

Access to Information Overview

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Definitions

- Freedom of Information
- Right to Information
- Access to Information
- Right to Know
- Open Government

Access to Information

- Applies to any recorded information held by or on behalf of an authority.
- This includes photographs, paper documents, emails, information stored on a computer, maps, audio (sound) tapes, video cassettes, DVDs, CDs, handwritten notes, or any other form of recorded information.

Information and Records

- Information is not the same thing as the record that contains the information.
- Under an Access to Information Law, I have the right to any piece of information that is covered by the law, regardless of what form it is in.
- It does not matter if the information is on a printed document, a computer record, or a tape recording or is held in some other format.

A person should not be required to identify the form or format in which the information is contained.

For example, a person can say:

“I want to request information about the commune budget this year.”

Not this way:

“I want to request budget document
SL/402275/GHR 234, please.”

News

- A description or report about what has happened, like in a news program on the TV or radio, or in a newspaper article telling you what has happened in the world or in your community.

Information

- Describes facts and details about a subject.

Examples:

You go to a store and ask an employee:

Where do you keep your soap?

OR

You get lost on a street and you ask a person on the street:

Where is Street 271?

OR

You go to the doctor about a pain and the doctor asks you where is the pain? How long have you had it?

In all these cases the person is requesting information.

International Legal Background

- Article 19 of the UDHR
- Article 19 of the ICCPR
- 7 countries in Asia have access to information legislation

These countries are: China/Hong Kong, India, Japan, Pakistan, South Korea, Taiwan, and Thailand.

Cambodia's Case

- Article 31 Cambodian Constitution
- Article 35 Cambodian Constitution
- Article 41 Cambodian Constitution
- Press Law Article 5
- Archive Law Chapter 5 Articles 13 and 14
- Draft Policy Framework Paper 2007

Press Law

- Article 5 Access to government held records can be denied in cases where there is

Harm to:

- National Security
- Relations with other countries
- Violation of privacy rights of individuals
- Confidential information and financial information
- Right of a fair trial
- Cause danger to public officials

Archive Law

Chapter 5 Article 13

Publicized documents in the public archives are permitted to be used by the public for research without restriction.

Non publicized documents in the public archives are permitted to be used by the public 20 years after the date of the document, or after the end of proceedings related to the document, or subject to special cases as stated in Article 14.

The term “publicized documents” is never defined in the Archive Law.

This is a problem since documents which are “non-publicized” cannot be released the public for 20 years or more.

Archive Law Article 14

Article 14 lists documents which require more than 20 years of secrecy:

Archive Law Article 14

40 YEARS

Documents that affect national defense, national security, and public order. Also birth certificates, notary papers, and court hearing (litigation) papers.

Documents that affect national defense, national security, and public order shall be specified in a sub decree.

120 YEARS

Personal documents and medical documents of each individual.

Archive Law

No whistleblower protection

Penalties for violation of the law:

Fine between \$ 1,250 and \$6,250

Possible imprisonment of between
7 and 15 years.

Who has the right to A2I? Who is covered by A2I

- Everyone has the right
- Bodies covered in Cambodia Draft Policy Framework
 1. Established by or under the Constitution
 2. Any level or branch of government
 3. Bodies controlled or substantially funded by the government
 4. Bodies that carry out a statutory or public function
 5. Private bodies that are contracted by a public body to carry out a public function

9 Principles of A2I

- 1. Maximum Disclosure
- 2. Obligation to Publish
- 3. Promote Public Information
- 4. Clear and Narrow Exemptions
- 5. Processing Claims for Information
- 6. Cost of Making Requests
- 7. Open Meetings of Public Bodies
- 8. Laws Consistent with Maximum Disclosure
- 9. Protect Whistleblowers

Exemptions

- Personal privacy
- Commercial secrecy
- Public or individual safety
- Government confidentiality
- Legal privilege
- Public economic interests
- National security

3 Part Test

- Even if the information falls under an exemption, it must also pass the 3 part test. If it does not pass the 3 part test, it must be released to the public.

3 Part Test: What is it?

- 1. The information must fall under one of the exemptions (legitimate protected interest)
- 2. Disclosure of the information would cause or threaten to cause serious or substantial harm
- 3. This serious or substantial harm must outweigh the public interest in finding out about the information.

Key Terms

- Access to information
- Freedom of expression
- Freedom of information
- Freedom of speech
- Official information
- Open government

Key Terms

- Press Freedom
- Privatization
- Public information
- Public institution
- Record
- Right to know
- Three part test
- Whistle blower

THANK YOU!

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