

ACCESS TO INFORMATION

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Produced By:



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Cambodian Center for Human Rights

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About the Cambodian Center for Human Rights

The Cambodian Center for Human Rights (“CCHR”) is a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia (“Cambodia”). CCHR’s vision is of a non-violent Cambodia in which people can enjoy their fundamental human rights, are empowered to participate in democracy, and share equally the benefits of Cambodia’s economic development. CCHR promotes the rule of law over impunity, strong institutions over strong men, and a pluralistic society in which variety is welcomed and celebrated, rather than ignored and punished. CCHR’s logo – a dove flying in a circle of blue sky – represents the twin principles of peace and freedom.

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About the Access to Information Module

This module on Access to Information has been produced as part of the “Advancing Right in Cambodia” (“ARC”) Project to raise Cambodian citizens’ awareness about access to information in the country. This module covers what the right to access to information is and its importance. It also covers the legal framework on access to information, under both Cambodian law and international law, and how states can protect and promote access to information.

Queries and Feedback

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The Right of Access to Information

The Right of 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 and ideas. The right of access to information is a fundamental human right and it is inherently linked to many other rights, including freedom of thought, conscience and religion, freedom of assembly, and freedom of association. Access to information is also linked to good governance, such as governmental transparency and accountability, and it is essential to build confidence and trust in government.

Access to information is a fundamental human right with **two** parts:

» Proactive

The right of access to information imposes a positive obligation on public bodies to provide, to publish, and to disseminate information of significant importance to the public. The information that must be made accessible includes information about the public bodies' main activities, budgets, policies and plans. This enables governmental transparency and equips the public with knowledge on the functioning of these institutions, allowing them to participate in public matters.

» Reactive

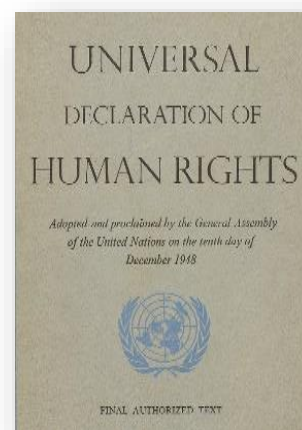
The right of access to information allows all persons to seek, request, and receive information from public officials about the duties and actions they are undertaking and any documents they hold. Most information held by public bodies should be disseminated upon request, but some information may be legally withheld to protect privacy, national security, or commercial interests.

1. International and national legal framework on the right of access to information

1.1 International 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.**"*

Article 19 of the **International Covenant on Civil and Political Rights ("the ICCPR")**, to which Cambodia is a party, requires State Parties to guarantee the right to freedom of expression and information including the right to hold opinions without interference, and *"the right to seek, receive, and impart information and ideas of all kinds through any medium and regardless of frontiers."*



1.2 National Law

1.2.1 The Constitution of the Kingdom of Cambodia (“the Constitution”)

Article 31 of the Constitution gives constitutional status to the international human rights treaties Cambodia has ratified, many of which enshrine the right of access to information.

Article 41 protects the right to freedom of expression, information, publication, and assembly.

1.2.2 The Law on the Press 1995 (“the Press Law”)

Article 1 “assures freedom of the press and freedom of publication” according to Articles 31 and 41 of the Constitution.

Article 3 guarantees the right to freedom from pre-publication censorship.

Article 4 guarantees the non-penalization of publications of official information that are fully true or accurate summaries of the truth.

Article 5 provides for the right of the press to access information in government-held records.

Article 20 guarantees that no person shall face criminal liability for the expression of an opinion.



1.2.3 Draft Law on Access to Information

The Ministry of Information (“MOI”) has recently finalized a draft Law on A2I, which is awaiting the review and endorsement of the Ministry of Justice (“MOJ”).¹ This law aims to ensure the public’s right to access information from public institutions. This new piece of legislation is welcome as under Article 19 of the ICCPR, State parties are strongly encouraged to enact freedom of information legislations.²

Many parties were involved in the drafting of the law, including civil society organizations, UNESCO, and media stakeholders,³ setting a good example of what the law-making process should look like.

2. Public bodies and their obligations under the principles of the right of access to information

The right of access to information applies to all persons including natural and legal persons.

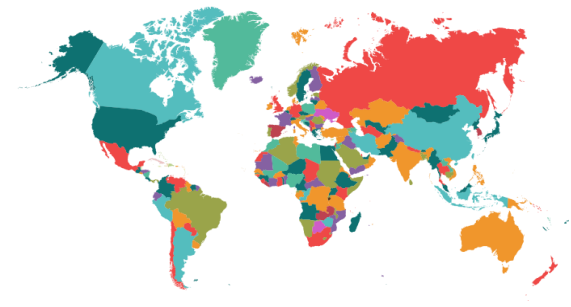
¹ Sar Socheath, “Law on access to information awaits endorsement from Justice Ministry”, ([Khmer Times](#), 29 Sept. 2021).

² UNHRC, General Comment No. 34, (n 10), para 19.

³ Sen David, “Draft Access to Information Law ready by year end” ([Khmer Times](#), 29 September 2020) <https://www.khmertimeskh.com/50767427/draft-access-to-information-law-ready-by-year-end/>

2.1 What are public bodies and what information must they disclose?

Public bodies should include all branches or levels of the government such as the executive, legislative, and judicial branches. It should also include local government, any elected bodies, bodies established under a statutory mandate, nationalized industries or public corporations, quasi non-governmental organizations, and private bodies which carry out public functions. No public bodies should be exempt from upholding the right of access to information.



Public bodies, at a minimum, should disclose:

- information about the activities and operational information of public institutions,
- information on requests, complaints, or direct actions members of the public may take in relation to the public body,
- the types of information the body holds,
- guidance on processes for the public to participate in decision-making processes, and
- the content of any decision which affects the public with reasoning behind the decision.

2.2 The principles on access to information



1. Maximum disclosure:

All information held by public bodies should be subject to disclosure except in limited circumstances (see principle 4).

2. Obligation to publish:

Public bodies should publish and widely disseminate information of significant public interest. The success of an access to information law is measured both by how many public requests are submitted and answered and by how much information reaches the public.

3. Promotion of open government:

Public bodies must actively promote an open government by educating the public about their rights and by promoting a culture of openness within the government by combating official secrecy.

4. Limited scope of exemptions:

Exemptions to access to information requests should be clear and narrowly drawn. Information should only be kept secret if it can be shown that revealing it will cause damage to national security, privacy or an interest protected within the law. The refusal to disclose information is unjustified unless the authorities can prove that the information meets a strict three-part test:

- (1) the information must relate to a legitimate aim listed in the law;
- (2) disclosure of the information must threaten to cause substantial harm to that aim; and
- (3) the harm to the aim must be greater than the public interest in having the information.

5. Processes to facilitate access to information:

Public requests for information should be processed promptly and fairly and an independent review and right of appeal of any refusals should be available within the public body.

6. Costs:

Individuals should not be deterred from making requests for information by excessive costs. A good access to information law will impose no application fee, but only charge the cost of producing the information, for example, for photocopying.

7. Open meetings:

Meetings of public bodies should be open to the public. People should have the right to attend public meetings and debates, to see how decisions are decided on their behalf and to participate in decision-making processes.

8. Disclosure takes precedence:

Any national law that is incompatible with the principle of maximum disclosure (principle 1) should be amended or repealed.

9. Protection for whistle blowers:

Individuals should be protected from any legal, administrative, employment-related or legal sanctions and from harm for releasing information on wrongdoing by public or private bodies.

3. The relationship between the right access to information and freedom of expression

The right of access to information falls within the general framework of freedom of expression. Freedom of expression and freedom of information are fundamental human rights which are guaranteed under Cambodian and international law. Press freedom is also a crucial component of these rights.

The right of access to information is a right encapsulated within the right of freedom of expression. The combination of these rights is essential to the functioning of democratic government systems because these rights allow individuals to gather information and speak their minds to make the world a more equitable place.



4. Why is access to information relevant to our everyday lives?



The right to access public information is the right for every person to have access to the information a person needs to make free choices and to live autonomously. Without information, people have no power to make choices about their government or about their everyday lives, and no ability to

meaningfully participate in decision-making processes. Additionally, without access to information, society cannot hold governments accountable or combat corruption.

4.1 Democratic participation

The right to access to information enables society to participate in democracy, which is a core principle of a flourishing democracy. By having access to information, citizens are more knowledgeable and better equipped to influence governmental decision-making through openly expressed public opinions. Without access to information, it is difficult for discussions to take place.

4.2 Accountability

Access to information is a primary tool in holding the government accountable for their actions or policy and legislative proposals. Access to information allows society to monitor how the government is performing in its mission and promised goals. Further, it empowers citizens to speak openly and freely to ensure the government follows through with its stated proposals.

4.3 Anti-corruption effects

Without access to information, the government lacks transparency, which fuels an environment of secrecy and corruption. By increasing transparency, access to information acts as a powerful tool to identify and uncover corrupt practices by both the government and private parties and enables a society which functions more freely.

4.4 Development

Access to information empowers marginalized and disadvantaged groups to become more involved in the development of initiatives that have profound effects on them. Lack of information prevents these groups from being able to participate in their own development, rendering them perpetually vulnerable to harmful governmental policies. When these groups have access to information, they play a vital role in the development of society and they can challenge harmful norms and ideologies.

5. What types of information requests can citizens make?

Organization and functioning of all public institutions;

institutions' development plan of infrastructure;

Detailed information about services mechanisms;

Laws, regulations, policies, decisions, and duties of public institutions relating to rights, freedoms, obligations, and public interests;

All aspects of public institutions functioning and procedures at courts, including administrative affairs which are of the interest of an have direct connection with the public; and

Annual budget plan of the institution approved by the legislature and its annual expenditure and audit reports

6. How must states protect the right of access to information?



The right to access information is not only important to allow for effective participation and open, public debate about issues of significant public importance and interests affecting people's life. It is also useful to exercise other rights.

Governments must respect the right of access to information by not violating it directly through the adoption of restrictive legislations, policies, or through restrictive judicial decisions. Additionally, governments must also actively protect the right of access to information by

passing legislation or policies which explicitly protect the right. Further, governments should prevent others from violating the right of access to information by setting up safeguards within governmental institutions for individuals to pursue independent appeals mechanisms in instances of non-disclosure of information.

Governments are obliged to provide information upon request as well as widely and publicly disseminate information of significant public interest, such as information that would enable the protection and exercise of political rights, human rights, or would expose corruption within the government. There are several government obligations that can be identified in relation to this right.

7. How can the right of access to information promote and protect other rights?



The right to access information is a right within itself but is also a key component of the right to freedom of expression. The right to freedom of expression, in turn, is a gateway right for the ability to exercise other rights. For example, society needs access to information to monitor the implementation of other fundamental rights. Access to information allows individuals to become aware of public policies or actions on certain rights including the right to health, the right to adequate housing, the right to a fair trial, the right to privacy and family life, and the right to security of the person.

Access to information is related to other rights by:

Being an important element to the realization of other rights;

Giving effect to and protecting other rights;

Assisting in the enforcement of other rights through government transparency and accountability; and

Preventing further violations by educating the public and keeping the public knowledgeable on situations of significant public interest.

QUIZ

1. **What is access to information?**

- A. Access to information has no connection with the right to freedom of expression and focuses only on imparting information.
- B. Access to information forms part of the right to freedom of expression. It is the ability to seek, receive and impart information and ideas.
- C. Answer A and B

2. **Access to information can come in two forms:**

- A. **Proactive** and reactive access
- B. Active and passive access
- C. None of the above

3. **The “Proactive” form of the right to access information imposes a positive obligation on public bodies to provide, to publish, and to disseminate information of significant importance to the public.**

- A. True
- B. False

4. **The “Reactive” part of the right to access information “allows all persons to seek, request, and receive information from public officials about the duties they are undertaking and any documents they hold.**

- A. True
- B. False

5. **Which article of the Constitution gives constitutional status to the international human rights treaties that Cambodia has ratified, many of which enshrine the right to access information?**

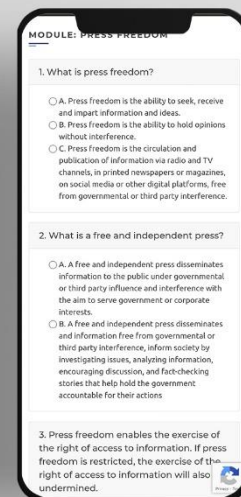
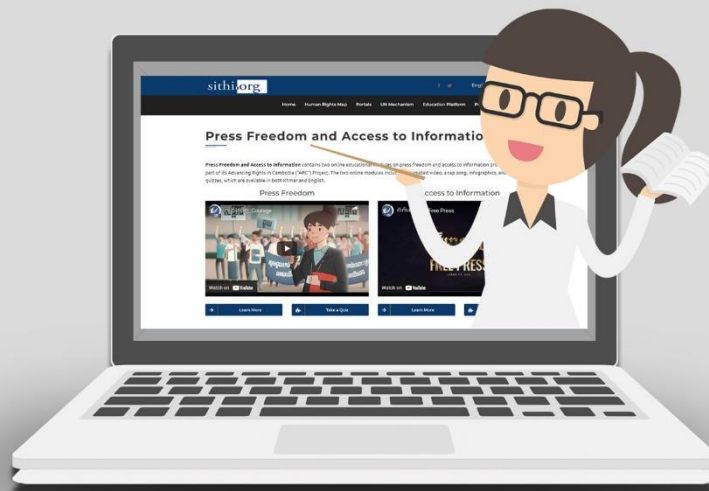
- A. Article 30
- B. Article 31
- C. Article 41

6. **What information should public institutions, disclose at a minimum?**

- A. Information about the activities and operational information of public institutions;
- B. Information on requests, complaints, or direct actions members of the public may take in relation to the public body;
- C. The types of information the body holds, and guidance on processes for the public to participate in decision-making processes;

- D. The content of any decision which affects the public with reasoning behind the decision.
- E. Answer A, B, C and D
7. **One of the principles of the right to access information is that "*public bodies must actively promote an open government by educating the public about their rights and by promoting a culture of openness within the government by combating official secrecy*".**
- A. True
- B. False
8. **The right to access information is a right encapsulated within the right to freedom of expression. The combination of these rights is essential to the functioning of democratic government systems because these rights allow individuals to gather information and speak their minds.**
- A. True
- B. False
9. **Why is access to information relevant to our everyday lives?**
- A. The right to access information enables every person to access the information they need to make free choices and live independently.
- B. The right to information enables people to make choices about their government or about their everyday lives, and have ability to meaningfully participate in decision-making processes.
- C. With access to information, society can hold governments accountable or combat corruption.
- D. Answer A, B and C
10. **How can states protect access to information?**
- A. By not violating it directly through the adoption of restrictive legislations, policies, or through restrictive judicial decisions.
- B. By passing legislation or policies that explicitly protect this right.
- C. By setting up safeguards within government institutions for individuals to pursue independent appeals mechanisms in instances of non-disclosure of information.
- D. Answer A, B and C

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