

Chapter 10. The functioning of the IGAI s and their agents

This chapter first looks at the means of operation of the collegial-body IGAI s 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 IGAI s' human and material resources and concludes with the IGAI s' possibility of benefiting from agents to help them fulfil their missions.

As for the OECD member countries, the operation of the four IGAI's in the MENA region examined in this report will be considered in terms of the collegial-body decisions made by the IGAI's and the human and material resources that support their missions, as well as the possibility for IGAI's 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 decision¹. 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 IGAI's

The four IGAI's 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.

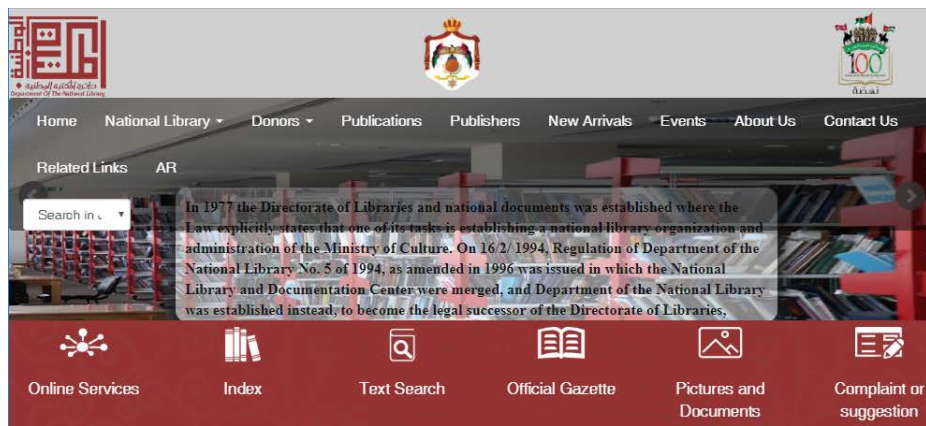
Prospects for the coming years

- 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 matter³.

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	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th 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 data⁴.

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 IGAI's 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 IGAI's in the MENA region would benefit from setting up a network of agents, as some IGAI's in OECD member countries have done.

In all cases, the IGAI's 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"], Nawaat, 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.



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