exemption is engaged, as in ss. 36(1); (2) in order to disengage an otherwise applicable exemption, as in ss. 33A(5), 39(2) and 40(2); and (3) in a merely recitative form.

The provisions are Sec. 33 (national security, defense and international relations), Sec. 33a (Commonwealth/State relations), Sec. 34 (Cabinet documents), Sec. 35 (Executive Council documents) and Sec. 36 (deliberative process documents). The role of the Administrative Appeals Tribunal in reviewing such a certificate is limited to asking whether or not reasonable grounds exist at the time of the hearing for the claims made in the certificate. This prevents the Tribunal from weighing public interest factors in favor of disclosure against interest factors favoring non-disclosure. The power to issue a certificate cannot be delegated: Re Association of Mouth and Foot Painting Artists Pty Ltd. And Commissioner of Taxation (1987) 7 A.A.R. 384

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that access ought to be refused. If, despite the representations of the third party, the agency decides that it will release the documents, the third party may apply to the Administrative Appeals Tribunal for a review of the agency’s decision.

The exemptions may be grouped into 20 heads. The class-based exemptions are: Cabinet documents and records, Executive Council documents, Documents and information the disclosure of which is prescribed by other statutes, Documents subject to legal professional privilege, Trade secrets, Documents the disclosure of which would be a contempt of Court or of the Commonwealth or a State Parliament, Certain documents arising out of companies and securities legislation, Electoral rolls.

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173 Thus, where a request is received by an agency for document that contain information concerning a person’s or organization’s commercial affairs, and appears that the person or organization might wish to contest the disclosure of the documents, then that person or organization must be given notice of the request: Freedom of Information Act 1982. Similar third party provision is made in relation to documents containing personal information relating to a third party (Freedom of Information Act 1982, s.27A) and in relation to documents containing information that originated from a State (Freedom of Information Act 1982, s.26A).

174 Sec.34 Freedom of Information Act 1982, purely factual material is generally exempted. The exemption applies to documents prepared for submission to Cabinet, even if not actually submitted to Cabinet: Re Rae and Department of Prime Minister and Cabinet (11986) 12.A.L.D. 589; Re Porter and Department of Community Services and Health (1988)14 A.L.D. 403; Re Reith and Minister for Aboriginal Affairs (1988) 16 A.L.D. 709.

175 Sec.35 Freedom of Information Act 1982, purely factual material is generally exempted. A conclusive certificate may be issued for this exemption and also for the existence of a document answering the terms of the request.

176 Sec.38, this provision gave rise to considerable litigation prior to its amendment in 1991.

177 Freedom of Act 1982 Sec. 42. It has been held that for the purpose of the Act legal professional privilege attaches to confidential professional communication between a Government agency and its salaried legal offices provided that it is undertaken for the sole purpose of seeking or giving legal advice or in connection with anticipated or pending litigation: Waterford v Commonwealth (1987) 163 C.L.R. 54

178 Freedom of Information Act 1982, Sec.43(l)(a), this whole section is designed to protect the interests of third parties: Harris v Australian Broadcasting Corp.(1983) 78F.L.R. 236; 50 A.L.R. 551.


The harm-based exemptions if disclosed would have one or more of the following effects: It can cause damage to the national security, defence or international relations of Australia,\(^{182}\) it can cause damage to relation between the Commonwealth and a State,\(^{183}\) it records the deliberative process of the federal government\(^{184}\) and its disclosure would be contrary to the public interest, it can cause damage to law enforcement, confidential sources of information relating to law enforcement, fair trials, or methods of criminal investigation,\(^{185}\) it would have a substantial adverse effects on the financial interest of the Commonwealth of Australia or an agency,\(^{186}\) it can prejudice the effectiveness of audits or tests or to have a substantial adverse effect upon the running of an agency, it would involve the unreasonable disclosure of personal information other than that relating to the applicant,\(^{187}\) it could reasonably be expected to destroy or diminish the

\(^{182}\) Sec.33 Freedom of Information Act 1982, The head of exemption also exempts a document the disclosure of which would divulge any information communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Australian Government. The Minister may issue a conclusive certificate in relation to this head of exemption and also in relation to confirming or denying the existence of a document answering the terms of the request. The section does not involve a consideration of whether disclosure would be contrary to the public interest.

\(^{183}\) Sec.33A, Freedom of Information Act 1982., The head of exemption also exempts a document the disclosure of which would divulge information communicated in confidence by or on behalf of the Government of an Australian State to the Federal Government. The role of the public interest is to disengage the exemption that would otherwise be applicable: Arnold (on behalf of Australians for Animals) v Australian National Parks and Wildlife Service (1987) 73 A.L.R 607.

\(^{184}\) Sec.36 Freedom of Information Act 1982, The Courts and Tribunal have given the first paragraph of s.36(1) a broad interpretation, capable of encompassing most document held by an agency recording any form of consideration of a decision: Harris v Australian Broadcasting Corp (1983) 78 F.L.R. 236;

\(^{185}\) Sec.37 Freedom of Information Act 1982, This has been given a broad interpretation, covering: confidential sources of information: Mekenzie v Secretary to the Department of Social Security (1986) 65 A.L.R. 645; even if the information provided by the source is not in itself confidential (Re Dale and Australian Federal Police (1997) 47 A.L.D. 417);

\(^{186}\) Sec.39, Freedom of Information Act 1982., The exemption does not apply where disclosure of the document would, on balance, be in the public interest.

\(^{187}\) Sec.41, Freedom of Information Act 1982., Detailed provision is made in relation to personal information the disclosure of which might be detrimental to the well-being of the applicant. It has been held that a company does not have “personal affairs” within the meaning of the Act: News Corp Ltd v National Companies and Securities Commission (1984) 1 F.C.R. 64; 52 A.L.R. 277.
commercial value of any information, it is information relating to a business that could reasonably be expected to have an unreasonably adverse effect upon that business or to prejudice the future supply of information to the Commonwealth of Australia, it would be likely to result in an unreasonable exposure to disadvantage to specified agencies carrying out research that is incomplete, it can have a substantial adverse effect on the ability of the Commonwealth to manage the economy, and lastly it would represent a breach of confidence other than that of the Commonwealth.

Where an agency refuses access to documents, the first right of appeal is one of internal review by the principal officer of the agency. Generally, the applicant is required to lodge a request for an internal review within 30 days of receiving notification of the original decision. The principal officer must review the decision within 30 days. If the applicant either does not receive a response within that time or receives an unfavorable decision, he is entitled to apply to the Administrative Appeals Tribunal for a further review of the decision. An application for review must generally be made within 60 days after the notice of the decision refusing access to a document was given to the applicant. The power given to the Administrative Appeals Tribunal is to review any decision that has

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188 Sec.43(1)(b) Freedom of Information Act 1982, This whole section is designed to protect the interests of third parties: Harris v Australian Broadcasting Corp (1983) 78 F.L.R. 236; 50 A.L.R. 551. As to the meaning of information having a commercial value, see: Gill v Department of Industry Technology and Resources [1987] V.R. 681;

189 Sec.43(1), Freedom of Information Act 1982, This whole section is designed to protect the interests of third parties: Harris v Australian Broadcasting Corp (1983) 78 F.L.R. 236; 50 A.L.R. 551.

190 Sec.43A, Freedom of Information Act 1982.


192 Sec.45, Freedom of Information Act 1982. This had been interpreted to be wide enough to succeed where an action for common law breach of confidence would not succeed: Baueris v Commonwealth of Australia (1987) 75 A.L.R. 327.

193 Sec.54(1), Freedom of Information Act 1982.

194 Sections 55(3) and 56(1) Freedom of Information Act 1982.
been made by an agency or minister with respect to a request for access to a
document and to decide the matter on the same basis as the agency or
minister could have decided it. Where a conclusive certificate has been
issued, the role of the Tribunal is restricted to a consideration of its
reasonableness. An appeal on a question of law lies from the
Administrative Appeals Tribunal to the Federal Court.

The Australian Law Reform Commission and the Administrative
Review Council released a joint report in January 1995 calling for
substantial changes to improve the law. The review called for the creation
of an office of the Freedom of Information Commissioner, making the Act
more pro-disclosure, limiting exemptions, reviewing secrecy provisions
and limiting charges. In June 1999, the Commonwealth Ombudsman
found “widespread problems in the recording of Freedom of Information
decisions and probable misuse of exemptions to the disclosure of
information under the legislation” and recommended changes to the Act
and the creation of an oversight agency. The Senate held an inquiry in
April 2001 on a private members amendment bill to adopt the
recommendations of the Australian Review Council and Administrative
Review Council report but to date there have been no substantive changes
in the Act. However, an amendment to exempt information on Internet
sites banned by the Australian Broadcasting Authority was approved in
2003. More recently, in February 2006 the Ombudsman released a report
on the Act which strongly recommended that the Government should

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195 The Tribunal is not restricted to the grounds of exemption relied upon by the agency: Searle Australia Pty Ltd. v Public interest Advocacy Centre (1992) 108 A.L.R. 163;
196 Department of Industrial Relations v Burchill (1991) 105 A.L.R. 327;
establish a Freedom of Information Commissioner, possibly as a specialized and separately funded unit in the office of the Commonwealth Ombudsman.\textsuperscript{200} The key was to ensure that an independent body would be tasked with monitoring and promoting the law. The Ombudsman’s report more generally found that requests were often not acknowledged and delayed and that there is still an uneven culture of support for Freedom of Information among Government agencies, even 20 years after its enactment. It has been previously noted that budget cuts have severely restricted the capacity of the Attorney General’s Department and the Ombudsman to support the Act and there is now little central direction, guidance or monitoring. Under the Archives Act, most documents are made available after 30 years. The Cabinet notebooks are closed for 50 years. There is still a small access gap for records for the years between 1976 and 1977. The Crimes Act provides for punishment for the release of information without authorization.\textsuperscript{201} The National Security Information (Criminal Proceedings) Act 2004 was approved by Parliament in December 2004. It regulates the use of national security information in trials. The adoption followed the Australian Law Reform Commission Report Keeping Secrets and the Protection of Classified and Security Sensitive Information in June 2004. In 2005, the Intelligence Services Legislation Amendment Act, 2005 Defence Signals Directorate and the Defence Intelligence Organization was passed, Schedule 7 of which exempts the Defence Signals Directorate and the Defence Intelligence Organization from the Act. Notably, the Australian Secret Intelligence Service (ASIO) and the Office of National Assessments (ONA) were already exempt. As

\textsuperscript{200} There are Information Commissions in the States of Queensland and Western Australia and in the Northern Territory. See Commonwealth Ombudsman, Scrutinising government - Administration of the Freedom of Information Act 1982 in Australian government agencies, March 2006.

\textsuperscript{201} The Crimes Act. Freedom Of Information Around the World, Privacy International law, 2006 p. 44 http://www.privacyinternational.org/foi/survey
noted above, Privacy Act requests for access to personal information to be given through the Freedom of Information Act. The Privacy Amendment (Private Sector) Act 2000 gives individuals the right to access records about themselves held by private parties.202

(vi) Africa

In The Republic of South Africa, Article 32 of its Constitution, formulated in 1996, and established a legal right to Information. It says: “Everyone has the right to access: (a) any information held by the state; and (b) any information that is held by another person and that is required for the exercise or protection of any rights”. Apart from that, The Promotion on Access to Information Act (PAIA) was passed in February 2000 and was put into force in March 2001. It implements the constitutional right of access and is intended to foster a culture of transparency and accountability in public and Government bodies by giving effect to the right of access to information and actively promote a society in which the people of South Africa have effective access to information to enable them to fully exercise and protect all of their rights. Under the Act, any person can demand records from government bodies without showing a reason, The Promotion on Access to Information Act also includes a unique provision203 unlike many other countries that allow individuals and government bodies to access records held by private bodies when the record is "necessary for the exercise or protection of any rights."204

203 Sec 5 of Promotion on Access to Information Act (PAIA) 2000.
**The Protected Disclosures Act (PDA)**

The Protected Disclosures Act was implemented in February 2001. This law imparts legal protection to those people, who give information about corruption cases. Before this law was passed, many times whistle-blowers had to face drastic consequences, like losing their jobs and even losing their lives. The Protected Disclosures Act (PDA) prescribes a system which can or is to be used when any employee of the private / public sector could be protected against repression, if they report the illegal or corrupt activities of their bosses or colleagues to the authorities. The Open Democracy Advice Centre (ODAC), which also collaborated to implement The Protected Disclosures Act, is also worth mentioning. The Open Democracy Advice Centre (ODAC) sees its mission in promoting an open and transparent democracy, fostering a culture of corporate and Government accountability and assisting the people in South Africa to realize their human rights. Open Democracy Advice Centre seeks to achieve its mission through supporting the effective implementation of rights and laws that enable access to, and disclosure of, information. Today Open Democracy Advice Centre is working for the enforcement of the Right to Information legislation in South Africa. It also provides information and training on using the law through public awareness campaigns, a website and regular workshops. In context of the Protected Disclosures Act the organization promotes the fight against corruption by supporting actual and potential whistle-blowers. It provides legal advice, support and case referral through a telephone-helpline.205

In this manner we conclude that in today’s world, freedom of information has become the pre-requisite of sustainable development due

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to its driving power. Free flow of information and its consumption boosts a country’s progress and prosperity. Effectiveness of democracy and security of human rights vastly depends on freedom of expression and information. Understanding the essence many countries- from developed to developing- now open the shutters and nod the people’s right to the access of information resources.