

# ACCESS TO INFORMATION



មជ្ឈមណ្ឌលសិទ្ធិមនុស្សកម្ពុជា  
Cambodian Center for Human Rights

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## About CCHR

The Cambodian Center for Human Rights (CCHR) is a non-aligned, independent, non-governmental organization that works to promote and protect respect for human rights – in particular civil and political rights – democracy, and the rule of law in the Kingdom of Cambodia.

CCHR is a member of the International Freedom of Expression Exchange (IFEX), the global network for freedom of expression. CCHR is also member of the CIVICUS alliance, the World Organization Against Torture (OMCT) SOS-Torture Network, and OECD Watch.

CCHR's Cambodian Human Rights Portal [www.sithi.org](http://www.sithi.org) is the 2011 winner of the Information Society Innovation Fund Award in the category of Rights and Freedoms and the 2013 winner of the Communication for Social Change Award awarded by the Centre for Communication and Social Change at the University of Queensland in Brisbane, Australia.

## Acknowledgments

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## About the Access to Information Module

Access to Information Module has been produced as part of the Promoting Independent Media and Freedom of Expression in Cambodia Project to raise awareness for Cambodian people about the right to access to information in the country. This module covers the definition of access to information and the rights to seek, receive, and impart information. It also covers the applicable laws including Cambodian law and international human rights law on the rights to access to information.

This module also discusses the state's obligation to uphold the individual right of access to information, highlighting that information must be accessible to the public, and discusses exceptions for information disclosure. In addition, it also highlights the importance of access to information for all citizens.

## Queries and Feedback

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# **Access to Information**

## 1. What is Access to Information?

Access to information forms part of the right to freedom of expression. It is the ability to seek, receive, and impart information effectively.

### 1.1 Right to Seek Information

The right to seek information comprises of the right of individuals to access general information and, more particularly, information of public interest that can contribute to public debate.

### 1.2 Right to Receive Information

The right to receive information implies not only that public bodies respond to requests for information but also that the government itself proactively publishes and widely disseminates information of significant public interest.

### 1.3 Right to Impart Information

The right to impart information includes the right to share and disseminate information.



## 2. Legal Framework

Access to information is upheld under Cambodian Law and international human rights law in order to ensure the public can access information.

### 2.1 Cambodian Law

Article 31 of [the Constitution of the Kingdom of Cambodia \(“the Constitution”\)](#) incorporates international human rights obligations into Cambodian domestic law meaning that access to information is protected under both Cambodian law and international law<sup>1</sup>. For example, under Article 41 of the Constitution, Khmer citizens are guaranteed the rights to freedom of expression of their personal opinions, freedom of information, freedom of the press and publication, and freedom of assembly.<sup>2</sup> Article 5 of the Cambodian Law on the Press (“Press Law”) also states that the press has the right of access to information in government-held records.<sup>3</sup>

In addition, a draft Access to Information law was recently made public in Cambodia and Article 5 enshrines the right to access information and guarantees all persons have the right to access information held by public institutions.<sup>4</sup>

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<sup>1</sup> Consti.art 31.

<sup>2</sup> Consti.art 41.

<sup>3</sup> Press Law.art5.

<sup>4</sup> Draft Law of A2I.art5.

## 2.2 International Human Rights Law

Article 19 of [the Universal Declaration of Human Rights \(“UDHR”\)](#) states, “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 regardless of frontiers.”<sup>5</sup>

In addition, [the International Covenant on Civil and Political Rights \(“ICCPR”\)](#) Article 19.2 states, “everyone shall have the right to freedom of expression; this 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.”<sup>6</sup>

Therefore, the right to access information under Cambodian law and international human rights law guarantees everyone the right of access to all information and documents related to the management of public affairs regardless of the status of the concerned person and the purpose for obtaining the required information.

### 3. State’s Obligation on Access to Information

To give effect to the right of access to information under Article 19 of the ICCPR, State parties should proactively put in the public domain government information of public interest and ensure easy, prompt, effective and practical access to such information. State parties should also enact the necessary procedures, whereby one may gain access to information. The procedures should timely process requests for information according to clear domestic rules that are compatible with the ICCPR. Moreover, fees charged for requests for information should not be so high as to amount to an unreasonable barrier to access information.

Authorities are also under an obligation to provide reasons for any refusal to provide access to information and an appeals process should be put in place for refusals to provide access to information as well as in cases of failure to respond to requests.<sup>7</sup>



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<sup>5</sup> UDHR.art19.

<sup>6</sup> ICCPR.art19.

<sup>7</sup> Human Rights Committee, General Comment 34. para 19.

Public institutions, under Articles 8 and 9 of the draft Law on Access to Information, shall perform the following obligations to facilitate access to information<sup>8</sup>:

1. Create an information unit within each governmental institution, both at national and sub-national level;
2. Train officers in charge of information in a professional capacity on the right to access to information;
3. Encourage specialized units under the institution itself to cooperate and take responsibility to the search and provide the information to those who request it;
4. Assist all persons who seek information; and
5. Provide all requested information to the public.

#### 4. What information can be accessed?

Governments hold information not for themselves but rather on behalf of the public. For that reason, public bodies should provide access to information. According to the principle of maximum disclosure, the right of citizens to access information applies to *all information* under possession, custody or control of public institutions. Citizens may request access to any information regardless of their status, their interest in obtaining such information, or their relationship to it, and they may request access to any information they choose. They are not to be questioned for making a request, no matter what information is being sought.<sup>9</sup> However, this does not mean that the government is obligated to provide access to

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<sup>8</sup> Draft Law of A2I.art8-9.

<sup>9</sup> Article 19, Access to Information.page3 (2018).

everything a citizen may request access to. This is discussed further in the next section. In this sense, citizens can request access to information including:



- 1 Organization and functioning of all public institutions;
- 2 Public institutions' development plan of infrastructures and all sectors;
- 3 Detailed information about services mechanisms;
- 4 Laws, regulations, policies, decisions, and duties of public institutions relating to rights, freedoms, obligations, and public interests;
- 5 All aspects of public institutions functioning and procedures at courts, including administrative affairs, which are of the interest of and have direct connection with the public; and
- 6 Annual budget plan of the institution approved by the legislature and its annual expenditure and audit reports.

#### 4.1 Exceptions for Information Disclosure

The three-part test outlined in Article 19 of the ICCPR helps to assess the permissibility of a restriction. When it comes to access to information, using the three-part test will help determine whether a refusal by authorities to share information is a permissible restriction of access to information and freedom of expression or if, on the contrary, it is not a

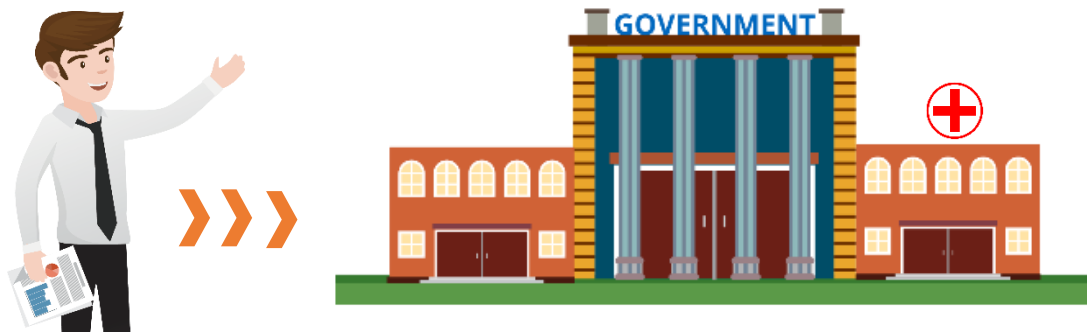


permissible restriction and therefore amounts to a violation of freedom of expression. This three-part test consists of the following:

**Step 1: legality:** is the restriction provided by law?

**Step 2: legitimacy:** is the restriction justified to protect a legitimate interest, namely (1) the respect of the rights or reputations of others; or (2) the protection of national security or of public order or of public health or morals?

**Step 3: necessity:** is the restriction necessary to achieve the legitimate aim identified under step 2?



**Example:** Mister A wants to access information pertaining to the spread of COVID-19 in Cambodia from the Ministry of Health. He wants to know how many patients there are and the locations where transmissions have occurred. If the Ministry of Health refuses to give him this information, it amounts to a restriction of Mister A's right to access to information. However, this restriction may be permissible if it complies with the three-part test in Article 19:

✓ **Step 1: Legality:** is there a legal provision that allows the Ministry of Health to withhold that kind of information? If the answer is YES, we can go on to Step 2. If the answer is NO, there is no compliance with the three-part test and the restriction is not permissible, meaning it is a violation of Mister A's right to access to information.

✓ **Step 2: Legitimacy:** is the Ministry's decision to withhold the information justified to protect a legitimate interest? This legitimate interest must be one identified in Article 19 of the ICCPR: either (1) the respect of the rights or reputations of others or (2) the protection of the national security or of public order (ordre public), or of public health or morals. If the answer is YES, that the restriction does protect a legitimate interest, we can go on to Step 3. If the answer is NO, that the restriction does not protect a legitimate interest, there is no compliance with the three-part test and the restriction is not permissible, meaning it is a violation of Mister A's right to access to information.

✓ **Step 3: Necessity:** is the Ministry's decision to withhold the information necessary to achieve the legitimate aim identified under Step 2? Is this decision the least-restrictive measure to achieve this legitimate aim? If the answer is YES, that the Ministry's decision to withhold information is necessary to achieve the legitimate aim and that it is the least-restrictive measure, there is compliance with the three-part test, meaning the restriction is permissible: The Ministry is allowed to withhold the decision. If the answer is NO, that the

