

### 36. Scope of freedom of information laws

Freedom of information laws (FOI) – also referred to as access to information laws – are a fundamental pillar of open government. These laws contribute to strengthening transparency, enhancing government accountability and promoting informed participation in policy making. Today, all but one of the countries responding to the OECD 2010 Open Government Survey has FOI legislation/regulations. However, the strength and scope of these laws varies considerably in terms of the institutions and types of information covered, reflecting different institutional and legal systems across countries.

In most OECD countries, the reach of FOI laws extends vertically to all levels of government and, for about half of them, horizontally to all branches of central government (legislative, judicial and executive). In the majority of countries, all bodies that form the executive branch of the central government (e.g. Ministries/Departments and executive agencies) are subject to FOI legislation. Private entities managing public funds, such as those contracted by the government to provide services to citizens, are subject to FOI laws in over half of member countries.

In all OECD countries the FOI law presumes a principle of maximum disclosure of information, i.e. the information held by the state is in principle available to the public. However, FOI laws also contain a list of exemptions that may be applied to justify withholding certain information from disclosure. Class tests and harm tests are two common ways to exempt information. Under class tests, any information that falls within a certain category (such as national security) can be denied. Under harm tests, the government can deny a request for information on the basis that disclosure would cause potential prejudice, for example, to an individual or harm to the defence of the state (the two most commonly used harm tests). The class tests applied by the greatest number of OECD countries concern exemptions related to national security, international relations and personal data. Exemptions to FOI requests can be both mandatory (public entity is required to withhold the information) or discretionary (public entities can use their judgement to withhold or disclose information).

Although certain kinds of information may be exempt from disclosure for the reasons described above, additional mechanisms exist in FOI laws that can be applied to override these exemptions. In most OECD countries, a public interest test can lead to information disclosure if the public benefits from the information outweigh any harm that may be caused by disclosing it. However in only nine countries (Belgium, Chile, Finland, Israel, Japan, Korea, Mexico, Poland and Spain), public interest tests in all cases supersede the exemption in case of conflict. Provisions of FOI laws can also include the possibility of partial disclosure of exempt information (in all countries with the

exception of Spain). In Canada and Chile, partial disclosure results from applying the principle of “severability” under which entire documents cannot be withheld from disclosure if only a portion qualifies for exemption. The same principle applies in practice in the Netherlands, although the FOI law does not contain a separate provision. Finally, ministerial discretion can be applied to override information deemed exempt by class and/or harm tests in 11 countries (Canada, the Czech Republic, Denmark, Estonia, France, Japan, Mexico, Norway, Poland, the United Kingdom and the United States).

#### Methodology and definitions

Data were collected through the 2010 OECD Open Government Survey. This survey focused on collecting data on the scope and the implementation of freedom of (or access to) information laws at the central level of government. Respondents to the survey were central government officials responsible for implementing open government initiatives. The survey was completed by 32 OECD countries, as well as by the Russian Federation and Ukraine.

#### Further reading

- OECD (2003), *Open Government: Fostering Dialogue with Civil Society*, OECD Publishing, Paris.
- OECD (2005), *Policy Brief – Public Sector Modernisation: Open Government*, OECD Publishing, Paris.
- OECD (2009), *Focus on Citizens: Public Engagement for Better Policies and Services*, OECD Publishing, Paris.

#### Table notes

Data are not available for Germany and Greece. Luxembourg is currently drafting a law on access to information and is not included in the tables.


- 36.1: The Russian Federation and Ukraine are not included in the OECD totals. The Italian FOI law applies only to administrative acts and does not refer to legislative acts. According to the Italian system, all legislative acts are published on the *Gazzetta Ufficiale* (freely available on line). Also preliminary legislative acts, as well as judgements and judicial acts, are available on line.
- 36.2: According to the Australian law, documents that contain personal data, internal government discussions and health and safety information must be disclosed unless there is a public interest against it. Different criteria are applied to satisfy the “harm” tests for each individual category of exemptions indicated in the table.

Information on data for Israel: <http://dx.doi.org/10.1787/888932315602>.

36.1 Breadth of central government freedom of information laws (2010)

Total OECD countries		
<b>Level of government</b>		
Central	31	Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Russian Federation, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom and the United States.
Sub-national	25	Austria, Belgium, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Hungary, Iceland, Ireland, Israel, Italy, Korea, the Netherlands, New Zealand, Norway, Poland, Portugal, the Russian Federation, the Slovak Republic, Slovenia, Spain, Sweden, Turkey, Ukraine and the United Kingdom.
<b>Branches of power at the central level</b>		
Executive	31	Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Russian Federation, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom and the United States.
Legislative	16	Belgium, Chile, Estonia, Finland, Hungary, Ireland, Israel, Italy, Korea, Mexico, Poland, the Russian Federation, the Slovak Republic, Slovenia, Sweden, Turkey, Ukraine and the United Kingdom.
Judicial	16	Australia, Belgium, Chile, Estonia, Finland, France, Hungary, Israel, Italy, Korea, Mexico, Norway, Poland, the Russian Federation, the Slovak Republic, Slovenia, Sweden and Ukraine.
<b>Other bodies</b>		
Private entities managing public funds	18	Australia, Belgium, the Czech Republic, Estonia, Finland, France, Hungary, Iceland, Italy, Korea, the Netherlands, Poland, Portugal, the Slovak Republic, Sweden, Switzerland, Turkey, Ukraine and the United Kingdom.


Source: OECD 2010 Open Government Survey.

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36.2 Depth of central government freedom of information laws (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	○	●	●	○	●	○	●	○	○	○	○	○
<b>Total OECD31</b>												
● Mandatory	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 2010 Open Government Survey.

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