Institutions Guaranteeing Access to Information

OECD AND MENA REGION



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Foreword

The right to access information is an essential element of open government, and should be considered in the framework of ongoing public governance reforms and a transparent and participatory government. The right to access information is an effective lever for inclusive growth. It increases citizens' trust in their public institutions, as well as their participation in the elaboration of public policies. It also helps to offer public services that meet a society's needs. Ultimately, the right to access information helps improve public governance, fight corruption, and involve civil society in the development of innovative approaches.

OECD member countries put great importance on developing and respecting the right to information. They have passed extensive legislation in this area. For more than 15 years, the OECD has been working on projects to promote open government and, in collaboration with member countries and partners, on designing and implementing legal, regulatory, and institutional frameworks that favour transparency, stakeholder participation, and access to information.

However, in the MENA region, the right to access information has only developed recently. Although Jordan passed a law on access to information as early as in 2007, it was not until the 2011 revolutions that legislation evolved significantly in Tunisia, Lebanon, and Morocco. The actual implementation of access to information remains nonetheless complicated in MENA region countries.

With the aim of developing and making the right to access information more effective, OECD member countries, and the four aforementioned MENA region countries, have decided to create institutions guaranteeing the right to access information (IGAI). These institutions play a decisive role in the individual and collective promotion, application, and development of this right.

It is in this context that the OECD Secretariat became specifically interested in IGAIs and elaborated this report as part of the MENA-OECD Governance Programme and the OECD Open Government Project. Both initiatives have supported MENA countries since 2012 in their development and implementation of public policies that favour transparency, stakeholder participation, and accountability, in consultation with citizens and civil society.

This report examines in particular the role of IGAIs in the proactive disclosure of information and in hearing appeals of refusals to communicate information. The first part addresses IGAIs in OECD member countries based on specific examples, while the second part assesses their situation in Jordan, Tunisia, Lebanon, and Morocco.

This study forms part of the work conducted by the OECD's Public Governance Committee to increase transparency and accountability for inclusive growth. It is based on the OECD Recommendation on Open Government, which defines a set of criteria to help countries design and implement open government programmes that re-establish the trust of their citizens in public policy and strengthen inclusive growth.

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Acronyms and abbreviations

AUD	Australian dollar
CAD	Canadian dollar
CADA	Commission on Access to Government Documents
CARDA	Commission on the Access and Reuse of Government Documents (Belgium)
CE	Council of State
CAI	Commission on Access to Information (Quebec)
CNIL	National Commission on ICT and Freedoms (France)
CTBG	Council on Transparency and Good Governance (the IGAI of the Spanish state)
RAI	Right to access information
DPA	Data Protection Act (United Kingdom)
EUR	Euro
FOIA	Freedom of Information Act (United States)
FOISA	Freedom of Information (Scotia) Act (Scotland)
GBP	Pound sterling
IGAI	Institution guaranteeing access to information

INAI	National Institute for Transparency, Access to Information, and the Protection of Personal Data (Mexico)
JOD	Jordanian dinar
MENA	Middle East and North Africa
OAIC	Office of the Australian Information Commissioner
OECD	Organisation for Economic Cooperation and Development
OGIS	Office of Government Information Services (United States)
NGO	Non-Governmental Organisation
UN	United Nations
OGP	Open Government Partnership
PRADA	Person Responsible for Access to Information within Government Administrations (France)
QUANGO(S)	Quasi-autonomous non-governmental organisation(s)
UIT	Information Transparency Office (Spain)
UNESCO	United Nations Organisation for Education, Science and Culture
USAID	United States Agency for International Development
USD	United States dollar

Executive Summary

The right to access information is essential in democratic countries. It improves the transparency of public action as well as the accessibility to information and to public services for citizens. The OECD Recommendation on Open Government and the related works of the OECD Public Governance Committee highlight the importance of this right to create a favourable environment for citizen participation and accountability. Although this right has been recognised and applied in several OECD member countries, sometimes for many years, it is relatively new to the MENA region.

The first part of this report focuses on institutions guaranteeing access to information (IGAI) in OECD member countries. The second part deals with IGAIs in Jordan, Lebanon, Morocco, and Tunisia.

The right to access information (RAI) in OECD member countries has constitutional and conventional bases. The fundamental laws of certain countries provide for the creation of IGAIs, but the majority of them were created by lawmakers. The unitary, strongly decentralised, or federal nature of the state determines the existence and the competence of national, local or federated IGAIs. OECD member countries also tend to appoint officials who are specifically responsible for implementing the RAI and capable of acting as correspondents for the IGAIs. IGAIs can be single-person entities, such as Ombudsmen and Information Commissioners, or collegial institutions, such as Access to Information Commissions. They can be public or administrative institutions, the delegates of public authorities, and they can benefit from large degree of autonomy. In practice, IGAI members are individuals with extensive experience in the field of access to information or magistrates. IGAI members are subject to stringent ethical obligations and enjoy several protections.

IGAIs carry out broad missions, such as promoting and coordinating administrative action in favour of access to information. They are also responsible for processing requests that have been refused, and for providing their opinion on the application of the RAI.

In certain situations, despite having financial, human and material resources, IGAIs face the risk of congestion. Depending on their nature and their degree of autonomy, they may also be subject to administrative and political oversight. In any case, it is advisable for parliaments, citizens and civil society to monitor their work.

Since the creation of IGAIs in the MENA region is relatively recent, (the Jordanian IGAI was created in 2007 and the Tunisian one in 2017, but the Lebanese and Moroccan ones have yet to be created), this report examines the RAI, its implementation and the workings of those IGAIs that do exist.

The 2011 revolutions have helped strengthen the RAI in the MENA region. In Morocco and Tunisia, it has led to the explicit integration of this right in their new Constitutions. In certain cases, other constitutional institutions, notably regarding good governance and anti-corruption, may also participate in its implementation.

The participation of the four MENA countries examined in this report in international conventions and organisations has fostered a renewal of the RAI. However, the legislation of these countries on the right to information remains complex and under-used. It is thus important to make sure that the RAI is actually being implemented and that the principle of the freedom of access to information is reflected in each country's legal framework.

The four countries studied have chosen to implement collegial institutions that have varying degrees of autonomy. The composition of IGAIs, actual or planned under the law, also differs; often, it entails the appointment of professionals in the information and archives sectors by the executive branch.

Apart from the Lebanese IGAI, which is also authorised to fight corruption, the three other IGAIs deal exclusively with matters of access to information. Their general missions consist in monitoring the RAI and promoting the voluntary publication of information. They reflect on the concepts of information, individuals required to communicate information, the limits to the right of access to information, and the penalties incurred for infringing upon the right of communication or improperly disclosing information. In some countries, the persons responsible for access to information in the structures required to communicate information also ensure coordination between the institution with which they are affiliated and the IGAI. Providing continuous training and raising awareness among these public servants, those affiliated with departments that hold information, and to top management represents an essential condition for implementing the RAI.

With a few major exceptions, the system for requesting access to information is relatively simple to implement. The procedures for submitting a claim to an IGAI and by which this IGAI rules on appeals of a refusal to communicate information are similar to those of OECD member countries. The Lebanese and Moroccan legislation creating IGAIs has yet to be implemented, and the Tunisian IGAI still awaits the necessary human and material resources to ensure its effective performance. Generally, it would be appropriate to vest IGAIs with investigative powers, and to create conditions that guarantee the enforcement of their decisions, which could mean, in certain cases, giving their decisions a mandatory nature.

The Jordanian IGAI is legally subjected to government oversight, but the Tunisian, Lebanese, and Moroccan ones are, according to the legal texts, independent from the government. Finally, court oversight will be the prerogative of administrative tribunals in all four countries.

IGAIs should also strengthen its links with the structures required to communicate information through the officials responsible for access to information, with the other institutions concerned with access to information, notably the institutions in charge of the protection of individual data, good governance, prevention and anti-corruption as well as mediation, and with parliament and civil society.

Assessment and recommendations

The notion of access to information lies between two, somewhat opposite, legal concepts: on the one side, the right generally or specifically held by individuals or legal entities to obtain all communicable information under the law or certain items of information that concern them in particular, and, on the other side, the right of persons not to have information concerning them be disclosed, modified, or aggregated, especially through automated processing, to which such data may be subject.

OECD countries have passed legislation on the right to access information and established institutions guaranteeing the right to access information (IGAI). These entities play a fundamental role in the promotion, application, and growth of this right, as well as in the protection of personal data and the communication of documents and information.

In organisational terms, there are four kinds of IGAIs in OECD countries:

- An Ombudsman or Mediator (for example, in Sweden, Norway, and New Zealand);
- An Information Commissioner (for example, in the United Kingdom, Slovenia, Hungary, Scotland, and Germany);
- A commission or institution (for example, in France, Italy, Portugal, Mexico, and Chile);

Another body responsible for monitoring this right, such as the Right to Information Assessment Review Council and the Ombudsman in Turkey, both of which ensure the observance of all relevant laws.

In MENA region countries, the right to access information has been asserted, debated, and legislated on for the last twenty years, but especially since the cycle of revolutions beginning in 2011.

This report on IGAIs focuses on the proactive or requested communication of information by persons subject to this disclosure obligation. The first part assesses the situation in OECD countries, and the second, the situation in Jordan, Tunisia, Lebanon, and Morocco.

A well-established right in OECD countries

The creation and jurisdiction of IGAIs

As the right to information is a very old one in certain countries, OECD member countries made its development and observance a core concern after the end of the Second World War.

International conventions and recommendations, especially from the UN, the OECD, Inter-American Councils, the Council of Europe, the Organisation for Security and Cooperation in Europe (OSCE), and the European Union, have set goals and rules in the domain of access to information. In certain situations, they have led to a general, positive obligation to protect the right to access information, and to the establishment of national IGAIs.

The right to access information in some OECD member countries is expressly stated in the constitution; however, in most member countries, the assertion of this right is based on other constitutional provisions, especially the right to freedom of thought and expression.

In some OECD member countries, the lack of a legal framework to protect the right to access information remains a mere principle. Other countries have instead adopted legislation that asserts the principle of free access to government documents, and that attributes a general scope to this right, especially to what we can define as communicable information. In a small number of countries, the laws on access to information prevail over concurrent provisions in other pieces of legislation.

The forms of political organisation in OECD member countries have a considerable effect on the laws on access to information. In highly decentralised or federated countries, the division of powers between the central or federal government on one side and the decentralised or federated entities on the other has two consequences. First, the national law often establishes a general framework that local or federated entities adapt and complete according to their area of jurisdiction. This division may lead to national or federal IGAIs on the one side and IGAIs that report to local political bodies or federated entities on the other. States with a strong unitary tendency have one IGAI with jurisdiction over the entire country, while highly decentralised or federal states tend to have one national and several sub-national IGAIs.

IGAIs do not offer decentralised services per se within their network, but some of them have agents specifically delegated to the area of access to information who cooperate with national or local government administrations.

The legal nature and composition of IGAIs

In some OECD countries, the IGAI is a single-person entity, and in others, it is collegial. A single-person IGAI is typical of Nordic and Anglo-Saxon countries (the Ombudsman), and in Central and Eastern Europe. Countries based on Roman law and Japan have opted for commissions.

Sub-national IGAIs may be single-person or collegial, without there necessarily being a symmetry between them and the national entity. However, an IGAI's individual or collegial form does not appear to have any bearing on its effectiveness.

IGAIs are legal entities under public or administrative law, depending on the institutional rules and regulations of each country. Some constitutions recognise the institution's independence. Even without such recognition, though, IGAIs in OECD countries have legal autonomy and can be qualified as independent public authorities, even as a veritable court, as in the case of Canada's IGAI.

As regards their functioning, IGAIs may form part of the legislative, judiciary, or executive branch. In some cases, as in Mexico, IGAIs are not part of any of these three branches and are instead constitutional or independent public bodies.

The legislation of some countries gives great latitude to the authority responsible for appointing individuals to the IGAI. Other countries instead specify exactly the requirements for candidates. The composition of the IGAIs generally varies from one country to the next. They are often composed of jurists, academics, judges, and professionals from the field of communication. The IGAI's composition may also take into account certain particularities regarding the country's constitutional or administrative organisation, as in the case of Belgium.

The conditions for appointing the IGAI or its members seek to assure the highest level of ethics, independence, and competency, while reserving significant room for manoeuvring to the political power that remains directly accountable to the electorate.

The IGAIs' general missions

In some countries where the IGAIs are much specialised, we can see a rapprochement between the authorities responsible for the right to access information and those responsible for the protection of personal data (e.g., in Italy and France).

A number of IGAIs encourage and coordinate the government's action in favour of access to information. Some of them have the mission of overseeing the enactment of laws on access to information. To facilitate the application of laws on the right to access information, national legislation authorises IGAIs to provide their opinions, recommendations, and advice to the authorities and all individuals involved in the law's application. IGAIs have the power to produce studies and reports, and to formulate general observations and proposals for action.

Depending on the legislation, the IGAI's missions are fulfilled voluntarily or when requested by the concerned party. Within their general scope of jurisdiction, IGAIs often have the right to conduct investigations at their own initiative to formulate their observations.

Requests for access to information

The processing of requests to access information is of primary importance to an IGAI's work and entails the examination and consideration of complex legal issues. An IGAI's jurisdiction is granted by the relevant legislation on access to information. It is authorised to give its opinion on all aspects of this legislation as regards the individual or collective situations it may review. It specifically provides its opinion on the grounds for the refusal to communicate any information, and often on the possibility of its reuse, especially in Europe.

The free nature of access to information is becoming the rule, or at the very least, the expense does not exceed an acceptable threshold. Penalties for the improper communication of information vary depending on individual laws and practices. Similarly, exceptions to the right to access information remain significant in some countries, and the IGAIs often provide their opinion on these exceptions. An IGAI's decision is generally based on three principles: the protection of privacy and national security, the concept of on-going cases, and the legality of the application.

The specific purpose of the accessibility or inaccessibility of a piece of information is to protect the legitimate interests of certain individuals or, more generally, those of society as a whole. Consequently, whistle-blowers must benefit from specific, adequate protections.

The modes of recourse against refusals of access to information and the legal grounds that grant people the right to consult an IGAI vary from one OECD member country to another. In case of an explicit or tacit refusal, some legal systems authorise the victim of the refusal to file an appeal before a court, or to appeal to an IGAI. Other legal systems, such as France's, require that the person apply to the IGAI before bringing any legal proceedings.

When an IGAI receives a request to access information, it issues an administrative, public, or judicial decision. It may allow, in some cases, for a partial communication of the information.

The functioning of IGAIs

Single-person IGAIs are in most cases structured around a representative, information commissioner, or ombudsman. This person manages an office and may receive support from a council. Collegial institutions are composed of several members who hold the same hierarchical level, make collective decisions, and are managed by a chairperson.

IGAIs are supported by administrative departments whose personnel and organisation generally reflect the diversity of their missions. IGAIs responsible solely for access to information are smaller and have a relatively simple organisation, in accordance with their small staff. When an IGAI instead has a greater number of missions, the amount of staff increases and the organisational chart becomes more complex.

Depending on the traditions and legislation, the IGAIs enact procedures with varying degrees of formality to introduce, review, and rule on access to information, both in general and specifically concerning one or more individuals.

IGAI's enjoy considerable autonomy in their operations. Their budgets differ widely in function of their missions, size, and the specific situation of each state or inter-state group.

A number of countries have seen a perceptible rise in requests for government documents. This development is sometimes due to people exercising the right to access information without having a legitimate legal interest. The saturation that persons responsible for access to information face is also due to the onerous nature of the legislation on access to information. Similarly, the centralised processing of requests can slow down access to information.

The increase in the number of explicit and tacit refusals to information often leads to a greater number of appeals to the IGAIs, and sometimes, an increase in the average time to process applications as well. The increase in the number of appeals to IGAIs results to some extent from the government's reticence to communicate documents that supposedly can be communicated. The increase in the number of appeals results in a lengthening of the times that IGAIs need to process applications. The proactive communication of information improves the processing times for requests to access information.

The increase in the number of appeals may become onerous. The encumbrance of IGAIs and the lengthening of timeframes are sometimes due to the liberality of the conditions for requesting information, the procedure for compiling an application by the requesting person, and the IGAI's decision to extend the investigation of an affair in the interest of the requesting person. The IGAI also sometimes wishes to better communicate or give a more precise opinion that is more useful to both the requesting person and the representative of the institution. Late responses to IGAIs' questions by the relevant persons also provoke delays in an IGAI's processing of applications.

Consequently, some IGAIs came to believe that they were no longer able to carry out their missions properly under optimal conditions. This has led to internal evolutions within certain IGAIs, for example by concentrating human resources on the more complex applications. At times, legislative reforms have managed to simplify the procedures through the sorting of requests that do not require any investigation, or by entrusting simple applications to a single person rather than to an entire body within the IGAI. These reforms also entail new procedures for admitting requests to government departments, or the automated processing of simpler cases.

The oversight of the work of IGAIs

Even though IGAIs are independent institutions, they are subject to oversight, like all other public bodies in their country. They are exempt from the hierarchical control of the head of their department and the actions of the supervisory body within the executive branch, but, depending on the country's legislation, they are subject to different forms of external oversight of an administrative or judicial nature.

Whether or not an IGAI reports to the Parliament, it remains under its oversight, either by virtue of the parliamentary oversight of the executive branch or directly, for example, as part of the compiling and review of the annual budget. Some IGAIs submit their reports directly to the Parliament, which may debate them.

Civil society organisations greatly value the right to access information, as it represents an essential tool for their work. It allows them to understand the reasons for public action and to respond accordingly. It also enables them to act as a proposing force.

Different types of judicial recourse against the actions of an IGAI are possible, depending on the legal system of each OECD member country. Depending on the country's legislation, an IGAI's decision may or may not be submitted directly to a court. At times, the decision by the person obligated to provide access to information could be appealed before a court.

A right to be upheld in Jordan, Lebanon, Morocco, and Tunisia

The evolution of the right to access information

Before the series of revolutions in 2011, the status of access to information was not favourable in Arab countries. Aside from Jordan, which passed legislation on access to information in 2007, most of the region's countries did not have a law on the freedom to share information. If there was one, a number of provisions penalised the provision, sharing, and communication of information without the prior authorisation of the relevant authorities. Lastly, governments were rarely inclined in practice to allow citizens to exercise their right to access information.

The 2011 revolutions created a favourable climate for the right to access information. The increased transparency of the authorities and the state, as well as access to information in the government's possession occupied a primary place among the demands that people made during these events. This led to crucial developments in legislation and the administrative habits of certain states.

In Morocco and Tunisia, the constitutions of 2011 and 2014 explicitly refer to the right to access information. To the contrary, the Lebanese constitution of 1926 and the Jordanian constitution of 1952 do not mention it, even though the former recognises freedom of expression and the press, and the latter, the right to question public authorities.

The Tunisian and Moroccan constitutions also provide for the creation of independent institutions responsible for protecting and developing civil and human rights. Within the sphere of their jurisdiction, these institutions are likely to participate in promoting and defending access to information.

International law also plays a role in promoting the right to access information in the four countries of the MENA region in question. Jordan, Morocco and Tunisia have also joined the Open Government Partnership. The four countries also cooperate actively with the

OECD, for example through the MENA-OECD Governance Programme and the Open Government Programme.

Since 2016, the legislation on access to information in Tunisia, Lebanon, and Morocco has improved markedly. In Tunisia, the Assembly of the Representatives of the People adopted an organic law on access to information on 24 March 2016. On 10 February 2017, Lebanon adopted Law No. 28 on access to information, which establishes the main means of enacting this right. However, this law requires a certain number of implementing provisions, especially concerning the composition of the National Anti-Corruption Commission, and the procedures for appointing its members and performing its duties. On 6 February 2018, the Moroccan Parliament adopted Draft Law No. 31-13 on the right to access information, which will enter into effect one year after its proclamation.

Even though improvements have been made since 2011 at the legislative level, laws regarding access to information coexist with a number of constitutional, legal, or regulatory provisions that protect individual freedoms or personal data, for example. The consequence of this is either a strengthening or a weakening of the exercise of the right to access information.

Moreover, the right to access information in the four MENA countries in question remains poorly known and under-utilised, and the transparency and provision of public information remains low.

The only available statistical data on the right to access information extending over several years comes from Jordan, where 10,305 requests were filed between 2012 and 2015. In 2016, this number jumped considerably to 12,101. There was a high rate of positive responses to requests for access between 2012 and 2016. Moreover, between 2008 and 2017, the Information Council, which is the national IGAI, received 51 appeals. Between 2012 and 2017, the country's government issued 353 refusals for communication, compared to the 45 appeals filed with the Information Council; this represents a 12.7% appeal rate.

The legal nature and composition of IGAIs

The four MENA countries covered in this report have created or are about to create collegial commissions that form their national IGAIs. Jordan established its IGAI in 2007, and Tunisia, in 2017; both are composed of nine members. The Moroccan Law of 6 February 2018 provides for the creation of a Commission on Access to Information composed of ten members. The Lebanese law of 10 February 2017 provides for the creation of a National Anti-Corruption Commission that will ensure the IGAI's mission; however, it does not define the composition of this commission nor does it determine precisely its missions and attributions. As a result, this report does not examine these aspects.

In the Jordanian, Tunisian, and Moroccan laws, the level of the IGAI's autonomy from the government varies. In Jordan, the Information Council is not independent from the government; it is directed by the Minister of Culture. The Moroccan Commission on Access to Information will be placed under the responsibility of the Head of Government. To the contrary, the Tunisian Authority for Access to Information is an autonomous legal entity, and it will be either an independent government authority or a specialised administrative body.

The Jordanian IGAI is composed essentially of public officials, in close relation with its attributions. In the other two cases, the IGAI's composition is broader and opened to other profiles, as well as members of civil society. In Jordan and Morocco, the designation of

IGAI members falls to the executive branch, while in Tunisia, the Assembly of the Representatives of the People holds this role. Strong ethics rules apply to all three IGAIs to guarantee the integrity of its members.

The general missions of IGAIs

The general missions of these four IGAIs include the assurance of the right to public information as an instrument for promoting democratic values and rights. The laws of these four countries provide a broad definition of the term "information", and consider that all representatives of the government or public administration as well as any person providing a mission of public service or one closely linked thereto, for example, through receiving subventions, is under the obligation to communicate the information.

The general laws of these four countries prescribe the mandatory publication of a certain number of documents, such as laws and regulations. The Tunisian, Lebanese, and Moroccan laws on access to information provide for the proactive disclosure of a large amount of other documents and pieces of information, such as directives and circulars, unlike the Jordanian law on access to information, which does not contain such provisions. Publication may be made in various ways, including online.

Neither the Jordanian law on access to information nor the Tunisian law explicitly consider the reuse of information. The Lebanese and Moroccan laws do, but they also protect third party and intellectual property rights. For that matter, they do not regulate the potential terms and conditions of remuneration, for example through licenses for the reuse of information.

The limitations on the right to access information provided for in the laws of the four MENA region countries in question are at times complex and dependent on the history of each country or its current political, social, and geographic situation. Certain limitations are linked to is the identity of the requestor. For example, the Jordanian law reserves the right to request information to the country's citizens; however, most of these limitations are connected to the information requested. This law establishes a large number of exceptions to the right of access, especially when the information involves privacy. The Tunisian law contains a provision for exceptions based on an assessment of the harm to national security or defence, the relevant international relations, and third party rights.

The four IGAIs examined promote and assess the actual enactment of the law on access to information, write reports, provide their opinions on laws and regulations, and share their experiences with their foreign counterparts.

The processing of access to information requests

The right of a person or group of persons to access information is expressed initially by formulating a request with the holder of that information. In exercising their missions, the IGAIs examine the application of the access to information law.

The laws of the four countries dictate precise procedures for making requests from the entity required to communicate the information. Requests must be made in writing, sometimes exclusively by using the form provided by the government administration for this purpose.

Response times are specified in the laws and are sometimes subject to modulation to account for specific circumstances. In the Lebanese and Moroccan laws, the decision is made in writing and is justified.

If the person requesting is not satisfied, he/she may file an appeal within the specified timeframe, either exclusively with the IGAI, as is the case in the Tunisian, Lebanese, and Moroccan laws, or, according to the Jordanian law, either with the IGAI or with the Council of State, which has its own jurisdiction.

The Lebanese law on the right to access information does not contain any provision for investigating the requests. The Jordanian law entrusts the investigation of the request addressed to the Information Council to the Information Commissioner, but it does not clearly define his/her powers of investigation. The Tunisian law attributes expanded powers of investigation to the Authority for Access to Information. In particular, it may conduct all research necessary on site at the relevant entity and question anyone who may be able to help. Under the Moroccan law on access to information, the Commission on Access to Information receives, investigates, and rules on complaints.

The four laws precisely state the timeframes for the IGAIs to decide on individual appeals filed with them. The timeframe for the Jordanian Information Council to rule on a request is 30 days from its filing. A draft law has proposed to reduce this timeframe to 15 days. The timeframe is 45 days for the Tunisian IGAI, 2 months for the Lebanese National Anti-Corruption Commission, and 30 days for the Moroccan Commission.

The nature of the Jordanian IGAI's decisions is not clearly defined as binding. The commission does not have the power to inflict penalties on public authorities that fail to observe the law. The Lebanese law remains silent on the binding nature of the National Anti-Corruption Commission's decisions. The same holds true for decisions by the Moroccan Commission on Access to Information. The Tunisian law is very innovative; the decision by the Authority for Access to Information is in fact binding on the entity concerned by the decision.

The IGAI's functioning and officials

The MENA region countries studied, which all have a unitary political structure, have established IGAIs at a national level that are headquartered in the country's capital. Only the Jordanian Information Council has been fully active for the last ten years. On 17 July 2017, the Tunisian Assembly of the Representatives of the People elected the nine members of the Authority for Access to Information. On 1 February 2018, this authority issued its first decision. Since then, it has experienced an important increase in the number of requests and in its activity as a whole.

Even though the Lebanese law on the right to information has been passed, the Lebanese National Anti-Corruption Commission has not been appointed, and current legal mechanisms do not seem to be sufficient to permit its operation. As the Moroccan law on access to information has just been passed, the Commission for Access to Information has not yet been created.

In Jordan, the Information Council is supported by the Information Commissioner, who provides its general secretariat. Given the very low number of individual appeals filed with the Information Council, this body does not experience any difficulties in fulfilling its mission. Consequently, it has been able to work on promoting the right to access information.

The Tunisian law on access to information specifies the modes of operation for the Authority for Access to Information, which are similar to that of a court. The Authority for Access to Information has a secretariat and receives funding from the state. The Authority's Board appoints the secretary general.

The modes of operation for Morocco's Commission on Access to Information resemble those of the Tunisian IGAI. Here, however, the government appoints the secretary general on the recommendation of the Commission. Moreover, the Commission does not have an independent secretariat, which is instead provided by the secretariat of the National Supervisory Commission for the Protection of Personal Data.

The Jordanian information law does not prescribe the appointment of information officials within the government administrations, but it does establish that the official in question must facilitate information acquisition. The laws of the three other countries foresee the appointment of individuals who are mainly responsible for ensuring the right to access information, or, in one case, who act as agents of the IGAI.

1.1.12. Oversight of the IGAIs' actions

The IGAIs that form part of an administrative hierarchy are subject to hierarchical control. This is the case of the Jordanian Information Council and the Moroccan Commission for Access to Information. The Lebanese National Anti-Corruption Commission and the Tunisian Authority for Access to Information are not subject to hierarchical oversight, according to the legal provisions that govern them. Only the Tunisian Authority for Access to Information presents its annual report to the President of the Republic, the President of the Assembly of the Representatives of the People, and to the Head of Government.

NGOs are very active in the field of access to information. They closely follow the work of the Jordanian Information Council. In all the countries observed, they formulate observations and recommendations on draft laws on information. The Tunisian law on access to information charges the Authority with promoting a culture of access to information within civil society.

The IGAI decisions are subject to appeal before an administrative court, thus guaranteeing the respect of rule of law.

Recommendations

1. The principle of the public's free access to information is one of the cornerstones of any democratic society, as it guarantees transparency in the work of government administrations and legal entities, especially those with a mission of public service and who are thus closely tied to this principle.
2. In a democratic society, a certain right may have exceptions to ensure its compatibility with equivalent or superior rights. Consequently, national laws place limits on the right to access information when this infringes upon the rights of individuals or on the nation's security. However, too many exceptions would diminish this right excessively and even neutralise it. Thus, it is recommended: a) to limit exceptions to the right to access information, by appropriately using the harm test and the public interest test in the information's accessibility; b) to ensure that conflicts between the various laws do not excessively deprive the law on the right to access information of its purpose; and c) to examine under which conditions it is appropriate to invoke the principle of the legal superiority of the right to access information over the concurrent rights.
3. Ease of access is one of the keystones of access to information, especially for citizens who are less experienced in facing the difficulties of dealing with the entities required to communicate information. Furthermore, the exercise of a public freedom does not require any justification, in principle. Consequently, it is not

indicated that people must formulate their requests: a) in writing; b) exclusively using a prepared form; or c) justifying them.

4. However, the information's transmission must not endanger anyone reporting personal knowledge of a breach of the law, a threat or a serious danger to the general interest and who is acting impartially and in good faith. Thus, all laws must provide for a special system to protect whistle-blowers in relation to the right to access information.

5. Moreover, the exercise of a public freedom must be as easy and broadly accessible as possible, and not be excessively limited by economic or administrative imperatives. This is why one should: a) limit the expenses for making information available to those people who are actually and directly served by the concerned entities; and b) not limit the right to access information solely to citizens.

6. Access to information within the shortest timeframes possible is, in certain circumstances, of considerable importance to a person's life, security, and liberty. Consequently, it is essential for national laws to provide that the response timeframes to a request to access information be as brief as possible whenever necessary to protect a person or his/her liberties.

7. The reuse of information concerns the concepts of the freedom of circulation of information and of transparency. It has a financial component, for example, when the data repositories of the government administration are used to create business value. At the same time, the protection of the economic and intellectual rights of the government administration and of private parties must be ensured at a time where the available information increases exponentially. To this end, it is necessary: a) to quickly pass laws on the reuse of information in all countries; b) make IGAIs responsible for ensuring the exercise of these laws; and c) grant IGAIs the financial, human, and technical means to take over the processing of requests to reuse public data.

8. IGAIs are essential instruments of a democracy and the rule of law. Their existence and the terms and conditions of their operation cannot be subject to political or economic powers, nor be exempt from clear, complete regulations that give IGAIs the means to fulfil their missions completely. Thus, countries should: a) quickly complete the regulations regarding access to information by adopting the provisions that apply the laws on access to information; b) give IGAIs full legal autonomy; c) create national IGAIs as quickly as possible; d) grant IGAIs all the financial, human, and technical means necessary to fulfil their missions; and e) regulate the processing of requests by establishing automated procedures for processing and sorting requests.

9. The proactive publication of information represents the basis for increased transparency and openness on the part of the government and the actions of those persons obligated to transmit the information. It provides persons searching for information with immediate access to public data and avoids any expense for them associated with filing a request or undergoing administrative procedures. For the public bodies, it reduces the costs tied to processing access to information requests arising from laws on freedom of information. Lastly, it creates a climate of trust in public institutions, which is essential to countries located in geopolitically complex regions. Furthermore, proactive communication tends to reduce the need to resort to the IGAI to obtain information. Consequently, IGAIs must promote a culture of

proactive disclosure of information, especially via the Internet and by updating portals and websites belonging to entities and persons obligated to communicate information.

10. Access to information is a matter of primary interest to citizens and civil society, and it must be promoted among them, along with the recourse to IGAIs. This can be accomplished by bringing the parties together as close as possible, for example, through meetings, trainings, and the sharing of analyses and experiences.

11. For information to be identifiable and usable, it must be processed and categorised appropriately. It often comes from many sources and documents, especially electronic ones, and it is often poorly structured and is rarely suitably organised. Access tools are multiplying and users have considerable difficulties in appropriating them. This results in a loss of time, a feeling of saturation and confusion, and often a lack of knowledge of essential information. Therefore, the bodies responsible for providing access to information must take all measures to help promote the management, updating, categorisation, and preservation of the information they hold to facilitate the information's presentation to the requesting parties. The IGAIs must also help fulfil this mission.

12. The work of IGAIs often runs into indolence on the part of the government or a lack of diligence among the personnel involved in this process. Furthermore, revealing the truth sometimes requires expanded—but clearly defined—powers of investigation. For these reasons: a) IGAIs should be given the power to investigate individual pieces of information, and be able to carry out all investigation procedures and question all relevant persons working in the entities in question; b) the persons in charge of the law on access to information in the entities within the scope of the law must collaborate actively with the IGAI to facilitate the performance of its duties; and c) one should evaluate whether the burden of proof for the non-communicability of the information does in fact rest with the persons who deny access to it.

13. Few laws make IGAI opinions and decisions binding. This is understandable, as it gives more leeway to the representative of the institution, who is incidentally subject to court oversight. However, depriving IGAI opinions and decisions of any force undermines their effectiveness and authority and raises doubts as to the usefulness of their creation. Therefore, it is indispensable to find a balance so that the non-enforcement of a national IGAI's opinions and decisions remains the exception. Consequently, one must: a) assess the proper enforcement of IGAI opinions and decisions; b) if the assessment reveals a low rate of enforcement of opinions and decisions, consider amending the law to make IGAI opinions and decisions binding, and if necessary, grant the IGAI the power to impose penalties; and c) with the aim of upholding the independent decision-making by an IGAI, legally qualify its actions, especially in favor of requests for access to information, so that they cannot be annulled or modified by government authorities.

14. In some countries, especially in the MENA region, recourse to the right to access information remains unknown, and little information is available or even reliable. Hence, the great need for a regular oversight of the enactment of the right to access information, for example by creating centralised statistics. The national IGAI could be granted this mission, in collaboration with the competent administrative bodies.

15. Good public governance, of which transparency and access to information constitute cornerstones, requires the concerted, systemic action of all actors involved. Hence, the need to provide the means necessary to guarantee cooperation between IGAIs and the other institutions involved in access to information, especially those responsible for protecting personal data, good governance, preventing and fighting corruption, and mediation (the ombudsman).

16. IGAIs cannot carry out all of their vast missions on their own. An extensive involvement of the entities subject to the law on access to information is indispensable. This is even truer for those IGAIs that lack local units, and which experience a lack of field contact and difficulty in accessing information and coordinating the work of the entire government administration. Therefore, it is advisable for IGAIs to establish networks of officials and to use all means available (written documents, websites, and meetings, for example) to animate these networks.

17. Creating a favorable environment for transparency and access to information also requires making all points of contact with citizens available. This includes, in addition to officials in charge of access to information, all points of interaction with citizens (welcome centres, information offices, etc.), and communicators. Communicators are potentially important levers for accessing information, as they are a permanent point of contact with the media.

18. One should also recall the importance of education and capacity building on the importance of this right for officials in charge of access to information and employees who work in offices that hold information; this should occur at all levels of government and in all independent institutions.

19. The IGAI represents a means of enforcing the law as issued by the Parliament. It may also become the Parliament's auxiliary by informing it of the status of the right to access information and assessing the law's implementation. At the same time, even if the IGAI is not subject to the Parliament's authority, the Parliament cannot ignore it. The IGAI is in fact an essential element of the state, which the Parliament oversees by virtue of the mandate granted to it by the electorate. Hence, it is imperative that strong, on-going relations between the IGAI and the Parliament be established, for example through a public review of the reports and hearings of the IGAI conducted by Parliament.

20. Consultation of the IGAI before adopting laws and regulations on access to information or that have an effect on this access is of the greatest importance. In fact, it can strengthen the quality of the text and the legal coherence of all the legislation, all the more so because IGAI case law supplements that of the constitutional courts and tribunals that rule on disputes over access to information. Lastly, the IGAI's opinions are based on its own experience and interactions with stakeholders, and on its knowledge of the current state of this domain at an international level. Consequently, it could be helpful to consult the national IGAI, and for it to issue its opinion on draft laws or regulations prepared by government, or that the Parliament wishes to examine.

21. Citizen access to the judiciary to dispute an opinion or decision by a public body or an entity responsible for carrying out a mission in the public interest constitutes one of the bases of the rule of law. Therefore: a) judicial recourse against decisions issued by government authorities refusing access to information must be made

totally accessible, for example by guaranteeing that they can be filed at no cost whatsoever and accepted without use of a lawyer; b) the courts in the claimant's place of residence must be assigned jurisdiction to hear these requests; and c) judges in the competent courts must be educated about the right to access information.

22. Finally, governments should include commitments on access to information in their open government action plans. This will favor the involvement of all entities subject to the right to access information, at the central and local levels, and raise interest among citizens and civil society. Furthermore, IGAIs must be able to participate actively in international exchanges around access to information, transparency, and accountability, and should integrate the Open Government Partnership.

Introduction

The right to access information: a challenge for democracy and public governance

The right to access information plays an essential role in democratic, pluralist societies. Known in English as "sunshine laws," this right allows the public to know more about state and public sector actions, and it constitutes the corollary of Article 19 of the Universal Declaration of Human Rights.[1] This right is applied with varying levels of strictness, depending on the country.

In general, the right to access information modifies public governance. It strengthens citizens' interest in public affairs and enables them to make more informed contributions to decisions that affect them. Citizens thereby form an opinion of the society in which they live and of the authorities that govern the society. Knowing that its actions can be examined, understood more clearly, and monitored, a government abandons the culture of secrecy to act more openly and, ultimately, more effectively. The right to access information leads towards a culture of transparency and accessibility that ascertains the legitimacy of the civil service. A relationship of trust between public authorities and citizens grows alongside a more thorough oversight of the integrity of public officials.

For more than 15 years, the OECD has been working on projects that promote open government and, in collaboration with member countries and partners, on designing and implementing legal, regulatory, and institutional frameworks that favour transparency, stakeholder participation, and access to information. This report forms part of this collaboration and highlights the implementation of transparency, stakeholder participation, and accountability through the right to access to information.

A renewed right in OECD countries

After the Second World War, countries that are now OECD members made the development and observance of the right to information one of their primary concerns. Since its creation in 1961, the OECD was quick to express its firm commitment to the observance and promotion of this right in order to guarantee a more open, transparent society. As a result, all OECD member countries have very advanced laws on the right to information and, largely, on the respect of this right.

A more recent achievement and development in the MENA region

The right to access information has been slow to develop in the MENA region,[2] even though Jordan played a pioneering role by passing a law on access to information in 2007. Nevertheless, political and civil society in the region has been making insistent requests to exercise this right.[3] In some countries, the 2011 revolutions provoked regime changes and amendments to constitutions, as well as significant evolutions to the laws on access to information, especially in Tunisia, Lebanon, and Morocco. The growth of access to information nevertheless remains difficult and slow.

Enacting principles of open government4 at the central and local levels

To increase the transparency of the public authorities' actions, the accessibility of information and public services, and the government's embrace of new ideas, demands, and needs, some MENA countries are trying systematically to integrate initiatives to create more openness in the government's work at the central and local levels. In particular, they have adopted new tools and mechanisms to encourage stakeholders to participate in the various stages of drafting public policies.

In the context of the Open Government Partnership, which Jordan, Morocco and Tunisia have joined, governments have drafted action plans in collaboration with civil society that entail measurable commitments to enacting reforms. Similarly, the new constitutions of Tunisia and Morocco consecrate the founding principles of open government: the protection of human rights, democratic participation, decentralisation, access to information, freedom of the press and of association, and the right to high-quality public governance, transparency, and integrity. Furthermore, the trend towards decentralisation underway in Morocco, Tunisia, and Jordan leads to new forms of cooperation between citizens and public officials at the subnational level. However, this progress does not mean that much remains to be done before these political commitments to a more open government will have an actual effect on all of society, including on women and youth (OECD, 2016).

The right to access information: difficulties and evolutions

The right to access information is certainly not without its critics, especially regarding the limited number of persons and kinds of information in question. Moreover, too many laws have provisions that compete with the law on access to information.[5] These provisions are at times superfluous in relation to other laws that either already mandate the communication of information (for example, the regulation on public inquiries into urban planning), or that prohibit the communication of certain kinds of information (for example, attorney-client privilege). More generally, exceptions to the right to access information, especially those based on the concept of public interest; appear to some as being too many and too confusing. As a result, the central governments of OECD member countries apply restrictions to the access to information based on varying criteria and kinds of harm (Table 1).

Table 1. Scope of the laws on the freedom of information in the central governments of OECD countries (2010)

	Class test							Harm test				
	National security	International relations	Personal data	Commercial confidentiality	Law enforcement and public order information received in confidence	Internal discussions	Health and safety	Harm to persons	Harm to international relations, or to defence of state	Harm to commercial competitiveness	Harm to the economic interests of the state	Harm to law enforcement agencies
Australia	⊙	⊙	○	⊙	⊙	○	○	⊙	⊙	⊙	⊙	⊙
Austria	●	●	●	●	○	○	●	●	●	○	●	○
Belgium	●	○	○	○	○	○	○	●	●	●	●	○
Canada	⊙	⊙	●	●	⊙	⊙	○	⊙	⊙	●	⊙	⊙
Chile	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
Czech Republic	●	⊙	●	●	●	⊙	⊙	●	●	●	●	●
Denmark	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
Estonia	●	●	●	●	●	⊙	●	●	●	●	○	●
Finland	⊙	⊙	⊙	⊙	⊙	○	⊙	⊙	⊙	⊙	⊙	⊙
France	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
Hungary	●	●	●	○	●	○	○	○	○	○	○	○
Iceland	●	●	●	●	○	⊙	⊙	●	●	●	●	○
Ireland	●	●	●	⊙	●	⊙	●	●	●	●	⊙	●
Israel	●	●	●	⊙	⊙	⊙	○	●	●	⊙	○	⊙
Italy	●	●	⊙	⊙	●	⊙	●	⊙	●	⊙	●	●
Japan	⊙	⊙	⊙	⊙	⊙	⊙	⊙	●	●	●	●	●
Korea	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
Mexico	⊙	⊙	●	⊙	⊙	⊙	⊙	●	●	⊙	●	⊙
Netherlands	●	⊙	●	●	○	⊙	○	⊙	⊙	⊙	⊙	⊙
New Zealand	○	○	○	○	○	○	○	⊙	⊙	⊙	⊙	⊙
Norway	⊙	⊙	●	●	⊙	⊙	⊙	⊙	⊙	●	⊙	⊙
Poland	⊙	⊙	⊙	⊙	⊙	●	⊙	⊙	⊙	⊙	⊙	⊙
Portugal	●	●	●	●	●	○	●	●	●	●	○	○
Slovak Republic	●	●	⊙	●	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
Slovenia	⊙	⊙	⊙	⊙	⊙	⊙	○	⊙	⊙	⊙	⊙	⊙
Spain	●	○	⊙	●	●	○	⊙	○	○	○	○	○
Sweden	⊙	⊙	⊙	⊙	⊙	●	○	●	●	●	●	●
Switzerland	●	●	●	●	●	●	●	●	●	●	●	●
Turkey	●	⊙	●	●	⊙	⊙	○	●	●	●	●	○
United Kingdom	⊙	⊙	○	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
United States	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	○	⊙
Russian Federation	●	●	●	●	●	⊙	●	●	●	●	●	●
Ukraine	○	⊙	⊙	○	●	○	●	○	○	○	○	○
Total OECD31												
●iMandatory	**15**	**10**	**14**	**12**	**8**	**3**	**6**	**13**	**14**	**12**	**10**	**7**
⊙ Discretionary	**15**	**18**	**13**	**16**	**18**	**20**	**15**	**16**	**15**	**16**	**15**	**17**
○ Not applicable	**1**	**3**	**4**	**3**	**5**	**8**	**10**	**2**	**2**	**3**	**6**	**7**

Source: OECD (2011), "2011 Government at a Glance", OECD Publishing, Paris http://www.oecd.org/gov/governmentataglance2011.htm

According to other criteria, the steps for accessing information and the related costs of the procedure and reproduction of information are too onerous for citizens. Governments or other responsible persons sometimes appear to neglect to apply the law in an attempt to shirk their obligations. In particular, certain institutions guaranteeing access to information do not have the human and material resources required to fulfil their missions. Technologies, which are evolving rapidly and recent progress at the international level, also raise new questions. In fact, information increasingly takes the form of electronic files stored independently and reorganised according to algorithms that manage databases and other metadata. Lastly, new forms of communication, such as messages sent via PINs and SMS raise new challenges to be overcome to protect the rights of persons who make requests.[6]

Therefore, the challenge no longer lies solely in refashioning legislation and reforming government; it involves an evolution of attitudes and the abolition of a culture of secrecy, nationally and locally, in a world where the concepts of information and information media are changing constantly and quickly.

All these changes remain to be understood fully in light of the democratic goal of equal rights and the simplified access to information. Ultimately, every citizen, following a proactive initiative by the government or after making a request, should enjoy access to all government databases understood in the broadest sense, in total transparency. The challenges and obstacles against this vary according to the country and areas of application.

Institutions guaranteeing access to information

Public authorities use different means to render the right to access information effective. Logically, the first consists of passing laws that establish the terms and conditions for applying this right, for example by mandating the automatic publication of government documents, or, for those entities holding information, its transmission to the persons requesting it.

Furthermore, when persons requesting access to information consider themselves deprived of their right, the laws prescribe the right to appeal decisions that deny this right of access. To this end, they first require the entity obligated to provide the information to review its own decisions through an administrative appeal process (for reconsideration or to a higher body). They then entrust this review to the competent judicial authority or another institution, which may carry out this mission by itself or in conjunction with others.

The concept of access to information involves at least two, distinct functional realities: the obligation for the persons involved to communicate the information they possess, and the obligation to protect personal data during its collection, processing, and preservation.

These functions are exercised with varying degrees of specialisation in OECD countries. Some IGAIs, like the French, Italian, and Portuguese Commissions for Accessing Government Documents, are essentially responsible for communicating information. The French National Commission on Informatics and Freedoms, the Italian Guarantor Authority for the Protection of Personal Data,[7] and the Portuguese National Commission for the Protection of Data[8] are specialised in protecting data. Other IGAIs, such as the Information Commissioners in the United Kingdom, Australia, carry out both of these missions at the same time. These two missions may be fulfilled by one sole body even in concomitance with other, very varied missions, as is the case with the Ombudsman's Office in Northern European countries.

There is no provision of international law that expressly requires states to establish a body that ensures the right to access information. However, according to provisions of Inter-American law to which several OECD countries are subject, they are obligated to a general, positive action to protect the right to information.[9] One of the most effective means of satisfying this obligation consists of creating an institution guaranteeing access to information. More specifically, in its 2002 Recommendation on access to official documents, the Council of Europe stated in Principle IX that: "1. An applicant whose request for an official document has been refused, whether in part or in full, or dismissed, or has not been dealt with within the time limit […] should have access to a review procedure before a court of law or another independent and impartial body established by law. 2. An applicant should always have access to an expeditious and inexpensive review procedure, involving either reconsideration by a public authority or review [...]"[10]. In its 2007 review of the right to access information within the region of its jurisdiction, the Organisation for Security and Cooperation in Europe also included within its analysis essential legal elements for the existence of a specific guarantor body, and it recommended the creation of such a body to all its member states.

Experience generally shows that IGAIs play a fundamental role in promoting a culture of access to information, the general application of the right, the individual access of persons requesting the communication of certain pieces of information, and the evolution of this right. Consequently, in the last thirty years, a number of countries have adopted or improved their laws on the right to access information and established institutions responsible for ensuring their application.[11]

In this context, characterised by a significant growth of the right to access information in OECD member countries and some MENA region countries on one side, and by the growing role played by IGAIs among OECD member countries and the establishment of new IGAIs in certain MENA region countries on the other side, the OECD secretariat became more interested in the functioning of IGAIs, especially regarding the proactive communication of information and the requests for information held by entities obligated to communicate this information.

This report forms part of the OECD's work on open government and the MENA-OECD Governance Programme, which has provided its support to MENA region countries since 2012 in the elaboration and implementation of public policies that promote transparency, stakeholder participation, and accountability in consultation with citizens and civil society. Access to information forms an integral part of the Open Government Partnership and is a condition for becoming a member. Jordan, Tunisia and Morocco have joined the Open Government Partnership, and Lebanon intents to join.

The first part of this report examines the status of IGAIs in OECD member countries, based on examples and with an emphasis on proactive disclosure and information requests. The second part presents the case of Jordan, which has the oldest legislation on the right to information in the region, and Tunisia, Lebanon, and Morocco, which have recently adopted or amended their legislation in this domain.

Notes

1 Article 19 of the Universal Declaration of Human Rights: "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." Universal Declaration of Human Rights adopted by the UN General Assembly in Paris on 10 December 1948.

2 United Nations, "Public Sector Transparency and Accountability in Selected Arab Countries: Policies and Practices", New York, 2004, https://publicadministration.un.org/publications/content/PDFs/E-Library%20Archives/2005%20Public%20Sector%20Transp%20and%20Accountability%20in%20SelArab%20Countries.pdf

3 See: UNESCO, *Accéder à l'information c'est notre droit – Un guide pratique pour promouvoir l'accès à l'information publique au Maroc* ["Accessing information is our right – A practical guide to promoting access to public information in Morocco"], UNESCO 2014, Rabat. As well, a training of trainers guide, 2019, Rabat.

4 Open government as it is defined in the OECD Council recommendation on open government is "a culture of governance that promotes the principles of transparency, integrity, accountability, and stakeholder participation in support of democracy and inclusive growth", www.oecd.org/gov/Recommendation-Gouvernement-Ouvert-Approuv%C3%A9e-141217.pdf.

5 In Belgium, approximately 15 laws published at the federal regional, and municipal levels deal with access to information.

6 Legault, S., *Modernisation de la Loi sur l'accès à l'information*, ["Modernisation of the Law on Access to Information"], lecture at the Canada School of Public Service, 24 September 2012, http://www.oic-ci.gc.ca/fra/med-roo-sal-med_speeches-discours_2012_8.aspx.

7 *Garante per la protezione dei dati personali*, Law No. 675 of 31 December 1996.

8 *Comissão de acesso aos documentos administrativos*, https://www.cnpd.pt/english/index_en.htm (website).

9 In the matter of *Claude Reyes et al. v. Chile*, the Inter-American Court of Human Rights noted the state's positive obligation of ensuring the protection of the right to information, and it emphasized that this entails both the obligation not to interfere with this right and the taking of positive steps to ensure its exercise.

10 Council of Europe, 2002 Recommendation Rec(2002)2 by the Committee of Ministers on access to official documents (adopted by the Committee of Ministers on 21 February 2002), https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804c6fcc

11 Between 2007 and 2012, at least 20 states passed laws on the right to access information. See Legault, S., *Modernisation de la Loi sur l'accès à l'information*, ["Modernisation of the Law on Access to Information"], lecture at the Canada School of Public Service, 24 September 2012, http://www.oic-ci.gc.ca/fra/med-roo-sal-med_speeches-discours_2012_8.aspx.

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OECD (2016), "Strengthening governance and competitiveness in the MENA region for stronger and more inclusive growth, OECD Publishing, Paris", http://www.oecd.org/publications/strengthening-governance-and-competitiveness-in-the-mena-region-for-stronger-and-more-inclusive-growth-9789264265677-en.htm

Part I. Institutions guaranteeing access to information in OECD countries

Overview of Part I.

The first part of this report analyses the right to access information in OECD member countries based on examples, but without making any claim of exhaustiveness. Chapter 1 examines the creation of IGAIs and their area of jurisdiction, and it examines national and international laws that led to their creation. It distinguishes between national, local, and federated IGAIs, and it presents, whenever they exist, their networks of public officials in the entities required to communicate information. Chapter 2 examines the legal nature and composition of the IGAIs. It first analyses them in terms of either their insertion within other institutions or administrations, or, to the contrary, their autonomy, whether they are single-person or collegial entities. Secondly, it looks at the terms and conditions for the appointment and composition of the various IGAIs and the duties, rights, and qualifications of the persons who form part of this body. Chapter 3 examines the IGAIs' missions, focusing initially on the general missions, such as the promotion and coordination of the government's actions to encourage access to information, the general monitoring of the law's enforcement, competencies in terms of opinions and recommendations, the duty to inform the public, and issues related to referrals to IGAIs and self-referrals by these same IGAIs. It then goes on to analyse the system for individual access to information requests by presenting the IGAIs' actual jurisdiction, limits on the right to access information, and proceedings before IGAIs. Chapter 4 focuses on the highly structured nature of the workings and organisation of the IGAIs, as well as their financial, human, and material resources, and the risks of an excessive number of requests that are likely to affect an IGAI. Chapter 5 concerns the various kinds of oversight of the IGAI's work, be it administrative, political, parliamentary, judicial, or by citizens and civil society.

The right to access information is of fundamental importance to OECD countries. This right has long been recognised in some member countries, for example in Northern Europe, and it developed swiftly in all OECD countries after WWII. By now, all these countries have highly developed laws on this matter. Among the fundamental mechanisms for rendering the right to information fully effective, the establishment of an institution guaranteeing access to information (IGAI) is of primary importance. IGAIs fulfil various missions in addition to ensuring the right to access information. They also review refusals of access to information, and are more readily accessible and less onerous for users than courts, whose burden they seek to lighten.

OECD member countries have four kinds of bodies that act as an IGAI:

- A Commission or Institution (for example, in Hungary, France, Italy, Portugal, Mexico, and Chile);
- An Information Commissioner (in the United Kingdom, Slovenia, Scotland, and Germany, for example);
- The Ombudsman or Mediator (for example, in Sweden, Norway, and New Zealand);
- And, finally, an ombudsman associated with a body responsible for monitoring this right, such as the Right to Information Assessment (Review) Council in Turkey, or BEDK.[1]

These different types of IGAIs highlight the great diversity within OECD member countries, especially in terms of: the conditions for the creation of IGAIs and their area of jurisdiction (Chapter 1); the IGAIs' legal status and composition (Chapter 2); the IGAIs' missions (Chapter 3); the means of the IGAIs' operation (Chapter 4); and the various forms of oversight to which IGAIs are subject (Chapter 5).

Notes

1 Republic of Turkey, Prime Minister, "Legislation on the right to information", www.bedk.gov.tr/Yayinlar/LEGISLATION_ON_THE_RIGHT_TO_INFORMATION/LEGISLATION_ON_THE_RIGHT_TO_INFORMATION.pdf.

Chapter 1. The creation of IGAIs and their area of jurisdiction

This chapter looks at the constitutional, international, legal, and regulatory provisions that give rise to IGAIs. It highlights the decisive role played by the political organisation of OECD member countries (unitary, decentralised, or federal) in shaping the nature and number of IGAIs, be they single, national IGAIs, central and subnational IGAIs, federal IGAIs, or IGAIs that represent federated entities. It also emphasises that the jurisdiction of an IGAI, especially a local one, is the result of the political organisation of the country in question.

IGAIs are directly or indirectly subject to various provisions of international conventions, including the principles on the right of access to information issued by the OECD.

IGAIs of member states of the Council of Europe and the European Union are also subject to a large number of obligations defined by these two organisations. Ultimately, international rules interact with the constitutional framework of each country to determine the existence of the IGAIs and the ways in which they perform their duties.

1.1. The bases for IGAIs

IGAIs are created based on national and international provisions that set forth the law that these institutions apply in accordance with the conception of the right in each country.

1.1.1. The international sources of the right to access information

The UN

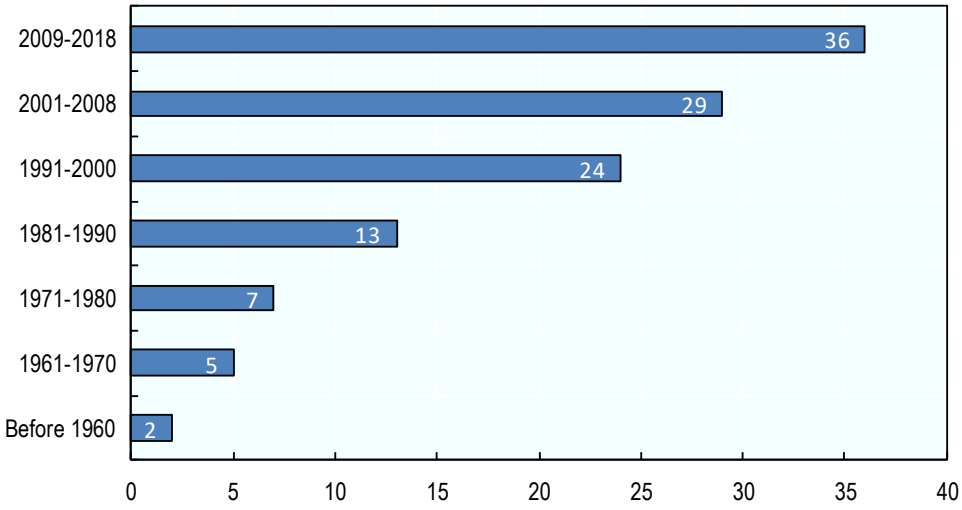
Upon the UN General Assembly's adoption of Resolution 59 in 1946, the UN has shown itself to be an ardent defender of the right to access information. This resolution states that "The General Assembly, Whereas Freedom of Information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated… Resolves therefore […] to authorize the holding of a conference of all Members of the United Nations on freedom of information"[1]. This text was followed by Article 19 of the Universal Declaration of Human Rights of 1948, according to which the terms freedom of expression express "the right… to seek, receive and impart information and ideas through any media and regardless of frontiers."

The OECD and the promotion of transparency

The OECD has long been at the vanguard of understanding current developments in our world and the concerns to which they give rise. So that member states can best respond to the needs of their citizens and guarantee human rights, the Organisation advocates for the observance and promotion of the right to access information, and it adopted a series of texts to support access to information and transparency[2]. These include the Principles and Guidelines for Access to Research Data from Public Funding. These principles are based on flexibility, transparency, compliance with the law, the protection of intellectual property, formal responsibility, professionalism, interoperability, quality, security, efficiency, accountability, and sustainability. Finally, one should cite the OECD Recommendation on the Principles for Transparency and Integrity in Lobbying.

Basing itself on its previous works, especially on the report "Open Government, The Global Context and the Way Forward" (OECD, 2016), the OECD published a new Recommendation by the Council on Open Government in December 2017 to help countries design and implement reforms by identifying a clear, realistic, evidence-based, internationally recognised and comparable framework for the governance of open government. Point 7 of this document states in particular that countries must: "proactively make available clear, complete, timely, reliable and relevant public sector data and information that is free of cost, available in an open and non-proprietary machine-readable format, easy to find, understand, use and reuse, and disseminated through a multi-channel approach, to be prioritised in consultation with stakeholders".

Figure 1.1. Number of OECD member countries with laws on access to information and administrative documents (until 2018)



Source: OECD (2010), "Number of OECD countries with laws on access to information (1960-2008)", in *Government at a Glance 2009*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264075061-graph28_2-en; The Right to Information (2012), "Access to Information Law: Overview and Statutory Goals", https://www.right2info.org/access-to-information-laws; Boletín Oficial del Estado (2013), "Ley 19/2013 de 9 de diciembre de transparencia, acceso a la información pública y buen gobierno" (Official Bulletin of the State, "Law 19/2013 of the 9th of December on transparency, access to public information and good governance"), https://www.boe.es/buscar/pdf/2013/BOE-A-2013-12887-consolidado.pdf for Spain; Journal officiel du Grand-Duché du Luxembourg (2018), "Loi du 14 septembre 2018 relative à une administration transparente et ouverte", http://legilux.public.lu/eli/etat/leg/loi/2018/09/14/a883/joor.

The Council of Europe

Access to government documents has been progressively integrated into the law of the Council of Europe. Until the adoption of the Convention on Access to Official Documents on 18 June 2009, there was no general international treaty guaranteeing the right to access documents in any sort of binding manner. Council law referred the matter to "soft laws" or confined itself to prescriptions in specific areas, such as environmental law, especially with the Aarhus Convention[3].

There are three major components of the Council of Europe's Convention on Access to Official Documents worth retaining: "1. Each Party shall guarantee the right of everyone, without discrimination on any ground, to have access, on request, to official documents held by public authorities. 2. Each Party shall take the necessary measures in its domestic law to give effect to the provisions for access to official documents set out in this Convention. 3. These measures shall be taken at the latest at the time of entry into force of this Convention in respect of that Party".[4]

These measures are accompanied by necessary restrictions, especially relating to national security, but they provide for total transparency for anyone who wishes to access information in the public domain, and they guarantee that this be simple and free of charge, in observance of the major principles of democracy. The Council of Europe's Convention on Access to Official Documents brought together a number of countries, as it includes European Union countries plus Russia, Turkey, Georgia, Azerbaijan, Armenia, and Greenland.

The European Union

The European Union has implemented numerous measures to promote access to information. Regulation n° 2016/679 of the European Union, also referred to as the General Data Protection Regulation (GDPR), is the authoritative text on the issue of personal data protection. It strengthens and harmonises data protection of individuals within the European Union. Directive 2003/4/CE on the right of public access to environmental information is also an excellent illustration of this approach. The European Union's directive on the re-use of public sector information (17 November 2003)[5] specifies the new conditions for using public data. The right to access documents from EU institutions has matured considerably by now and constitutes a true citizen right that is monitored by the European Court of Justice. Access to documents complies with a general principle of transparency in the EU and constitutes an instrument of democratic oversight of the work of the European government[6]. Because it does not seek to ensure the protection of the legal status of individuals and legal entities, it does not require proof of a specific interest. It seeks to provide a service to citizens and businesses, to encourage their participation, and to promote an open, transparent government[7].

The constitutional right to access information

In some OECD member countries, the right to access information is expressly stated in the country's constitution. For instance, in 1974, the Swedish Constitution pronounced that "every citizen, in his/her relations with the public authorities, enjoys the following rights and freedoms: […] 2. Freedom of information: that is, the freedom to procure and receive information and otherwise acquaint oneself with the utterances of others".[8] Article 20 of the Spanish Constitution explicitly recognises and protects the right to communicate and receive truthful information freely, through any means of distribution[9]. Article 32 of Belgium's Constitution guarantees citizen access to documents held by Belgian government authorities[10]. On 7 February 2014, Mexico amended Article 6 of its Constitution and considerably expanded the concept of information and the number of entities subject to obligations tied to access to information. Article 6 now states that information held by any authority or entity, as well as by any body with executive, legislative, or judiciary powers is public and its communication may only be prevented temporarily for reasons of public interest and national security, according to provisions of law. In interpreting this right, the principle of maximum publicity must prevail[11].

In most OECD countries, though, the right to access information comes from other constitutional provisions, especially the right to the freedom of thought and expression. In the United States of America, freedom of access to information comes from the First Amendment to the Constitution of 1791, according to which "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances" (Kennedy, 2005; Bertrand, 2006). In France, this right was recognized by the case law of the Constitutional Council, which, based on Article 11 of the Declaration of the Rights of Man and of the Citizen of 1789, ensures the free communication of thoughts and opinions[12]. In Italy, this right is closely tied to the right to express one's thoughts, as defined in Article 21 of the Constitution[13]. Article 21 of Japan's Constitution guarantees the freedom of assembly, association, expression, speech, the press, and any other form of expression. Even though this text does not expressly concern the right to receive and communicate information, the country's Supreme Court believes that it protects the right to information.[14]

Although access to information per se does not constitute a right guaranteed by the constitutions of all OECD member countries, as in Canada, it nevertheless tends to form a fundamental, constitutional right in general (Mockle, 2010). The freedom of opinion, a cornerstone of modern democracies, is accompanied by the right to access information, as the goal of any democracy is not only equality, but also the formation of an enlightened opinion, something that cannot be attained without very extensive governmental transparency. Like the freedom of opinion and expression, the right to access information thus becomes "a fundamental freedom that is all the more precious, because its existence is one of the essential guarantees of the observance of other rights and freedoms, and of national sovereignty."[15]

Box 1.1. The right to transparency in the Spanish Constitution

Article 20 of Spain's Constitution explicitly recognises and protects the right to communicate and freely receive truthful information through any means of distribution. Article 105 states:

"The law shall regulate:

a) the hearing of citizens directly, or through the organisations and associations recognised by law, in the process of drawing up the administrative provisions which affect them; b) the access of citizens to administrative files and records, except as they may concern the security and defence of the State, the investigation of crimes and the privacy of individuals; c) the procedures for the taking of administrative action, guaranteeing the hearing of interested parties when appropriate."

Laws

OECD member countries are characterised first of all by the passing of legislation that asserts the principle of free access to government documents, second by the general scope of this right, especially in defining communicable information and, lastly, by the existence of bodies responsible for guaranteeing the observance of the right to access information.

The oldest legislation on this topic is in Sweden, which has recognised the right to access information since 1776. It was followed by legislation in other Nordic countries[16]. The United States *Freedom of Information Act* (FOIA) dates to 1966, and Italy adopted a law on access to information on 7 August 1990. In the United Kingdom, the two laws regarding the right to access information entered into effect in 2005, in replacement of the prior system, regulated by the Public Records Act of 1958, which granted citizens the right to access public archives after 50 years. In Germany, the federal law on this matter entered into effect in 2006.

The Swedish system grants public officials the freedom of expression and the liberty to share the information at their disposal with third parties (Jonason, 2016). In France, freedom of access extends to all documents and information held by government administrations, in any form whatsoever, which most often excludes documents belonging directly to the government, the judiciary, or the legislature. In the United Kingdom, the right to information extends to sessions of Parliament.

In legal-technical terms, most of the time, as is the case with the Canadian law[17], laws on the right to access information are ordinary laws that are likely to compete with other laws at the same level.

Sometimes, as in Quebec, the Constitution, national lawmakers, or federated entities give these laws a preponderant status to mark their importance and assert their hierarchical supremacy in the legal order. The National Assembly of Quebec decreed that the law on access to documents belonging to public bodies and on the protection of personal information, as well as the law on the protection of personal information in the private sector, must prevail over all general or previous laws that would contradict it. This precedence remains however subject to the condition that this contradictory legislation to the law on access to documents and the law on the protection of personal information does not state that it prevails of them.

Table 1.1. Breadth of the laws on freedom of information (2010)

	Number of OECD countries
Level of government	
Central	31
Sub-national	25
Branches of power at the central level	
Executive branch	31
Legislative branch	16
Judiciary branch	16
Other bodies	
Privative entities managing public funds	18

Source: OECD (2011), Government at a Glance 2011, OECD Publishing, Paris, https://doi.org/10.1787/gov_glance-2011-en.

Requests to access information in three OECD member countries and Jordan from 2011 to 2013

This table compares the requests to access information received in Jordan, Mexico, the United Kingdom, and the United States. It lists the available data for each country between 2011 and 2013. Once the data was collected, descriptive statistical methods were used to generate a cross-comparative table of requests, complaints, and appeals involving access to information in the sample countries.

Table 1.2. Overview of the volume of requests to access to information

Country	Total number of requests (per year)	Number of institutions responsible for access to information	Requests per capitaa	Pending/outstanding requests	Pending requests (%)b
Jordan	2,286 (2013)	15	0.04 %	0	0
Mexico	142,766 (2013)[c]	247	0.12 %	11193	7.8%
United Kingdom	49,464 (2012)[d]	41	0.08 %	757	1.5%
United States	776,184 (2013)[e]	99	0.22 %	95564	12%

a) Percentage of the population making a request under the law on access to information (total number of requests divided by the number of inhabitants). Based on World Bank data available at http://data.worldbank.org/indicator/SP.POP.TOTL.
b) Percentage of requests awaiting a response in proportion to the total number of requests.
c) Until 15 December 2013.
d) 26% of all requests, which were deemed inadmissible, are not taken into account here.
e) While 704,394 requests were made during the 2013 budget year, 71,790 requests from the previous year were still awaiting a response at the beginning of the new budget year.

Source: Lemieux, V. et al., "Transparency and Open Government: Reporting on the Disclosure of Information", CEDEM, https://openknowledge.worldbank.org/bitstream/handle/10986/22526/Requests0and0a0m00and0United0States.pdf?sequence=1&isAllowed=y

Table 1.3. Processing of requests to access to information

Country	Number of requests processed (per year)*	Granted in full (%)	Partially granted (%)	Refusals based on a derogation	Unresolved/refused for other reasons	Other
Jordan	2,286	95.6%	0	4.4%	4.4 %	
Mexico	131,573	71.7%	0	3.7%	15.5 %	9.1% (transferred requests)
United Kingdom	48,707	43.6%	11.7%	3%	30.4 %	
United States	678,391	35%	30%	6.1%	28.9 %	

Source: Lemieux, V. et al., "Transparency and Open Government: Reporting on the Disclosure of Information", CEDEM, https://openknowledge.worldbank.org/bitstream/handle/10986/22526/Requests0and0a0m00and0United0States.pdf?sequence=1&isAllowed=y

1.2. National, local, or federated IGAIs and their networks

The types of an OECD member country's political organisation determine the scope of the laws on access to information. In heavily decentralised or federated countries, the division of powers between the central or federal government and the decentralised or federated entities yields two consequences. The national law often establishes a general framework that the federated entities adapt and complete according to their jurisdiction. It may also lie at the origin of national or federal IGAIs on one side and IGAIs representing local or federated entities on the other.

1.2.1. Institutions in unitary states

In unitary states, all constitutional powers are generally held at one level of government that solely possesses regulatory power to which all citizens are subject. Among the 36 member countries of the OECD, 28 fit this definition. In most unitary states, a national law sets the rules on access to information. However, in very heavily decentralised countries, like Spain or Italy, local entities enjoy a large power to apply the law on access to information. Some countries have a central IGAI and other IGAIs that belong to federal or local entities.

Single IGAIs in unitary states

Unitary states, such as France, have established a single IGAI that holds jurisdiction over the entire country. The same holds true for commissions on access to government documents, which exist in Italy and Portugal. Likewise, the Council for Transparency's jurisdiction extends across all of Chile.

IGAIs in heavily decentralised states

In heavily decentralised countries, local institutions play a very important role in the right to information. In Spain, for example, most autonomous entities have adopted their own legislation on transparency and access to information, and have created their own web portals as well (Campos Acuña, 2017). The government of Aragon hosts a website devoted entirely to transparency, where requests can be made and certain kinds of information can be found, such as on the local government budget.

Moreover, in accordance with Article 24 of Spanish Law No. 19/2013 of 9 December 2013 on transparency, access to public information, and good governance, the Spanish government's Council for Transparency and Good Governance is responsible for processing complaints against resolutions involving procedures for accessing public information, unless autonomous governments assign this jurisdiction to a specific body. To this end, the fourth additional provision of this same Law No. 19/2013 of 9 December 2013 states that, in the case of resolutions issued by autonomous governments and their public sector or by local entities included within their geographic scope of application, the complaint will be settled by the independent body determined by the autonomous governments. This same law provides that the autonomous governments and cities holding an autonomous status may assign this jurisdiction over the settlement of complaints to the Council for Transparency and Good Governance by entering into an agreement with the council to this end[18].

In application of these provisions, eight autonomous Spanish entities, including Castile-La Mancha and the Estremadura, decided to entrust the resolution of disputes to the Council for Transparency and Good Governance[19]. Other autonomous governments, such as Andalusia and Catalonia, have instead assigned this jurisdiction to their own commissions for access to information, or to the Ombudsman (as in Galicia)[20]. The Basque commission for access to information is the specific body for monitoring transparency. It is specifically responsible for investigating complaints against government decisions refusing citizen access to public information that have been handed down by Basque government administrations[21].

In Italy, when people are unsuccessful in their request to access documents from the state's central or peripheral government administrations, they may file an appeal before the Commission for access to government documents. With regard to documents held by local

government administrations, people must consult the Regional, Provincial, or Municipal Ombudsman holding jurisdiction[22].

Historically, the United Kingdom has always been a highly decentralised country. The UK Freedom of Information Act of 2000 concerns public access to government documents belonging to central British government agencies and the public authorities in England, Wales, and Northern Ireland. At the national level, the United Kingdom has established two Information Commissioner's Offices that cover the entire country. The Scotia Freedom of Information Act (FOISA) of 2002 concerns the Scottish executive, the public authorities, and Parliament. The FOISA led to the establishment of the Scottish Information Commissioner, who is responsible for promoting and applying the FOISA and the Environmental Information (Scotland) Regulations of 2004 (Scottish EIRs), as well as for processing requests to access documents.

1.2.2. The different structures in place in federal states

In federal states, federated states enjoy a large degree of autonomy and a complete state organisation that respects the sharing of powers with the federal level. The OECD has eight federal states among its members for whom the regulation and implementation of access to information is subject to a subtle sharing between the different levels of the state. Thus, the new Article 6 of Mexico's Constitution sets forth the principles and bases for exercising the right to access information at the level of the federation, the individual states, and the federal district in the context of their respective jurisdictions[23].The United States adopted the Freedom of Information Act (FOIA) in 1966 and amended it in 1996. This act regulates access to government documents at the federal level. However, all states, as well as the District of Columbia and some territories, have adopted similar laws providing for the communication of information by state bodies and local government administrations. Some states have increased the transparency of the federated entities by adopting laws on information regarding public meetings, which require them to be announced in advance and held publicly.

The United States Office of Government Information Services (OGIS) was created in 2007 and forms part of the national administration of archives and registers. As ombudsman for the FOIA's application, the OGIS has two missions. It ensures the implementation of the FOIA by government agencies, and it makes recommendations to Congress and the President of the United States with the aim of improving the FOIA. It is also responsible for mediating between people making requests who invoke the FIOA's application and federal agencies, without such mediation excluding court appeals. If the mediation does not lead to the conflict's resolution, the OGIS may provide its advice. The OGIS also processes comments and complaints from federal agencies and the public for the purpose of improving FOIA procedures[24].

The Officer of the Information Commissioner of Canada was created in 1983 in application of the law on access to information, with the aim of helping private citizens and entities that believe that federal institutions have ignored their rights. The Commissioner's Office thereby ensures the observance of both the rights of government organisations and of any concerned third party[25]. Other provincial Canadian entities have established IGAIs that are responsible for their affairs, such as the Information and Privacy Commissioner of Ontario or the Quebec Commission on Access to Information[26].

The National Institute for Transparency, Access to Information, and the Protection of Personal Data (INAI) is an autonomous constitutional body of the United Mexican States. It was established in May 2015 following the adoption of the general law on transparency

and access to information[27]. It is responsible for guaranteeing people's right to access public government information, protecting personal data held by the federal government and private persons, and ruling on refusals to access information formulated by entities belonging to the federal government or that depend on it. Alongside the INAI are the IGAIs in Mexico's Federal District and the federated states, such as the Institute for Transparency, Access to Public Information, the Protection of Personal Data, and Accountability of Mexico City or the Commission on Transparency and Access to Public Information for the state of Querétaro[28].

The Belgian Constitution assigns jurisdiction to all subnational lawmakers for regulating access to government documents. This occurs most often by sorting access to information requests depending on whether or not they concern the environment. At the federal level, the law of 11 April 1994 on government publicity created the Commission for Access to Government Documents, which issues opinions in total independence and neutrality whenever a government administration refuses to provide access to a piece of information. For Wallonia and the Brussels-Capital Region, the Commission for Access to Government Documents is an independent, regional government authority that issues its opinion when someone wishes to obtain a document held by an authority that has refused to communicate it. The Commission also holds decision-making powers regarding the environment.

In Germany, the federal law on the freedom of information entered into effect in 2006[29]. As a result, the German Commissioner for the Protection of Personal Data took on the role of Commissioner for the Freedom of Information[30]. At the federal level, twelve of sixteen *Länder*, or regions, have adopted similar legislation to date. These laws apply to the communication of documents held by the *Länder's* authorities. Each *Land* also has its own Commissioner for the Protection of Personal Data (who may also take on the role of Commissioner for the Right to information, depending on the legislation in effect).

Box 1.2. The Commissioner for the Protection of Personal Data and Freedom of Information for the Land of Berlin

The Commissioner for the Protection of Personal Data and Freedom of Information for the Land of Berlin ensures the observance of the legislation on the protection of personal data and confidentiality, provides advice, and ensures the fundamental right to informational self-determination.

Its jurisdiction extends over the authorities and other public bodies in the Land of Berlin, as well as over private bodies, such as businesses and associations established in Berlin. Since 1999, it also ensures the observance of the right to access personal data and information.

The Commissioner is elected by the Berlin House of Representatives (Abgeordnetenhaus) to a five-year term of office. Re-election is permitted. The Commissioner enjoys independence in the exercise of its functions and is only subject to the law.

Source: Berliner Commissioner for the Protection of Personal Data and Freedom of Information, https://www.datenschutz-berlin.de/berliner-beauftragte.html.

1.2.3. The network of IGAIs

IGAIs do not exactly have a network of devolved or decentralised services, but some of them use officials that are specifically delegated for access to information. For example,

the US Open Government Act, which amended the FOIA in 2007, requires that a high-level official is appointed who in turn appoints several persons in charge of applying the law. Likewise, the Spanish central government offices involved in transparency and access to information constitute a network that also includes the management centres, the Transparency Information Offices, and the Central Transparency Information Office[31].

At the subnational level, Article 8 of the 1982 Quebec law on access to documents belonging to public bodies and on the protection of personal information provides that each public body must designate the highest-ranking person within the body as responsible for applying the law. This official may designate a high-ranking staff member as the responsible person.

In France, the major government administrations must designate a person responsible for access to documents and questions regarding the reuse of information (PRADA). The list of responsible officials and their contact information are on the website of the Commission for Access to Government Documents, or CADA, and the relevant government administrations. The creation of this network has contributed to the improvement of government administrations' conduct. The CADA publishes a monthly informational letter to the attention of the PRADAs that discusses problems regarding the different categories of documents.

Box 1.3. Persons responsible for access to government documents within French government administrations (PRADA)

In 2005, French legislation provided for the designation of persons responsible for access to government documents and questions regarding the reuse of public information within government administrations (PRADA). Their mission consists of receiving communication requests and any complaints, overseeing their investigation, and acting as a liaison between their administration and the Commission for Access to Government Documents, or CADA. These officials may also draft an annual report on requests to access government documents and licences to reuse public information. In choosing such person, the administrative authority must consider the compatibility of the missions with the duties exercised, the person's skills, his or her position within the administrative structure, and the person's availability. The designated person is most often a public official, but there is no provision preventing this person from being an elected official.

The government authorities concerned and the means of appointing PRADAs

The network of responsible persons involves most government entities that hold or process administrative documents. The following are required to designate a responsible person: ministers and prefects, presidents of regional and general councils, mayors of towns with more than 10,000 inhabitants and presidents of public establishments for inter-municipal cooperation with more than 10,000 inhabitants, and directors of national and local public establishments that employ at least 200 agents. Lastly, this obligation extends to any public and private institution responsible for managing a public service and employing at least 200 agents. The legislation does not require a strict formalisation of the responsible person's appointment (by resolution or decree). However, it does give rise to an act of appointment that includes the responsible person's first and last name, profession and professional contact information, as well as the contact information for the appointing authority. The appointment is announced to all administered persons and all services within the appointing government administration according to the most appropriate procedures, for example via publication on the government administration's website.

The role of PRADAs

Facilitating the investigation of requests

Persons wishing to obtain a document or to reuse public information may contact a responsible person who will facilitate the investigation of his/her request. However, in most government administrations, the communication of government documents is organised by the offices involved in the request. Thus, the PRADAs are often the contact persons who are kept informed of the difficulties encountered with accessing government documents or with reusing public information. They are not responsible for answering all requests themselves.

Providing expert legal opinions

PRADAs provide government administrations with expert legal opinions to facilitate the full application of the law and to help them understand their obligations. Depending on the missions entrusted to them, responsible persons may advise their own administration on the investigation of specific applications or investigate them themselves. They may also suggest improvements to facilitate access to the communicable documents in application of the law within the shortest timeframe possible.

Acting as a liaison with the CADA

PRADAs help transmit information between administrative authorities and the CADA, inform on the case law on access to information, and increase the effectiveness and speed of the review of requests for opinions and advice.

Identifying the need to consult the CADA

The existence of the PRADAs helps establish with greater certainty whether a request for advice duly filed with the CADA is necessary. For matters on which the CADA provides a constant, well-established response, its website (www.cada.fr) contains information that gives the government administration the ability to respond in a relevant manner to the requests for communication it receives. The Commission's secretary general also responds to questions asked by the administrations and sends them opinions or advice issued before by the Commission on similar subjects.

Being an interlocutor during the review of requests for opinions

The term of one month granted to the CADA to notify its opinion is very brief. The Commission consults the government administration in question, which must respond quickly. If the government administration's refuses to communicate, it is essential that it highlights the legal and factual elements in its response to the Commission on which it has based its decision. The CADA's secretary general sends the PRADA requests for opinions that concern the PRADA's own administration. The PRADA thereby has the contact information of the person responsible for reviewing the request and can determine the office that received the request or prepare the response that the administration will send to the CADA.

Source: French Commission for Access to Government Documents, www.cada.fr/les-personnes-responsables-de-l-acces-au-sein-des,6152.html (website).

Box 1.4. The offices for transparency and access to information within the Spanish central government

The Management Centres are:

- the entities that hold public information developed or acquired in the course of their work;
- the responsible bodies for handling requests to access information;
- the responsible bodies for proactive information disclosure.

The Transparency Information Offices (UIT):

- are specialised offices;
- are situated within each state ministry (in addition to two special UITs within the Treasury Department of the Social Security Agency and within the Spanish Data Protection Agency);
- receive access to information requests ;
- refer the requests to the various management centres within the ministries;
- ensure the follow-up and oversight of the proper processing of requests for access.

The Central Transparency Information Office (Central UIT):

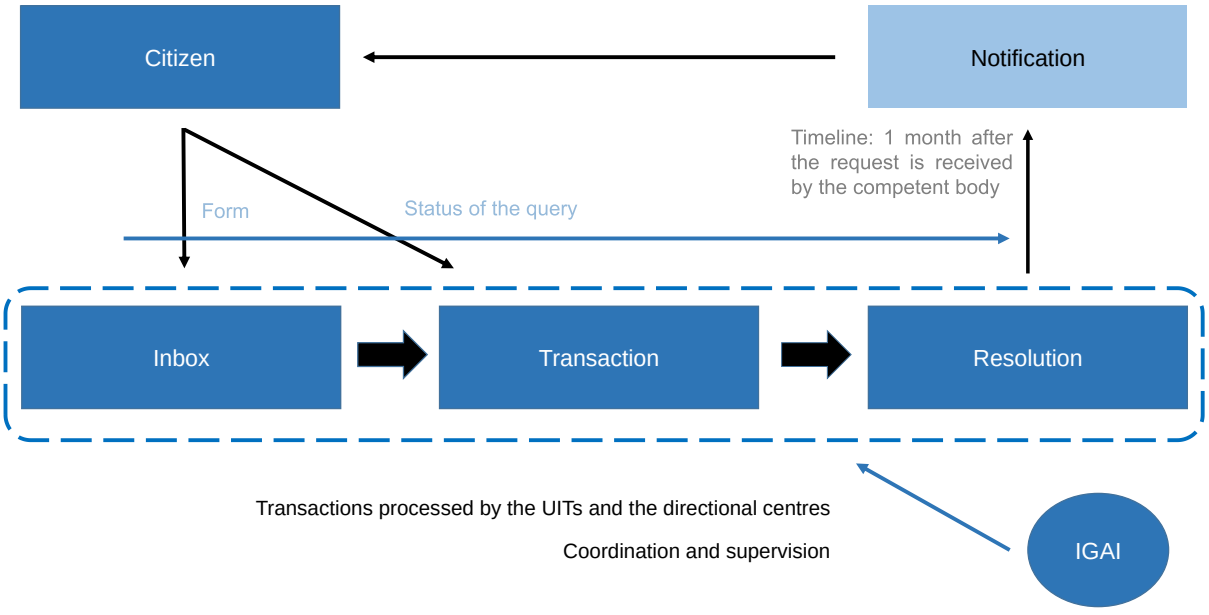
- since 2017, this has been the Central Office of Public Governance within the Ministry of Public Finance and Public Service.
- is a specialised office;
- ensures the coordination and oversight of the UITs;
- is responsible for the Transparency Portal;
- oversees the digitization of the processing of requests for access (GESAT).

The Council for Transparency and Good Governance (the Spanish IGAI)

- is a public, independent, body;
- is responsible for guaranteeing access to information and responding to administrative appeals;
- assesses the Transparency Portal;
- does not hold the power to inflict penalties (due to the absence of an implementing regulation to this effect).

Source: Portal of Transparency, General Administration of the State, Spain, http://transparencia.gob.es/transparencia/transparencia_Home/index.html (website)

Figure 1.2. The circuit for accessing information from the Spanish government



Source: OECD (2016), OECD Public Governance Reviews: Spain 2016, OECD Publishing, Paris http://www.oecd.org/spain/oecd-public-governance-reviews-spain-2016-9789264263024-en.htm

Notes

1 Resolution 59, Calling of an International Conference on Freedom of Information, 1946.

2 Recommendation of the Council for Enhanced Access and More Effective Use of Public Sector Information; Recommendation of the Council on Principles for Public Governance of Public-Private Partnerships; Recommendation of the Council on Regulatory Policy and Governance; Recommendation of the Council on Digital Government Strategies; Recommendation of the Council on Budgetary Governance; Recommendation of the Council on Gender Equality in Public Life; Recommendation of the Council on Public Procurement; Recommendation of the Council on Water; Recommendation of the Council on Public Integrity.

3 See OECD (2010), "Council Recommendation on Principles of Transparency and Integrity for Lobbying", », https://legalinstruments.oecd.org/fr/instruments/256.

4 Article 2, Right to access official documents, Council of Europe Convention on Accessing Official Documents of 18 June 2009.

5 European Parliament and Council of the European Union, "Directive 2013/37/UE by the European Parliament and Council of 26 June 2013 amending Directive 2003/98/CE on the re-use of public sector information", Official Journal of the European Union No. 175/1, 27 June 2013, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013L0037&from=FR.

6 Salvadori, M. (date unknown) *Il diritto di accesso all'informazione nell'ordinamento dell'Unione Europea* ["The right to access information in European Union law"]

7 Margherita Salvadori, *Il diritto di accesso all'informazione nell'ordinamento dell'Unione Europea*, ["The right to access information in European Union law"] http://www.evpsi.org/evpsifiles/UE-Diritto-accesso-Salvadori.pdf

8 Sweden, Constitution of 28 February 1974, Chapter II: Fundamental freedoms and rights, Article 1, available at http://mjp.univ-perp.fr/constit/se1974.htm.

9 Article 20 of the Spanish Constitution, available at http://www.derechoshumanos.net/constitucion/articulo20CE.htm.

10 Access to government documents was included in the Belgian Constitution as of 1992; Article 32 came into effect in 1995: "Everyone has the right to consult any government document and to receive a copy of it, except for those cases and under those conditions set by law, decree, or the rule set forth in Article 134".

11 Article 6: "I. All information in custody of any authority, entity or organ of the Executive, Legislative and Judicial Powers, autonomous organisms, political parties, public funds or any person or group, such as unions, entitled with public funds or that can exercise authority at the federal, state or municipal level is public. This information may only be reserved temporarily due to public interest or national security, following the law provisions for this. The principle of maximum disclosure shall prevail when interpreting this right. The obligated subjects (obligors) must record every activity that derives from their authority, competence or function, the law will specifically establish the assumptions under the declaration of inexistence of information shall proceed". Reform of Article 6 of the Political Constitution of Mexico, published in the Official Journal of the Federation on 7 February 2014, http://www.dof.gob.mx/nota_detalle.php?codigo=5332003&fecha=07/02/2014.

12 Constitutional Council, Decision No. 84-181 DC of 11 October 1984, on the law limiting concentration and ensuring financial transparency and pluralism in media companies; Decision No. 86-217 DC of 18 September 1986, on the law on freedom of communication; Decision No. 82-141 DC of 27 July 1982, on the law on audio-visual communication.

13 Constitutional Court of the Republic of Italy, Case No. 420 of 7 December 1994.

14 See Article 19, "Country Report : The Right to Information in Japan," 6 October 2015, https://www.article19.org/resources/country-report-the-right-to-information-in-japan/

15 Decision of 10-11 October 1984 by the French Constitutional Council.

16 For Norway, see the "Freedom of information Act - Act of 19 May 2006 No. 16 relating to the right of access to documents held by public authorities and public undertakings", available athttps://app.uio.no/ub/ujur/oversatte-lover/data/lov-20060519-016-eng.pdf; for Denmark: "The Danish Access to Public Administration Files Act", Act No. 572, 19 December 1985, available at: https://www.parlament.cat/document/intrade/723.

17 See the Decisions by the Supreme Court of Canada, Canada (Information Commissioner) vs. *Canada (Commissioner of the Canadian Royal Police)*, https://scc-csc.lexum.com/scc-csc/scc-csc/fr/item/2038/index.do.

18 See the Spanish government's Transparency Portal at http://transparencia.gob.es/transparencia/transparencia_Home/index/MasSobreTransparencia/Comunidades-autonomas.html.

19 For a list of conventions signed by the State Council for Transparency and Good Governance and Spanish municipalities, see: www.consejodetransparencia.es/ct_Home/transparencia/portal_transparencia/informacion_econ_pres_esta/convenios/conveniosCCAA.html.

20 See the Spanish government's Transparency Portal at http://transparencia.gob.es/transparencia/transparencia_Home/index/MasSobreTransparencia/Comunidades-autonomas.html.

21 See the Spanish government's Transparency Portal at www.gardena.euskadi.eus/transparencia/-/derecho-de-acceso-a-la-informacion-publica/#4191.

22 Supreme Administrative Court of the Czech Republic and ACA Europe (2015), "Supreme Administrative Courts and the evolution of the right to publicity, privacy, and information, Brno,

23 Secretary of the Interior (2014), *Decreto por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de transparencia* ["Decree reforming and adding several provisions on transparency to the Political Constitution of the United Mexican States"], United Mexican States, www.dof.gob.mx/nota_detalle.php?codigo=5332003&fecha=07/02/2014.

24 The Office of Government Information Services, www.archives.gov/ogis (site web).

25 Office of the Information Commissioner of Canada, www.oic-ci.gc.ca/fra/abu-ans_who-we-are_qui-sommes-nous.aspx (site web).

26 Quebec Commission for access to information https://www.oneauthor.org/

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29 Federal Ministry of Justice and Consumer Protection (2006 et 2013), "Federal Act Governing Access to Information held by the Federal Government (Freedom of Information Act)", http://www.gesetze-im internet.de/englisch_ifg/englisch_ifg.pdf.

30 FreedomInfo.org (2005), www.freedominfo.org/2005/08/german-federal-data-protection-commissioner-to-become-freedom-of-information-commissioner/.

31 As indicated, the Council on Transparency and Good Governance is the national Spanish IGAI, and it enjoys legal autonomy.

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Chapter 2. The legal nature and composition of IGAIs in OECD countries

This chapter examines the legal nature of IGAIs (single-person, collective, collegial, under the executive branch or legally independent) as well as the means of establishing IGAIs, either by appointment or by election.

The IGAIs in OECD member countries are legal entities made up of a natural person or a collegial body of individuals. Their legal nature and composition set their prerogatives and the terms and conditions for the exercise of their power. They are either public or administrative, depending on the country's institutional rules, and they are legally autonomous.

2.1. Single-person and collegial IGAIs and their autonomy

An IGAI may be composed of a single person or a collegial body, and it may be an administrative office or an autonomous agency.

2.1.1. Single person or a collegial body

A single-person institution

Under certain conditions, an IGAI may consist of a single person benefiting from the support of a government administration in the performance of his/her missions regarding the right to access to information. This is the case in Germany, Australia, Canada, Scotland, Ireland, the United Kingdom, Slovenia, and Switzerland.

IGAI's missions are sometimes entrusted to an ombudsman, an independent person responsible for reviewing citizens' complaints against the government, especially in the legal systems of Sweden, Finland, Norway, and Denmark. As the ombudsman does not form part of the government administration denying access to information and against which the complaint was filed, appealing to the ombudsman's jurisdiction is in principle beneficial. This system has proven satisfactory and has been adopted by several OECD member countries. Information Commissioners, Mediators, and Ombudsmen have been established in this way (Legrand, 2011). In Canada, the protection of freedom of access to information falls to the Information Commissioner, who has been supported by the Office of the Information Commissioner since the adoption of the 1983 law on access to information.

A single-person institution may exist at the subnational level. There are several single-person institutions in Canada that fulfil an IGAI's mission: the Information and Privacy Commissioner of Alberta, the Information and Privacy Commissioner of British Columbia, the Information and Privacy Commissioner of Saskatchewan, the Ombudsman of Manitoba, the Information and Privacy Commissioner of Ontario, the Ombudsman of New Brunswick, the Information and Privacy Commissioner of Prince Edward Island, The Review Office of Access to Information and Privacy, the Information and Privacy Commissioner of Newfoundland and Labrador, the Ombudsman and the Information and Privacy Commissioner of the Yukon, the Information and Privacy Commissioner of the Northwest Territories, and the Information and Privacy Commissioner of Nunavut[1]. The Geneva Cantonal Data Protection and Transparency Officer provides another example of a subnational, single-person institution. This person is an independent authority that reports to the president's office, and whose mission consists of overseeing the application of the law on public information, access to documents, and the protection of personal data of 5 October 2001[2].

Collegial institutions

Sometimes, a collective and collegial body is responsible for monitoring the right to access to information. Such is the case of the information access commissions in France[3],

Belgium, and Italy. These commissions ensure the proper application of the right to access information, provide opinions that represent means of recourse prior to going to court, and they may advise government administrations on implementing this right of access.

However, certain specificities can exist in some circumstances. Hence, the Quebec Information Access Commission (CAI) is a government body responsible for applying the legislation on access to information and the protection of personal information throughout the province. As a supervisory body, the CAI conducts inquiries and informs citizens about the protection of personal information and access to public information. As a judiciary body, it resembles an administrative court that hears complaints regarding the implementation of laws on the access to information and the protection of personal information. According to Quebec's law on access to information, judgements can be given in a non-collegial fashion by a single member of the commission (art. 130.2 and 139).

Aside from the collective or individual nature of the decision-making process, there appear to be few substantial differences between a single-person commissioner who has assistants and offices and a commission made up of several members. However, commission members do not necessarily work full-time, as in the case of the French and Portuguese commissions. They often devote part of their time to their professional obligations, which results in a lower number of cases reviewed or the lengthening of processing times. The tendency in Europe is towards the establishment of full-time Information Commissions that have all the appropriate human and material resources[4].

2.1.2. The independence of the IGAIs

The IGAIs may be placed under the Parliament, the executive branch (President of the Republic or Prime Minister), or be completely independent.

Independence recognised by the Constitution

Some IGAIs originate with a constitutional provision, such as the Swedish Ombudsman (Chapter 12 of the *Regeringsform*) or the Danish Ombudsman (Section 55 of the Constitution) (Legrand, 2011). In Mexico, the National Institute for Transparency, Access to Information, and the Protection of Personal Information (INAI) is also a constitutional body. This origin means that the IGAI's independence from other state authorities is particularly marked, and that the IGAI is free from the influence of the executive, legislative, or judiciary branches of government.

IGAIs as independent authorities

None of the IGAIs in OECD member countries functions as administrative departments without any legal independence. These IGAIs act as a public or independent administrative authority. The latter instance is created by the Constitution or by a law. It is often directed by a person or by a council made up of independent persons. It also has a legal personality. It is responsible for managing an area of the nation's life, and it is not subject to ministerial hierarchies. It acts on the basis of proposals, opinions, regulations, individual decisions, and penalties (Drago, 2007). The closest concept in common law is that of an "autonomous non-governmental organisation" (QUANGO).

IGAIs are authorities. In fact, they possess a certain number of powers (of recommendation, decision, regulation, and punishment). Depending on the country's legal system, they are public or administrative entities. When they are administrative entities, they act in the name of the state, and certain government responsibilities are delegated to them, such as a part of

regulatory powers. Similarly, their actions are carried out at the state's responsibility, and according to some country's legal systems, the government is responsible for their actions before the Parliament. They are independent, primarily of political power, as the regulation of access to information, collectively or individually, is incompatible with the political management of cases. Then, they are independent of the public and private actors in question. This avoids the bending of the regulation in favour of certain interests, and maintains their impartiality in arbitration and regulation. Their founding articles guarantee their independence[5].

Most IGAIs in OECD member countries conform to the definition of a public, independent administrative authority. This is particularly the case of the French, Italian, Belgian administrative commissions on access to information, as well as the Canadian and German Information Commissioners. Established with the law on the transparency of public service and access to government information, Chile's Council for Transparency also serves as an example of an independent entity. It is an independent public law entity with a legal personality and its own assets, directed by a board of four council members, and which makes collective and individual decisions. The United States' OGIS was created within the National Archives and Registers, which have been an independent agency since 1985.

The operational assignment of IGAIs

Some IGAIs are tied through their operating plan to a ministry or administrative department. This assignment does not deprive them of their independence of decision-making and action.

a) Assignment to the executive branch

IGAIs may be placed under the authority of the President of the Republic, the Prime Minister, or other ministries or administrative departments, such as the archives. Often, this is a functional connection, meaning that the IGAI's operations form part of the administrative services of a ministry, for example the Ministry of Justice. However, this does not mean that they are dependent on this ministry. The Japanese Supervisory Commission on the Communication of Information and Protection of Personal Information thus forms an independent body within the Office of the Council of Ministers. It is now part of the Ministry of the Interior and Communication since 2016.

Similarly, the Office of the Australian Information Commissioner (OAIC), which is under the direction of the Australian Information Commissioner, is a statutorily independent entity that also acts as the national authority responsible for the protection of personal data[6]. The OAIC is, for financial and administrative purposes, part of the Office of the Australian Attorney General.

b) Institutions assigned to the Parliament

In some OECD member countries, the IGAIs represent an instrument of parliamentary oversight of the government at the citizens' disposal. Their actions are undertaken according to the constitutional principle of the separation of powers and the legislature's actual capacity to monitor the executive branch (Gil-Robles et al., 1988). In this case, they are assigned to the Parliament, as in the case of Portugal's Commission for Access to Government Documents, which is established by the President of the Assembly of the Republic[7]. The same is true for a number of single-person IGAIs, such as Canada's Information Commissioner, and the Ombudsman's Offices in Sweden, Finland, Norway, and Denmark. Generally, the Ombudsman's Offices that are also IGAIs report to the Parliament, as shown by the OECD survey conducted in 2017[8].

In federal states, the IGAI may also report to the legislative branch of the federated state. Thus, in Ontario, Canada, the Information and Privacy Commissioner is an employee of the legislature[9].

2.2. The appointment and composition of IGAIs

To ensure the independence of an IGAI's decisions, its members must provide the best guarantees of ethics, independence, and competency in the relevant area of activity. However, given that these positions have a very high degree of responsibility, it is only natural that political authorities, who remain responsible before the electorate, participate in the appointment of these individuals.

2.2.1. . The composition of the IGAIs

The composition of the IGAIs is at times hardly specified in national laws, as is the case of the Japanese Commission for the Oversight of the Communication of Information and the Protection of Personal Data, which is made up of 15 experts selected and appointed by the Prime Minister from among "people of superior judgment". The composition of IGAIs generally varies quite a bit, as it may include bureaucrats, politicians, competent persons, academics, judges, members of civil society, and professionals in the domain of law and data protection. For example, the French Commission on Access to Government Documents includes judges from the Council of State, the Court of Cassation, and the National Audit Court, a deputy and a senator, a locally elected politician, a professor of higher education, a competent person, a member of the National Commission on Informatics and Freedoms (CNIL), and three competent persons from various domains[10].

In practice, the United Kingdom has an Information Commissioner who is an experienced attorney in the field of consumption, while her two deputies have worked in labour unions and local government. Ireland and Slovenia have had Information Commissioners who are journalists who worked in the field of politics and who were experienced with questions regarding freedom of the press. Hungary's Information Commissioner is an attorney and professor of political science who has worked on promoting the right to information. Lastly, Mexico's IGAI includes academics, legal scholars, and persons who have worked in the government among its Information Commissioners[11].

The composition of IGAIs generally tends to be representative of the country's citizens. For example, Belgium's Commission on Access to Government Documents (CARDA) includes, aside from its chairperson, an equal number of Francophone and Flemish-speaking members with voting powers. Furthermore, chairmanship alternates between a Francophone and a Flemish speaker[12].

Box 2.1. Composition of the Italian Commission on Access to Government Documents

The Italian Commission on Access to Government Documents is chaired by the Under-Secretary of State to the Prime Minister's Office. It is composed of:

- two senators and two deputies, appointed by the speakers of their respective chambers;
- four judges and attorneys appointed by their respective independent bodies;
- a professor who teaches legal and administrative matters, appointed by the Ministry of Education, Universities, and Research;
- the director of the entity assigned to the Prime Minister's Office who supports the Commission's operations.

Source: Article 6 (27) of Law No. 241 of 7 August 1990, as amended, www.commissioneaccesso.it/la-commissione/composizione-attuale.aspx.

2.2.2. IGAI members: obligations, rights, and qualities

IGAI members are subject to strict obligations, and they enjoy certain rights, both of which ensure the proper performance of their duties and obligations. Independence and impartiality constitute the statutory basis for the IGAIs. Provided for by the legislation and legal system of each country, they take the form of an ethics code that conditions the appointment of the members and the performance of their mandate, among other things. IGAI members are thus required to prove their dignity, subtlety, and a certain sense of honour, both professionally and personally.

IGAI members are also subject to extensive prohibitions. With the exception of the elected members of collegial IGAIs, members most often may not hold a political office, and in some countries, their terms of office are not renewable. They are often obligated to exercise the strictest discretion and confidentiality in relation to the information they come to know in performance of their duties or the deliberations in which they participate. As such, members of the Japanese Supervisory Commission on Communication of Information and the Protection of Personal Data are subject to penalties for the disclosure of information learned during their term of office, even after the end of this term.

IGAI members are often subject to an audit of their assets and potential conflicts of interest that might potentially impair the proper performance of their role. They may not receive instructions when reviewing cases, requests for opinions, or appeals. Mechanisms to guarantee an IGAI's transparency are also implemented, for example by ensuring the extensive visibility of their meetings and interviews. Under certain conditions, the greatest impartiality translates into rules that enable an IGAI member to abstain, if not recuse him/herself, from a request made by a party to the procedure, especially when the IGAI is in collegial form.

Management qualities are often demanded of IGAI members. For example, the Scottish Public Services Ombudsman must prove his/her excellent ability in handing down opinions and making impartial decisions, significant competency in terms of influence and communication, a track record of strategic leadership, and proven experience in the diffusion of the results of his/her missions.

IGAI members enjoy certain privileges and protections that shelter them from threats to which they may be subject, such as the security of tenure. For example, members of Chile's Council for Transparency are appointed by the Supreme Court at the request of the President of the Republic or of the Chamber of Deputies[13]. IGAI members may also benefit from legal or other means necessary to protect the fulfilment of their mission. Lastly, their professional status must be sufficiently respectable, especially to avoid any form of incitation to commit criminal acts.

Box 2.2. Observance of the independence and neutrality of Belgium's Commission for Access to Government Documents

Chaired by a member of the Council of State, Belgium's Commission for Access to Government Documents carries out its work in a completely independent, neutral manner. It may not receive instructions for the handling of requests for opinions or appeals.

Commission members are not authorised to participate in deliberations:

- on subjects in which they hold a direct interest, either directly or as an agent, or in which their biological or legal relatives removed up to the 4th degree hold a personal interest;
- when they have been directly implicated in the making of an administrative decision against which a request for review or an appeal has been filed.

Source: Federal Public Office of the Interior, "Presentation of the Commission", www.ibz.rrn.fgov.be/fr/commissions/publicite-de-ladministration/presentation-de-la-commission/.

Box 2.3. The Quebec Commission for Access to Information

Excerpts from the ethics code of its members

Section I: General provisions

1. The member must observe the ethics rules set forth in the Law on Access to the Documents of Public Bodies and the Protection of Personal Information (RLRQ, c. A-2.1) and in this code.

Section II: Members' duties of office

1. The member fulfils his/her duties with care, dignity, and integrity.
2. The member fulfils his/her duties in full independence and free of any interference.
3. The member must be expressly and objectively impartial.
4. The member shows his/her respect of and courtesy towards persons who come before him/her while exercising the authority required for the proper conducting of the hearing.
5. The member preserves the Commission's integrity and defends its independence in the higher interest of justice.
6. The member conscientiously and diligently performs his/her duties of office.

7. The member respects the confidentiality of the deliberated matter.
8. The member must observe the confidential nature of the information he/she obtains and discretion about what he/she learns in performance of his/her duties.
9. The member takes the necessary steps to maintain and improve his/her knowledge and abilities needed for the fulfilment of his/her duties.

Section III: Members' general duties

1. Members refrain from situations of conflicts of interest or ones likely to impair the dignity of his/her office or to discredit the Commission.
2. Members show reserve and prudence in their public conduct.
3. Members show political neutrality and do not engage in any political activities of a partisan nature that is incompatible with the fulfilment of his/her duties.
4. Members disclose all direct or indirect interests to the Commission's Chair that they hold in an enterprise that is likely to create a conflict between their personal interests and their duties of office.
5. Members may hold non-remunerative roles in not-for-profit organisations as long as these do not compromise their impartiality or the fruitful fulfilment of their duties.
6. The following are nevertheless incompatible with the fulfilment of their duties:

1° Soliciting or receiving gifts, unless these activities are related to community, school, religion, or family that do not compromise the other duties set forth in this code;

2° Associating his/her status as Commission member with the activities mentioned in paragraph 1;

3° Participating in organisations likely to be involved in a matter brought before the Commission.

Source: Quebec Commission on Access to Information, "Member's Ethics Code", www.cai.gouv.qc.ca/a-propos/code-de-deontologie-des-membres/.

2.2.3. The procedures for appointing IGAI members

An IGAI's rules for designating, appointing, or electing members vary from one institution to another and largely follow those of the country's federal or unitary organisation, the parliamentary or presidential nature of the regime, and its institutional traditions. Chile's Council for Transparency is staffed with four directors appointed by the President of the Republic upon approval by two thirds of the members of the Senate in office. In Germany, the Federal Data and Information Protection Commissioner is appointed by the federal government. The Scottish Public Services Ombudsman is appointed by the Scottish Parliament[14]. The Council of Ministers appoints the Canadian Information Commissioner after consulting the head of each recognised party in the Senate and House of Commons and after their approval through a resolution adopted with a simple majority by both chambers[15].

Sometimes the appointment procedure begins with a call for applications, as in the case of the Scottish Public Services Ombudsman. Generally, the selection procedure must be transparent, open, and participatory, and it must result in the appointment of a person free

of political influence who enjoys the support of civil society and who is able to win the public's trust. The selection process often involves public hearings and the drafting of a restricted list of candidates. For its part, members of the CAI from Quebec are named by the National Assembly on the basis of a list of candidates that have been declared eligible following a selection process as specifically provided by a provincial regulation.[16]

Table 2.1. Composition and appointment of the Belgian Federal Commission on the Access and Reuse of Government Documents

President + substitute	Appointed from among members of the Council of State at the proposal of its First President	
Secretary + substitute	Appointed from among members of the Federal Public Service (SPF) of the Interior, at the proposal of the Minister of the Interior	
Other members + substitutes	Four particularly competent members in government publicity, appointed at the Prime Minister's proposal: two members appointed from among Level A bureaucrats in the state's centralised or decentralised public services; the two other members are not bureaucrats	Four particularly competent members in the reuse of information held by a public authority, appointed at the Prime Minister's proposal: two members appointed from among Level A bureaucrats in the state's centralised or decentralised public services; the two other members are selected from outside the members of the public service

Source: Schram, F. (undated) "The Commission on the Access and Reuse of Government Documents". http://www.ibz.rrn.fgov.be/fileadmin/user_upload/fr/com/publicite/avis/2017/AVIS-2017-60.pdf

Notes

1 Please refer to the list of Information and Privacy Commissioners and Ombudsmen of the Provinces of Canada, https://blood.ca/sites/default/files/privacycommissionerombudsman-fr.pdf.

2 Republic and Canton of Geneva, "Cantonal Data Protection and Transparency Officer", https://www.ge.ch/ppdt/

3 Their area of action and the means at their disposal are defined in Article 20 of the Law of 17 July 1978. Their mission is to "monitor the observance of the freedom of access to government documents and public archives, as well as the application of Chapter II regarding the reuse of public information".

4 The Right to Information, "Information Commission/ners and Other Oversight Bodies and Mechanisms", www.right2info.org/information-commission-ers-and-other-oversight-bodies-and-mechanisms.

5 Parliamentary Office for the Evaluation of Legislation (2006), "Independent administrative authorities: evaluation of an unidentified legal object", French Senate, www.senat.fr/rap/r05-404-1/r05-404-12.html.

6 www.oaic.gouv.au/about-us/

7 *Comissão de acesso aos documentos administrativos*, www.cada.pt (site web).

8 Among the ombudsman's offices that responded to the OECD survey, and which are also IGAIs, 70% are appointed by the Parliament, address reports on their work to it, and are financed by it. Source: responses to the OECD survey on the Role of Ombudsman Institutions in Open Government, 2017.

9 Law on access to information and the protection of privacy, L.R.O. 1990, C. F.31, Art. 4 (1).

10 Article L 341-1 of the Code of Relations between the Public and the Government.

11 See: The Right to Information, "Information Commission/ners and Other Oversight Bodies and Mechanisms", www.right2info.org/information-commission-ers-and-other-oversight-bodies-and-mechanisms.

12 See Schram, F. (undated) "The Commission on the Access and Reuse of Government Documents", www.juritic.be/pages/CARDA.pdf.

13 *Consejo para la transparencia*, http://200.91.44.244/consejo/site/edic/base/port/inicio.html (site web).

14 See the Scottish Parliament, "Parliament to nominate new Public Services Ombudsman", www.parliament.scot/newsandmediacentre/103367.aspx.

15 Government of Canada, Law on access to information, L.R.C. 1985, C. A-1, Art. 4 (1).

16 Regulation on the selection procedure of qualified candidates to be nominated to become members of the access to information commission (A-2.1.r.5), http://legisquebec.gouv.qc.ca/fr/ShowDoc/cr/A-2.1,%20r.%205/

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Legrand, A. (2011), *Ombudsmän nordiques et Défenseur des droits* ["Nordic Ombudsmen and Defenders of Rights"], *Revue française d'administration publique* ["French Review of Public Administration"] 2011/3 (no. 139), pgs. 499-506, www.cairn.info/revue-francaise-d-administration-publique-2011-3-page-499.htm.

Chapter 3. An IGAI's mission

This chapter examines in detail the general missions of IGAIs, and all aspects concerning individual or collective requests made to IGAIs seeking their ruling on a partial or total refusal to communicate information.

As set forth in the introduction to this report, some IGAIs only monitor the dissemination of information, while others also guarantee the protection of personal data. Lastly, some IGAIs fulfil these two missions together with other, various missions concerning the general protection of the citizenry. For example, the French, Italian, and Portuguese Commissions for Access to Government Documents are only responsible for access to government documents. The United Kingdom's Information Commissioner and the German Federal Commissioner for Data Protection and the Right to Information ensure both the review of appeals involving refusals to communicate a document and the protection of personal information. This model has been replicated in Estonia and Slovenia. The duties of the Scandinavian Ombudsman Institutions extend well past access to information; they handle a great variety of administrative disputes, for example regarding the government's invasion of people's privacy or social questions.

However, in some countries with a high degree of specialisation of IGAIs, we can see a rapprochement between authorities responsible for the right to access information and those responsible for protecting personal data. Thus, the Italian law prescribes that if a request to access information is refused for reasons concerning the protection of personal data, the Commission for Access to Government Documents must, before ruling on the appellant's request, request opinions and observations from the Guarantor Authority for the Protection of Personal Data. In France, the Law for a Digital Republic adopted on 7 October 2016 provided for the rapprochement of the National Commission on Informatics and Freedoms (CNIL) and the Commission for Access to Government Documents (CADA). Henceforth, the presidents of the two institutions are members of both bodies. Moreover, the CNIL and CADA may meet as a single body at the joint initiative of their presidents, whenever a subject of common interest justifies this.

By focusing on the right to access information, we can distinguish between an IGAI's general missions and the one related to the processing of individual or collective requests for access to information.

3.1. The general missions of IGAIs

The general missions of IGAIs can be categorised as the instigation and coordination of government action to promote access to information, the general monitoring of the law's performance, the formulation of opinions, recommendations, and advice, and informing the public. These missions are fulfilled when the IGAI is called upon a matter, or at its own initiative.

3.1.1. The instigation and coordination of government action to promote access to information

Many IGAIs instigate and coordinate government action to promote access to information. In particular, these institutions provide support to those entities subject to the proactive dissemination of information. The Italian Commission on Access to Information ensures the observance of the principles of "publicising" and communication in relation to the government's work[1]. The Australian Information Commissioner promotes the knowledge and understanding of the 1982 law on freedom of information and its purpose, and he/she helps the bodies named in Article 8E of this law to disseminate the information[2]. The Office of the Canadian Information Commissioner encourages federal institutions to communicate requested information systematically and to observe citizens' rights to request and receive information in the name of transparency and accountability. It advocates continuously for increased access to information through targeted initiatives, such as the Right to Know

Week, and a constant dialogue between citizens, the Parliament, and federal and provincial institutions[3].

3.1.2. The general oversight of the law's application

Some IGAIs have a mandate to oversee the application of legislation on access to information, like the Quebec Commission for Access to Information, which conducts inquiries at its own initiative or upon receiving a complaint. The inquiries specifically seek to determine whether a practice or conduct by an enterprise or body subject to the law is complying with this law. The Commission also enjoys powers of inspection and reviews requests filed by individuals or bodies that wish to receive the personal information of individuals without their consent for study, research, or statistical purposes. When the Commission approves a request, it issues an authorisation accompanied by conditions to guarantee the protection of the personal information and which regard the communication, conservation, utilisation, or destruction of this personal information.

3.1.3. Opinions, recommendations, and advice

To facilitate the application of legislation on the right to access information, the law authorises IGAIs to formulate opinions, recommendations, and advice to public authorities and all individuals concerned by the law's application.

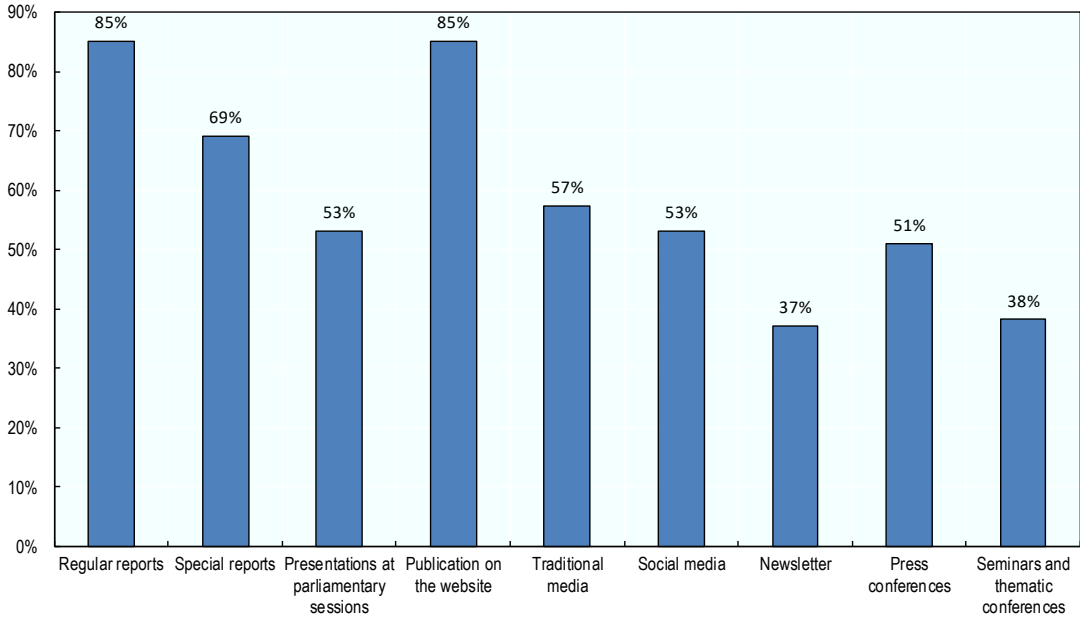
To this end, the Scandinavian Ombudsman Institutions have a general power to propose legislative reforms. The Italian Commission on Access to Government Documents is responsible for proposing potential modifications and amendments to laws and regulations related to the full implementation and enactment of the right to access government records and documents. France's Commission on Access to Government Documents proposes all modifications of texts that it considers useful[4]. It also advises "the authorities… on all matters concerning… this law and pursuant to Title I of Book II of the French Assets Code". At the subnational level, the Quebec Commission on Access to Information provides opinions on the protection of personal information or on access to information in relation to draft laws or regulations, planned communications of personal information, information system plans, or various administrative projects[5].

3.1.4. Informing the public

IGAIs are authorised to produce studies and reports, and to formulate general observations and proposals for action. For example, the Italian Commission on Access to Information issues an annual report on the transparency of the government's work that it sends to the Parliament and the Prime Minister. This document contains an analysis of the main opinions and advice issues and a summary of the Commission's work. It also contains a selection of the main issues it confronted in its interpretation of legal provisions governing access to government documents. France's Commission on Access to Government Documents issues a public report on a particular issue covering several years. IGAIs make every effort to ensure the optimal dissemination of their reports, which can be accessed on their websites.

Lastly, IGAIs organise or participate in colloquia and trainings on the right to access information, domestically and abroad, in collaboration with international organisations on these matters. These activities are often open to public officials, sector professionals, and journalists interested in this topic. In particular, Ombudsman institutions that also act as IGAIs use multiple communication channels to publicise their decisions and recommendations.

Figure 3.1. Communication channels used by Ombudsman institutions



Source: OECD (2017), Responses to the OECD questionnaire on the Role of Ombudsman Institutions in Open Government.

3.1.5. Referrals to IGAIs and the Right of Initiative

Depending on the law, an IGAI's missions are carried out either at its own initiative or at the request of the interested party. In the general domains of their jurisdictions, IGAIs often have a right of initiative to formulate their observations.

Thus, Belgium's Commission on Access to Government Documents is authorised to issue opinions on the general application of the law on government publicity. It may also submit proposals to the legislature for the law's application and revision[6].

Thus, Ombudsman institutions have the power to propose legislative reforms (Bousta, 2007). This power is often coupled with the power to present legislative proposals directly, without going through the government.

Box 3.1. An example of an IGAI's presentation on its website: Chile's Council for Transparency (excerpts)

The Council for Transparency is an independent, public law entity with its own legal personality and assets, created by the law on the transparency of public service and access to government information of 20 August 2008. It seeks to promote transparency in public service, ensure the observance of the rules on transparency, and to guarantee the right to access information.

The Council for Transparency's board of directors

The board of directors has four members appointed by the President of the Republic upon approval by two thirds of the members of the Senate. The board of directors is responsible for directing and managing the Council for Transparency.

Who are the directors, and how are they elected?

Directors are elected for a term of six years, which can be renewed only once. They may be revoked by the Supreme Court at the request of the President of the Republic or the Chamber of Deputies.

What happens if I do not receive a response to my request to access information by the deadline?

You may file a complaint with the Council for Transparency.

And if I am refused information in an irregular manner, what can I do?

You must file a complaint with the Council for Transparency. If there is no Council representative in your region, you may do so via the governorship. You must file your complaint within 15 days of the refusal of access to information, indicate the breach committed, and attach all pieces of supporting evidence.

If am refused information due to exceptions to access to information provided for by law, may I file a complaint with the Council anyway?

Yes, you may consult the Council if you think that there is an error in qualification by the public service.

How does the Council for Transparency process complaints?

The Council notifies the complaint to the state entity in question. The responsible authority or its management may present its defence or observations within ten business days. Five days later, the Council will publish its resolution.

What happens if the Council for Transparency decides that the information must be transmitted to the requesting person?

The Council sets a reasonable timeframe for the transmission, and it may open an administrative inquiry within the state body to determine whether there has been an infraction.

What are the penalties in case of an unjustified refusal to communicate information?

A department head who unjustifiably refuses access to information will be subject to a fine between 20% and 50% of his/her remuneration. If the authority persists in its attitude, the fine will be doubled and the agent may be suspended for five days.

What can I do if the Council decides that it is not appropriate for the information to be communicated?

The concerned party may file a complaint of illegality with the appeals court holding jurisdiction. This party has 15 calendar days to file following the notification of the Council's resolution.

Source: Chilean Council for Transparency, www.consejotransparencia.cl/que-es-el-cplt/consejo/2012-12-18/190048.html (website).

Box 3.2. The legislation implemented by the United Kingdom's Information Commissioner (excerpts)

The **Data Protection Act 1998** (DPA) gives citizens important rights including the right to know what information is held about them and the right to correct information that is wrong. The DPA helps to protect the interests of individuals by obliging organisations to manage the personal information they hold in an appropriate way.

The **Freedom of Information Act 2000** (FOIA) gives people a general right of access to information held by most public authorities. Aimed at promoting a culture of openness and accountability across the public sector, it enables a better understanding of how public authorities carry out their duties, why they make the decisions they do and how they spend public money.

The **Privacy and Electronic Communications Regulations 2003** (PECR) support the DPA by regulating the use of electronic communications for unsolicited marketing to individuals and organisations, including the use of cookies.

The **Environmental Information Regulations 2004** (EIR) provide an additional means of access to environmental information. The Regulations cover more organisations than the FOIA, including some private sector bodies, and have fewer exceptions.

The **Infrastructure for Spatial Information in the European Community Regulations 2009** (INSPIRE) give the Information Commissioner enforcement powers in relation to the pro-active provision by public authorities of geographical or location based information.

The **Data Retention Regulations 2014** (DRR) provided the Information Commissioner with a limited supervisory role under the Data Retention and Investigatory Powers Act 2014 (DRIPA). This Act was repealed on 31 December 2016 but the ICO's duties have been carried forward to the Investigatory Powers Act 2016 (IPA). The Acts impose duties on communications service providers in respect of the retention of communications data for third party investigatory purposes where they have been issued with a notice from the Secretary of State. The Information Commissioner has a duty to audit the security, integrity and destruction of that retained data.

The **Re-use of Public Sector Information Regulations 2015** (RPSI) gives the public the right to request the re-use of public sector information and details how public sector bodies can charge for re-use and licence the information. The ICO deals with complaints about how public sector bodies have dealt with requests to re-use information.

The **Electronic Identification and Trust Services for Electronic Regulations 2016** (eIDAS) facilitate secure streamlined electronic transactions between businesses, individuals and public authorities in the EU and set out requirements that trust service providers must comply on. The ICO, as the UK's designated Supervisory Authority for eIDAS, can grant qualified status to those providers who comply with extra requirements set out in the Regulations. The ICO also has powers of enforcement.

Source: Information Commissioner's Office (2017), Information Commissioner's Annual Report and Financial Statements 2016, Wilmslow, pg. 34, https://ico.org.uk/media/about-the-ico/documents/2014449/ico053-annual-report-201617-s12-aw-web-version.pdf.

Box 3.3. Duties and powers of the persons responsible for information under Australian law (excerpts from the Australian Information Commissioner Act 2010 as in force on 1 July 2014)

Definition of information commissioner functions

The information commissioner functions are as follows:

1. to report to the Minister on any matter that relates to the Commonwealth Government's policy and practice with respect to:
2. (i) the collection, use, disclosure, management, administration or storage of, or accessibility to, information held by the Government; and
3. (ii) the systems used, or proposed to be used, for the activities covered by subparagraph (i);
4. any other function conferred by this Act or another Act (or an instrument under this Act or another Act) on the Information Commissioner other than a freedom of information function or a privacy function.

Definition of the freedom of information functions

The freedom of information functions are as follows:

5. promoting awareness and understanding of the Freedom of Information Act 1982 and the objects of that Act (including all the matters set out in sections 3 and 3A of that Act);
6. assisting agencies under section 8E of the Freedom of Information Act 1982 to publish information in accordance with the information publication scheme under Part II of that Act;
7. the functions conferred by section 8F of the Freedom of Information Act 1982;
8. providing information, advice, assistance and training to any person or agency on matters relevant to the operation of the Freedom of Information Act 1982;
9. issuing guidelines under section 93A of the Freedom of Information Act 1982;
10. making reports and recommendations to the Minister about:
11. (i) proposals for legislative change to the Freedom of Information Act 1982; or
12. (ii) administrative action necessary or desirable in relation to the operation of that Act;
13. monitoring, investigating and reporting on compliance by agencies with the Freedom of Information Act 1982;
14. reviewing decisions under Part VII of the Freedom of Information Act 1982;
15. undertaking investigations under Part VIIB of the Freedom of Information Act 1982;
16. collecting information and statistics from agencies and Ministers about the freedom of information matters (see section 31) to be included in the annual reports mentioned in section 30;

17. any other function conferred on the Information Commissioner by the Freedom of Information Act 1982;

18. any other function conferred on the Information Commissioner by another Act (or an instrument under another Act) and expressed to be a freedom of information function;

Source: Australian government (2014), Australian Information Commissioner Act 2010 as in force on 1 July 2014, Federal Register of Legislation http://www.legislation.gov.au/Details/C2014C00382.

3.2. Requests for access to information

There are three aspects to requests for access to information: first, the possibility granted by law to an identified person or group of persons to request access to information; second, the obligation of the entity required to provide this information to respond to this request, explicitly or tacitly; and lastly, if the information's communication is refused, the possibility of an appeal before the IGAI authorised to review the legality of the decision made by the entity subject to the obligation to communicate the information. This mechanism determines the IGAI's material jurisdiction over individual requests and the limits of the right to access information that this institution has the responsibility to interpret, as well as the procedures for the presentation of requests filed with the IGAI. In practice, the processing of individual requests for access to information represent a significant portion of the IGAI's activities and entails the provision of responses to the legal issues set forth below.

3.2.1. The material jurisdiction of IGAIs

IGAIs receive their jurisdiction from the legislation on access to information. They are authorised to rule on all aspects of this legislation regarding the individual or collective situations to which they are exposed. In particular, they rule on the merit of refusals to communicate information, and often, especially in Europe, on the possibility of reusing information[7].

The identification of the documents

A request to access information raises the issue of identifying the requested documents. If the request is too general, it cannot lead to the communication of the documents. The person requesting must specify and properly target any request. "A request for access is not a request for information"[8]. If a request lacks precision, to quote the terms of the Quebec Portal on Public Environmental Information, "the public authority approached asks and helps the requesting person to specify it".

The cost of access

Access to a government document should not be hindered by its cost, and free access is becoming the rule. In most countries, a document's communication does not give rise to the payment of a fee, unless the government's expenses exceed a certain threshold. The Quebec Portal for the Commission on Access to Information states that: "In principle, access to a document is free. However, fees not to exceed the cost of its transcription, reproduction, or transmission may be exacted by the body, which must indicate the approximate amount to the requesting person in advance". These expenses may include the

reproduction of a document in application of the right of use and reuse. In France, the government may charge the cost of reproduction and transmission. In Germany, the government has the right to charge for the information's communication according to fees set in a regulation. The IGAIs are responsible for reminding the relevant persons of these rules on the cost of accessing information, if necessary.

3.2.2. The limits of the right to access information

The principle

Exceptions to the right to access information and penalties for the undue communication of information vary depending on a country's laws and practices[9]. IGAIs are often asked to rule on exceptions to the right to access information. The IGAI's decision is generally based on three principles: the protection of privacy and national security; the concept of on-going matters, and; the correctness of the request. In fact, all information involving privacy and a country's national security cannot be communicated or distributed freely. Any document related to a pending court case is not freely accessible, as it could violate the impartiality and equality of Justice. Lastly, any request that fails to comply in form or in substance cannot lead to the communication of the requested document. Thus, Slovenian law provides that confidential information pertaining to public and national security, international relations, and to the state's intelligence and security activities be excluded from the right to access information. The communication of information pertaining to business secrets, which violates the protection of personal data, or which concerns the management of archives or tax procedures is also prohibited[10].

Confidential information will not be communicated; it will be concealed or withdrawn from any document transmitted. Thus, personal information concerning any person other than the person requesting cannot be communicated. However, there are limits to the exceptions to the communication of personal information. Thus, in Quebec, the access to information law considers that some personal data are public in nature and should thus be communicable, such as the name, title, position, rank, status, work address and phone number of a member of a public body, board of directors, or personnel office, and, in the case of a ministry, a deputy minister, his/her adjuncts and staff. One may also communicate information about a person who is a party to a service agreement entered into with a public body, as well as the terms and conditions of this agreement.

Exceptions to the prohibition of communicating information and the protection of whistle-blowers

In some cases, the communication of information helps protect the legitimate interest of individuals and society as a whole. Thus, whistle-blowers must benefit from special protections. According to the results of an OECD survey, 27 of 32 responding members have specific laws or provisions to protect whistle-blowers in clearly defined circumstances, and 13 of them have a law that protects whistle-blowers in the public sector in particular (OECD, 2015).

3.2.3. The procedures for submitting a request to an IGAI

Recourse to an IGAI

There is a great diversity within OECD member countries as to the modes of recourse against a partial or total refusal of access to information, as well as to the legal provisions

that grant the right to appeal to an IGAI. Generally, when a body from which access to information was requested refuses to communicate the requested information, explicitly or tacitly, some laws, as in Italy and Japan[11], authorise the person who was refused access to file a complaint with a court or to appeal to an IGAI. Other legal systems require the person to seek recourse from an IGAI before bringing any form of legal proceeding. For example, in France, requesting persons must consult the Commission on Access to Government Documents before filing a complaint before an administrative court.

In reality though, the mechanisms for seeking recourse from an IGAI are not without their subtleties, especially given the existence of exceptional procedures. In Belgium, when a person requesting encounters difficulties in obtaining a consultation or correction of a government document as per law, he/she may send a request for reconsideration to the federal authority in question. At the same time, he/she can ask the Belgian Commission for Access and Reuse of Government Documents to issue an opinion. A federal authority may also consult the Commission.

In Finland and Sweden, a refusal of access to information may be referred to administrative courts. In Norway, a refusal may be referred to the ordinary administrative appeal body, and in Denmark, an appeal may be brought directly before the highest ordinary appeal body within the region. Iceland has a special appeals board for freedom of information, and all refusals may be referred to it directly.

In Sweden, decisions by government offices on requests for access to information are not submitted to the courts or to the parliamentary ombudsman. In Denmark, the parliamentary ombudsman and the ordinary courts may review refusal decisions. The situation in Norway is similar to the one in Denmark, except for the fact that the ombudsman cannot act if the Council of State has come to a decision. In Finland, decisions made at the highest administrative level within the state can be referred directly to the Supreme Administrative Court, and in Iceland, to the special appeals board for freedom of information. In Finland and in Iceland, the ombudsman is also authorised to review decisions made by the highest administrative levels of the state (Jørgensen, 2014).

In some countries, seeking recourse from an IGAI represents a "trigger" that automatically results in the government's communication of the information, and it appears to the government that this recourse testifies to the persistence of a person requesting who is also willing to go before the court holding jurisdiction, if necessary. Hence, the large number of requests that give rise to a "no objection" ruling by the IGAI. The French Commission for Access to Government Documents finds that many documents are communicated to people requesting after they seek recourse, but before the Commission rules on the request (Leclerc, 2011).

The investigation of the request and the decision-making procedure

An IGAI's investigation procedures vary greatly, and there is a strong distinction between Ombudsman's institutions and other IGAIs. Nordic Ombudsman's institutions in fact have great freedom in their modes of action. They conduct their inquiries according to their own opinions and following their own methods, in an informal manner. This flexibility of action emblematises the diversity of the regulations of reference for government control. The essential originality of the Ombudsman's institution resides in the concordance between its outsider position in relation to the government and its right to obtain large quantities of information from this same government administration.

In other OECD member countries and in the case of collegial IGAIs, the procedure is much more rigid. For example, the Commission for Access to Government Documents in France meets most often in plenary form, with six members (a judge from the Court of Cassation, a judge from the Supreme Audit Court, a parliamentarian, a senator, a local, elected political official, a professor of higher education, and a qualified member of the National Commission on Informatics and Freedom) and three qualified persons working in various fields (archives, prices and competition, and the public dissemination of information). The government commissioner may make oral observations[12]. The reduced formation responsible for inflicting penalties involving the reuse of public information has three members who must not have any conflicts of interest in relation to the matter at hand. The operating rules have been set to take into account the punitive nature of the procedure[13].

The judicial section of Quebec's Commission for Access to Information acts mainly in relation to requests for review and recourse provided in the law on access to public documents, requests for reviews of disagreements, or appeals provided for in the law on protection in the private sector. These requests are based on citizen dissatisfaction with a decision on requests for access to information or correction made to public bodies and enterprises. Administrative courts generally hold hearings during which the parties have the opportunity to present their arguments. The judicial section also acts before the hearings to ensure that the parties are able to present their arguments or to resolve specific issues in the processing of cases. Lastly, it provides the parties with a voluntary, confidential mediation procedure, which seeks the amicable settlement of cases. Whenever circumstances allow, this procedure leads parties to reach an understanding and close the case by withdrawing the request or any other opinion indicating that there is no longer an appeal[14].

The procedure before the Italian Commission on Access to Government Documents is quite rapid, and it ensures the following of a procedure in the presence of all parties by informing them all of the matter. The Commission's meetings are not public. Parties may appeal directly to the Commission, without any legal representation. If the appeal is accepted, the Commission asks the government administration that it ruled against to review the refusal decision and to grant access to the requested documents. The filing of an appeal before the Commission suspends the timeframes for appealing to a regional administrative court. An administrative appeal is not an alternative to judicial review. In addition to issuing decisions on appeals, the Commission also ensures the implementation of the principle of the full knowledge of government activities in observance of the limits established by Law No. 241/1990, as subsequently amended[15]. It should be noted that IGAIs tend to interpret laws benevolently. Thus, the Italian Commission on Access to Government Documents agrees to some extent to review dismissed complaints to lighten the heavy load weighting on the administrative courts[16].

The nature of an IGAI's decisions

When called to rule on a request concerning access to information, IGAIs issue administrative (or public) decisions based on the communicability of information. In some situations, they are authorised to accept the partial communicability of the information[17]. In most cases, the IGAI formulates a recommendation or an opinion that is not binding on the persons subject to the obligation of communication. For example, decisions by the Japanese Commission for the Oversight of Communication and the Protection of Personal Information are not binding. Similarly, in Denmark and Norway, reports by the Ombudsman are not obligatory. France's Commission for Access to Government Documents (CADA) issues a favourable or unfavourable opinion on the document's

communication. Even in the event of a favourable opinion on communication by France's CADA, the government administration may uphold its initial refusal. In 2011, 7.3% of opinions formulated by the CADA were not followed up on (Lademann, 2010). It should nevertheless be noted that, even though IGAI opinions are not obligatory, the government, given the moral authority of these institutions and the publicity they can give to their opinions, generally respects them.

Box 3.4. Penalties for disclosing information: the example of France's National Commission on Informatics and Freedoms (CNIL)

IGAIs responsible for the protection of personal data, like France's National Commission on Informatics and Freedoms (CNIL), often dispose of powers of sanction. Penalties for the undue communication of information most often take the form of fines, the amount of which varies considerably. Any information communicated illegally, for example without the consent of its holder or the main person concerned by the information, is subject to penalties. The internet has made protecting against the undue communication of information much more difficult.

Penalties for the disclosure of information are either administrative or judicial. In France, administrative penalties inflicted on responsible persons who do not observe the law consist of a warming and a fine (except for the processing of information made by the state) up to a maximum amount of 150,000 EUR, which, in case of a repeat offense, go up to 300,000 EUR. The CNIL may also request that the procedure to process information be stopped and order the withdrawal of a previously granted authorisation. In addition to administrative penalties, a criminal court may inflict criminal penalties.

Sources: CNIL, "The CNIL's penalty procedure", www.cnil.fr/fr/la-procedure-de-sanction-de-la-cnil; CNIL, "criminal penalties", www.cnil.fr/fr/les-sanctions-penales.

IGAIs sometimes have the power to issue instructions to the government. Thus, the Italian Commission on Access to Government Documents holds a true decision-making power and is authorised to order a government administration to communicate a document, however without any power of sanction or binding force[18]. The Commission on Access to Government Documents for the Brussels-Capital Region issues an opinion when a person wishes to obtain access to a document held by an authority, and this authority refuses access to this information to this person. It also holds decision-making powers on environmental matters[19]. France's Commission for Access to Government Documents has held a power of sanction since 2005 that allows it to inflict fines only in case of a fraudulent reuse of public information. These fines can be as high as 300,000 EUR.

As an administrative court, the Commission on Access to Information in Quebec reviews decisions by public bodies following requests made by persons who were refused access to a government document or access or rectification of their personal file. In the private sector, a refusal following an access to information request or the rectification of a personal file can also be subject to a request to examine the disagreement made to the commission on access to information. Generally, the commission renders its judgement on these issues after having held hearings. The decisions handed down are public[20].

In Sweden, the refusal by a government administration or a citizen to collaborate with the Ombudsman constitutes a crime prosecutable by a criminal court in some instances. In many OECD member countries, recourse to an IGAI generally proves very effective and

avoids the clogging of courts with requests involving the right to access information. For that matter, decisions in case law serve as a reference for persons subject to the obligation of communication and help avoid some amount of litigation[21].

Box 3.5. The procedure for appealing to France's Commission on Access to Government Documents (CADA)

A person requesting access to a government document has two months from a refusal decision to appeal to the CADA. This timeframe can be disputed only if the government administration notifies the person requesting of the means of recourse against its decision. The CADA rules on whether the requested documents can be communicated or not. A request asking the CADA to rule on the refusal issued by a government administration may be sent in writing or via email. It is accompanied by a copy of the letter or email sent to the government administration, or, in absence thereof, compelling testimony in case of an oral request, to establish that there was indeed a refusal to communicate the government documents.

The CADA acknowledges receipt of the request and immediately contacts the government administration identified by the person requesting as the author of the communication refusal, to receive the documents in dispute and the reasons for the refusal. The summoned authority must, by the deadline set by the Commission's Chairperson, communicate to the CADA all documents and useful information and provide it with all necessary assistance. A secretary general records each matter in an electronic database, assigned to a rapporteur in function of his/her specialisation, and introduced in the agenda for the Commission's next meeting. As part of the investigation, the rapporteur has the ability to get in touch with the government administration, especially by phone. Commission members and rapporteurs appointed by the Chairperson may conduct any field investigations necessary to fulfil their mission. The opening of the Commission's meeting concludes the investigation. Correspondence received after this date is not taken into account.

The CADA meets twice a month, in plenary session at the authority of its Chairperson. At the Chairperson's request, summoned government administrations may participate in the Commission's work on a consulting basis for the most sensitive cases. CADA meetings are not public. Once resolved during the meeting, the person requesting and the government administration are notified of the opinion in the form of a simple letter stating the opinion and its grounds. The opinion may take several forms: favourable to the communication of the documents, favourable under certain conditions, or unfavourable.

The CADA may declare the request not applicable if the documents do not exist or if they have already been sent to the person requesting, or unacceptable if the request seeks to obtain simple information, or if it is not precise enough. The CADA may also rule that it lacks jurisdiction, for example, when access to the documents is subject to special rules. The CADA has one month from the day of the request's registration by its secretary to notify its opinion to the responsible authority and to the person requesting. However, if the Commission does not issue its opinion within the one-month deadline, this does not vitiate the correctness of the decision to refuse the communication.

Source: French Commission on Access to Government Documents, "Procedure", www.cada.fr/procedure,6150.html.

Table 3.1. Information Commission/ners and other oversight bodies and mechanisms

	Oversight mechanism structure			Powers and responsibilities of supervising agents						
	Possibility of recourse other than to a court	Types of Ombudsmen and Commission/ ners	Selection process	Establishing regulations or guidelines	Reviewing refusals	Ordering the communication of the information	Prosecuting public bodies	Training agents	Educating the public	Informing the Parliament
Bulgaria	No	-	-	-	-	-	-	-	-	-
Hungary	Yes	National authority for data protection and freedom of information	Named by the President of the Republic upon recommendation from the Prime Minister	-	Yes	Non-binding power	Cannot be a party to the proceeding	Yes	Yes	Yes
Ireland	Yes	Information Commissioner	Appointment by the President of the Republic at the Parliament's proposal	No	Yes	Yes	-	No	-	Yes
Lithuania	Only an administrative procedure	No	-	-	-	-	-	-	-	-
Netherlands	Yes	No	-	-	-	-	-	No	No	-
New Zealand	Yes	Ombudsman responsible for "ill-faith management"	Appointment by the Governor General	No	Yes	Authorised to negotiate	-	Yes, as an option	No, included in the mandate	Yes
Romania	Administrative recourse	Ombudsman with general jurisdiction	Appointment by the Parliament	No	-	No	No	No	No	-
Scotland	Yes	Information Commissioner	Appointment by Parliament, confirmed by the Crown	Yes	Yes	Yes	-	No	Yes	Yes
United Kingdom	Yes	Information Commissioner	Appointment by the Crown	Yes	Yes	Yes	-	-	Yes	Yes

United States	Only internal recourse	No federal mechanism	-	-	-	-	-	-	-	-
France	Yes	Commission for Access to Government Documents	Appointment of the Commission's Chairperson by the highest administrative court. Appointment of the other members by various entities	Yes	Yes	Non-binding power	No	-	Yes	-

Source: The Right to Information, "Information Commission/ners and Other Oversight Bodies and Mechanisms", www.right2info.org/information-commission-ers-and-other-oversight-bodies-and-mechanisms. Updated by the OECD based on information received from member countries.

Notes

1 Article 27 of Law No. 241 of 1990.

2 Australian Information Commissioner Act 2010 No. 52, 2010 as amended, Federal Register of Legislation, https://www.legislation.gov.au/Details/C2014C00382.

3 Office of the Information Commissioner of Canada, www.oic-ci.gc.ca/fra/abu-ans_what-we-do_ce-que-nous-faisons.aspx

4 Article 28 of the Decree dated 30 December 1995.

5 Quebec Commission on Access to Information, *Mission, fonctions, valeurs* ["Mission, duties, values"], www.cai.gouv.qc.ca/a-propos/mission-fonctions-valeurs/.

6 Schram, F. (undated) *La Commission d'accès aux et de réutilisation des documents administratifs* ["The Commission for Access and the reuse of Government Documents"], Instituut voor de overheid, www.juritic.be/pages/CARDA.pdf.

7 For example, in France, Article 15 of Law No. 2015-1779 of 28 December 2015 on the free nature and procedures for the reuse of public sector information provides that: "the reuse of public information is free. However, the government administrations mentioned in Article 1 may establish a reuse fee if they are obligated to cover, using their own resources, a substantial part of the costs tied to the fulfilment of their public service missions". This law was followed by the Law for a Digital Republic of 7 October 2016. These laws were adopted as a result of the European directive of 26 June 2013 on the reuse of public sector information.

8 Quebec Commission on Access to Information, www.cai.gouv.qc.ca

9 For examples of limitations to the right to access to information in a specific sector, see Cardona, F., "Balancing openness and confidentiality in the defence sector: lessons from international practice, Guides for Good Governance" No. 6/2018, Centre for integrity in the defence sector, Norwegian Ministry of Defence, http://cids.no/wp-content/uploads/2018/06/9062-DSS-GGG-6-eng-4k. October 2017.

10 Data provides by the Ministry of Public Service and the Modernisation of Government in Morocco.

11 Decisions refusing access to information may be submitted to the Japanese Commission for the Oversight of Communication and Protection of Personal Information or to District Courts ("courts with specific jurisdiction"); see: https://www.article19.org/resources.php/resource/38132/en/country-report:-the-right-to-information-in-japan.

12 Article R 341-3 of the Code of Relations between the Public and the Government.

13 Articles R 341-5 and R 341-6 of the Code of Relations between the Public and the Government.

14 Quebec Commission for Access to Information, www.cai.gouv.qc.ca/

15 *Commissione per l'accesso ai documenti amministrativi* ["Italian Commission for Access to Government Documents"], www.commissioneaccesso.it/la-commissione/funzioni.aspx (website).

16 Italian Commission for Access to Government Documents, "Report for the year 2015 on government transparency", Prime Minister's Office, www.commissioneaccesso.it/media/54980/relazione%202015.pdf.

17 French Commission for Access to Government Documents, "Modes of concealment", www.cada.fr/les-modalites-d-occultation,6233.html.

18 The Italian Commission for Access to Government Documents expressed its regret over this lack of administrative and judicial power. See: Italian Commission for Access to Government Documents

(no date), "Report for the year 2015 on government transparency", Prime Minister's Office, www.commissioneaccesso.it/media/54980/relazione%202015.pdf.

19 Belgian Commission for Access to Government Documents, http://be.brussels/a-propos-de-la-region/commission-dacces-aux-documents-administratifs

20 Quebec Commission for Access to Information, "Recourse to the Commission", www.cai.gouv.qc.ca/citoyens/recours-devant-la-commission/.

21 For example, the database of France's Commission for Access to Government Documents contains 70,000 opinions and recommendations issues. This is very helpful to government administrations and the public, who have access to 6,000 of the most representative decisions.

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Chapter 4. The functioning of IGAIs

This chapter looks at the different ways in which IGAIs work. From an institutional standpoint, it emphasises the difference between single-person and collegial entities. It then examines the human and material resources at the disposal of IGAIs, as well as the risks of saturation to which they are exposed.

The way that an IGAI works determines the effectiveness and extent of its actions, as well as its compliance with the law and citizens' expectations. To achieve these goals, IGAIs in OECD member countries often rely on a highly structured organisation and operation, and they have their own financial, human, and material resources; however, these resources are not always sufficient.

4.1. A strong organisation

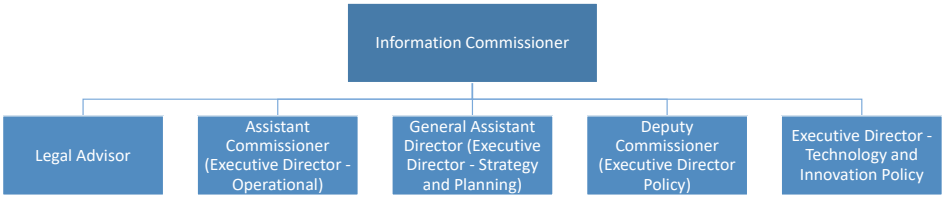
To ensure a functioning that complies with the principles of a nation based on the rule of law and good public governance, IGAIs establish stable, precise, and clear structures and modes of operation.

4.1.1. Internal organisation

Single-person institutions are organised around a representative figure, an information commissioner, or an ombudsman in most cases. This person heads an office and may be assisted by a board.

For example, the United Kingdom's Information Commissioner exercises his functions in collaboration with a team of nine directors, five of which are the principal directors (Figure 4.1). Canada's Information Commissioner has three departments: i) the Complaints Resolution and Compliance Branch, which carries out investigations and dispute resolution efforts to resolve complaints. It assesses the performance of federal institutions and conducts systemic investigations; ii) the Corporate Services Branch, which provides guidance and advice to senior management on strategic issues; and iii) the Legal Services Branch, which represents the commissioner in court cases and provides legal advice on investigations and legislative and administrative matters.

Figure 4.1. Organisational chart of the Management Board of the United Kingdom's Information Commissioner



Source: United Kingdom's Information Commissioner's Office. https://ico.org.uk/about-the-ico/who-we-are/management-board/

Box 4.1. Structure of the Information Commissioner's Office of Canada

(excerpts from the Information Commissioner's Office of Canada, "Our Structure")

The Office of the Information Commissioner of Canada has three branches: The Complaints Resolution and Compliance Branch carries out investigations and dispute resolution efforts to resolve complaints. It assesses the performance of federal institutions and conducts systemic investigations.

- The Intake and Early Resolution Unit was introduced as part of the Office's efforts to strengthen and streamline its complaints-handling process to eliminate its historical backlog of cases and to improve service to Canadians and federal institutions. It carries out the initial assessment of complaints; establishes the order of priority and prepares files for investigation; investigates more straightforward complaints, usually administrative in nature; and tries to reach a solution that satisfies both the complainant and the institution. The unit is an integral component of the Office's case management model.
- The Complaints Resolution Team is responsible for the investigation of complaints from individuals and organisations who believe that federal government institutions covered by the Access to Information Act have not complied with their access to information obligations, under the Act. This team investigates complaints submitted by complainants after April 1, 2010. Complaints may be submitted where Institutions refuse the release of information and/or apply specific and/or partial exemptions and/or exclusions under the Act. The mandate of this unit is to provide thorough, unbiased and private investigations with respect to these types of complaints.
- The Strategic Case Management Team was created in November 2008 to address the inventory of complaints predating April 1, 2008. Based on the strategies and approaches recommended by the multi-disciplinary Inventory Assessment Team struck in October 2008, complaints in the inventory are being investigated with a view to eliminating the inventory.
- The Corporate Services Branch provides guidance and advice to senior management on strategic issues.
- The Access to Information and Privacy Secretariat is responsible for processing all requests for information pursuant to the Access to Information and Privacy Acts.
- The Human Resources Unit oversees all aspects of human resources management and provides advice to managers and employees on human resources issues.
- The Information Management and Technology Unit is responsible for organising and managing a variety of services and initiatives in information management and for providing technology support and direction for the entire Office.
- The Public Affairs Unit manages the Office's external relations with the public, media, government and Parliament.
- The Strategic Planning, Finance and Administration Unit provides strategic and corporate leadership in areas of financial management, internal audit, and security.

The Legal Services Branch represents the Commissioner in court cases and provides legal advice on investigations, and legislative and administrative matters.

Source: Information Commissioner's Office of Canada, "Our structure" http://www.oic-ci.gc.ca/eng/abu-ans_our-structure-notre-structure.aspx

Collegial institutions consist of several members at the same hierarchical level who adopt decisions in a collegial manner under the direction of a chairperson. Their organisation tends to resemble that of a court.

Table 4.1. Organisational chart of the French Commission for Access to Government Documents (CADA)

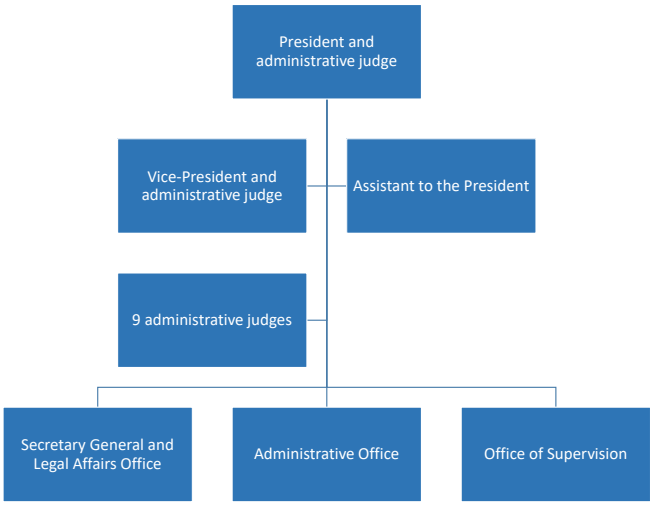
Rapporteurs	Commission	General Secretariat
A chief rapporteur Two adjunct chief rapporteurs Fifteen rapporteurs and officers	A Chairperson: 1 member of the Council of State (Presiding Judge) A judge from the Court of Cassation A judge from the State Audit Court; A deputy and a senator; A local elected official; A professor of higher education; A qualified person, member of the CNIL; Three qualified persons from different fields (archives; price and competition; the dissemination of public information). Four government commissioners (officers in the government's general secretariat)	A secretary general An assistant secretary general A director in charge of document management A communications officer Five rapporteurs Three secretaries

Source: French Commission on Access to Government Documents, "Composition", www.cada.fr/composition,6076.html. http://www.cada.fr/IMG/pdf/organigramme_sept_2017.pdf

IGAIs have administrative offices that are sometimes managed by a general secretariat, the size and organisation of which generally reflect the variety of their missions. IGAIs responsible solely for access to information are smaller and have a relatively simple organisation for their small number of staff. Thus, to the contrary, the more missions an IGAI has, the greater the personnel and the more complex the organisational charts become, and it may initially be difficult to ascertain which offices are responsible for access to information.

However, in certain IGAIs that are organised as commissions, such as the CAI in Quebec, decisions may be rendered by only one of its members.

Figure 4.2. Organisational chart of the Quebec Commission to Access to Information (July 2018)



Source: Quebec Commission on Access to Information (2017), www.cai.gouv.qc.ca/documents/CAI_organigramme.pdf..

Box 4.2. The services of the Swedish ombudsman, an IGAI with multiple missions

The Swedish ombudsman has four areas of responsibility that correspond to four delegated mediator institutions. For the preparation of cases that arise from complaints or are initiated by the Ombudsmen and in connection with consultation documents regarding proposed legislation, the Ombudsmen are assisted by a Head of Secretariat and supervisory departments consisting of Heads of Division, Senior Legal Advisors and Legal Advisors. Each supervisory department has its own bureau to deal with its cases.

To carry out the tasks incumbent on a national preventive mechanism pursuant to the Optional Protocol of 18 December 2002 to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), the Parliamentary Ombudsmen are assisted by a special unit, the OPCAT unit. This comprises a Head of Unit and Legal Advisors.

The Chief Parliamentary Ombudsman is assisted by an administrative department that comprises a unit for human resources, finance, premises and IT issues, a unit for registration and archives as well as a Public Relations Manager and an International Coordinating Director. The unit for human resources, finance, premises and IT issues is headed by the administrative director. This unit employs staff for financial and human resources management, administrative assistants and cleaning staff.

The unit for registration and archives is headed by the Head of Division responsible for registration and the archives. This unit employs a chief registrar, registrars and receptionists.

Source: Riksdagens Ombudsmän, "Administrative Directives", www.jo.se/en/About-JO/Legal-basis/Administrative-directives/.

4.1.2. Formal decision-making

Depending on the different traditions and legislations, IGAIs enact procedures with varying degrees of formality for the introduction, revision and decision of cases regarding access to information, for both general matters and cases concerning one or more individuals. To ensure the quality and impartiality of their decisions, the decision-making procedure adopted by IGAIs, especially those in collegial form, often resemble that of a court. The decision-making process is based on the following principles:

- The rules for an IGAI's operation is based on the legislation that concerns it directly, as well as from other relevant legislation.
- The IGAI has its own internal operating regulation (IGAI internal regulation, ethics code, internal regulation of the decision-making body).
- The meetings of an IGAI's decision-making body follow an agenda announced in advance by the responsible authority; a secretary prepares the meeting documents; the chairperson ensures the oversight of the work; a voting regulation is applied; a register of resolutions is kept, and; a person is appointed in charge of enforcing a decision.
- As regards IGAI decisions on individual matters, the procedure can be either written[1] or oral, and is often adversarial, which means that each party is entitled to be informed of the arguments and documents exhibited by the other party, and that the IGAI's decision can only be based on the exhibits that all the parties know. Depending on the legal traditions, the procedure resembles either an inquiring procedure (where the IGAI directs the investigation) or an accusatory one (where the person requesting and the entity subject to the obligation to provide access to information hold the same status, and the IGAI's role is limited to arbitrating the litigation between the two parties).

Box 4.3. The decision-making procedures of the French Commission on Access to Government Documents (CADA)

France's CADA has two deliberation formations, while all decisions are adopted by a majority of those members present:

- In plenary form (general cases): six members establish a quorum. The government commissioner may make oral observations.
- In limited form (penalties for the reuse of public information): the quorum is established by three members, who must not have any conflict of interest as regards the matter at hand. The operating rules for this formation take into account the procedure's punitive nature.

Since the entry into force of the Law for a Digital Republic, the Commission may delegate the exercising of some of its attributions to its chairperson. To ensure the CADA's operation, the chairperson relies on rapporteurs, whose work is coordinated by a chief rapporteur and two assistant chief rapporteurs. A government commissioner appointed by the Prime Minister sits on the Commission and participates in its deliberations. In fulfilment of its mission, the CADA relies on a general secretariat, whose officials (currently 14 in number) come from the Prime Minister's offices.

Source: French Commission on Access to Government Documents, "Composition", www.cada.fr/composition,6076.html.

4.2. Financial, human, and material resources

IGAIs are independent in their management, and they have their own financial and human resources; however, the perceptible increase in the workload of some IGAIs creates the danger that they are not always able to fulfil their mission under the terms and conditions provided for in the legislation.

4.2.1. Independent management

IGAIs in OECD member countries enjoy a large degree of independence in their management. In the case of single-person institutions, the person heading the institution directs its offices. For example, the German Federal Information Commissioner directs his offices independently and decides on their work. In the case of collegial body institutions, the decision-making power falls to the member heading the body, most often the institution's chair or director. For example, the chairperson of Chile's Council for Transparency is in charge of recruitment and the Chairperson of France's Commission on Access to Government Documents is the main person in charge of the Commission's expenses; hence, he disposes of a general budget that he uses according to the needs of the institution he directs[2].

Box 4.4. The roles and responsibilities of the Chairperson of the management board of Chile's Council for Transparency

The chairperson of the management board is the legal representative of the Council for Transparency. He/she specifically exercises the following roles and responsibilities:

- ensuring the observance and implementation of management board resolutions;
- planning, organising, directing, and coordinating the Council's work in accordance with the directives imparted by the management board;
- establishing the internal regulation to ensure the Council's proper functioning, with the agreement of the management board;
- recruiting and dismissing Council personnel in accordance with the law;
- ensuring the implementation of any other decision and entering into the necessary conventions for the fulfilment of the Council's missions;
- delegating specific powers or responsibilities to Council members;
- exercising any other role or responsibility delegated to him/her by the management board.

Source: "Digital Law 20.285: On Access to Public Information", viewable on the website of the National Congress Library of Chile, www.leychile.cl/Navegar?idNorma=276363&idVersion=2016-01-05.

4.2.2. Financial and human resources

An IGAI's financial resources come from the public authorities to which they belong (states or intra-state entities), and they are subject to public law budget rules. Thus, the Minister of Finance proposes the budget of the Irish Information Commissioner that is then adopted by the Parliament. The budget of the Hungarian National authority for data protection and

freedom of information is approved by the Parliament, and constitutes a separate line item in the state budget. The United Kingdom's Information Commissioner files a request before the Ministry of Justice, which then allocates credits to it in the budget approved by the Parliament. The Commissioner must also prepare an annual report and financial statements[3]. In collaboration with the Ministry of Justice, he prepares a management and financial report in a document that contains the rules and recommendations tied to the exercise of his roles, responsibilities and powers, the attribution of funds placed at his disposal by the public authorities, the presentation of his report to the Parliament, and his relations with the Ministry of Justice.

The budgets allocated to IGAIs vary to a significant degree in function of their missions, size, and the specific situation of each state or intra-state entity. The budget of the Belgian Commission on the Access and Reuse of Government Information and that of the Federal Appeals Commission for Access to Environmental Information is zero, but the two bodies receive funds placed at their disposal by the federal government[4]. The budget of the Portuguese Commission on Access to Information was 782,400 EUR in 2017[5]. The budget of France's Commission on Access to Government Documents in 2017 covered mainly the salaries of the 14 FTE agents, which brought the personnel expenditures to almost 1.2 million EUR out of a total budget of 1.4 million EUR. The means of this institution's operation are handled by the Department of Administrative and Financial Services in the Prime Minister's Office. Expenses other than for personnel (Title II), namely the operating expenses, totalled 255,957 EUR. They mainly involve the maintenance of the website and the reprogramming of the IT programme SALSA (Rabault, 2016). In the fiscal year 2016-17, The Australian Office of the Information Commissioner received 10,618 000 AUD (equal to roughly 6,972,440 EUR) from the federal budget to employ an average of 71 persons. At 30 June 2017, it had 74.37 full-time equivalents (FTE), including permanent and temporary employees (OAIC, 2017).

The United Kingdom's Information Commissioner employed 500 people during the 2016-2017 period, and the state's funding totalled 3,750,000 GBP; the fees earned during this same period totalled 19,729,000 GBP. Total expenditures during the period totalled 4,504,000 GBP (ICO, 2017). The offices of the Finnish Parliamentary Ombudsman employ 63 people (including the staff of the Human Rights Centre). Five of them are responsible full-time for ensuring access to information, four work in the clerk's office, and one person manages the ICT. The internal regulation of the Parliamentary Ombudsman's Office also provides that access to information and the processing of requests and all related activities constitute an integral part of each employee's duties.

The total budget for 2017 was 5,608,000 EUR. Since 2016, the Parliamentary Ombudsman's Office has had a new system for the electronic processing of cases, the results of which have been judged satisfactory. The Office processes approximately 5,000 complaints per year. All complaints received via post are recorded in the system and processed electronically. The costs of this system total 13,000 EUR per year[6]. The budget of subnational IGAIs, such as the Quebec Commission on Access to Information or the IGAIs of the autonomous Spanish governments, are financed by the government entity to which they belong. The Quebec Commission on Access to Information had 63 employees in 2012 and 58 in 2016, and its budget grew from 5.98 million CAD in 2016-17 to 6.10 million CAD in 2017-18.

The laws of each country determine the labour regulations that apply to the IGAI's personnel. Some, like France's Commission on Access to Government Documents, employ public officials and agents. Others, like Chile's Council for Transparency, employ private

law agents who are sometimes subject to specific obligations in view of the IGAI's missions.

The compensation of IGAI personnel is an expense of an administrative nature. For example, the German Federal Information Commissioner earns the salary of a federal official of an equivalent rank, and his situation is similar to that of a public agent. In Ireland, the Information Commissioner's salary is the same as that of a High Court judge. Members that sit on an IGAI who mainly exercise another profession are sometimes compensated for their work according to their shifts (for handling cases and attending meetings, for example).

Box 4.5. Resources and expenses for the United Kingdom's Information Commissioner

- Subsidies

The Information Commissioner's Office is financed with "grant in aid", which totalled 3,750,000 GBP in 2015-16 and 2016-17.

- Fees

Data protection activities are financed by fees collected from data controllers who have to notify their processing of personal data under the DPA. The annual fee is £35, unchanged from its introduction in 2000. It applies to charities and small organisations with fewer than 250 employees. In 2009, a higher fee of £500 was introduced for larger data controllers as those with an annual turnover of £25.9 million or more and employing more than 250 people. For public authorities employing more than 250 people the fee is also £500.

Fees collected in the year totalled 19,729,000 GBP (2015-16: 18,311,000 GBP); a 7.7% increase on the previous year.

Expenses during the fiscal year 2016-17 totalled 4,504,000 GBP (compared to 5,255,000 GBP for the previous year).

Source: Information Commissioner's Office (2017), Information Commissioner's Annual Report and Financial Statements 2016/17, Wilmslow, Cheshire, https://ico.org.uk/media/about-theico/ documents/2014449/ico053-annual-report-201617-s12-aw-web-version.pdf.

Box 4.6. The legal status of the staff of Chile's Council for Transparency

The Council's personnel is subject to the Chilean Labour Code. It is also subject to the rules of probity set forth in the Law on Probity in Public Service and the Prevention of Conflicts of Interest, and the provisions of Title III of Law No. 18.575 on the constitutional organisation of the general bases of the state's administration. A specific clause about these legal obligations is included in the employment contracts.

Persons holding a management role within the Council are selected through a public call for applications launched by the government, in accordance with the rules for recruiting management personnel.

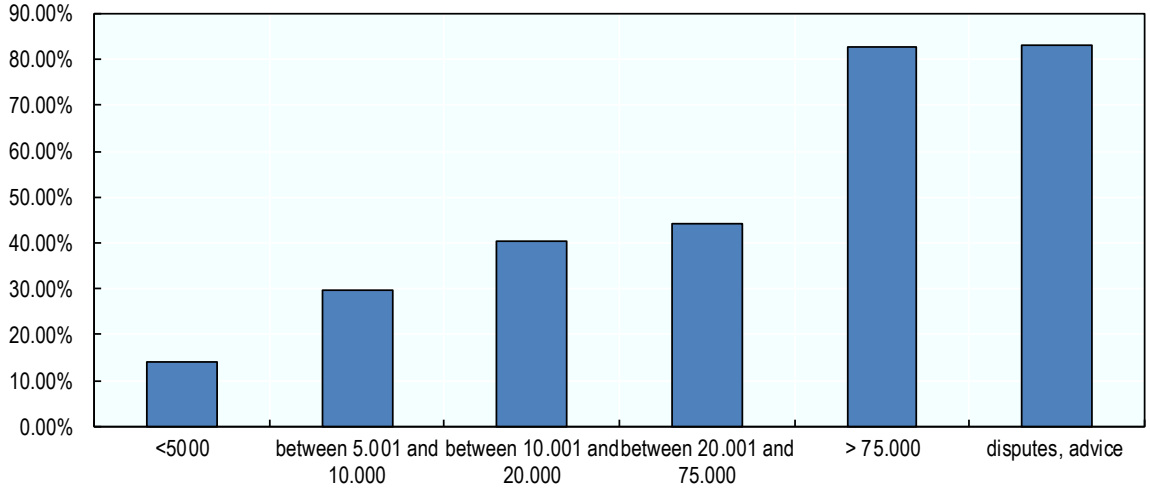
Source: Article 43 of Law No. 20.285: On Access to Public Information, viewable on the website of the National Congress Library of Chile, https://www.leychile.cl/Navegar/?idNorma=276363&idParte=0

4.2.3. The risk of exceeding IGAIs' capacities

A number of countries have seen an increase in requests to access government documents. For example, statistics for the United States government on FOIA show a marked increase in the number of requests, which went from 600,000 in 2010 to almost 800,000 in 2016.[7]

This marked increase in requests for access to information can also be seen at the subnational level. For example, the city of Montreal received more than 17,000 requests in 2016, which results in an average response time of 22 days, and which can be as long as 50 days[8]. The requests concern all local sectors of activity, especially in the case of Spanish local government entities (see Figure 4.3 below).

Figure 4.3. Requests for access to information processed by Spanish local government entities



Source: Campos Acuña, C., "The role of public administrations in access to information: subnational governments and access to information", Contribution to the OECD regional workshop on access to information held in Caserta on 18 December 2017.

The increase in the number of refusals to access information, explicit or tacit, is often related to the number of appeals to IGAIs. The Spanish Council for Transparency and Good Governance (the Spanish government's IGAI) thus received 844 appeals during the first eight months of 2017, which represents 8.33% of all requests to access information (see Table 4.2). The French and Portuguese Commissions on Access to Government Documents have also recorded a constant increase in requests for access to information (see Table 4.3 and Diagram 4.4). In 2015, the French institution recorded 7,222 appeals and issued 5,591 opinions and 227 recommendations, while 1,404 cases remained to be investigated.9 It processed 6,606 cases in 2016, provided 5,214 opinions and 273 recommendations, of which 56.8% were favourable to the persons requesting. The average processing time was 58 days in 2015 and 69 days in the first quarter of 2016.[10] This increase is likely to lead to the institution exceeding its processing capacities, as noted in the reports by the French Commission on Access to Government Documents for the years 2015 and 2016.[11]

Table 4.2. Exercise of the right to access to information in Spain from January to August 2017

Processing of information requests		
Total number of information requests	10.958	
Number of completed requests	10.365	94,59%
Number of ongoing requests	576	5,26%
Number of requests subject to "administrative silence"	17	0,16%
Submission format of requests		
Electronic communication (via "CI@ve")	9.558	87,22%
Paper	1.400	12,78%
Types of resolutions (completed requests)		
Access granted	6.983	67,37%
Not accepted	2.454	23,68%
Refusal	337	3,25%
Retraction and other forms of completing the processing	591	5,70%
Administrative appeals to the CTGG (until 31 August 2017)		
Number of complaints filed with the CTGG	844	8,33%

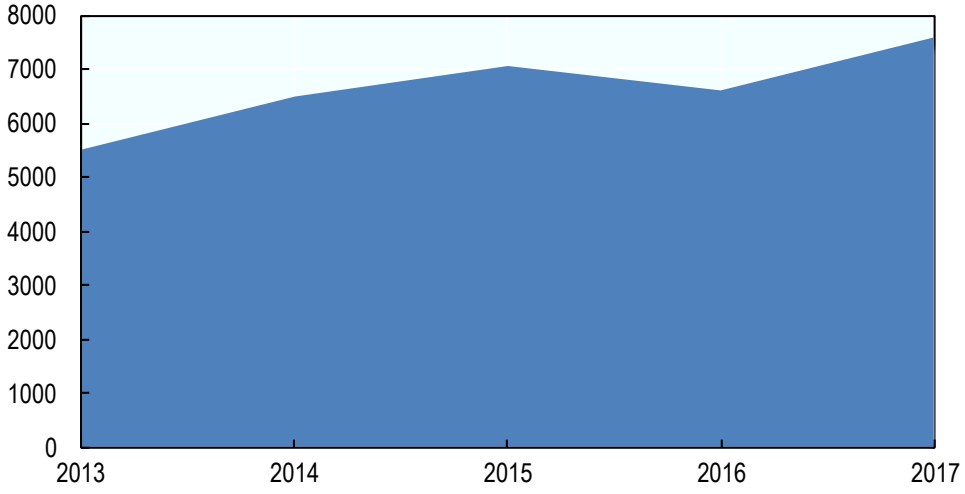
Note: CTGG: Council of Transparency and Good Governance (Spanish IGAI).
Source: Julián A. Prior Cabanillas, General Direction of Public Governance, Ministry of Finances and Civl Service (Spain), contribution to the regional workshop of the OECD on access to information, Caserta, 18 December 2017.

Table 4.3. Procedures initiated and the growth in procedures since the start of operations of Portugal's Commission on Access to Government Documents

	Recorded	Annual increase (%)	Recorded	Annual increase (%)
1994-95	72	-	51	-
1996	95	32 %	92	80 %
1997	142	49 %	145	58 %
1998	204	44 %	203	40 %
1999	305	49 %	289	42 %
2000	431	42 %	403	46 %
2001	514	19 %	513	27 %
2002	421	-18 %	418	-19 %
2003	542	29 %	525	26 %
2004	527	-3 %	553	05 %
2005	496	- 9 %	503	- 9 %
2006	595	20 %	565	12 %
2007	556	- 6.55 %	559	- 1 %
2008	570	2.5 %	610	9,1 %
2009	650	%	594	-2.62 %
2010	760	16.92 %	716	20.53 %
2011	637	-16.18 %	624	-12.85 %
2012	625	-1.88 %	657	5.28 %
2013	593	-5.12 %	638	-2.89 %
2014	800	34.91 %	706	10.65 %
2015	830	3.75 %	828	17.28 %

Source: Portuguese Commission on Access to Government Documents, www.cada.pt/modules/news/index.php?storytopic=1.

Figure 4.4. Growth of the number of cases received by France's Commission on Access to Government Documents since 2013



Source: Guichard, C., Secretary General of France's Commission on Access to Government Documents, Contribution to the OECD regional workshop on access to information held in Caserta on 18 December 2017.

The increase in the number of requests for access to information and the resulting excess in workload are sometimes due to the exercising of the right to access information by someone without a legitimate legal interest. The person requesting, be they individuals or legal entities, wish to acquire the confidential information about an individual or a legal entity by requesting it from the public entities holding that information (Jonason, 2016). Such practices ignore the principles of proportionality and necessity that govern the information's communicability[12]. This excessive workload may also originate with the cumbersome nature of the law on access to information or the centralised processing of requests, which are likely to hinder the proper functioning of access to information[13].

Lastly, the increase in requests to IGAIs is also related, to some extent, to the government's reticence to communicate documents that could nevertheless be communicated. The immediate consequence of the increase in the number of appeals is the lengthening of the timeframes with which IGAIs process cases, while the proactive communication of information constitutes to some extent a better handling of requests for access to information.

For example, the Irish Parliament passed a law on access to information in 1997 that provides for the automatic publication of certain pieces of information. This has help unencumber the IGAI. The burdening of the IGAI and the lengthening of timeframes is often due to the liberal conditions for appealing and the care that the IGAI gives to processing the case of the person requesting. It is also because IGAIs allow, in the interest of the person appealing to them, for long timeframes for investigation to ensure a better communication of pieces of information and to allow them to issue more precise opinions and decisions[14]. Furthermore, late responses from persons obligated to communicate the information to requests from the IGAI result in delays in the IGAI's processing of cases.

For that matter, the very nature of the laws on access to information seems to entail an increase in the number of appeals to IGAIs. Experience has shown that previous laws give rise to questions with which IGAIs must grapple (for example, concerning the limits of the sphere of privacy in terms of personal data, or the border between administrative and judicial documents). The most recent laws, especially those concerning the reuse of information or digital data (for example, complex databases) and their posting online (the implications for public security, for example), are even more likely to raise new issues with which IGAIs will have to deal[15].

Some IGAIs believe that they are no longer able to carry out their missions well under the best conditions[16]. Changes have been made, for example in the allocation of human resources to the most complex cases. Procedures have at times been simplified by legislative reforms that implement the sorting of requests that do not involve any investigation, or by entrusting simple cases to one person as opposed to an IGAI's collegial body. Similarly, the implementation of procedures for the acceptability of requests entrusted to administrative departments or the automatic processing of the simpler cases under the supervision of an IGAI member[17] allow IGAIs to focus on more

Notes

1 In principle, the parties may only present their arguments and conclusions in written form. This principle renders the administrative procedure less supple, but it provides a guarantee of seriousness and security.

2 French Senate, "Draft Finance Law for 2006: Management of the Government's Action", www.senat.fr/rap/a05-104-2/a05-104-25.html.

3 Data Protection Act 1998, Chapter 5, point 1, paragraph 10, www.legislation.gov.uk/ukpga/1998/29/contents.

4 Data provided by the secretariats of the Belgian Commission on the Access and Reuse of Government Documents and the Federal Appeals Commission for Access to Environmental Information.

5 *Comissão de acesso aos documentos administrativos*, http://www.cada.pt/modules/news/index.php?storytopic=12

6 Information communicated to the OECD by the Finnish parliamentary ombusdman parlementaire on 23 November 2017.

7 United States Department of Justice, https://icic2017open.files.wordpress.com/2017/08/icic-melanie-ann-pustay.pdf

8 LA PRESSE.CA, *Les délais d'accès à l'information s'allongent à Montréal* ["The timeframes for accessing information are growing in Montreal"], www.lapresse.ca/actualites/montreal/201706/09/01-5106142-les-delais-dacces-a-linformation-sallongent-a-montreal.php.

9 French Commission on Access to Government Documents, "2015 Annual Report", https://www.cada.fr/sites/default/files/cada_rapport_activite_2015.pdf.

10 Guichard, C., Secretary General of France's Commission on Access to Government Documents, Contribution to the OECD regional workshop on access to information held in Caserta on 18 December 2017.

11 French Commission on Access to Government Documents, "2015 Annual Report", https://www.cada.fr/sites/default/files/cada_rapport_activite_2015.pdf; French Commission on Access to Government Documents, "2016 Annual Report", www.cada.fr/IMG/pdf/rapport_d_activite_2016.pdf.

12 The Supreme Administrative Court of the Czech Republic and ACA Europe (2015), "Supreme Administrative Courts and the development of the right to publicity, privacy, and information, Brno, 18 Mai 2015, Responses to the questionnaire : Italy", www.aca-europe.eu/seminars/2015_Brno/Italie.pdf.

13 LA PRESSE.CA, *Les délais d'accès à l'information s'allongent à Montréal* ["The timeframes for accessing information are growing in Montreal"], www.lapresse.ca/actualites/montreal/201706/09/01-5106142-les-delais-dacces-a-linformation-sallongent-a-montreal.php.

14 French Commission on Access to Government Documents, "2016 Annual Report", www.cada.fr/IMG/pdf/rapport_d_activite_2016.pdf.

15 *Ibid*.

16 LA PRESSE.CA, *La Commission d'accès à l'information du Québec est sous-financée, selon son président* [The Quebec Comission on Access to information is under-funded, according to its Chair"], http://www.lapresse.ca/actualites/politique/politique-quebecoise/201704/25/01-5091678-la-commission-dacces-a-linformation-est-sous-financee-selon-son-president.php.

17 French Commission on Access to Government Documents, "2016 Annual Report", www.cada.fr/IMG/pdf/rapport_d_activite_2016.pdf.

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Jonason, P. (2016), *Le droit d'accès à l'information en droit suédois : une épopée de 250 ans* ["The right to access information under Swedish law: a 250-year saga"], *Revue internationale de droit des données et du numérique* ["International Law Review on Data and Digital"], vol. 2, pp. 37-50, http://ojs.imodev.org/index.php/RIDDN/article/view/137/175.

Office of the Australian Information Commissioner (2017), Annual Report 2016–2017, Australian Government, www.oaic.gov.au/resources/about-us/corporate-information/annual-reports/oaic-annual-report-201617/oaic-annual-report-2016-17.pdf.

Chapter 5. The oversight of the IGAI's actions in OECD countries

This chapter examines the oversight to which IGAIs are subject, whether by administrative, political, parliamentary, or judicial bodies, or by citizens and civil society.

All OECD member countries agree that oversight helps guarantee democracy and a rule of law. It guarantees that all parties observe the principles and laws on which democracy and rule of law are based, and which enable them to function properly. At the same time, oversight procedures ensure the observance of the prerogatives of political power and allow citizens to play their role fully as actors in a democracy. Consequently, IGAIs must be subject to oversight procedures, as long as these respect the specific nature of IGAIs, especially their independence. These procedures are administrative, political, judicial, or exercised by civil society.

5.1. The political and administrative oversight of IGAIs

5.1.1. Administrative and accounting oversight

IGAIs are subject to the traditional forms of oversight for public bodies in their country of origin, even when these are independent institutions. In this latter case, they nevertheless remain exempt from the oversight of their hierarchical superior (for example, the head of government, the minister, or the representatives of the executive branch within the subnational entities); this also exempts them from the oversight bodies operating within the executive branch. Some IGAIs are not even subject to internal financial oversight, such as the French Commission on Access to Government Documents, which is not subject to budget or accounting oversight. IGAIs are instead subject to different forms of external oversight of an administrative or judicial nature. For example, the Australian Information Commissioner's Office is supervised by the National Audit Office, which sends its report to the Attorney General, and the French Commission on Access to Government Documents is supervised by the Supreme Audit Court.

IGAIs are responsible for adopting all necessary measures to ensure the observance of the relevant national laws, for example by creating internal oversight mechanisms, to monitor both performance and the risk of fraud.

Box 5.1. The Australian Information Commissioner, the accountable authority's responsibility for the financial statements

1. As the Accountable Authority of the Office of the Australian Information Commissioner, the Information Commissioner is responsible under the *Public Governance, Performance and Accountability Act 2013* for the preparation and fair presentation of annual financial statements that comply with Australian Accounting Standards. The Australian Information Commissioner is also responsible for internal control as necessary during the preparation and presentation of financial statements. During these stages, he/she is responsible for assessing the Office of the Australian Information Commissioner's ability to continue its work, taking into account whether the entity's operations will cease as a result of an administrative restructure or for any other reason.

Source: Australian National Audit Office, Independent auditor's report, in Office of the Australian Information Commissioner (2017), Annual Report 2016–2017, Australian Government, www.oaic.gov.au/resources/about-us/corporate-information/annual-reports/oaic-annual-report-201617/oaic-annual-report-2016-17.pdf.

5.1.2. Parliamentary oversight

Whether they depend on, or are independent from the Parliament, IGAIs are subject to legislative oversight, either directly or through parliamentary oversight of the executive branch. For example, the French Commission on Access to Government Documents is subject to the ordinary oversight of various parliamentary commissions, and during the preparation of the annual finance law, the Parliament reviews its operations. The Italian Commission on Access to Government Documents sends its report directly to the Parliament. The Irish Information Commissioner must publish an annual report that is sent to each house of Parliament. The Information Commissioner of the United Kingdom submits reports on its work to Parliament. The German Federal Commissioner on Data Protection and Freedom of Information includes in his report a summary of the priority activities for a two-year period and defines perspectives on key data protection issues. The Commissioner's activity reports are debated in the Parliament, or *Bundestag*, which then expresses its opinions on all the principal issues regarding the right to information and data protection.

5.2. Oversight by citizens and civil society

In OECD member countries, civil society organisations attach great importance to the right to access information, as this is an essential tool for their work. It allows them to understand the reasons for public action and to react to it, and it allows them to act as a source of public proposals. At the same time, civil society and the institutions responsible for access to information at times have close relations and help one another, for example regarding the dissemination of legislation or the organisation of common trainings, thereby contributing to the achievement of their shared goals. Lastly, citizens act to make sure that the law on access to information and data protection is applied correctly.

A number of NGOs advocate for the right to access information. They conduct inquiries and monitor the application of legislation regarding access to information, propose regulations, launch campaigns to reform the law, and bring legal action. They also provide support and trainings. Lastly, they train networks of national organisations that seek to guarantee greater transparency.

Some NGOs, such as Article 19 and the Open Knowledge Foundation, organise campaigns aimed at citizens and elected officials, conduct trainings, and establish barometers for assessing access to information in different countries. Similarly, Huridocs encourages human rights organisations to use available information and technology, and the association Mediaterre facilitates access to information for anything regarding sustainable development.

5.3. Judicial oversight

In a nation based on the rule of law, administrative decisions are subject to the oversight of a judge and court decisions are subject to appeal before a higher court or the Court of Cassation. IGAIs are not exempt from this principle; however, there are different kinds of recourse against an IGAI's decisions, in accordance with the legal system of each OECD member country.

The judge that holds jurisdiction to review an IGAI's decision or opinion varies depending on the legal system of the country in question. In France, decisions by the Commission on Access to Government Documents fall to an administrative judge. In Italy, decisions by

that country's Commission on Access to Government Documents fall to a regional administrative court; disputes involving personal data instead fall to an ordinary court. In Australia, administrative courts hold jurisdiction to assess the merit of the Australian Information Commissioner's Office's decisions regarding a refusal to communicate information, or whenever the Commissioner indicates that a matter should be brought directly before such a court. Administrative court decisions can be appealed to the Australian Federal Court when a legal issue is at stake. Decisions by Chile's Council for Transparency can be subject to a complaint of illegality by the concerned party that is brought before the ordinary appeals court holding jurisdiction. Parties have 15 calendar days from the notification of the Council's resolution to this end.

Challenging an IGAI's decision before a court is not uniformly recognized in all OECD member countries. Decisions by Japan's Commission for the Oversight of Communication and the Protection of Personal Data are not binding in effect and thus do not qualify for judicial recourse and cannot be appealed. A requesting person who is unsatisfied with the decision issued by France's Commission for Access to Government Documents may file a complaint before the administrative court in the place of his/her residence within two months of receiving the opinion. It should be noted that an appeal filed before an administrative court must be directed against the government administration's refusal, not against the decision by the Commission for Access to Government Documents. The parties may appeal a final decision from the CAI in Quebec to a judge from the Court of Quebec within 30 days of reception. The appeal may relate to any question of law or of competence. The decision by the Court of Quebec is final.

Box 5.2. The right to legal recourse

The example of France's Commission for Access to Government Documents

A person requesting may file a legal complaint before the administrative court in the place of his/her residence within two months of receiving the opinion of the Commission for Access to Government Documents. The complaint is filed against the government administration's refusal, not the opinion of the Commission, which is not subject to legal recourse.

Generally, the legal complaint must be filed within two months of the notification of the act in dispute, namely the express or tacit refusal decision by the government administration in relation to a complaint filed with the same or a higher-ranking authority.

The administrative court has six months to rule. The complaint is not suspensive in principle, which means that the decision or act by the government administration continues to apply until the court hands down its decision. In emergency cases, there are expedited administrative proceedings that can suspend the decision's enforcement.

Source: French Commission on Access to Government Documents, "Suites d'un avis", https://www.cada.fr/particulier/les-suites-dun-avis.

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Part II. IGAIs and the right to access information in four MENA region countries

Overview of Part II.

The second part of this report focuses on the right to access in four countries of the MENA region: Jordan, Lebanon, Morocco, and Tunisia. Chapter 6 discusses the development of this right in light of the political situation in these countries, and the new constitutional base for the right to information. The Jordanian and Lebanese Constitutions do not explicitly proclaim this right, unlike the Moroccan and Tunisian constitutions, which are the result of social movements that began in 2011. Moreover, in some cases, institutions of a constitutional nature other than the national IGAI may intervene in defence of the right to access information. This chapter also discusses how the participation of these four MENA region countries in international conventions and accords has stimulated the renewal of the right to access information, and, more generally, that procedures resulting from legislation in this area remain complex and poorly used. Chapter 7 considers the legal nature and composition of the four IGAIs in question. It observes that the four countries have decided to create collegial institutions that do not all enjoy the same degree of independence.

The composition of the existing or to be created IGAI varies and often consists of the executive branch's appointment of information sector professionals. Chapter 8 studies the general missions of the IGAIs. First, they monitor the right to information, which leads them to examine concepts of information and those persons obligated to communicate information, of proactive publication, the reuse of public information, limits to the right to access information, and the penalties incurred for infringing on the right to communication or for the undue disclosure of information. Secondly, the four IGAIs in question monitor the development of the commitment to access to information, write reports, provide their opinions on laws and regulations, evaluate the consecration of the right to access information, and share experiences with their foreign counterparts. Chapter 9 focuses on the system for requesting access to information by a person or group of persons by examining, first, the procedure for formulating a request from an entity that holds the information, and then, the IGAI's decision-making procedures for an appeal of a decision refusing to communicate the information. Chapter 10 examines the IGAIs' internal modes of operation and the potential existence of correspondent information officers in the various departments obligated to communicate information. Finally, Chapter 11 deals with the various forms of oversight over the IGAIs, be they administrative, political, hierarchical (from the executive branch), parliamentary, by citizens, civil society, or the courts.

The four MENA countries studied in this report are active actors in international relations. They collaborate actively with international organisations and they have signed international conventions, some of which concern the right to access information. However, aside from Jordan, which passed a law on access to information in 2007, the legislation on the right to access information in three of the countries examined has long remained deficient. Moreover, significant, recurrent gaps in the knowledge and application of legislation in all the countries examined have often been extensively criticised by observers and civil society.

The Arab Spring resulted in the adoption of new Constitutions in Morocco and Tunisia that include the right to access information. It also fostered, with the efforts of international institutions, the will to develop national legislations. This resulted in Tunisia's, Lebanon's, and Morocco's adoption of new laws on access to information.

In each country, these legislations provide for the creation of a national, collegial-body IGAI to monitor the application of the right to access information, both generally and in relation to appeals against decisions to refuse communication. This is called the Council for Information in Jordan, the Authority for Access to Information in Tunisia, the National Anti-Corruption Commission in Lebanon, and the Commission on Access to Information in Morocco.

These IGAIs enjoy varying degrees of independence, as the appointment of their members is made mostly by the executive branch and rarely by the Parliament. The composition of these IGAIs varies. Often they are made up of public officials tied to their activities, but it sometimes extends past that to include representatives from civil society, for example. Logically, the IGAIs act in compliance with the areas of jurisdiction and rules established by the legislation. As bodies applying the law, IGAIs are obligated, in the exercise of their attributions, to interpret and apply the right of access to information. Like all other public institutions, IGAIs are ultimately subject to oversight by the courts, and in some cases, by the Parliament. This oversight may also be exercised by hierarchical superiors or by civil society.

These topics are discussed in Part II of this report as follows: the evolution of the right to access information in the four MENA region countries (Chapter 6); the legal nature and composition of the IGAIs (Chapter 7); the general missions of the IGAIs (Chapter 8); the processing of requests to access information (Chapter 9); the functioning of IGAIs and their agents (Chapter 10), and; oversight of the IGAIs (Chapter 11).

Chapter 6. The evolution of the right to access information

First, this chapter looks at developments in the political situation that have favoured the right to access information, and at times its constitutionalisation, in certain MENA region countries. It then considers that Jordan, Lebanon, Morocco, and Tunisia have signed international conventions containing provisions regarding the right to access information, and that they cooperate actively with international organisations in this field. Lastly, it observes that the recent legal changes in these countries have not always simplified the right to access information, which remains insufficiently applied by the government and poorly used by citizens and civil society.

The four MENA region countries in question have signed three international conventions containing provisions on the right to access information, even though the direct applicability of these conventions in the national legal systems has not been established. These countries also cooperate actively with international organisations in favour of the right to access information. These organisations have advocated consistently for a greater enactment of this right, which had long been ignored in most MENA region countries and which was vigorously reclaimed by civil society during the Arab spring. Since 2011, significant transformations in national laws on the right to information have taken place, some of which have even entered countries' constitutions. However, these changes do not appear to have simplified the right to access information, which is still not adequately observed by entities obligated to communicate information, and not well known or exercised by citizens and civil society.

6.1. The national political situations

6.1.1. Before the revolutions

Before the revolutionary cycle of 2011, the status of access to information was not favourable in Arab countries (Schenkelars et al., 2004). Most of these countries did not have a law on the freedom of the exchange of information (Canavaggio, 2014). When such a law existed, a slew of provisions penalised the availability, sharing, and publication of information without the authorisation of the responsible authorities[1]. Moreover, administrative practices did not favour the exercise of this right. In general, during the period from 2007 to 2011[2], legislation on access to information was barely known or exercised in these countries[3], and there was little public transparency or information that was made available.

In Tunisia, Organic Law No. 2004-63 of 27 July 2004 on the protection of personal information, which is still in force, already provided that everyone enjoys the fundamental, constitutionally guaranteed right to the protection of personal information pertaining to his privacy, and that this data is processed with transparency, good faith, and in respect of human dignity. According to the terms of Article 32 of this same law, people have access to personal data that concerns them. Articles 15-17 of Law No. 88-95 of 2 August 1988 provide that public archives can only be communicated after 30 years, after 60 years when these archives specifically concern privacy and national defence, and 100 years after someone's birth in the case of medical or personal files.

Tunisian administrative law of this same period, which is still in effect, strictly organised the protection of confidential documents and government information. Article 7 of the general statute of personnel of the state, local governments and public establishments of an administrative nature establishes an obligation to professional secrecy and strictly regulates its lifting. This obligation is reasserted in Articles 109 and 253 of the Tunisian Criminal Code. In application of these articles, a public official who communicates any document that he comes to know through his work to the detriment of the state or private persons faces one year in prison, and anyone who unduly discloses the contents of a letter, telegram, or any other document belonging to someone else faces three months of imprisonment (OECD, 2013). Moroccan administrative law also posits the principle of a prohibition for public officials and agents to provide information or to communicate pieces of information or government documents to others[4].

However, this situation was not entirely homogeneous from a legal standpoint. In 2007, Jordan became the first Arab country to pass a law guaranteeing the right to access

documents held by public bodies (Mendel, 2016). In parallel, a certain number of significant laws began to point in this direction, specifically: the law requiring that a public inquiry be opened before making an administrative decision (provisions regarding historic buildings, urban planning and expropriation laws, laws on environmental impact studies, laws and regulations permitting access and receipt of copies of government documents, municipal charters, the law on the establishment of electoral lists, the law on archives, and the decree on government contracts); various provisions regarding the Press Code; laws on the delegated management and the grounds for unfavourable government decisions; the Commercial Code; and the decree on the publication of drafts laws and regulations. Practices differed from one country to the next. In Morocco, for example, a number of government administrations used to make documents available to the public in the form of studies, reports, circulars, and statistics in documentation centres or government libraries, or via electronic means[5].

6.1.2. The post-revolutionary evolution

The revolutions that took place throughout the MENA region in 2011 created a climate that favoured the right to access information (Almadhoun, 2015). A greater transparency on the part of the authorities and the state, as well as easier access to the information held by the government occupied a primary place in the demands that people made during these events. These claims led to crucial developments in the laws and government practices of some states.

For example, at the outcome of the revolution, the new Tunisian authorities adopted Decree-Law No. 2011-41 of 26 May 2011 on access to government documents held by public bodies, which was amended and supplemented by Decree-Law No. 2011-54 of 11 June 2011. This legislation upheld the right of citizens to access government documents held by public bodies, and it promoted the government's proactive communication of important information. It obligated the government to communicate documents proactively at the interested party's request. The right of access concerns all documents and applies to all individuals and legal entities. The law provided a broad definition of government documents subject to the right of access. Public bodies became obligated to publish available information on a regular basis, and on as wide a scale as possible. They were given a two-year period to apply the law in full.

6.2. The constitutional basis for the right to information

The constitutions of many Arab countries now provide specific guarantees for the right to access information (UNESCO, 2015). Jordan's Constitution of 1952 and Lebanon's Constitution of 1926 do not make explicit reference to the right to access information, but the constitutions of Morocco and Tunisia, which were promulgated after the Arab Spring, explicitly refer to this right.

6.2.1. The lack of an explicit mention of the right to access information in the Jordanian and Lebanese Constitutions

The Jordanian and Lebanese Constitutions mention the freedom of opinion and of addressing the authorities. Article 15 of Jordan's Constitution of 1 January 1952 provides that: "1. The State shall guarantee freedom of opinion. Every Jordanian shall be free to express his opinion by speech, in writing, or by means of photographic representation and other forms of expression, provided that such does not violate the law. 2. Freedom of the press and publications shall be ensured within the limits of the law. 3. Newspapers shall

not be suspended from publication nor shall their permits be revoked except in accordance with the provisions of the law. 4. In the event of the declaration of martial law or a state of emergency, a limited censorship on newspapers, publications, books and broadcasts in matters affecting public safety and national defence may be imposed by law. 5. Control of the resources of newspapers shall be regulated by law". Article 13 of the Lebanese Constitution declares that "The freedom to express one's opinion orally or in writing, the freedom of the press, the freedom of assembly, and the freedom of association shall be guaranteed within the limits established by law"[6]. These two documents show that the right to access information is not a constitutional freedom that has been explicitly provided in Jordan or Lebanon.

6.2.2. The promotion of the right to information in the Moroccan and Tunisian Constitutions

The Moroccan Constitution, which was promulgated on 29 July 2011[7], established a new form of dualist, parliamentary monarchy that profoundly redefined the king's powers and the organisation of the executive branch and its relationship with the Parliament. The document proclaims a long list of rights and freedoms, as well as the State's commitment to guaranteeing them (Bendourou, 2014). It consecrates the primacy of international law, the constitutionalisation of universally recognised human rights, establishes the objection of unconstitutionality, and consecrates the independence of the judiciary. It serves to assert a democratic nation based on the rule of law[8]. Article 27 guarantees: "the right to access information held by the government administrations, institutions of elected officials, and bodies fulfilling a mission of public service".

The Tunisian Constitution of 26 January 2014 replaced Constitutional Law No. 6-2011 of 16 December 2011 on the provisional organisation of government, which recognised the suspension of the June 1959 Constitution. This new document is based on the principle that the rule of law represents the best protection against the abuse of power. It also seeks to strengthen and perfect a nation based on the rule of law. Consequently, the constitutional scope has been more diverse than in the past. Moreover, the creation of a constitutional court creates a mechanism for constitutional oversight that is accessible to citizens, which gives them the possibility of demanding the repeal of laws that infringe on their rights and freedoms[9].

The Tunisian Constitution of 26 January 2014 discusses the freedom of information extensively. Article 15 provides that the government remains at the service of citizens and the general interest, and that it is organised and acts in obedience to the rules of transparency, integrity, efficiency, and accountability. Article 31 guarantees the freedom of opinion, thought, expression, information, and publication. These freedoms cannot be restricted in any way. Article 32 adds that the state guarantees the right to information and the right to access information. Lastly, the state works to guarantee the right to access communication networks[10].

6.2.3. The foreseeable participation of certain constitutional institutions in the right to access information

The Moroccan and Tunisian Constitutions are characterised by the creation of independent authorities responsible for protecting and developing rights. In Morocco's Constitution, this creation seeks to separate the executive, the legislative, and the judiciary, and to limit the spheres of influence of the three branches[11]. Tunisia's 2014 Constitution also established such institutions, including five independent constitutional authorities[12].

It should be noted that these constitutional institutions, like those in other countries, could play a role in access to information. For example, in Tunisia, the members of the Independent High Authority for Audio-Visual Communication (HAICA) asked the authors of the Constitution to limit the jurisdiction of the Audio-Visual Communication Authority set forth in Article 127 of its Charter to the media sector, thereby guaranteeing the coherence of its activities. Consequently, they requested the withdrawal of the provisions from the draft constitution that granted Audio-Visual Communication Authority control over access to information, which gave it jurisdiction over government documents under Article 32 of the Constitution. Based on the interpretation they will make of their attributions and the legislation they will apply, the authorities responsible for good governance set forth in Articles 161-170 of Morocco's Constitution may also be able to play a role in access to information. In fact, the attributions of the National Authority on Probity, the Prevention, and the Fight against Corruption (Art. 36 and 167), the National Human Rights Council (Art. 161), the Ombudsman's Institution (Art. 162), and the High Audio-Visual Communication Authority (Art. 165) could lead them to deal with this issue in a subsidiary manner.

The interventions by these authorities could have a non-negligible impact. Article 159 of the Moroccan Constitution specifically provides that these authorities are independent and enjoy the support of state bodies. Article 65 of Tunisia's Constitution states that the five independent, constitutional authorities have a legal personality and financial and administrative independence. It specifies that their missions seek to "strengthen democracy" by monitoring observance of the laws and the Constitution, and that all state institutions are obligated to facilitate the exercise of their missions. Lastly, these authorities possess the right to issue recommendations, review texts that enter into their area of jurisdiction, and present their Annual Report to the Assembly of the People, to which they are responsible.

6.3. The international context

The four MENA region countries studied in this report have participated in the development of international law instruments, some of whose provisions concern the right to access information. They are also active members of international forums active in this domain.

International conventions

These four countries are bound by three international conventions that provide for the right to access information to different degrees. The first is the International Covenant on Civil and Political Rights, which entered into effect in 1976. Its Article 19 set forth the right to freedom of expression, which "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". It specifies that this right "may therefore be subject to certain restrictions, but these shall only be such as are provided by law." These restrictions traditionally include the observance of the rights or reputation of others, the safeguarding of national security, public order, public health or morals.

The United Nations Convention against Corruption argues for "public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts" (Art. 9). More specifically, Article 10 provides that the State must "take such measures as may

be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate". This may take several forms, specifically: "a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public; (b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and (c) Publishing information, which may include periodic reports on the risks of corruption in its public administration." Lastly, Article 13 of the Convention provides that the state commits specifically to "ensuring that the public has effective access to information" and to "respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption". Lastly, Article 13 of the Convention of the Rights of the Child provides that: "1. The child 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 the child's choice. 2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; or (b) For the protection of national security or of public order, or of public health or morals".[13]

Jordan and Lebanon have ratified the Arab Charter of Human Rights of 2004. Article 32 of this instrument states that "a. this Charter guarantees the right to information and freedom of opinion and expression, and the right to search for, receive, and distribute information through any means, without any consideration of geographic borders; b. these rights and freedoms are exercised in the context of the fundamental principles of society, and they are subject only to those restrictions necessary for the observance of the rights and reputation of others, and the protection of national security, public order, public health, and public morals".[14]

Table 6.1. Principal international conventions containing clauses on the right to information and the Open Government Partnership: status of ratifications

Convention	Jordan	Lebanon	Morocco	Tunisia
International Covenant on Civil and Political Rights[15]	Signature: 30 June 1972 Ratification: 28 May 1975	Ratification: 3 November 1972	Signature: 19 January 1977 Ratification: 3 May 1979[16]	Signature: 30 April 1968 Ratification: 18 March 1969
United Nations Convention against Corruption[17]	Signature: 9 December 2003 Ratification: 24 February 2005[18]	Ratification: 22 April 2009	Signature: 9 December 2003 Ratification: 9 May 2007	Signature: 30 mars 2004 Ratification: 23 September 2008
Convention on the Rights of the Child	Signature: 29 August 1990 Ratification: 24 May 1991	Signature: 26 January 1990 Ratification: 14 May 1991	Signature: 26 January 1990 Ratification: 21 June 1993	Signature: 26 February 1990 Ratification: 31 January 1992
Arab Charter on Human Rights	Ratified and published in the Official Gazette of 16 May 2004	Ratified	-	-
Open Government Partnership	Member since 2011	-	Member since 2018	Member since 2014

Source: United Nations, Treaty Collection, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en (compilation by the authors).

6.3.1. International forums

Several international forums play an active role in promoting the right to access information. Jordan, Lebanon, Morocco, and Tunisia are members of these entities.

The Open Government Partnership

Jordan, Morocco and Tunisia have joined the Open Government Partnership (OGP), an international organisation created in 2011 that seeks to promote more open, transparent government[19].

The goal of the OGP is to increase the availability of information and to promote the visibility of government activities at all levels. Members must collect and communicate data on public expenditures and government performance in the area of essential services, and publish the information without delay, using standard formats that citizens can readily comprehend and reuse. They commit to transparency in decision-making and implementing policies, and in providing adequate channels for retroactivity. They agree to implement anti-corruption policies along with mechanisms and practices that favour transparency in the management of public finances and public procurement. They also commit to establishing and maintaining a legal framework for publishing the revenues and assets of their high-ranking officials. Lastly, they work to protect people who report irregularities and they facilitate access to new technologies to encourage a sense of transparency and responsibility among public agents.

The role of the OECD

The OECD occupies an important place in promoting open government in MENA region countries through the MENA-OECD Governance Programme, a cooperative framework created in 2004 and co-chaired by the region's countries. This initiative seeks to help states

respond to requests for transparency from citizens and enterprises, and to modernise national government administrations so that they provide better services. It also seeks to contribute to their sustainable socio-economic development by promoting the sharing of international best practices, OECD recommendations and standards, and the experiences of OECD member countries through bilateral projects, peer reviews, and regional working groups. It conducts Open Government Reviews to formulate recommendations and increase the transparency of governments in their drafting of public policies and provision of services. The OECD has already conducted a review of open government in Morocco (OECD, 2015) and another in Tunisia (OECD, 2016). The regional working group discussed these reviews on an open and innovative government, and they form part of the MENA-OECD Open Government Project. As part of this project, the OECD also offers advisory activities and support for capacity building in the domains of transparency, participation, and accountability.

6.4. Legislation remains complex

Even though the legislation on access to information in Jordan, Tunisia, Lebanon, and Morocco has evolved significantly, it should be noted that it remains complex.

6.4.1. The improvement of the applicable right

The social changes and policies that have come about since 2011 have led to an improvement in the legislation on access to information in Tunisia, Lebanon, and Morocco. In application of Article 65 of the Tunisian Constitution, according to which laws on the organisation of information, the press, and publishing must take the form of an organic law, the Assembly of the Representatives of the People passed an organic law on 24 March 2016 on access to information, which abrogates Decree-Law No. 2011-41 of 26 May 2011[20].

On 10 February 2017, Lebanon passed the long-awaited Law No. 28 on access to information[21], which establishes the principal means of applying the right to access information, and which also established a National Anti-Corruption Commission that acts as an IGAI. However, this law requires a certain number of implementing decrees, especially concerning the composition and the conditions for appointing its members, and the ways in which the Commission exercises its jurisdiction, which have not yet been adopted.

In Morocco, Draft Law No. 31-13 on the right to access information, which was announced in 2010 as part of a programme to fight corruption and filed before the Parliament on 8 June 2016, was finally enacted on 22 February 2018. Lawmakers also adopted the law on the creation of the Archives of Morocco, a national institution that will manage and administer public archives, and which is responsible for establishing the instruments for researching and accessing the archives. Similarly, public information websites have proliferated throughout the country and now form part of the programme egov.ma.

Box 6.1. Morocco: the goals of the law on access to information

The Moroccan Parliament adopted a law on access to information, which has the following goals:

1. Encouraging citizen participation in managing the public sphere
2. Increasing transparency and accountability in public service
3. Attracting investments and stimulate the economy
4. Supporting scientific research and expand the field of knowledge
5. Helping citizens identify and understand the actions of government and to defend their rights
6. Increasing trust in the relations between the government and its users, and promoting openness on the government's part about its environment.

Source: Ministry of the Reform of Government and Public Service, "The Moroccan experience of the draft law on the right to access information", Contribution to the OECD regional workshop on access to information held in Caserta on 18 December 2017.

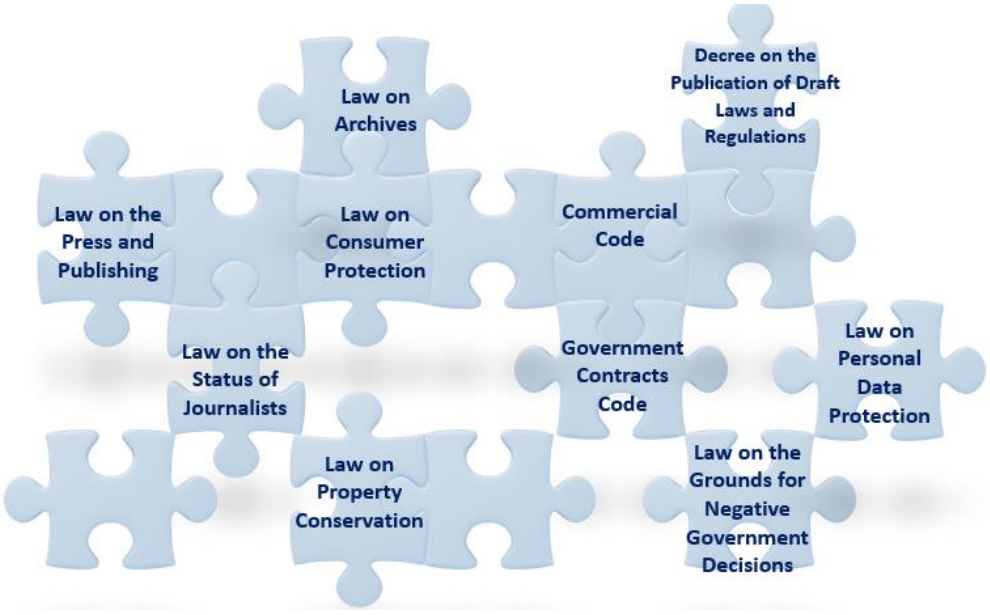
6.4.2. The complexity of the applicable legal provisions

As can be observed in OECD member countries, the multitude of laws has consequences for the right to access information. Multiple constitutional, legal, or regulatory provisions, especially in certain areas, can have a favourable effect on the exercise of this right, or, to the contrary, they can hamper it. For example, in Jordan, Articles 5-7 of Law No. 10 (1993) on the press and publications justifies the right to access information for journalists, determines the scope of the exercise of this right, and specifies the authorities' obligation to help journalists in their work (Al-Dabbas, 2008). As regards the protection of personal data, Article 18 of Jordan's Constitution provides that: "All postal, telegraphic and telephonic communications shall be treated as secret…" Hence, the protection of the relevant data and the necessary limitation of freedom of access to information that circulates through these communication channels. In 2005, this country had a minimum of 13 laws affecting the freedom of the media and access to information. For example, Article 7 of the law on civil status provides that all data included in civil status dossiers is confidential[22]. Article 37 of the Law on Electronic Transactions also provides that any institution authenticating documents for government or commercial use will be subject to a fine of 50,000 JOD if it reveals confidential information contained in such documents. The Law on Statistics guarantees the confidentiality of information[23] in this domain (Almadhoun, 2010).

Several legal texts affect the right to access information in Morocco: the Commercial Code, the Government Contracts Code, the Law on the Press and Publishing, the Law on Archives, the Law on Consumer Protection, the Law on the Status of Journalists, the Law on Data Protection, the Law on Property Conservation, the Law on the Grounds for Government Decisions, and the Decree on the Publication of Draft Laws and Regulations. In particular, the General Statute of Public Service and the Criminal Code provide for significant restrictions on the right to access information. Article 18 of the General Statute of Public Service provides that "all public officials are bound to an obligation to professional discretion regarding any facts and information that he/she comes to know in

the exercise of his/her duties. Any deviation or improper communication of official information or documents to third parties is formally prohibited. Aside from those cases provided for by the rules in force, only the authority of the minister for whom the public official works can release him/her from this obligation to discretion or lift the aforementioned prohibition"[24]. The criminal code also prohibits anyone who comes to know professional secrets in function of his/her permanent or temporary duties from revealing them[25]. Laws on access to information also address parallel topics: for example, the Lebanese law deals more specifically with the grounds for administrative documents. Consequently, the general right of access to information is often a patchwork of laws that are at times contradictory, and which interact heavily with other laws.

Figure 6.1. An example of disparate legislation: Morocco



Source: Ministry of the Reform of Government and Public Service, *L'expérience marocaine sur le projet de loi sur le droit d'accès à l'information* ["The Moroccan experience with the draft law on the right to access information"] Contribution to the OECD regional workshop on access to information, Caserta, 18 December 2017.

6.5. A right that is barely exercised

Most observers agree that the right to access information is barely exercised in the four MENA region countries examined in this report[26]. This limitation is concomitant with specific legislation involving requests to access information, for example a law on the communication of government inquiries or the opening of archives, or general legislation on access to government documents.

Relevant statistics for the four MENA region countries examined in this report are not available, except for Jordan, in which a circular from November 2012 provides that government administrations must send their statistics on the exercise of the right to access information to the Information Council[27]. According to these statistics, the annual amount of requests has risen from 2,140 in 2012 to 3,670 in 2015, and most of them received positive responses. It should be noted that requests for access to information in 2016 rose considerably to 12,101.

Table 6.2. Growth of requests for access to information in Jordan

Year of requests	Number of requests accepted	Number of requests rejected	Total
2012	2,186	100	2,286
2013	2,101	108	2,209
2014	3,596	74	3,670
2015	2,094	47	2,140
2016	12,077	24	12,101

Source: Mutawe, E., *La situation du droit d'accès à l'information en Jordanie* ["The status of the right to access information in Jordan"] contribution to the OECD regional workshop on to information, Caserta, 18 December 2017.

However, in Jordan, the requirements for data collection seem very general. In particular, the law does not oblige public bodies to produce annual reports on requests for access to information. In 2012, the data comprised 15 bodies that declared 2,286 requests (0.04 % per inhabitant). 95.6% of these requests were satisfied in full. There is no data available on the reasons for the refusal of requests. In 2013, the Jordanian Department of Statistics received the highest number of requests, followed by the Royal Jordanian Geographic Centre, the Meteorology Department, the Social Security Agency, and the National Library. Overall, the law seems poorly known and barely used[28].

Across the entire MENA region, citizens, civil society organisations, and journalists are not very aware of the importance of exercising their right to access information, and those who do encounter many difficulties with the processing of their requests. For example, from January to August 2017, the NGO IWatch sent 58 requests for access to information to various Tunisian public institutions; it received responses to only 34% of its requests[29].

Public bodies obligated to provide access to information, for example through the appointment of an information officer, experience difficulties in meeting these obligations. They rarely proactively publish information on their websites and they respond with difficulty to requests to access information. For example, in September 2017, the NGO IWatch conducted an inquiry in Tunisia and found, upon examining the various ministry websites, that most of them contained invalid contact information. The organisation also observed that the judiciary structures (such as the administrative and ordinary courts), the offices of the Presidency and the Ministry in charge of Relations with Constitutional Authorities, Civil Society, and Human Rights did not have an official website. It noted that 22 of 27 ministries did not observe the basic requirements of the law on access to information, as stated in its Chapter 7. Likewise, ten ministries had not regularly updated their information, even though the law demands that they do so every three months. IWatch also looked at access to information at the local level, where it found that 134 municipalities (38% according to the old classification) did not have a website[30].

Nevertheless, both government administrations and civil society are undertaking initiatives to promote the exercise of the right to information. In Tunisia, for example, the website Marsad Baladia reports on legislation regarding the right to access information and lists the requests made in each governorship, as well as their fate.

There are no overall statistics on appeals against refusals of communication of information for Lebanon, Morocco, and Tunisia, who have recently passed new legislations. Only Jordan provides statistics on the Information Council's work. In this country, the Council received 51 appeals between 2008 and 2017. Between 2012 and 2017, 353 refusals of communication were issued by the country's government, compared to 45 appeals to the Council, which represents an appeal rate of 12.7%. The low number of appeals made to the

Council seems to be the result of the large number of positive responses from the government, as well as the low level of exercise of the right to access information by citizens.

Table 6.3. Number of appeals to Jordan's Information Council

Year	Number of appeals
2008	2
2009	2
2010	2
2011	-
2012	7
2013	15
2014	8
2015	4
2016	5
2017	6

Source: Mutawe, E., *La situation du droit d'accès à l'information en Jordanie* ["The status of the right to access information in Jordan"] contribution to the OECD regional workshop on to information, Caserta, 18 December 2017.

Notes

1 Al Urdun al Jadid Research Center (undated), "Cairo Declaration on the right to access information in the Arab world", Amman, http://www.meida.org.il/wp-content/uploads/2009/04/Cairo%20Declaration.PDF

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3 Le soir échos, *Le droit d'accès à l'information dans la région MENA* ["The right to access information in the MENA region"], 19 June 2012, http://www.marocpress.com/fr/le-soir-echos/article-5609.html.

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12 Without engaging in an in-depth analysis of the Tunisian Constitution, let us cite the five independent constitutional authorities that carry out a regulatory mission: the Independent Superior Election Authority (Article 126); the Authority for Human Rights and Fundamental Freedoms (Article 128); the Authority for Sustainable Development and the Rights of Future Generations (Article 129); the Authority for Good Governance and the Fight against Corruption (Article 130) and; the Authority for Audio-visual Communication (Article 127).

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14 Arab Centre for International Humanitarian Law and Human Rights Education, Arab Charter of the Rights of Man of 2004, https://www.acihl.org/texts.htm?article_id=16.

15 United Nations, International Covenant on Civil and Political Rights, Treaty Collection, https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx

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25 Ministry of the Reform of Government and Public Service, *L'expérience marocaine sur le projet de loi sur le droit d'accès à l'information* ["The Moroccan experience with the draft law on the right to access information"] Contribution to the OECD regional workshop on access to information, Caserta, 18 December 2017.

26 UNESCO (2011), *Vers un droit d'accès à l'information publique au Maroc. Étude comparative avec les normes et les meilleures pratiques dans le monde* ["Towards the right to access public information in Morocco. A comparative study with the norms and best practices throughout the world"], UNESCO, Rabat, http://unesdoc.unesco.org/images/0021/002146/214658f.pdf; UNESCO (2014), *Accéder à l'information c'est notre droit. Guide pratique pour promouvoir l'accès à l'information publique au Maroc* ["Accessing information is our right. A practical guide to promoting access to public information in Morocco"], UNESCO, Rabat; Mendel, T. (2016), "Analysis of Law No. 47 for the Year 2007, Guaranteeing the Right to Obtain Information", UNESCO, Amman, http://stmjo.com/en/wp-content/uploads/2016/06/UpdatedJordan.RTI-Analysis.16-05-18LS.pdf; UNESCO (2015), "Assessment of Media Development in Jordan, based on UNESCO's Media Development Indicators", UNESCO, Amman, http://unesdoc.unesco.org/images/0023/002344/234425e.pdf; Mendel, T. (2016), Participant's Manual, Training Programme on the Right to Information for Jordanian Information Officers, UNESCO, Amman http://stmjo.com/en/wp-content/uploads/2016/06/UpdatedATIManual.Jordan-Officials.16-05-18LS.pdf.

27 See "Circular No. (19) for the year 2012 dated 27/11/2012 on the submission of statistics to the Council on requests for the right to information provided to ministries and government departments and public institutions and bodies under Article 9 / a of the law on the right of access to information".

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Chapter 7. The legal nature and composition of IGAIs in MENA countries

The chapter begins by observing that, among the four MENA region countries studied, only Jordan has not granted its IGAI an independent status. It then considers in detail the legal nature of the four IGAIs as collegial bodies, as well as the terms and conditions and the procedures for appointing their members.

The four MENA region countries examined in this report have or are about to set up collegial-body commissions that will act as national IGAIs. The provisions for Lebanon's National Anti-Corruption Commission, which will act as an IGAI, have not yet been established and thus cannot be studied. In the case of Jordan, Tunisia, and Morocco, the IGAI's independence from the government varies according to the law. Furthermore, in one case, the IGAI includes public officials whose work relates to the IGAI's attributions, while in the other two cases, the institution's composition is broader and more open to other competencies and to civil society. Lastly, in Jordan and in Morocco, the executive branch appoints the IGAI members, while in Tunisia, this role is held by the Assembly of the Representatives of the People.

7.1. The IGAIs' attachment or independence

Jordan, Lebanon, Morocco, and Tunisia have all opted to give their IGAI a collegial body that is, either integrated into the state's structures, or has its own legal independence. However, the procedures for appointing IGAI members vary. Given that Lebanon still does not have any laws for its National Anti-Corruption Commission and that it has not yet developed a draft law to fill this gap, this country's situation will not be discussed in the following sections.

7.1.1. The creation of a collegial institution

Collegiality seeks to guarantee an IGAI's independence, pluralism, and competency. It balances the different influences at work in the process of appointing the panel's members. It acts in a collective, circumspect manner on complex topics of great importance to the society's development (Menuret et al., 2012). Lawmakers may choose to establish collegial bodies with fewer members to favour confidentiality and the speed of decisions, as well as a general effectiveness of action. Some authorities have more members, which gives them a broader range of competencies and ensures the observance of a sense of pluralism by including the maximum number of perspectives, experts, or representatives from the relevant sectors.

Jordan, Lebanon, Morocco, and Tunisia have all decided to grant a collegial institution the mission of ensuring the right to access information. In Jordan, this is the nine-member Information Council[1]. The Tunisian Authority for Access to Information is also a collegial institution whose nine members have more varied origins than its Jordanian equivalent. According to the Moroccan law, this mission falls to the ten-member Commission on the Right to Access Information. Lastly, Lebanon has charged its National Anti-Corruption Commission with guaranteeing the provisions regarding the right to information, however without having determined the Commission's composition.

7.1.2. An IGAI's administrative attachment or independence

According to international principles[2], an IGAI must be independent from the government administration, it is understood that the majority of cases it handles must involve individual citizens. In certain situations, IGAIs are completely independent administrative authorities created to meet several goals, including the provision of a strong guarantee of impartiality from the state to the public, and ensuring the effectiveness of government intervention in terms of speed, adaptation to changes in needs and markets, and continuity of action. An IGAI's creation may also partly be a political response to the aspiration to new modes of regulating the economy and society, by giving a large space to mediation, and by paying

closer attention to actual transparency in the government's actions (French Council of State, 2001).

In the four MENA region countries examined in this report, lawmakers did not always make the same choices. Some IGAIs are directly attached to administrative departments and do not have a legal personality separate from that of the state. They come under the hierarchical authority of the head of the administration into which they have been inserted. This person might be the Prime Minister, by virtue of his/her power of regulation and investigation under ordinary laws, or a minister when the legislation explicitly designates such a person. Jordanian lawmakers did not want the Information Council to be independent of the government; therefore, they placed the Minister of Culture in charge of it (Mendel, 2016).

In Morocco, Article 22 of the law on access to information states that the president of the Commission on Access to Information is named by the King and 6 of its members are appointed by independent constitutional bodies. The Commission is however under the authority of the Head of Government. The lack of decree providing a framework for the implementation of the law has led to the formulation of hypotheses regarding the extent of its subordination. The Commission would report directly to the Head of Government and consequently would be under his/her direct authority. It would thus not have the status of an independent administrative authority, like the Supervisory Commission for the Protection of Personal Data; it is instead an administrative unit without its own legal personality.

To the contrary, Article 37 of the Tunisian law established an independent public authority with its own legal personality. The law does not determine the exact legal nature of the Authority for Access to Information; therefore, it may have the status of either an independent administrative authority pursuant to Tunisian law, or that of a specialised administrative court. The two hypotheses are presented below, without case law having taken up this matter to date.

On the one hand, it may be an independent administrative authority to the extent that it has its characteristics, namely those of a state institution responsible for ensuring, in the state's name, the regulation of sectors that society considers essential and where the intervention of the executive branch remains limited. Similarly to other independent administrative authorities, the Authority for Access to Information will have a certain number of powers (recommendation, decision, regulation, and sanction). The commission's administrative nature arises from its delegation of certain responsibilities traditionally assigned to the government. Its independence comes from the law that created it, which provides that it is independent of the sectors it oversees and of the public authorities[3]. Considering the importance of the Authority for Access to Information for the preservation of public freedoms, one can legitimately imagine that lawmakers intended to grant it a legal status much like that of the constitutional authorities established under the 2014 Constitution, which occupy an important place in the organisation of essential sectors for democracy and rule of law in Tunisia (Martinez, 2014).

On the other hand, the judiciary role of the Authority for Access to Information could also come from several articles of the organic law on access to information that describe a judiciary procedure. In particular, Article 38 on the Authority's attributions provides that it is responsible for "deciding appeals submitted to it on access to information. To this end and as necessary, it may conduct all necessary investigations on site at the body in question, carry out all investigative procedures, and question anyone whose testimony is deemed useful". Article 31 of the law also regulates the procedure for appealing the Authority's

decisions before an administrative court. Likewise, Article 61 of the law containing transitory provisions specifies that "the administrative court continues to rule on appeals against decisions refusing access to information that fall within its jurisdiction before the authority begins its operations, in accordance with the rules and procedures provided in Decree-Law No. 2011-41 of 26 May 2011 on access to government documents held by pubic bodies, as amended and supplemented by Decree-Law No. 2011-54 of 11 June 2011". Given the impossibility arising from the law of determining the legal nature of the Authority for Access to Information as either an independent administrative authority or as a court, we must therefore wait for the case law of the courts holding jurisdiction to decide this matter.

7.2. The appointment and composition of the IGAIs

The broad participation in IGAIs of persons of different origins and competencies, especially professionals, as well as the terms and conditions for appointing the members are decisive to an IGAI's independence and credibility.

7.2.1. The composition and qualities expected of IGAI members

The composition

The composition of the IGAIs in Jordan, Tunisia, and Morocco expresses the intention to link them with the body responsible for protecting personal data. Morocco's Commission for Access to Information is presided over by the President of the National Supervisory Commission for the Protection of Personal Data. This rapprochement coincides with current evolutions in OECD member countries.

In general, the members of the IGAIs in Jordan, Tunisia, and Morocco come mostly from the government and the upper administration, or they more broadly represent the diversity of the society. In the case of Morocco and Tunisia, one can note the intent to establish a relationship between the IGAI and the archive preservation departments. Besides that, Jordan's IGAI includes the Human Rights Commissioner, and Morocco's IGAI includes a representative from the National Human Rights Council and a representative from the Ombudsman Institution. The presence of a representative from the National Authority on Probity and the Fight against Corruption in Morocco's Commission on Access to Information brings it closer to the goal of fighting corruption, which also led to the creation of Lebanon's IGAI.

It should be noted that most of the members of Jordan's IGAI are high-ranking public officials in office. It is composed of the following members: the Minister of Culture (president), the Information Commissioner (vice-president), the secretary general of the Ministry of Justice, the secretary general of the Ministry of the Interior, the secretary general of the Media Council, the Director of the Statistics Department, the Director of the Centre for Training and technology, and Ethics Director for the Armed Forces, and the Human Rights Commissioner. Such a composition for an IGAI diverges from the practice within OECD member countries, where public officials subject to a hierarchy are limited in number to ensure the IGAI's independence from the executive branch, against which most of the complaints are filed. However, a draft amendment of the Jordanian law is now being examined by the Parliament. This draft proposes that the President of the Jordan Press Association (JPA) and the Jordan Bar Association, as well as the Director of the Media Commission all become members of the Council. Such a development would bring Jordan's IGAI more in line with the IGAIs in OECD member countries.

The board of the Tunisian Authority for Access to Information is composed of nine members (Art. 41): an administrative judge (president), a judge from an ordinary court (vice-president), a member of the National Statistics Council, a university professor specialised in ICT, an expert in government documents, an attorney, and a journalist. These individuals must demonstrate a minimum of ten years of actual working experience as of the date of the presentation of their application. These members are supplemented by a representative from the Authority for the Protection of Personal Data who must have worked within this institution for a minimum of two years, and a representative of associations active in fields related to access to information. This person must have held a managerial position within one of these associations for a period of at least two years. Therefore, Tunisian lawmakers sought to take their distance from the government sphere and to place emphasis on the independence of the decisions made by the Authority's members. In fact, it is essentially made up of judges, university professors, and representatives of various professions and from civil society.

The law on access to information seeks to turn the Moroccan IGAI into a body that is largely representative of the public powers, institutions, and society, one which has a majority of members that come from independent institutions or who themselves hold an independent status. The Commission on Access to Information is chaired by the President of the National Supervisory Commission for the Protection of Personal Data, who is appointed by the King from among those persons known for their impartiality, probity, and competence in the domains of the law, courts, or information[4]. The IGAI is composed of a representative from the Archives of Morocco (which brings it closer to Jordan's IGAI), two representatives of the government administration designated by the Head of Government, a member designated by the President of the Chamber of Representatives, a member designated by the President of the Chamber of Councillors, a representative from civil society known for his/her competency and experience in the field of access to information, who is designated by the Head of Government. It also includes a representative from the following constitutional institutions: the national Authority for Probity and the Fight against Corruption, the National Human Rights Council, and the Ombudsman Institution.

Table 7.1. Composition of the Jordanian, Tunisian and Moroccan IGAIs

Members	Jordan	Tunisia	Morocco
Minister	1 (president)		
Director of archives and libraries	1 (Information Commissioner)	1	1
Person responsible for data protection	1	1	1 (president)5
Person responsible for fighting corruption	-	-	1
Person responsible for human rights/Ombudsman	1	-	26
Person responsible for the media	1	-	-
High-ranking public officials	4	1	2
Judges	-	2 (one of which is the president)	-
Academic	-	1	-
Attorney	-	1	-
Journalist	-	1	-
Representative from civil society	-	1	1
Members designated by Parliament	-	*	2
Total	9	9	10

Note: All members of Tunisia's IGAI are elected by Parliament
Source: Compilation by the authors using the texts of the Jordanian, Tunisian, and Moroccan laws on IGAIs.

The qualities expected of IGAI members

The laws in force in Jordan, Tunisia, and Morocco seek to establish the necessary conditions for the proper fulfilment of the missions of institutions responsible for access to information by their members. Generally, members of these IGAIs are prominent individuals who have great moral authority that allows them to enforce their positions before the entities required to provide information.

All the laws also provide for the obligation of nationality and the observance of ethics at the highest level, as well as an obligation of professional activity, experience, or competency in the field in question, or in related fields, or ones that concern access to information. All of these obligations are either explicitly stated in the law creating the IGAI, or form the corollary of the qualification of the public official.

We should note that the contribution of IGAIs to freedom of information is due largely to the independence granted to its members in the performance of their duties within the institution. The laws of some of the countries being examined emphasise the autonomy or independence of IGAI members in the performance of their duties. However, we must note that a minister will be tied by the duty of governmental solidarity, and that an official will submit to a hierarchy. For these reasons, one should guarantee that the IGAI's decision-making bodies sufficiently represent different social interests to guarantee that they mutually balance one another.

7.2.2. The designation of IGAI members

Designation constitutes the administrative act with which the responsible authority selects a person called to occupy a specific position. This power may lead the authority in question to choose at its discretion, to suggest a person for a position, or lastly just to confirm the designation of someone who has been proposed (formal power of appointment). The designation entails the delegation of powers tied to the position. It often also helps, for example when the IGAI member already holds a permanent public position, to signify the independence of the authority in question (Gérald, 2006). The modes of appointing IGAIs in Jordan, Morocco, and Tunisia are characterised by their relative diversity.

The law does not determine the mode of appointing members of the Jordanian IGAI, but it refers to their positions or roles in the government and the administration to substantiate their appointment. Article 40 of the Tunisian organic law on the right to access information specifies that the Authority for Access to Information is composed of a board and a permanent secretary. Board members are designated by the Assembly of the Representatives of the People. The designation process is characterised by its formalism, openness to competition, and transparency. Members of the Authority are appointed by the Head of Government for a non-renewable term of office of six years, upon a decision by the Assembly of the Representatives of the People. A call for applications is launched at the decision of the President of the Specialised Commission of the Assembly of the Representatives of the People, and is published in the Official Journal of the Republic of Tunisia. This call for applications sets the deadline and the procedures for filing applications, as well as the conditions to be met. The Specialised Commission selects and ranks the best three candidates for each position by a three-fifths majority of its members in a secret vote. The candidates who win the most votes are selected, depending on their ranking. In case of an equal number of votes for a man and a woman, the woman shall be selected, and in case of an equal number of votes between two men, the younger one will be selected. The President of the Assembly of the Representatives of the People sends a list to a plenary session of the Assembly that contains the ranking of the three best candidates

for each position in order to choose the Authority's members. The plenary session of the Assembly of the Representatives of the People votes to choose a candidate for each position with an absolute majority of all members in a secret vote. The President of the Assembly of the Representatives of the People sends the list of Authority members elected by the General Assembly to the Head of Government. In July 2017, the Assembly of the Representatives of the People elected the members of the Authority by a wide majority in this way[7].

According to the Moroccan law, the IGAI's members are appointed by the public authorities and certain administrative authorities that exercise considerable independence. The IGAI's president is the President of the National Supervisory Commission for the Protection of Personal Information. Two representatives from the government administration are designated by the Head of Government. The President of each Chamber of Parliament designate each one member, as will the Ombudsman Institution, the National Human Rights Council, the Archives of Morocco, and the National Authority for Probity and the Fight against Corruption. Lastly, one member represents a civil society organisation working in the field of access to information. He is appointed by the Head of Government.

Notes

1 See: Mendel, T. (2016), "Analysis of Law No. 27 for the Year 2007 Guaranteeing the Right to Obtain Information', UNESCO, Amman, pg. 18, paragraph 2.

2 Ibid.

3 See: Gaddes, C. (2009), *Les autorités administratives indépendantes à travers les avis du conseil constitutionnel, analyse critique des avis 50 et 83 de 2007* ["Independent government authorities through the opinions of the constitutional council, a critical analysis of opinions 50 and 83 of 2007"], India, F.D.S.E.P.S. & A.T.D.C, Constitution & Administration, http://www.chawki.gaddes.org/resources/sousse.pdf.

4 National Supervisory Commission for the Protection of Personal Data of the Kingdom of Morocco, "Legislation on the protection of personal data", www.cndp.ma/fr/espace-juridique/textes-et-lois.html.

5 The President of the National Control Commission for the Protection of Personal Data.

6 The President of the National Council of Human Rights and the Mediator.

7 Réalités Online, *Élection des membres de l'instance d'accès à l'information* ["Election of members of the information access authority"], 18 juillet 2017,www.realites.com.tn/2017/07/arp-election-du-president-et-du-vice-president-de-linstance-dacces-a-linformation.

Chapter 8. The general missions of IGAIs

This chapter observes that the IGAIs in the MENA region countries examined in this report exercise constant vigilance over the right to information, promote access to information, write reports, provide opinions on laws and regulations assess the enactment of the right to access information, and share their experiences with foreign authorities that carry out equivalent missions.

As in OECD member countries, the legislation of the four MENA region countries examined (Jordan, Lebanon, Tunisia, and Morocco) makes IGAIs the guardians of the right to access information in its two essential dimensions: the right to public information as a way to promote democratic values and rights at the individual and collective level, and the right to private information, meaning information concerning a particular individual, in terms of the interest that this individual may express regarding access to his personal data held by public bodies or the private sector.

However, like all administrative authorities, IGAIs act within the limits of their jurisdiction and the rules dictated to them by law. They interpret and apply the law on access to information in its principles, exceptions, and penalties, both towards those individuals who are subject to the obligations established by law and the beneficiaries of this right.

8.1. IGAIs oversee the right to information

As for the IGAIs in OECD member countries, the IGAIs in the MENA region examined in this chapter are responsible for overseeing the right to information and for ruling daily on its application.

8.1.1. The concepts of information and of an individual obligated to communicate information

The legislation of the four MENA region countries examined in this report closely links the concepts of information and of an individual obligated to communicate information. This exclusively concerns the information held by those who either carry out a mission of public service, or who are closely tied to the public sphere, for example through the public funds that they receive. This combination gives a broad scope of application to the legislation.

Jordanian legislation defines information as any oral, written, copied, recorded, or electronically preserved data, as well as statistics, documents, or recordings preserved by any other means that are subject to the control or responsibility of a person at a ministry, government office, authority, entity, or any public institution, an official public institution, or a company responsible for managing a public service.

Articles 2 and 3 of the Tunisian organic law grant a very broad scope of application to the right to access information. This area covers all recorded information, regardless of the date, form, or medium, produced or obtained by bodies subject to the law's provisions in performance of their work. The law specifically concerns: the Presidency of the Republic and its bodies, the Presidency of the Government and its bodies, the Assembly of the Representatives of the People, the Ministries and the various bodies that sit beneath them, domestically or abroad, the Central Bank, public enterprises and establishments and their offices abroad, local and regional public bodies, local authorities, judiciary bodies, the Superior Council of the Judiciary, the Constitutional Court, the State Audit Court, the constitutional authorities, independent public authorities, regulatory authorities, private law persons responsible for managing a public service, and organisations, associations, and bodies receiving public financing. It should be noted that the very broad scope of this law, which applies to the Parliament and to the judiciary, places it at a higher level than a number of laws in OECD member countries, one that is in accordance with international standards.

The Lebanese law defines the government as the state and its administration, public institutions, independent administrative entities, courts, entities and councils of a judiciary or arbitration nature, be they ordinary or extraordinary, including judicial, administrative,

and financial courts (while entirely excluding religious courts), municipalities and syndicates of municipalities, private institutions and companies responsible for managing public facilities or assets, public-private enterprises, public interest foundations, all other public law entities, and entities exercising a regulatory power over certain sectors. The law adds that a government document means any written, electronic, or photographic document, any audio or video recording, as well as any mechanically legible document in any form held by the government. Government documents include, but are not limited to files, reports, studies, acts, statistics, orders, instructions, directives, circulars, warrants, letters, opinions, and decisions issued by the government, contracts entered into by the government, and documents belonging to the national archives.

Article 2 of the Moroccan law on access to information defines information as data and statistics expressed in the form of numbers, letters, drawings, images, audio-visual recordings, or in any other form that are contained in documents, reports, studies, decrees, circulars, publications, notes, or databases, or in any other document of a public nature produced or obtained by the relevant institutions or bodies in performance of their missions of public service, in any medium whatsoever, in electronic format or otherwise. This article also says that the persons and bodies to which this law applies includes: the Chamber of Representatives, the Chamber of Councillors, government administrations, courts, local political bodies, public establishments and all public law entities, institutions or bodies in the public or private sector responsible for carrying out a mission of public service, and governance institutions and bodies as stated in Title XII of the Constitution. These comprise the National Human Rights Council, the Ombudsman, the Council of the Moroccan Community Living Abroad, the Authority for Equality and for Fighting all Forms of Discrimination, the High Authority for Audio-Visual Communication, the Anti- Trust Council, the National Authority for Probity and for Preventing and Fighting against Corruption, the Superior Council of Education, Training, and Scientific Research, the Advisory Council on Family and Childhood, and the Advisory Council on Youth and Community Action.

8.1.2. The proactive publication of information

In OECD member countries, the great majority of the population does not make requests for the communication of information, but it comes to know it through its proactive publication by those entities subject to this obligation, the government in particular. Therefore, it is the responsibility of the persons subject to the law to place this information at the public's disposal without being requested to do so. The most recent legislation in the MENA region countries examined tends to establish this same type of obligation. The Jordanian law on access to information, which dates back to 2007, does not require the proactive publication of information.

The Tunisian law devotes an entire chapter to the proactive publication of information. It contains a very detailed list of the disclosure obligations that apply to all bodies subject to the law. It should be noted that the law provides for the publication and updating of information. Article 7 of the law specifically provides that information must be published on the obligated entity's website, and it establishes the frequency of the updating of the information, as the data on the websites in question are often old and incomplete. These positive measures will lead the obligated entities to act and to designate the persons responsible for updating the information. Article 8 of the Tunisian law also provides that the bodies subject to the provisions of this law must proactively publish any information that was the subject of at least two repeated requests, as long as it does not fall under the legal exceptions to publication. This latter measure is very interesting, as it allows users to

avoid the multiplication of requests and the relevant offices from responding to additional requests.

Article 7 of the Lebanese law proclaims the obligation to publication in a much more generic manner. It provides this for transactions involving a payment of more than 5 million LBP (roughly 2,550 EUR[1]) to ensure a good level of transparency in the use of public funds. The information is published within a 15-day term; however, the law does not specify when this term begins. This obligation should appear when the act in question is completed or is mandatory in nature.

The Moroccan law specifies the procedures for the advance publication of information in detail. It provides for the general obligation using all available means, especially electronic ones (national data portals). It also specifies a long list of texts subject to the obligation to publication (legislative and regulatory texts, budgets for local political bodies, official reports, etc.). Article 11 specifies that any institution or body must adopt all useful measures to manage, update, classify, and archive the information in its possession to facilitate its presentation to people who request it.

8.1.3. The reuse of public information

In OECD member countries, the legislation may provide for the reuse of public information for purposes other than the ones for which it is held or for which it was developed. Reuse entails a component of administrative transparency, and a financial one, which consists of commercially developing the data assets in the government's possession (Martinez et al, 2007). The approach adopted in the four MENA region countries reveals several disparities.

Neither the Jordanian nor the Tunisian law contain explicit provisions on the right to reuse information, nor do they explicitly prohibit it. According to the data collected in preparation of this report, the Tunisian government hopes to produce a draft law on the reuse of information. The intention of filling this legislative gap as quickly as possible merits support, and the Tunisian government can take inspiration from the laws of OECD member countries. The Jordanian government could follow suit and develop a similar project.

Article 20 of the Lebanese law provides that the right to access information does not allow beneficiaries or any other party to transfer, publish, or use the documents for commercial purposes, unless these documents have been innovatively reorganised in accordance with Article 3 of Law No. 75 of 3 April 1999 on the protection of literary and artistic property, and on the condition that the documents do not contain any personal information and that they respect intellectual property rights. Article 20 thus protects the intellectual property of works while allowing for the reuse of information, especially when its purpose is a new creation. Nevertheless, the preparation of a draft law on the reuse of information remains necessary.

According to Article 6 of the Moroccan law, the use and reuse of information that has been published, made available to the public, or delivered by institutions and bodies subject to the law are authorised on the condition that they are made for legal purposes and that their content is not altered, that the source and issuance date are mentioned, and that this does not compromise the general interest or the rights of third parties. Thus, the information contained in these documents to which third parties hold intellectual property rights is not subject to the right of reuse.

Article 6 of the Moroccan law does not say anything about those cases where the entity demands compensation because of its intellectual property rights. In some OECD member countries, like France, entities obligated to communicate information are authorised to

charge fees on the condition that they first enter into a reuse license agreement. In the French case, ignorance of the license's clauses and altering the public information are subject to penalties (fines) inflicted by the French Commission on Access to Government Documents in response to a complaint filed by the government. Such an example could serve as inspiration to the authorities of MENA region countries as they envision the evolution of their legislation in this direction.

8.1.4. The limits to the right to access information

In OECD member countries, IGAIs play an important role in setting limits on the right to access information. They face a dual constraint in their application of the law: ensuring a balance between the right to access information and the right to privacy on the one side and the right to protect the confidentiality of the information whose disclosure would harm the public interest on the other (OECD, 2002).

In OECD member countries, it is a given that legislation must formulate exceptions to the right to access information clearly and specifically. These exceptions are made using strict criteria that consider both the public and private harm that could arise from communicating the information and the nature of the public interest protected by this communication. In some laws, communication of the information is the rule; this limits the profusion of exceptions. The justification of the refusal to communicate the information depends on the public authority's capacity to prove that the information in question is subject to an objective provided by law, that the communication of the information would significantly hinder this objective, and that this hindrance would be considerably greater than the interest in communicating the information to the public. This principle applies to all the branches (executive, legislative, and judiciary) and all government departments (especially those involving national security and defence). Additionally, bodies with a majority of attributions that fall under the regime of exceptions should nevertheless not be completely excluded from the law's scope of application. Each decision leading to a refusal to communicate information must thus be duly justified, especially when it concerns individual requests for access[2].

The regime of exceptions provided in the laws of the four MENA region countries in question is at times complex and particular to the history of each country, or to its current political, social, and international situation. For example, some exceptions are tied to the need to protect individual freedom in traditionally authoritarian states, or the need to protect public resources from corruption.

The general exceptions

The laws of the four MENA region countries examined have exceptions of a general nature. Thus, Jordanian Law No. 47/2007 on the protection of the right to access information provides for a large number of exceptions, which demands a very careful interpretation of its provisions[3]. Some of the general exceptions to the right to

communicate information involve the identity of the person requesting. For example, the Jordanian law provides that this be a Jordanian citizen (Art. 7). The Moroccan law on the right to access to information reserves this right to citizens of the country and foreigners who are legal residents. These limitations diverge from the practices in OECD member countries, where requests for access are made without any consideration of nationality or residence. According to the data collected for this report, the Jordanian government, aware of the overly restrictive nature of certain limitations imposed by the country's law, hopes to initiate a legislative reform to remove them.

Without entering into the details, we may observe that the Jordanian law lists a large number of exceptions to the right to access information, which demands a very careful interpretation of the law. Furthermore, even though the first paragraph of Article 24 of the Tunisian organic law establishes a principle that limits the exceptions ("The body in question may only refuse access to information when this compromises national defence or security, international relations, or a third party's rights involving the protection of their privacy, personal data, or intellectual property".), the following paragraphs provide specifications to indicate that the limits are relative and can be interpreted otherwise. Thus, the domains cited in the first paragraph of Article 24 of the organic law are not considered as absolute exceptions to the right to access information. They are subject to a harm test requiring that the harm be serious, whether it is concomitant or after the fact. They are also subject to a test of the public interest in the information's accessibility or inaccessibility for each request. The proportionality between the interests to be protected and the reason for the request for access are thereby considered. (See Box No.8.2 below on the absolute and relative exemptions to the right to access information).

Article 25 of the law on access to information expressly protects the identity of individuals who report abuse or acts of corruption. Article 26 provides for an absolute right to obtain information tied to grave violations of human rights or war crimes and the pursuit of their perpetrators and to the protection of the public interest from a grave threat to health, security, the environment, or resulting from a crime.

Article 19 of the Lebanese law gives much greater latitude to the obligated entities in refusing access to information by stating that "refusal decisions are written and reasonable". The only explicit exception concerns the prohibition of publishing salaries and indemnities (Art. 7).

Article 7 of the Moroccan law lists a very large number of exceptions to the right to access information. It provides that: "[…] any information is excluded from the right to access information when it is tied to national defence, the state's domestic and international security, as well as information involving the privacy of individuals or types of personal data or information whose disclosure is likely to infringe on the fundamental freedoms and rights specified in the Constitution, and the protection of sources of information.

The provisions of the previous paragraph apply to information whose disclosure may cause harm to:

1. Relations with another state or international governmental organisation;
2. The state's monetary, economic, or financial policies;
3. Industrial property rights, copyright, and other such rights; and
4. The rights and interests of victims, experts, and whistle-blowers with regard to crimes such as corruption, embezzlement, and the abuse of power.

Information considered confidential by current legislation in effect is excluded from the right to access information, as is information whose disclosure may cause harm to:

a. the confidential nature of resolutions issued by the Council of Ministers and the Council of the Government;
b. the confidential nature of administrative inquiries and investigations, unless authorised by the relevant administrative authorities;

c. the progress of court proceedings and all other related procedures, unless authorised by the relevant administrative authorities; and

d. the principles of free, fair, and open competition, as well as private initiative".

Article 28 of the Tunisian law and Article 21 of the Lebanese law proclaim that documents that are exempt from the right to information must become accessible according to the procedures and timeframes established in the legislation on archives. Finally, the laws on access to information in Tunisia (Article 27), Jordan (Article 11) and Morocco (Article 8) authorise the partial communication of information after the names of the parties protected by confidentiality have been redacted.

Box 8.1. A particular case in the legislation: the right to access court documents

- A growing number of countries grant access to court documents by third parties. The judiciary branch is not systematically excluded from provisions on the public's right to access documents.
- National systems for the accessibility of court documents are mostly partial (i.e., they only apply to certain types of courts or documents); however, there is a marked tendency to subject the judiciary branch to the requirement of transparency.
- Some countries (mainly Canada, Finland, and Slovenia) have a comprehensive system for accessing court documents. Although a meticulous examination of these systems has highlighted significant differences between them, they all in principle grant the public the broadest access to court documents.

Source: Determined by the author on the basis of: European Parliament (2013), national practices with regard to the accessibility of court documents, Publications Office of the European Union, Luxembourg, http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474406/IPOL-JURI_ET(2013)474406_EN.pdf.

Box 8.2. Relative and absolute exemptions from the right to access information in European Union countries

The legislation of European Union member countries contains exemptions from the right to access information. "Their purpose is to limit administrative discretion by ranking interests at stake (establishing a hierarchy) so that public authorities are required to assess the concrete relevance of those interests. The most commonly used legal standards in this relation are the harm test (absolute exemptions) and the balancing test (relative exemptions)".

Absolute exceptions: the harm test

"The harm test involves an assessment. Firstly, the public authority has to establish the nature of the impairment that might result from disclosure. Secondly, the likelihood of the detriment to occur has to be convincingly established. Regarding the nature of the harm to the public interest, it is necessary to identify and qualify the specific detriment that would endanger the interest protected by the exemption. A distinction can be drawn between the potential and the actual risk of damage. The best judicial and administrative practices tend to reject the former notion and to converge on the latter: in order to apply an exemption, the risk of impairment should be more than an abstract possibility. If exceptions to the rule of access have to be interpreted restrictively, a request can only be rejected if disclosure is capable of actually and specifically undermining the protected interest.

Regarding the likelihood of the detriment, a public authority needs to show that there is a causal relationship between the potential disclosure and the impairment of the public interest. Once it is ascertained that the risk of impairment is actual and specific, the degree of the risk for it to occur should be assessed. Two options are available. One is based on the distinction between plausible and likely impairment: a requirement of a plausible harm is more stringent than the requirement of a harm that is merely likely. Another variant of this technique involves the distinction between the straight and reverse harm test: a straight requirement of damage favours the granting of access whereas a reverse requirement of damage assumes secrecy to be the main rule."

Relative exemptions: the balancing test

"The possibility that the public interest in transparency could override a public or private interest protected by the exemption implies that the conflicting interests are put on an equal foot. There is no presumption in favour of protecting one of the two at legislative level. It is for the public authority to weigh the two competing interests and the latter is entrusted with full discretion. A proper application of the balancing test requires a preliminary harm test. If the harm is not relevant (or not likely to occur), there is no need for balancing: the public interest in disclosure would prevail without being "weighed". The second step, specific to the balancing test, involves weighing the potential damage against the corresponding benefits arising from the disclosure. The relevant criteria for balancing are the general ones pertaining to the exercise of administrative discretion and, thus, may vary from one legal tradition to the other. Nonetheless, since the right of access is recognised as a fundamental right it imposes the adoption of strict scrutiny over the discretionary power of public authorities. Therefore such scrutiny should be carried out in light of the principle of proportionality."

Source: European Parliament (2013), national practices with regard to the accessibility of court documents, Publications Office of the European Union, Luxembourg, http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474406/IPOL-JURI_ET(2013)474406_EN.pdf.

Exceptions concerning the protection of privacy

As indicated beforehand, the Tunisian law and the Moroccan law assert the general principle of the protection of privacy in relation to the information to be communicated. This principle is of great importance in practice, because it applies to a large amount of personal data held by the government and by public agents (for example, medical, tax, asset, and family-related data).

Article 9 of the Moroccan law adds a provision on the protection of information that third parties have filed with an institution or body to maintain its confidentiality, but which may be subject to a request for communication. When receiving such a request and before delivering the requested information, the institution or body must obtain the agreement of this third party to the disclosure of the requested information. If the response is negative, the institution or body in question will decide whether to disclose the information in light of the grounds put forth by this third party.

Paragraphs e and f of Article 13 of the Jordanian law are much more explicit. They provide for the protection of personal data and individuals' education and medical files, professional files, as well as information on bank accounts, money transfers and professional secrets. They also protect the confidentiality of correspondence.

Article 4 of the Lebanese law regulates in detail the access to government documents containing personal data. It prohibits the communication of information regarding privacy and health (Art. 5-4). Moreover, only the person in question has the right to access personal files or any evaluation report for an individual when the following information appears in such documents: the person's name, identification number or code, or any other identifying description such as fingerprints or eye scans, or acoustic or photographic records.

8.1.5. Penalties

Penalties may apply in case of an infringement on the right to information or for an undue disclosure of information. Under the Tunisian and Moroccan laws, the right to access information is protected by specific disciplinary and criminal measures. The IGAIs do not intervene in their adoption, however.

The Jordanian and Lebanese laws on access to information do not specify penalties for infringements on the right to access information, without prejudice to the applicability of penalties arising under the general criminal law or public administrative law systems. The Tunisian organic law inflicts a fine for an intentional infringement on the right to access information within bodies subject to the law on access to information (Art. 57). It also provides for disciplinary measures to be taken against public agents who ignore the provisions of this law (Art. 58). The Moroccan law sets forth disciplinary penalties for anyone responsible for information within entities subject to the provisions of the law who does not observe them. The law also inflicts the criminal penalty of disclosing professional secrets on anyone who breaches the prohibitions from disclosure set forth in its Article 7. According to the Tunisian law (Art. 58) and the Moroccan law (Art. 29), the illegal and intentional damaging of information or the incitation to do so is punishable by imprisonment or fines.

8.1.6. The general missions fulfilled by IGAIs

The IGAIs of MENA region countries, like those of OECD member countries, receive very important general attributions for guaranteeing access to information; however, they may

not issue regulatory acts that have a general, prerogative effect. This power remains with the executive branch.

8.1.7. Promoting access to information

Paragraph 4 of Article 4 of the Jordanian law provides, with regard to the Information Council, that "the Council publishes bulletins and carries out all appropriate activities to explain and reinforce the right to knowledge and a culture of information". In this context, the Information Council has prepared a certain number of circulars and directives to organise the classification, availability, and statistical monitoring of information by the various responsible offices. Such an approach is indispensable to a coherent and effective exercise of the right to access information[4], and, in observance of the jurisdiction held by IGAIs in the region, it might inspire their actions.

The Tunisian law provides that the IGAI monitors the policy in favour of the proactive dissemination of information by the relevant bodies. This applies to information subject to the obligation to publication, updating, the periodic placement at the public's disposal, publication and updating on websites, and which has been the subject of at least two requests for access. The IGAI also promotes a culture of access to information in coordination with the bodies subject to the law's provisions and civil society through initiatives to educate and raise awareness among the general public (Art. 38).

The Lebanese National Anticorruption Commission advises the relevant authorities on all cases involving the application of provisions of the law on access to information. It also participates in educating citizens and raising awareness among them of the importance of the right to access information and on exercising this right. It helps train government personnel and managers on how individuals are authorised to access information and on the importance of this access (Article 22).

Under the Moroccan law, the Moroccan Commission on Access to Information is responsible for raising awareness among the relevant individuals about the importance of transmitting information and facilitating access to information through all available means, especially by organising training sessions for managers of the relevant institutions and bodies (Article 22).

8.1.8. Writing and presenting reports

The laws of the four MENA region countries examined in this report demand that IGAIs write an annual report on their work, in which they make their observations and recommendations.

According to the Jordanian law, the Information Council approves the annual report on the exercise of the right to access information written by the Information Commissioner and presents it to the Prime Minister[5]. The Tunisian Authority for Access to Information prepares an annual report on its work that contains suggestions and recommendations necessary for the consecration of the right to access information, as well as statistical data on the number of requests for access to information and appeals, the responses and their timeframes, the decisions adopted by the Authority, and the annual oversight of their implementation by the bodies subject to the law's provisions. The Authority submits its annual report to the President of the Republic, the President of the Assembly of the Representatives of the People, and to the Head of Government, and this report is published on the Authority's website (Art. 38).

According to Article 22 of the Lebanese law, the National Anti-Corruption Commission prepares an annual report on its work on the right to access information, which also assesses the enactment of this right. This document also reports on the difficulties encountered by individuals in accessing information and classifies them by category. The Commission also publishes special reports on important topics.

According to the Moroccan law, the Commission on Access to Information prepares an annual report on its work in the domain of the right to access information, which specifically includes an assessment of the implementation of the actions carried out (Art. 22).

8.1.9. Providing opinions on laws and regulations

The Tunisian law provides that the IGAI must issue its opinion on draft laws and regulations concerning access to information (Art. 38). Under the Moroccan law, the IGAI provides opinions on draft legislation and regulations that the government presents to it (Art. 22). These measures are important for the overall coherence of the legislation and the primacy accorded to the right to access information.

8.1.10. Assessing the consecration of the right to access information

According to Article 38 of the Tunisian law on access to information, the Authority for Access to Information periodically assesses the consecration of the right to access information by the bodies subject to the provisions of this law. Article 22 of the Moroccan law requires the Commission on Access to Information to formulate recommendations and proposals with the aim of improving the quality of the procedures for accessing information, and to submit proposals to the government to bring current legal and regulatory texts closer to the principle of access to information.

8.1.11. Sharing experiences with foreign counterparts

Under Article 38 of the Tunisian law, the Authority for Access to Information shares its experiences and best practices with its foreign counterparts and specialised international organisations, and it enters into cooperation agreements in this domain. These attributions comply with the need to share experiences at the international level and with the increasingly important role played by international conventions and organisations. It should, however, be noted that the conventional capacity accorded at the international level to the Tunisian Authority for Access to Information limits the traditional role of the government and the Ministry of Foreign Affairs in defining the country's international policies. It also represents the exception among the laws of the MENA region countries examined in this report.

Notes

1 As of 7 November 2017.

2 Article 19 (no date), "The public's right to information: principles regarding the legislation on the freedom of information", http://www.ipu.org/splz-f/sfe/foi_ps.pdf.

3 Article 13 of Law No. 47/2007 on the protection of the right to access information establishes a large number of exceptions to the right to access information. It states "Without prejudice to the provisions of the applicable legislation, the person responsible for access to information will refrain from disclosing information on: a. Secrets and documents protected by another law. b. Documents classified as confidential and protected, and documents that can be communicated upon another country's agreement. c. Secrets involving national defence, state security, or foreign policy. d. Information including the analysis, recommendations, propositions, or consultations to be submitted to the responsible official before a decision is made on them. This includes correspondence or information exchanged between the various government offices. e. Personal data and dossiers for education or medical personnel, professional dossiers, bank accounts, transfers, and professional confessions. f. Personal or confidential correspondence, whether sent by post, cable, telephone, or any other technological means, with government offices and the responses to this correspondence. g. Information whose disclosure would affect negotiations between the Kingdom and any other state or authority. h. Investigations led by the public ministry, the judicial system, or security authorities into any crime or proceeding falling within their jurisdiction, as well as investigations by the relevant authorities conducted with the aim of revealing financial, customs, or bank-related offences, unless the relevant authority authorizes their disclosure. i. Commercial, industrial, or technological information, information on scientific, research, or technology transfer offers, whose disclosure would lead to an infringement of copyright, intellectual property rights, or fair and lawful competition practices, or to an irregular profit or loss for anyone". For a detailed study of these exceptions, see: Mendel, T. (2016), "Analysis of Law No. 47 for the Year 2007, Guaranteeing the Right to Obtain Information", pgs. 12-17, UNESCO, Amman, http://stmjo.com/en/wp-content/uploads/2016/06/UpdatedJordan.RTI- Analysis.16-05-18LS.pdf

4 Circular No. (17) for the year 2007 of 17/11/2007 on the need to index and organise information and documents at this disposal of government administrations and institutions; Circular No. (19) for the year 2007 of 29/7/2007 and Communication No. (20) for the year 2007 of 5/8/2007 on the establishment of forms for requesting information and on the consolidation of information contained in this document; Circular No. (24) for the year 2007 of 19/11/2007 to extend the necessary period for completing the indexing and organising of information for an additional period of three months ending on 17/12/2007; Circular No. (29) for the year 2007 of 14/11/2007, which includes the adoption of request for information prepared by the Information Council; Circular No. (13) for the year 2008, which upholds the need to implement the indexing and classification of information in all ministries and public institutions; Circular No. (19) for the year 2012 of 27/11/2012 on the presentation of statistics to the Council on requests made to access information sent to government ministries and offices, as well as to public institutions and bodies pursuant to Article 9(a) of the law on the right to access information; Approval of price lists for expenses incurred by the Ministry for photocopies or copies of requested information. Source: Mutawe, E., La situation du droit d'accès à l'information en Jordanie ["The state of the right to access information in Jordan"], contribution to the OECD regional workshop on access to information, Caserta, 18 December 2017.

5 Article 4, paragraphe 4, e.

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Chapter 9. The processing of requests for access to information

This chapter discusses the procedures for making requests to access information from the entity holding that information, as well as the procedures that the IGAIs of Jordan, Lebanon, Morocco, and Tunisia have for such requests.

The right to request information represents a fundamental aspect of the right to access information, but it is often hard to implement. Requests may be made by an individual or a group of individuals who, for various reasons, seeks data, indications, information, and clarifications held by someone in a position to provide them, and who must respond to their request positively according to the terms and conditions defined in the legislation. The laws of the four MENA region countries examined in this report have dictated precise procedures for making requests of the entity obligated to provide the information. In carrying out their missions, especially when examining decisions refusing access to information, IGAIs examine the application of this legislation, on which it bases its decisions, which are subject to clearly established procedures.

9.1. The request to access information made to the obligated entity

The individual right to access information is enacted with a procedure that includes the presentation of the request for access and the response received, as well as the expenses incurred. It should be noted that the procedure for requesting access to information described below is very general; however, in certain countries, for example Tunisia, the procedure is very detailed.

Only Jordanian legislation reserves access to information to the country's citizens, even though the draft amendment of the law currently being reviewed by the Parliament, to which it was previously referred, contemplates the removal of this condition of nationality[1]. Jordanian legislation also specifies that the person requesting must ground his/her decision, whereas the Tunisian law does not require this. In OECD member countries, grounds for the request are generally not required.

The request for access to information must be made in writing in the four countries in question. According to Jordanian and Moroccan legislation, the requesting person requests access to information using a form that the government has created for this very purpose. The Tunisian law provides that the person can make his/her request using either the form or a blank piece of paper. In all cases, the person presenting the request and the documents being requested must be identifiable. According to the Tunisian organic law, the request must specify the preferred means of accessing the information (on site consultation, receipt of a paper or electronic copy, or an extract of the information). Under the Tunisian and Lebanese laws, the request to access information is made directly to the office that holds this information. The Moroccan law indicates that the request must be made to the person responsible for access to information at the entity subject to the law's provisions. An incorrectly addressed request is redirected to the appropriate office by the recipient public body.

The Lebanese and Moroccan laws mention that the person responsible for access to information will provide the necessary assistance to persons requesting access to information. The Lebanese law provides that the agent responsible for access to information must keep a register of the requests filed, and specifically advise the requesting person of the response times. If the request is insufficiently detailed, the agent will request additional information.

The response times to requests for access to information are clearly stated in the laws examined. According to the Jordanian law, the response must be provided within 30 days. The Jordanian draft amendment to the law currently being studied proposes reducing this timeframe to 15 days[2]. According to the Tunisian law, the criteria vary: a standard deadline of 20 working days is set upon receiving the request, and a request for on-site consultation

requires a response within 10 days. According to the Lebanese law, the response must be provided within 15 days. This period may be extended by another 15 days if the request requires a large amount of information, or the consultation of a third party or of another ministry. The Moroccan law sets a standard deadline of 20 days. This timeframe is doubled under certain conditions if the institution or body in question is only able to respond partially to the request; if the response requires the collection of a large quantity of information; if it is materially impossible to provide the information within the term provided, or; if the request requires that other parties be consulted. The term is reduced to two days under the Tunisian law and three days under the Moroccan law if someone's freedom or safety is at stake. These measures seek to ensure the protection and freedom of individuals.

A decision refusing a request to access information may be tacit or explicit. Under the Lebanese law, such a decision is made in writing and is duly explained. Article 18 of the Moroccan law provides that the refusal decision must be made in writing, especially when the requested information is not clearly identified or it is being processed.

All the legislation examined establishes the principle that the communication is free, even though they let the requesting person bear any expenses incurred.

9.2. IGAI decisions or recommendations on appeals

A decision refusing a request to access information can be appealed administratively (to the same authority for reconsideration, or a higher instance) or to the IGAI. Article 29 of the Tunisian law on access to information provides that the person requesting access to information may file an appeal to the same administrative authority with the head of the body in question within 20 days of decision's notification. Article 19 of the Moroccan law provides the possibility of filing an appeal before the same authority, or to a higher instance in the event that a request to access information is refused.

According to the different legislations, anyone who wishes to challenge a refusal to access information either has the choice of appealing to the IGAI or a court, or must appeal to the IGAI before filing an appeal in court. The Jordanian law authorises anyone receiving an explicit or implicit refusal response to file an appeal before the Council of State or the Council for Access to Information. In Lebanon, Morocco, and Tunisia, an appeal must systematically be filed first with the IGAI. Similarly, the person directly concerned by the government's refusal must file a request to the IGAI, which means that this institution does not have the right to investigate individual refusals at its own initiative.

9.2.1. An appeal filed with the IGAI by the person in question

As it to individual decisions, the IGAI cannot act on its own initiative. The person involved in the decision refusing access to information gives the IGAI jurisdiction. No one may act in the name of a third party.

9.2.2. An appeal based on the refusal of a request to access information

Under Article 4(b) of the Jordanian law, the Information Council is authorised to review individual requests for access to information that have been refused, explicitly or implicitly. According to the Tunisian organic law, the appeal may be filed either directly against the decision by the authority that refused the request for access to information, or against the hierarchical decision following the initial decision (Articles 29 and 30).

Article 22 of the Lebanese law grants the National Anti-Corruption Commission jurisdiction to receive and hear complaints and to hand down decisions in observance of the law. Article 22 of the Moroccan law requires the Commission on Access to Information to record the complaints of persons requesting access to information and to rule on them, which includes the investigation, inquiry, and formulation of recommendations in relation to the complaints. The IGAI is also authorised to formulate recommendations with the aim of settling the conflict.

Observations on the grounds for appeal

In the four countries examined, the refusal of the request for access to information provides the grounds for the appeal, similar to the Roman-Germanic legal traditions prevalent in most OECD member countries. According to other legal traditions, though, the legislation must specify in detail the grounds for filing an appeal before an IGAI (UNESCO, 2015).

Term for appealing before an IGAI

The Jordanian law does not set a deadline for appealing to the IGAI. In contrast, according to the Tunisian law, the person requesting access must file an appeal before the Authority for Access to Information within 20 days of receiving the refusal decision or of the date of the tacit refusal. The Lebanese law sets a two-month term for filing an appeal before the National Anti-Corruption Commission.

Under the Moroccan law, the person requesting access to information may file a complaint with the IGAI within 30 days of either the expiration of the legal term for a response to his/her initial request to the body in question, or of the date of receiving a response to this request.

9.2.3. The investigation of requests for access to information by the IGAIs

The Jordanian Information Commissioner makes recommendations on accepting, presenting, and settling complaints before the Information Council. He receives complaints and submits them to the Council. He takes the necessary administrative and professional measures to exercise the powers and duties assigned to him/her (Art. 6). The law does not clearly define the investigative powers of the Information Council, which does not have the specific power to summon witnesses or to make on-site verifications. For that matter, in this procedure, the burden of proof does not clearly fall to the government authorities.

The Tunisian law contains clearer provisions concerning the procedure for investigating requests for access to information. According to Article 38 of the organic law, the Authority for Access to Information rules on the appeals filed before it. To this end, it may conduct the necessary on-site investigations at the body in question, carry out all inquiries and question any person whose deposition is deemed useful. The persons responsible for the bodies subject to the law's provisions must facilitate to the greatest extent possible the measures that are indispensable to the optimal functioning of the Authority for Access to Information (Art. 39). The Tunisian IGAI announces its decisions to all concerned bodies as well as to the person requesting access to information, and it publishes its decisions on its website. It seems likely that the Authority for Access to Information completes such provisions with internal organisational measures to be taken. Furthermore, the President of the Authority for Access to Information may invite, without holding a vote, any competent individual to a meeting whose presence is deemed useful. Similarly, a set of provisions seeks to avoid conflicts of interest. Members of the Authority are prohibited from participating in deliberations if they hold a direct or indirect interest in the topic of

deliberation, and if they participated directly or indirectly in making the decision that is the subject of the meeting (Art. 51). To the contrary, the Lebanese law does not contain any provisions regarding the investigation of requests for access to information before the National Anti-Corruption Commission. Under the Moroccan law, the Commission for Access to Information receives complaints filed by persons requesting access to information and rules on them, which includes the investigation, inquiry and formulation of recommendations (Art. 22). Article 25 provides that, in carrying out its missions, the Commission will use an administrative mechanism such as the one described in Articles 40 and 41 of Law No. 09-08 on the protection of individuals in the processing of personal data. According to Article 40, the President of the Authority is assisted in the performance of his/her administrative and financial duties by a secretary general responsible for preparing the working documents for the Commission for Access to Information's meetings, and to keep a register of its resolutions. Under Article 25 of the law on access to information and Article 40 of Law No. 09-08, the secretary general prepares the files for the individual requests for access to information. The President of the Commission may also summon any person, authority or government representative to Commission meetings on a consulting basis to benefit from his/her expertise (Art. 23). For that matter, the Commission's procedural rules are established in accordance with an internal regulation developed by its President, approved by the Commission, and published in the Official Bulletin (Art. 26).

The four laws examined clearly specify the timeframes within which the IGAI must rule on the appeals filed before it. The Jordanian Information Council must rule on requests filed before it within 30 days of their presentation. A draft law proposes reducing this term to 15 days. The term is 45 days for the Tunisian IGAI, 2 months for the Lebanese National Anti-Corruption Commission, and 30 days for the Moroccan Commission.

The effects of the IGAIs' decisions are especially important, as they largely determine the effectiveness of the institutions' actions and justify their existence. The mandatory effects of the Jordanian IGAI's decisions are not clearly defined. This IGAI lacks the power to inflict penalties on public authorities that break the law. In Lebanon, the law does not say whether or not the decisions by the National Anti-Corruption Commission are binding, but it does specify that the Commission is responsible for advising the relevant authorities on all cases involving the law's application (Art. 22-2), which can include the means of enforcing its decisions. The recommendations by the Moroccan Commission on Access to Information are not binding on the entities obligated to communicate the information either.

Very innovatively, under the Tunisian law, the decision by the Authority for Access to Information is binding on the body involved in the decision (Art. 30). This measure must be examined in light of the fine provided for in Article 57 of the organic law, which applies to anyone who intentionally impairs access to information within the bodies subject to the law's provisions, as well as a disciplinary penalty incurred under Article 58 by any agent who does not observe the organic law's provisions. The Tunisian law also authorises the Authority for Access to Information to announce its decisions to all relevant bodies and to the person requesting access (Art. 38).

Table 9.1. The means of recourse against a refusal of access to information under the Moroccan law

Persons requesting information	Term	Body/Institutions	Commission
Filing of a complaint in case of no response or a negative response	20 business days	Receipt and review of the complaint	
Receipt of the decision by the president of the body	15 days	Decision by the head of the body or institution	
Filing of a complaint by registered letter or email to the president of the commission	30 days		Receipt and review of the complaint

Source: Ministry of the Reform of Government and Public Service, *L'expérience marocaine sur le projet de loi sur le droit d'accès à l'information* ["The Moroccan experience with the draft law on the right to access information"], Contribution to the OECD regional workshop on access to information, Caserta, 18 December 2017.

Notes

1 See: Mutawe, E., *La situation du droit d'accès to information en Jordanie* ["The state of the right to access information in Jordan"], contribution to the OECD regional workshop on access to information, Caserta, 18 December 2017

2 Idem

References

Mendel, T. (2016), Participant's Manual, Training Programme on the Right to Information for Jordanian Information Officers, UNESCO, Amman, http://stmjo.com/en/wp-content/uploads/2016/06/UpdatedATIManual.Jordan-Officials.16-05-18LS.pdf.

UNESCO (2015), "Assessment of Media Development in Jordan", UNESCO, Amman, http://unesdoc.unesco.org/images/0023/002344/234425e.pdf

Chapter 10. The functioning of the IGAIs and their agents

This chapter first looks at the means of operation of the collegial-body IGAIs vested with decision-making powers, even though only Jordan's Information Council has been in existence for the last ten years and Tunisia's IGIA has been active for only a year. It then studies the IGAIs' human and material resources and concludes with the IGAIs' possibility of benefiting from agents to help them fulfil their missions.

As for the OECD member countries, the operation of the four IGAIs in the MENA region examined in this report will be considered in terms of the collegial-body decisions made by the IGAIs and the human and material resources that support their missions, as well as the possibility for IGAIs to use agents to support their work. Jordan's Information Council has been fully active for ten years. On 17 July 2017, the Tunisian Assembly of the Representatives of the People elected the nine members of the Authority for Access to Information. On 1 February 2018, the Authority handed down its first decision[1]. As the legislation governing Lebanon's National Anti-Corruption Commission has not yet been drafted, this IGAI does not have the necessary means to operate. The Moroccan Commission on Access to Information was created in March 2019. It is managed by the secretary general of the National Supervisory Commission on the Protection of Personal Data. However, internal measures must still be taken to ensure the workings of the Commission on Access to Information.

10.1. The functioning of the IGAIs

The four IGAIs examined are collegial bodies that receive the support of administrative structures in the performance of their missions.

10.1.1. The Jordanian Information Council

In Jordan, the Information Council is assisted by the Information Commissioner, who acts as the institution's secretary general. The President and members of the Information Council do not have any right to compensation from the state treasury (Art. 3b of the law).

According to Article 6 of Law No. 47/2007 on the security of access to information, the Jordanian Information Commissioner prepares the form for requesting information in collaboration with the institution that is supposed to provide it (a ministry or public establishment)[2] and submits it to the Council. He also draws up instructions for the presentation, acceptance, and resolution of complaints to the Council for their approval; receives complaints from people requesting information and submits them to the Council for their resolution, and; adopts the administrative and professional procedures required to fulfil the duties and powers granted to him/her.

Furthermore, the Department of the National Library carries out the administrative and professional missions necessary for the Council's and the Commissioner's work with regard to access to information. Given the very low number of appeals against decisions refusing access to information (the annual average between 2008 and 2017 was 5.1 appeals per year), neither the Department of the National Library nor the Information Council experiences any difficulty in processing appeals. Consequently, the Council has engaged in extensive promotional and training activities regarding the right to access information (Box 10.1).

Box 10.1. The work of the Jordanian Information council in 2017

- Presentation of Jordanian legislation on access to information to a delegation of all the ministries from the Palestinian Authority.
- Participation in a discussion session on access to information and fundamental freedoms in Jordan.
- Participation in a workshop on the revision of the laws on audio-visual media, the press, publications, and the right to information organised by the UNESCO Office in Amman in cooperation with the Media Authority.
- Organisation of a training programme on the right to access information for Jordanian public officials, in cooperation with the UNESCO Office and the National Library.
- Cooperation with the Jordan Transparency Centre (JTC) on the application of the Carter Foundation's rules for the right to access information.
- Participation in the production of a film on the right to access information in the Hashemite Kingdom of Jordan, in cooperation with the UNESCO Office in Amman, on the occasion of the International Day for Universal Access to Information. The film was distributed on a number of websites and social media platforms.
- Contribution to the television and radio coverage of the celebration of the International Day for Universal Access to Information on 25 September 2016.
- Organisation of conferences for government representatives on the importance of access to information.
- Participation in the launch ceremony for Project Know, in promotion of transparency and the right to know, organised by the Jordanian Committee on Freedom and Protection of Journalists in cooperation with the United States Agency for International Development (USAID).
- Participation in the Project to Support the Jordanian Media, financed by the UNESCO Office in Amman and Canada's Centre for Law and Democracy, as part of the training workshops for the Council's liaison agents. This cooperation led to the creation of five customised training programmes for all information liaison agents, in addition to the training programme for the trainers with regard to spokespersons, journalists, and attorneys, which included:
- A 3-day training devoted to trainers on the right to information, which was attended by 15 representatives of civil society organisations;
- Several 3-day trainings for 57 information liaison agents;
- Two advanced workshops for 72 trainers and information liaison agents from various government bodies and civil society institutions.

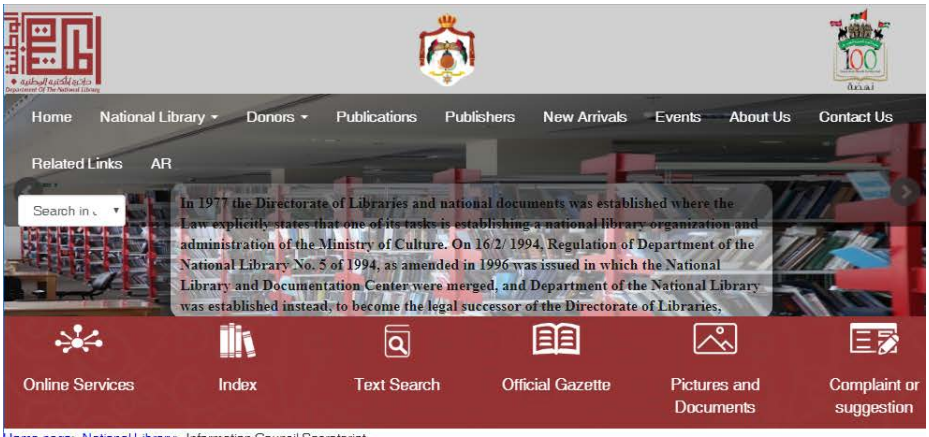
Prospects for the coming years

- Continuation of training and awareness-raising activities.

- Creation of a closed network for liaison agents to improve their communication and coordination through a Facebook page.
- The updating of the Information Council's website, which was also rendered more interactive.
- Continuation of the awareness-raising campaign to increase knowledge of the law on access to information among the public through written, audio-visual, and social media.
- Encouraging government institutions and ministries to communicate information proactively through their websites and in collaboration with liaison agents.

Source: Mutawe, E., La situation du droit à l'accès à l'information en Jordanie ("The state of the right to access information in Jordan"], contribution to the OECD regional workshop on access to information, Caserta, 18 December 2017).

Figure 10.1. Home page of the website Jordan's National Library for the Information Council



Home page> National Library> Information Council Secretariat

Freedom of Access to Information Law No. (47) of the Year 2007 was issued on 17/6/2007 as the first law of its kind in the Arab World. The Law includes the formation of (Information Council) who shall ensure providing information to the applicants and consideration of complaints from applicants for information and resolution.

Vision :-

Freedom of access to information in a high level of transparency, as it is considered the corner stone of press and public freedom.

Mission :-

Ensure providing information to the applicants, to consider the complaints from applicants for information and resolution.

Information Council Members :-

1. Minister of Culture/ President of the Council.
2. Information Commissioner/ Director General of Department of the National Library/ Vice President.
3. Secretary General of Ministry of Justice/ Member.
4. Secretary General of Ministry of Interior/ Member.
5. Secretary General of Higher Council of Media/ Member.
6. Director General of Department of Statistics/ Member.
7. Director General of National Information Technology Center/ Member.
8. Director of Moral Guidance in the Armed Forces/ Member.
9. General Commissioner of Human Rights/ Member.

Responsibilities of the Council :-

1. Ensure providing information to the applicants within the limits of this Law.
2. Consideration of the complaints from applicants for information and work to resolve these complaints in accordance with Instructions issued for this purpose.
3. Adopting forms of request for information.
4. Issuance of bulletins and conduct appropriate activities to explain and promote the culture of the right of knowledge and access to information.
5. Approve the annual report on the application of the right of access to information provided by the Information Commissioner and submitted to the Prime Minister.

Responsibilities of Information Commissioner :-

1. Preparation of application forms to obtain information in cooperation with the department and submitted to the Council.
2. Preparation of instructions for the acceptance of complaints and resolution procedures and submitted to the Council for issuance.
3. Receive complaints from applicants for information and presenting to the Council for resolution.
4. Administrative actions and professional tasks necessary to implement the responsibilities and tasks entrusted to him.

Mechanism for requesting information and access to :-

1. Filing the access to information application form in the competent ministries or institutions or government departments including the name of the applicant and place of residence, the applicant work, and reasons for the request in accordance with the form prepared for this purpose.
2. The applicant has to specify the subject of information he/she wishes to obtain accurately and clearly.
3. The application is answered or rejected within thirty days from the day following the date of submission.
4. In the case of rejecting the request, the decision shall be reasoned and justified, and failure to respond within the specified period is considered a decision of rejection.
5. The applicant may file a complaint against the Official to the Council through the Information Commissioner/ Director General of Department of the National Library, in case of rejection of his/ her application or failure to provide the information required within the period prescribed by the Law.
6. The applicant bears the cost of the photocopying of required information by technical means or copied in accordance with a list of the approved allowance in the department having the requested information. If the information is reserved in a way that it is impossible to photocopy or copy, the applicant can view these information, noting that paper copies are given free of charge for up to ten pages and if the number has increased above, it satisfied the allowance from the first page, taking into consideration Copyright Law when photocopying and copying the information and the reference to their source.

Information which may not be requested :-

Information that bears the stamp of religious or racial or ethnic discrimination or discrimination because of color or gender may not be requested.

The competent Court to consider the decision to a request for information :-

Supreme Court of Justice has jurisdiction in the decision to refuse a request for information, on the condition that the claim by the applicant against the Official must be within 30 days from the day following the date of expiry of the period granted under this law to answer or reject the application or lack of response by the Official.

Source: http://www.nl.gov.jo/En/InfoCouncilSecretariat.aspx

10.1.2. The Tunisian Authority for Access to Information

The Authority's functioning

Section 3 of the organic law on the right to access information is devoted to the functioning of the Authority for Access to Information. The President of the Authority is its legal representative and ensures the proper performance of its work. As part of his attributions, he supervises the administrative and financial aspects concerning the institution and its agents. He also supervises the preparation of the annual budget and annual report. He may delegate certain prerogatives to the Vice-President or another member of the Authority.

The Authority for Access to Information meets every two weeks at the President's summons, and whenever necessary. The President or Vice-President chairs its meetings. The President of the Authority sets the agenda for the meetings. He may invite anyone to the meetings whose presence is deemed useful, without this person being allowed to vote.

The Authority for Access to Information deliberates behind closed doors in the presence of a majority of its members. In absence of a quorum, the meeting begins a half-hour after the initial time listed on the meeting's call notice, regardless of the number of members present. The Authority adopts decisions with a majority of votes by those members present. Deliberations and decisions are recorded in minutes signed by the President and all members present at the meeting.

Members of the Authority must maintain professional secrecy regarding everything brought to their attention in terms of documents, data, or information concerning the cases handled by the Authority, and they may not exploit them for other purposes besides the ones required by their attributions, even after their term of office ends.

By governmental decree adopted at the proposal of the President of the Authority, the terms of any members of the Authority may be ended at any time upon a vote by the majority of the Authority's members and after hearing the member in question. Members are revoked in the following instances: a grave breach of professional obligations or the unjustified absence from 3 consecutive or 6 non-consecutive meetings during a 12-month period; the participation in a deliberation by the Authority while in a situation of conflict of interest; the disclosure of information or documents obtained in performance of his/her duties within the Authority, and; the failure to meet any of the conditions required to be a candidate.

Vacancies due to a death, resignation, revocation, or a total disability are confirmed and noted for the record by the Authority in a special report that is sent to the Assembly of the Representatives of the People. According to Article 49 of the organic law, the indemnities and privileges of the President, Vice-President, and members of the Authority are set by governmental decree.

The functioning of the secretariat

According to the Tunisian organic law, the Council formed by the collegial body of the members of the Authority for Access to Information has a secretariat and an administrative office staffed with field agents from government administrations or recruited in accordance with the statute for the Authority's agents. The statute for agents of the Authority for Access to Information is set by governmental decree. The Authority's organisational chart is approved by governmental decree in accordance with a proposal by the Council.

This Council oversees the functioning of the Authority, and elects its secretary-general, who may not be a member of the Authority, and who must meet the conditions for

appointment for a general director of a government administration. The Council designates an administrative manager from among the Authority's agents who will be responsible for drawing up the minutes of the deliberations. It rules on the Authority's proposed organizational chart and its internal regulation, its draft budget, and the adoption of its annual report.

Article 56 of the organic law that created the Tunisian Authority for Access to Information provides that the Authority's financial resources come specifically from subventions allocated by the state. It remains to be established how its budget will be determined, a question subject to constant debate in Tunisia. According to one possible scenario, the Authority sends its request for annual credits to the Ministry of Finance, which includes this in the draft finance law for the year. According to another possibility, the Authority makes its requests directly to the Assembly of the Representatives of the People, which then consolidates them in the annual budget. The debate currently revolves around the role of the Ministry of Finance in determining the funds allocated to the Authority. Either the Ministry will receive the Authority's requests and include them in the draft finance law without discussing them, or, as it would for a simple administrative office, it will evaluate them before including them in the annual draft finance law.

Whichever scenario is followed, the setting of the budget for the Authority for Access to Information should not lead to an excessive reduction of its independence as intended by lawmakers, at the risk of incurring censure from the courts holding jurisdiction over this matter[3].

A rapidly growing activity

In 2018, the Tunisian IGAI received 597 appeals. The number of appeals registered increased steadily from one quarter to another. The following table illustrates this trend.

Table 10.1. Evolution in the number of appeals to the Tunisian IGAI

Time period	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Number of appeals	75	142	159	221

Source: Data provided by the Tunisian IGAI.

In the framework of its consultative mission, the Tunisian IGAI has given 3 opinions concerning the three following draft documents:

- Draft organic law on the protection of personal data;
- Draft digital code;
- Circular note from the Head of the Government on access to information.

The Tunisian IGAI has monitored and evaluated the respect of the provisions of law n° 2016-22 on access to information in 647 public entities. In this framework, it has encouraged them to appoint an official in charge of access to information as well as substitutes, to create websites in a timely manner, to send their annual reports on access to information, and to improve their existing websites in compliance with the provisions of articles 6, 7, and 8 of law n° 2016-22 on access to information.

This IGAI has also conducted several awareness workshops and trainings for the officials responsible for access to information and for the managers of public entities bound by the law, as well as for civil society representatives. Finally, it has signed several cooperation conventions and partnerships with international organisations (OECD, UNESCO), civil society actors (DRI, article 19), ministries, universities and public enterprises.

The Tunisian IGAI plans to:

- Prepare the texts that will support the implementation of law n° 2016-22 on access to information and follow-up with their expeditious adoption;
- Strengthen its human resources;
- Develop an awareness and training strategy in a timely manner;
- Improve its capacities in terms of the management of appeals (investigation and proceeding timeframes) and of monitoring, especially regarding the websites and the relevant entities.

10.1.3. The Moroccan Commission on Access to Information

The Commission's functioning

According to the law on the right to access information, the Moroccan Commission on Access to Information is chaired by the President of the National Supervisory Commission for the Protection of Personal Data.

The Commission on Access to Information meets as often as necessary at the President's summons or initiative, or at the request of at least half of its members. Meetings are validly convened with at least one third of all members present. Decisions are adopted either unanimously or with a majority of members present. In case of a tie vote, the President casts the deciding vote. The Commission's rules of procedure are established in an internal regulation developed by the President and presented to the Commission for its approval before its entry into effect. The text is published in the Official Bulletin of the Kingdom of Morocco.

The functioning of the secretariat

The article of the Moroccan law on the right to access information provides that, in performance of its duties, the Commission on Access to Information be assisted by the administrative structure described in Articles 40-41 of Law No. 09-08 on the protection of individuals in the processing of personal data[4].

The Commission's President is thus assisted in the performance of his/her administrative and financial duties by the secretary general of the National Supervisory Commission on the Protection of Personal Data. The secretary general is responsible for managing the personnel, preparing and executing the budget, entering into contracts, preparing working documents for Commission meetings, and keeping a register of decisions, as well as overseeing the work of committees established by the Commission and providing these committees with the material and human resources necessary for the fulfilment of their missions. The secretary general has administrative and technical staff that report to him/her, and who are composed of public officials and agents assigned from other offices or recruited by the Commission.

For being directly inserted within the government administration and lacking a legal personality, the financial resources of the Commission on Access to Information are determined with the same procedures used for other administrative offices.

The law implies that the Authority for the Protection of Individuals in the Processing of Personal Data and the Commission on Access to Information will share the same administrative offices to create economies of scale. One should nevertheless ensure that the means actually placed at the disposal of the Commission on Access to Information allow it to fulfil its mission completely.

10.2. The network of persons responsible for access to information

The MENA region countries examined, which have a unitary political structure, have established IGAIs with national jurisdiction that are located in the country's capital. In some cases, legislation also contemplates the designation within the entities subject to the right to information of persons responsible for overseeing the right to access information, or, in one of these cases, who will act as the IGAI's agents.

The Jordanian law of 2007 does not explicitly contemplate the appointment of an individual who will be mainly responsible for ensuring access to information. Article 8 provides generally that the agent responsible for a case will facilitate the obtaining of the information and ensure its speedy distribution under the terms and conditions provided by law. Article 15 of the Lebanese law also provides that an agent will be assigned within each ministry to process requests for access to information. This agent will have the necessary authority to search for the information, to access it, and to send it to the requesting individuals. Article 12 of the Moroccan law proclaims that all bodies or institutions that fall within the scope of the law on access to information must designate one or more delegates who are responsible for receiving and processing requests for access, and for assisting people making such requests.

The Tunisian organic law assigns a more important role to the person responsible for information within the offices and entities obligated to distribute information. Any body subject to the law on the right to access information must designate a person responsible for access to information and one substitute. The person responsible for access to information receives and processes requests for access to information, draws up an action plan for enacting the right to access information, and oversees the plan's execution. He also prepares the annual report on access to information.

The person responsible for access to information is also an agent of the Commission on Access to Information, which is advised of his/her appointment within 15 days (Article 32). He ensures coordination between the body of which he is a part and the Commission (Article 37-4). In Tunisia, this relationship compensates for certain gaps that have often been observed in MENA region countries, especially the absence of local IGAI units, the lack of contact with the field, and the difficulty of accessing information and coordinating the work of the entire government administration. All IGAIs in the MENA region would benefit from setting up a network of agents, as some IGAIs in OECD member countries have done.

In all cases, the IGAIs require support in their efforts to establish networks of agents and to forge close and continuous relations with them through any means possible (written documents, websites, and meetings) to help them carry out their missions effectively.

Notes

1 Appeal filed by the National Association for the Protection of the Taxi Transportation Sector against the decision by the Governor of Mahdia refusing access to the minutes of the Mahdia Regional Council meeting on the determination of the terms and conditions and priorities for issuing taxi permits, as well as to the list of recipients of permits since 2011.

2 Article 6 is not precise about the procedure for compiling the form. According to a literal interpretation, the Commissioner prepares a form in collaboration with the various institutions, which is unique to each institution.

3 For the record, all other things being equal, the Interim Authority for the Supervision of the Constitutionality of Draft Laws proclaimed in August 2017 the unconstitutionality of Articles 33, 11, and 24 of the organic law on joint provisions governing independent constitutional authorities for the reason that Articles 2, 10, 11, 24, and 33 of this text breached the provisions of Chapter 6 Articles 125 and 130 of the Constitution. In effect, the censured articles submitted the constitutional authorities to the control of the Assembly of the Representatives of the People and granted it the right to revoke their members and to adopt their financial reports. Now, Article 125 of the Constitution only provides that the constitutional authorities are elected by the Assembly of the Representatives of the People with a qualified majority, and that they must submit an annual report to the Assembly, which is discussed for each authority at a plenary session devoted to this very subject. Noura Borsali, *Quand l'ARP adopte des articles inconstitutionnels* ["When the ARP adopts unconstitutional articles"], Nawaa, 7 November 2017, https://nawaat.org/portail/2017/11/07/quand-larp-adopte-des-articles-inconstitutionnels/

4 Dahir No. 1-09-15 of 18 February 2009 on the promulgation of Law No. 09-08 on the protection of individuals in the processing of personal data.

Chapter 11. The oversight of the IGAI's actions in MENA countries

This chapter looks at the different kinds of oversight to which IGAIs are subject in Jordan, Lebanon, Morocco, and in Tunisia from administrative and political entities, citizens, civil society, and the courts.

Like any public institution, IGAIs are subject to forms of oversight that constitute fundamental democratic practices. These forms of oversight ensure that the institutions act in observance of the rules that founded them, and they guarantee the IGAIs' subordination to the political power that creates the rules and regulations. They also legitimise the power of citizens, and they are fully justified by the distance separating the government from the governed, which is a source of inequality. These forms of oversight are hierarchical, parliamentary, judicial, or exercised by civil society (Magdalijs, 2004). The legislation on the right to access information in MENA region countries considers the same goals and constraints as that in OECD member countries.

11.1. The administrative and political oversight of the IGAIs

11.1.1. Hierarchical oversight

Hierarchical oversight is exercised vertically by a superior over its subordinate. It legally allows the former to replace the latter's assessment with its own, unless a legislative provision prohibits such a substitution. However, in the case of an institution tasked with supervising the work of the government, its decisions cannot be questioned by a hierarchical superior within the government administration involved in the decision.

For IGAIs, hierarchical oversight may be exercised when they are located within an administrative hierarchy, and nothing in the legislation indicates that their opinions or decisions cannot be annulled or reformed by the hierarchical authority. This may be the case for the Jordanian Information Council and the Moroccan Commission on Access to Information, which lack their own legal personality and which reside within the administrative structures of their countries.

To the contrary, the first paragraph of Article 23 of the Lebanese law on the right to access information provides that the Lebanese National Anti-Corruption Commission must hand down decisions that are not subject to administrative appeal. The Tunisian Authority for Access to Information is exempt from all forms of hierarchical oversight pursuant to Article 37 of the organic law granting its independence. Therefore, to increase the credibility of the Jordanian and Moroccan IGAIs, the relevant authorities should explicitly reiterate that the decisions handed down by these two institutions are exempt from all hierarchical oversight, and that their decisions are not subject to annulment or reform by government authorities.

11.1.2. Parliamentary oversight

The legislation in the four countries examined does not provide that the IGAI's operations be subject to specific oversight by their national parliaments. The Parliaments will thus have all the regular means of oversight at their disposal, such as questions addressed to the government, investigative commissions, or discussions about the financing of IGAIs as it appears in the annual draft finance law. As mentioned above, only Article 38 of the Tunisian organic law on the right to access information provides that the Authority for Access to Information submit its annual report to the President of the Republic, the President of the Assembly of the Representatives of the People, and to the Head of Government. The Assembly of the Representatives of the People may examine the annual report and question the President of the Authority for Access to Information once a year. Establishing close ties with their Parliaments can only help IGAIs.

11.2. Oversight by citizens and civil society

In light of the political history of the MENA region, it is understandable that citizens and civil society are carefully monitoring the right to access information and maintaining constant relations with their national IGAIs. This has become even truer since the Arab Spring, which led to the appearance of a large number of non-governmental organisations (NGO) that advocate for transparency and access to information as a way to assert democracy, the rule of law, and fight against corruption. For example, Al Bawsala is a Tunisian non-profit association that asserts its independence of any political influence. It seeks to put citizens at the centre of political action by giving them the means to inform themselves on the work of their elected officials, and to defend their fundamental rights. It also seeks to establish relations with elected officials and decision-makers, to work for the implementation of good governance and a strong sense of political ethics, and to participate in the defence of the idea of the social progress and emancipation of citizens[1]. Similarly, the NGOs IWatch Tunisia (Ana Yakedh)[2], Transparency Morocco[3], Transparency Lebanon,[4] and Rasheed for Integrity and Transparency[5] work on defending transparency in public and economic life, and on fighting corruption. The association Article 19 is a British human rights organisation that defends and promotes freedom of expression and information throughout the world, including in the MENA region[6].

The experience of OECD countries has shown that the establishment of networks strengthens the influence of civil society organisations and promotes dialogue with the public authorities. The Moroccan Network for the Right to Access Information (REMDI), which was created in 2010, includes 16 organisations that promote the right to access information, facilitate interactions with the government, and protect organisations from the risk of exclusion (OECD, 2015).

Through the IGAIs' annual reports, which are sometimes prepared in collaboration with civil society[7], legislation promotes a culture of access to information. Similarly, through awareness-raising and training initiatives aimed at the public, they grant citizens and civil society an essential place in exercising the right to information. Lastly, the close relations that IGAIs establish with NGOs that defend access to information may enable IGAIs and NGOs to carry out shared projects in the publics' interest.

11.3. Judicial oversight

Judicial oversight is yet another form of oversight. However, a court decision that is deemed to final and irrevocable becomes enforceable, even on the government, makes this form of oversight an essential tool in defending the rule of law. In observance of the rule of law and in compliance with their legal systems, the four MENA region countries examined in this report have entrusted the litigation of their IGAIs' actions to their administrative courts.

Article 62 of Jordan's Constitution provides that civil courts hold jurisdiction to hear appeals against the state involving any person or subject, unless otherwise specifically provided in the Constitution and in the laws in effect that refer certain kinds of disputes to religious courts or other, special courts. Law No. 27 of 2014 provides that all administrative decisions, including those by governmental bodies, may be challenged before an administrative court of the first instance within 60 days of the disputed decision, and appealed before the same court within 30 days.

As the Jordanian Information Council is an administrative body, its decisions are subject to oversight by the administrative court, for example, when it signs an administrative contract. However, a decision on the refusal of access to information by the Jordanian Information Council cannot itself be challenged before an administrative court. A decision by the body obligated to communicate information may instead be disputed, under the terms and the conditions defined in Article 17 of Law No. 47 of 2007 on the guarantee of the right to access information. In application of this article, the person requesting has 30 days following the Information Council's decision to appeal the decision by the relevant body before a court. In all cases, the responsibility of the Director of the National Library, who also holds the position of Information Commissioner, remains limited to that of his main title (Art. 15).

With regard to decisions on requests to access information, Article 31 of the Tunisian organic law on the right to access information provides that the person requesting access to information or the body in question may file an appeal with an administrative court within 30 days of the date on which the relevant institution's decision was notified. However, the law does not specify the collective or general records made by the Authority, for example its public contracts or personnel decisions. As this is an administrative institution or special administrative jurisdiction, it seems natural that its records be subject to administrative law under ordinary conditions.

It would also be preferable to replace the administrative court with the administrative appeal chambers in the disputes regarding requests for access to information. Until May 2017, the seat of the administrative court was only in Tunis, which was not very accessible to citizens from other regions. However, Organic Law No. 2001-79 of 24 July 2001 on the administrative courts, specifically Article 15, provided for the creation of chambers of the first instance in the regions. More recently, Article 116 of the 2014 Constitution specified that "administrative justice is composed of a superior administrative court, administrative appeals courts, and administrative courts of the first instance". In accordance with these provisions, the government adopted Decree No. 620 on the creation of 12 chambers of the first instance that act as administrative courts[8]. In the stead of an administrative court, these chambers may thus be declared to hold jurisdiction over decisions by the Authority for Access to Information based on the requesting person's place of residence. This would help simplify court procedures for citizens.

Moreover, in application of paragraph 2 of Article 23 of the 2017 law, decisions by the Lebanese National Anti-Corruption Commission are subject to appeal before the Council of State, the country's only administrative court, through a "full powers" administrative proceeding or an "abuse of power" administrative proceeding. Article 21 of the Moroccan law provides for the possibility of disputing either the decision by the President of the Commission on Access to Information or the refusal decision by the government administration in question before a court, within 60 days of receiving a response from the Commission on Access to Information concerning the complaint or the expiration of the legal term for responding to this complaint. Apparently, in application of Law No. 41-90, which established the administrative courts , such a dispute falls under the jurisdiction of the administrative courts. The other administrative acts by the President of the Moroccan Commission on Access to Information, acting for example as the organiser of the institution, would also fall under the jurisdiction of the administrative courts, either through an "abuse of power" administrative proceeding or a "full powers" administrative proceeding.

Notes

1 See: Al Baswala, "Who are we?" www.albawsala.com/presentation.

2 See: iWatch Tunisia, www.iwatch.tn/ar/ (website, in Arabic).

3 See: Transparency Morocco, http://transparencymaroc.ma/TM/ (website).

4 See: The Lebanese Transparency Association, http://www.transparency-lebanon.org/ (website).

5 See: Transparency International - Jordan, http://rasheedti.org/ (website).

6 See: Article 19, https://www.article19.org/ (website).

7 Article 38 of Tunisian organic law no. 2016-22 of 24 March 2016 on the right to access information. Similarly, paragraph 3 of Article 12 of the Moroccan Constitution proclaims that "associations interested in the public sphere and non-governmental organisations contribute in the context of a participatory democracy to the development, implementation, and evaluation of decisions and projects by elected institutions and public authorities (...)".

8 Creation of regional administrative chambers of first instance in the governorates of Bizerte, Kef, Sousse, Monastir, Gabès, Sfax, Kasserine, Gafsa, Médenine, Sidi Bouzid, Kairouan, and Nabeul.

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Institutions Guaranteeing Access to Information

OECD AND MENA REGION

Thanks to comparative tables and precise examples, this report offers an overall picture of the institutions guaranteeing access to information (IGAI) in OECD member countries. While it does not provide a comprehensive analysis of each of these institutions, it examines the legislation, the composition, and operation of the IGAIs as well as their missions regarding the spontaneous disclosure and appeals following access to information requests.

Similarly, the report carries out an overall analysis of the access to information legislation of Jordan, Lebanon, Morocco, and Tunisia, and of the legal and practical context of their IGAIs. In particular, it offers ways to make the implementation of this legislation more effective, at a time when these countries' citizens are very keen on increased access to information.

Consult this publication on line at ***https://doi.org/10.1787/e6d58b52-en***.

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