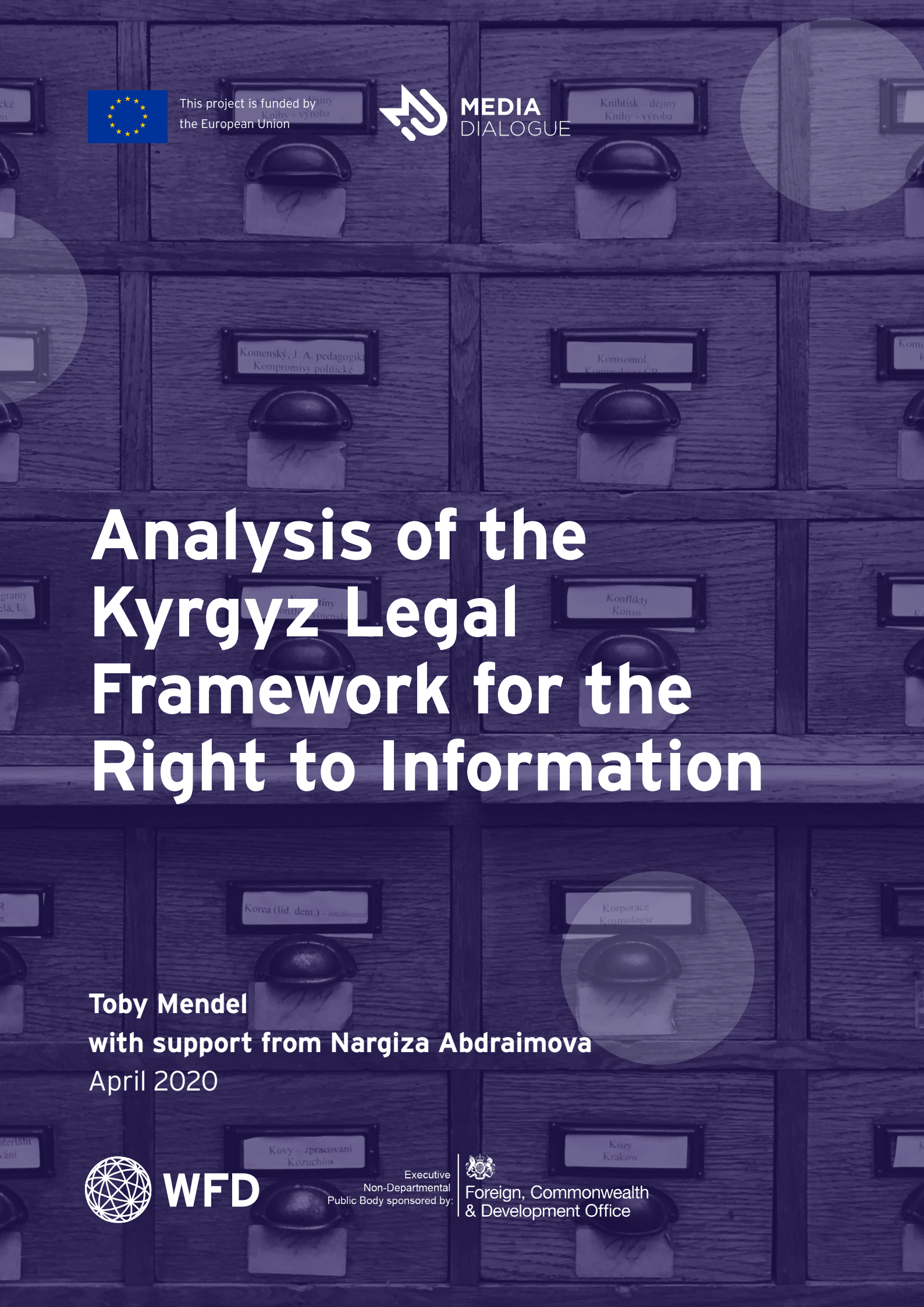

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MEDIA DIALOGUE

Analysis of the Kyrgyz Legal Framework for the Right to Information

Toby Mendel
with support from Nargiza Abdraimova

April 2020

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Analysis of the Kyrgyz Legal Framework for the Right to Information

by Toby Mendel,
Executive Director, Centre for Law and Democracy (CLD)

with support from Nargiza Abdraimova

on behalf of
the Westminster Foundation for Democracy

April 2020

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Introduction

Kyrgyzstan first passed a law giving individuals a right to access information held by public authorities, often referred to as right to information (RTI), access to information (ATI) or freedom of information (FOI) laws, in 1997 (Law on Guarantees of Information)[1] but it was a very incomplete law. A new, far more detailed and comprehensive law was then adopted in 2006 (ATI Law).[2] This Analysis reviews the legal framework for RTI in Kyrgyzstan, focusing mainly on the ATI Law but also covering the Law on Guarantees of Information and other relevant laws. It highlights strengths and weaknesses in the legal framework and points to areas for reform along with specific recommendations.

The Kyrgyz legal framework for RTI has a number of both strengths and weaknesses. There is a clear constitutional guarantee for this right, giving it overriding legal status. The ATI Law applies broadly to a range of public authorities. However, although appeals from refusals to provide access lie to the Ombudsman and the Prosecutor, these are not specialised RTI bodies. The Law also preserves secrecy rules in other laws, leading to a situation where there is a seriously overbroad regime of exceptions. The system also lacks a central body which is tasked with promoting the right and providing advice and expertise to both citizens and public authorities.

The main methodology for preparing this Analysis was desk-based research. A draft of the Analysis was reviewed by a local expert and the Analysis was then revised based on her feedback. In addition, to get a sense of some of the practical issues faced by citizens seeking information, 12 local interviews were conducted with journalists (four), civil society representatives (three), lawyers (two), a businessman (one), an official (one) and a member of parliament (one). Their inputs were mainly on the practical issues faced by requesters, whereas the main focus of this Analysis is on the legal framework. However, in some cases the practical issues highlight the impact of legal weaknesses, while in others they show how the legal framework is not always being respected. The feedback of those interviewed is indicated in this Analysis to highlight these issues.

This Analysis assesses the Kyrgyz legal framework against international standards regarding the right to information, as reflected in the RTI Rating, the leading global methodology for assessing the strength of legal frameworks for RTI.[3] It also takes into account good legislative practice from democracies around the world.[4] An assessment of the legal regime based on the RTI Rating has been prepared and should be read in conjunction with this Analysis; the relevant sections of this assessment are pasted into the text of this Analysis at the appropriate places. The overall score of the Kyrgyz legal framework, based on the RTI Rating, is as follows:

Section		Max Points	Score	Percentage
1	Right of Access	6	4	67%
2	Scope	30	23	77%

1 Law of the Kyrgyz Republic "On guarantees and free access to information", December 5, 1997, No. 89. Available at: https://www.libertas-institut.com/de/Mittel-Osteuropa/Law%20on%20Guarantees%20and%20Free%20Access%20to%20Information.pdf.

2 Law of the Kyrgyz Republic "On access to information held by state bodies and local self-government bodies of the Kyrgyz Republic", December 28, 2006, No. 213. Available at: https://www.legislationline.org/download/id/4217/file/Law_On_Access_to_Info_held%20by%20State%20Bodies%20and%20Local%20Self-Government%202006_EN.pdf.

3 The RTI Rating, which was first launched in September 2011, is run by the Centre for Law and Democracy (CLD) and Access Info Europe. It is based on a comprehensive analysis of international standards adopted both by global human rights mechanisms, such as the UN Human Rights Committee and Special Rapporteur on Freedom of Opinion and Expression, and by regional mechanisms, such as regional courts. The Rating is continuously updated and now covers 128 national laws from around the world. It is the leading tool for assessing the strength of the legal framework for the right to information and is regularly relied upon by leading international authorities. Information about the RTI Rating is available at: http://www.RTI-Rating.org.

4 See, for example, Toby Mendel, *Freedom of Information: A Comparative Legal Survey, 2nd Edition* (2008, Paris, UNESCO), available in English and several other languages, including Russian, at: http://www.unesco.org/new/en/communication-and-information/resources/publications-and-communication-materials/publications/full-list/freedom-of-information-a-comparative-legal-survey-2nd-edition/.

Section		Max Points	Score	Percentage
3	Requesting Procedures	30	17	57%
4	Exceptions and Refusals	30	12	40%
5	Appeals	30	21	70%
6	Sanctions and Protections	8	2	25%
7	Promotional Measures	16	8	50%
	TOTAL SCORE	**150**	**87**	**58%**

This score places Kyrgyzstan in 63rd place out of the 128 countries around the world the legal frameworks of which are assessed on the RTI Rating, or just in the middle of all countries. The relative position of Kyrgyzstan would drop quite a bit if the comparison were limited to laws of its more recent vintage, since these laws tend to be a lot stronger. It would thus be appropriate at this time, some thirteen years after the main ATI Law was adopted, for Kyrgyzstan to review its legal framework for RTI with a view to considering amendments so as to make it stronger. We note that we are not necessarily suggesting replacing the ATI Law with an entirely new law, as amendments would go a long way to improving it.

1. Right of Access and Scope

As noted above, one of the reasons for Kyrgyzstan's reasonable score in the RTI category of Right of Access is that it has a constitutional guarantee for the right to information. Specifically, Article 33(4) of the 2010 Constitution provides:

> *Everyone shall be guaranteed access to information in the possession of state authorities, local government bodies as well as officials thereof. The regulations of providing information shall be envisaged in the law.*

This is very positive since it effectively serves to elevate the ATI rules to provisions giving effect to a constitutionally protected right. Article 20(2) of the Constitution is the main one allowing for limitations on rights, as follows:

> *Human and civil rights and freedoms may be limited by the Constitution and laws for the purposes of protecting national security, public order, health and morale of the population as well as rights and freedoms of other persons. Such limitations may also be implemented to deal with the particularities of military or other public service. The introduced limitations should be commensurate to the declared objectives.*

This largely aligns with international standards inasmuch as it requires restrictions to be set out in law and to serve one of a limited list of mainly recognised or legitimate interests.[5] However, the standard of justification – namely being "commensurate to the declared objectives" – is lower than the international law requirement that restrictions be "necessary" to protect the interest.

The ATI Law also provides for a general guarantee of the right to information, in Article 3(1), while Article 3(2) sets out various principles for the exercise of this right, namely "accessibility, objectivity, timeliness, openness and authenticity of information". However, these all condition the exercise of the right, as opposed to referring to the external benefits which giving effect to the right might realise, such as increasing accountability, combating corruption and facilitating participation in public affairs. It is better practice to list these sorts of benefits in an ATI law and then to require the provisions of that law to be interpreted in the manner that best promotes those benefits. This can help promote an approach to interpretation by officials, oversight bodies and the courts that focuses on the benefits that the law can realise, as opposed to a narrower, more letter-of-the-law type of approach.

Article 2(1) of the ATI Law indicates that it regulates access by "individuals and legal entities" to information held by public authorities. Article 3(1) then states that "everyone" has a right of access. Other provisions, however, refer only to "citizens" and "legal entities" (see, for example, Article 9(1)(b) and Article 13(1)). It is positive that the Law applies to both individuals and legal entities but it would be preferable if it were made explicit that it covers both citizens and foreigners. This is also reflected in many national RTI laws. For example, Article 2(3) of the Albanian law states: "Person means any natural or legal person, local or foreign, as well as any stateless persons."[6] And Article 4 of the Bulgarian law states: "(1) Any citizen of the Republic of Bulgaria is entitled to access to public information subject to the conditions and the procedure set forth in this act, unless another act provides for a special procedure to seek, receive and impart such information. (2) Foreign citizens and individuals with no citizenship shall enjoy the right under sub-art. 1 in the Republic of Bulgaria. (3) Legal entities shall enjoy the right under sub-art. 1 too."[7] It may be noted that, under international law, the right to information is recognised as a human right which applies to everyone.

The ATI Law does not include any specific definition of "information". While the general references to "information" appear to be broad, for example with Article 3(1) referring generally to "information held by state bodies and local self-government bodies", the lack of a specific definition means that this term may be interpreted differently by different actors. For example, it is not clear whether emails, photographs and/or videos would be included. A strong definition would cover all recorded information, regardless of the form or medium in which it is held. For example, Article 3(1) of the Afghan Access to Information Law defines information simply as: "Any type of documents and recorded or registered information including written, audio, visual, sample or model."[8] Similarly, Article 4(1) of the Antiguan Freedom of Information Law

5 Restrictions to "deal with the particularities of military or other public service" do not appear to be in line with international standards.

6 Law No. 119/2014 on the Right to Information. Available at: https://www.rti-rating.org/wp-content/uploads/Albania.pdf.

7 Access to Public Information Act. Available at: https://www.rti-rating.org/wp-content/uploads/Bulgaria.pdf.

8 Access to Information Act, 2018. Available at: https://www.rti-rating.org/wp-content/uploads/2020/01/Afghan.RTI_.Decree.May18.Amend_.Oct19.pdf.

includes the following definition: "For purposes of this Act, a record includes any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the public authority or private body that holds it and whether or not it is classified."[9] Article 3(1) of the ATI Law covers all information "held by" public authorities but there appears to be a problem in practice with this being interpreted unduly narrowly in some cases.

The ATI Law generally uses the term "information" to refer to the material that it covers, although the terms "document" and "material" are also sometimes used. Better practice is to make it clear that an applicant may ask for either information, which may need to be extracted from a document or documents – such as the amount of money allocated to the Ministry of Education in the last five years – or a specific record or document – such as the budget in a certain year or a published report.

Article 2(2) defines the scope of the ATI Law in terms of which public authorities are covered by it. The scope in this sense is broad, including authorities which are created by the Constitution or laws, which are given authority by any of the three branches of government, which are funded from the State budget or which carry out State functions, with several areas being specifically mentioned, such as health and education. It also refers explicitly to both central and local self-government authorities. However, it only covers "permanent (continuing)" bodies so would exclude those created on a short-term basis, for example during an emergency. In addition, this definition is limited to non-profit bodies so that it does not cover State-owned enterprises.

Recommendations:

- In due course, consideration should be given to amending the constitutional guarantee for the right to information to make it clear that the law giving effect to this right should include only limited ("necessary") exceptions and otherwise be user-friendly in nature.
- The law should set out a range of general benefits which flow from the right to information and should require its provisions to be interpreted so as best to give effect to those benefits.
- The law should make it clear that everyone, including foreigners, has the right to make requests for information.
- A clear and broad definition of "information" should be added to the law which covers all recorded material, regardless of the medium in which it is recorded.
- The law should make it clear that applicants may make requests for both records (documents) and information.
- It should be clear that the law covers all public authorities, including those created on a temporary basis, as well as State-owned enterprises.

Right of Access

Indicator		Max	Points	Article
1	The legal framework (including jurisprudence) recognises a fundamental right of access to information.	2	2	33(3), (4) Constitution
2	The legal framework creates a specific presumption in favour of access to all information held by public authorities, subject only to limited exceptions.	2	2	3(1)

9 Freedom of Information Act, 2004. Available at: https://www.rti-rating.org/wp-content/uploads/Antigua.pdf.

Indicator		Max	Points	Article
3	The legal framework contains a specific statement of principles calling for a broad interpretation of the RTI law. The legal framework emphasises the benefits of the right to information.	2	0	1, 3(2)
	TOTAL	**6**	**4**	

Scope

Indicator		Max	Points	Article
4	Everyone (including non-citizens and legal entities) has the right to file requests for information.	2	1	2(1)
5	The right of access applies to all material held by or on behalf of public authorities which is recorded in any format, regardless of who produced it.	4	2	
6	Requesters have a right to access both information and records/documents (i.e. a right both to ask for information and to apply for specific documents).	2	1	9(4)
7	The right of access applies to the executive branch with no bodies or classes of information excluded. This includes executive (cabinet) and administration including all ministries, departments, local government, public schools, public health care bodies, the police, the armed forces, security services, and bodies owned or controlled by the above.	8	7	2(2), Law on Guarantees, 6
8	The right of access applies to the legislature, including both administrative and other information, with no bodies excluded.	4	4	2(2), Law on Guarantees, 6
9	The right of access applies to the judicial branch, including both administrative and other information, with no bodies excluded.	4	4	2(2), Law on Guarantees, 6
10	The right of access applies to State-owned enterprises (commercial entities that are owned or controlled by the State).	2	0	2(2), Law on Guarantees, 6
11	The right of access applies to other public authorities, including constitutional, statutory and oversight bodies (such as an election commission or information commission/er).	2	2	2(2), Law on Guarantees, 6
12	The right of access applies to a) private bodies that perform a public function and b) private bodies that receive significant public funding.	2	2	2(2), Law on Guarantees, 6
	TOTAL	**30**	**23**	

2. Duty to Publish

The ATI Law contains very detailed provisions on the duty to publish or proactive publication. Article 6 sets out various means by which this information may be disseminated, including via official websites, the media, direct access and other means, including means which ensure the general accessibility of "socially significant resolutions". Article 31 expands upon this in relation to "automatized informational systems", including by providing for dissemination of certain information in "open data" formats.

Articles 16-27 then elaborate on a number of rules regarding proactive publication, including the modalities for achieving it and the types or categories of information to be included, as well as basic rules on open meetings. Article 20, in particular, provides a long list of types of information that must be published on an annual basis. Although the list is quite comprehensive, it includes only quite general rules on budget-related information, in particular requiring the publication of information of "budget execution" and on technical assistance funding for project (Articles 20(1)(17) and (18)). More detailed rules on the publication of budgets, revenues, expenditures and audit reports would be useful.

In practice, many of those interviewed indicated that not all of the information listed in the law was being proactively disclosed, while in many cases it was not being maintained in an up-to-date fashion, although a few expressed general satisfaction with proactive disclosure or noted that performance on this varies among public authorities. Several interviewees also indicated that websites were not in line with the technical standards for this. One, in particular, noted that often information was disclosed in .pdf format rather than in a more user-friendly manner. Other interviewees suggested that even if information was available, it was often not easy to find or well organised. Even as experts they found this difficult while ordinary citizens could be expected to find it quite difficult.

As expansive as the list of types of information in Article 20 is, it is likely that, over time, and as public authorities gain capacity in this area, it would be useful to expand it. To provide for this, it would be useful to allocate a subordinate power to a central body, such as the Ombudsman, to add to the categories of information that public authorities are required to publish proactively. Several interviewees suggested that it would be useful to extend the proactive publication rules.

Recommendations:

- The list of types of information subject to proactive publication in section 20 should be expanded to include more detailed financial information.
- Consideration should be given to allocating the power to a central body, such as the Ombudsman, to add additional categories of information to the list of information which is subject to proactive publication.

Note: *The RTI Rating did not assess the duty to publish and so no excerpt from it is provided here.*

3. Requesting Procedures

The legal framework for access to information in Kyrgyzstan scores 18 out of the possible 30 points in the Requesting Procedures category of the RTI Rating, or 60%. While this is almost the same as the overall score of the ATI Law on the RTI Rating, it is relatively easy to do well in terms of creating simple, user-friendly procedures for making and processing requests, so the aim should be to improve this score.

In terms of the first issue covered here, namely making requests, a first problem is the detailed information that must be provided on a request, which includes, for an individual, the full name, date of birth and place of residence of the applicant (the information required from legal entities is also unduly extensive) (Article 9(1)). This is unnecessary since all that is required is for an applicant to describe the information clearly and to provide an address for purposes of communicating with him or her. The latter could be an email or postal address or even a telephone number.

The ATI Law provides for various means for lodging requests (see Article 9(5)) and it even calls for the creation of a dedicated email address for this purpose (Article 31(1)). Public authorities must create templates or forms for making requests (Article 9(3)), although it is not clear whether use of these templates is mandatory. Most of the journalists interviewed indicated that they used their own templates (forms) for making requests and this does not appear to be an issue in practice. The Law also prohibits public authorities from asking the reasons for a request and most of those interviewed suggested that this rarely happened, although it did happen sometimes, while some of the journalists indicated that the reasons for their requests were often obvious.

The rules on providing assistance to applicants are not very developed in the ATI Law. Article 9(4) provides that, if the subject matter of a request requires clarification, the applicant may be contacted for purposes of clarification or, if there is no contact telephone, the information officer (the person responsible for responding) may clarify the request directly. This is useful but it should be mandatory to contact the applicant whenever contact details, which should include an email address or physical address, and not just a telephone, have been provided.

Beyond this, Article 33(1) provides that public authorities shall provide "brief free of charge responses" by phone regarding the procedure for implementing the law. Once again, this is useful but better practice in this area is to create a wider and more general obligation to provide reasonable assistance to applicants whenever this is needed. In addition, many laws require special assistance to be provided to applicants who are disabled or illiterate, including to reduce oral requests to writing where this is needed.

In practice, interviewees mostly indicated that it was relatively easy to lodge requests. However, several indicated that although they could lodge requests by email, it was not effective to do so as these often failed to elicit responses. The Law requires public authorities which do not hold requested information to transfer requests to other authorities which do, if they are aware of this. In practice, several of the journalists indicated that this rarely happened but there was also a complaint from one about repeated getting referred to other authorities (i.e. getting bounced around).

Article 11(1) of the Law provides for requests to be registered, which involves recording fairly detailed information about the request. The Law does not, however, indicate anywhere that an applicant must be provided with a receipt or formal acknowledgement of their request. This is important to enable an applicant to prove that he or she made the request in the first place, and the date that it was made. In practice, most of the journalists indicated that they were rarely, if ever, provided with a receipt when they lodged a request.

Articles 7(2) and 14 provide for responses to requests to be answered using the same medium of communication as was used to make the request. Better practice in this regard is to allow the applicant to specify the format in which he or she would like to receive the information. Just because a request was made via email does not necessarily mean the applicant wants an electronic response. He or she may wish to inspect the documents or receive a photocopy. Such wishes should normally be respected outside of exceptional cases where to provide the information in the preferred format might harm the record holding the information. Article 7(3) provides for responses to be given in the preferred language, where the information is available in more than one language, which is helpful.

Article 10 sets out the time limits for responding to requests, which shall be two weeks, which may be extended for another two weeks provided the applicant is informed about it before the expiry of the first two weeks. These are short and

appropriate time limits for processing requests. However, the system could be improved in two ways. First, better practice is to require requests to be answered "as soon as possible", with the two weeks being understood as an outer time limit (and not the expected period for delivery of the information). Second, it would be useful to stipulate the circumstances in which an extension may be claimed, such as because the request is for a large number of documents, is complex and requires a search through a large number of documents or requires consultation with other public authorities or other third parties.

The time to respond to requests was the single biggest problem identified by those interviewed. It was not entirely clear, in some cases, whether this meant that the legal time limits were being exceeded or just that those limits were already too long (especially for journalists, for whom time is often of the essence). However, several interviewees referred to specific times, such as up to three months, which are clearly not in line with the law. One interviewee suggested that 30% of all requests were met with mute refusals (i.e. never responded to). In some cases, delays were blamed on excessively bureaucratic internal procedures relating to the processing of requests. One interviewee indicated that some public authorities counted the time limits in working days, although the law stipulates two weeks, which seems quite clear.

In terms of fees, Article 13(1) of the ATI Law makes it clear that it is free to lodge a request. Where a request involves photocopying, the "cost price" for requests, beyond the first five pages, which are free, may be charged. The Law calls for a "unified price list" for this to be approved by the government (Article 13(3)), but it would appear that only more general central rules on fees have been approved.[10] According to the information we have, various public authorities have adopted more precise schedules of fees for the services they provide but in at least some cases these do not stipulate the fees for such services as photocopying per page.[11] Article 13(3) also provides that public authorities "have the right" to waive fees for "socially vulnerable" categories of people. Article 7 of the Law on Guarantees of Information provides that information which touches on the rights and legal interests of applicants shall be provided for free, which is positive.

Provision of the first five pages for free is useful but better practice in this regard is to give out a slightly higher number of pages, say ten or twenty. This means that public authorities are not burdened with collecting very small amounts of money for a small number of photocopies, which would almost certainly cost more than the value of the fee collected.

Otherwise, the rules on fees in Article 13(3) are progressive but a key element – namely the adoption of central rules on fees for photocopying and perhaps other information services, such as providing a flash drive with information – appears to be missing. Finally, the rule on fee waivers for vulnerable applicants should be made mandatory rather than being left to the discretion of each public authority, and it should include anyone who is too poor to pay for photocopying.

Almost none of the interviewees mentioned fees as a problem area in relation to the right to information. However, the official who was interviewed indicated that the absence of clear central rules on this was a problem, leading to different approaches towards this among public authorities.

The ATI Law includes some rules governing the reuse of information obtained via its provisions. For example, Article 3(3) provides, very generally, that the right to disseminate information is protected. Articles 18-1 and 18-2 protect the right to reproduce judicial acts, subject to certain conditions. Article 12(2) of the Law On e-Government provides:

> *Public information may be used by any person at their discretion, subject to the observance of exclusive rights to intellectual property, as well as restrictions established by law on the distribution, provision, use, other processing of certain types of information.*[12]

All of these are helpful but none constitutes a full regime on the reuse of information. Such a regime would provide for applicants to reuse information provided pursuant to a request as they might wish, subject to certain conditions, such as respect for third party intellectual property rights, as indicated in the provision cited above. While Article 12(2) of the Law

10 See, for example, Kyrgyz Republic Government Decree, Order determining the amount of payment for the provision of state and municipal services (work), October 26, 2000, No. 637. Available in Russian at: http://cbd.minjust.gov.kg/act/view/ru-ru/7735?cl=ru-ru.

11 See, for example, the fee schedule adopted by the Ministry of justice. Available in Russian at: http://minjust.gov.kg/ru/content/300.

12 Law of the Kyrgyz Republic "On e-Government", July 19, 2017, No. 127. Available in Russian at: http://cbd.minjust.gov.kg/act/view/ru-ru/111634?cl=ru-ru.

On e-Government is a good start, more is needed to establish such a regime. In many cases, a framework of rules on reuse of information are included in the RTI law, although this could be in another law as well. Then, the law often provides for the mandatory development of a system of open licences to govern reuse (i.e. setting out detailed rules for this), perhaps within a set timeframe (for example of six months).

Recommendations:

- When making a request for information, applicants should only be required to provide an address for delivery of the information rather than details such as their names, date of birth and place of residence.
- The law should make it clear that applicants do not need to use the form or template when making a request for information.
- Public authorities should be required to provide reasonable assistance to applicants, including special assistance, as needed, to applicants who are disabled or illiterate.
- Applicants should be provided with a receipt or acknowledgement when they lodge a request for information.
- Instead of providing for requests to be answered via the same means of communication as the one used to make the request, applicants should be able to indicate their preferred format for receipt of the information and public authorities should normally be required to provide the information in that format, subject to rules protecting the integrity of the record holding the information.
- The law should require responses to requests to be provided "as soon as possible", with the time limit merely being a maximum. It should also place conditions on when public authorities may claim extensions to the time limit.
- Consideration should be given to extending the number of pages that are provided for free, for example to ten or twenty pages, and to making it mandatory to offer fee waivers to applicants who are "socially vulnerable" or impecunious. A central schedule of fees that may be charged for answering requests – for example the cost of photocopies per page and of flash drives – should be adopted.
- Consideration should be given to introducing a basic framework of rules into the law on the right to reuse information, including by creating a strong presumption in favour of open reuse of information created or owned by public authorities.

Indicator		Max	Points	Article
13	Requesters are not required to provide reasons for their requests.	2	2	9(2), Law on E-Gov, 15(1)
14	Requesters are only required to provide the details necessary for identifying and delivering the information (i.e. some form of address for delivery).	2	0	9(1)
15	There are clear and relatively simple procedures for making requests. Requests may be submitted by any means of communication, with no requirement to use official forms or to state that the information is being requested under the access to information law.	2	2	7(1), 8,9(3), (5), 15(2), 31(1), Law on Guarantees, 5, Order No. 56-R of 2020

Indicator		Max	Points	Article
16	Public officials are required provide assistance to help requesters formulate their requests, or to contact and assist requesters where requests that have been made are vague, unduly broad or otherwise need clarification.	2	1	9(4), 33(1)
17	Public officials are required to provide assistance to requesters who require it because of special needs, for example because they are illiterate or disabled.	2	0	
18	Requesters are provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed 5 working days	2	1	**11**
19	Clear and appropriate procedures are in place for situations where the authority to which a request is directed does not have the requested information. This includes an obligation to inform the requester that the information is not held and to refer the requester to another institution or to transfer the request where the public authority knows where the information is held.	2	2	12(1), (2)
20	Public authorities are required to comply with requesters' preferences regarding how they access information, subject only to clear and limited overrides (e.g. to protect a record).	2	0	7(2), (3), 14
21	Public authorities are required to respond to requests as soon as possible.	2	0	
22	There are clear and reasonable maximum timelines (20 working days or less) for responding to requests, regardless of the manner of satisfying the request (including through publication).	2	2	10(1), (2), (3)
23	There are clear limits on timeline extensions (20 working days or less), including a requirement that requesters be notified and provided with the reasons for the extension.	2	2	10(4)
24	It is free to file requests.	2	2	13
25	There are clear rules relating to access fees, which are set centrally, rather than being determined by individual public authorities. These include a requirement that fees be limited to the cost of reproducing and sending the information (so that inspection of documents and electronic copies are free) and a certain initial number of pages (at least 20) are provided for free.	2	1	13(3), Law on Guarantees, 7, Standards of state services and Determination order on payment
26	There are fee waivers for impecunious requesters	2	1	13(3)
27	There are no limitations on or charges for reuse of information received from public bodies, except where a third party (which is not a public authority) holds a legally protected copyright over the information.	2	1	13(3), 18-1(1), 18-2, Law on E-Gov, 12(2)
	TOTAL	**30**	**17**	

4. Exceptions and Refusals

The legal regime for RTI is relatively weak in terms of the regime of exceptions, garnering only 12 out of a possible 30 points on the RTI Rating, or 40%, making exceptions the second weakest category on the RTI Rating. The regime of exceptions is always complicated since it is important to protect legitimately confidential information but, if the regime of exceptions is overbroad, this undermines the whole thrust of the RTI law. In essence, the regime of exceptions draws the line between which information shall be disclosed and which shall remain confidential.

According to international law, an appropriate balance is maintained here by imposing three conditions on or a three-part test for exceptions. First, exceptions must only protect interests which are recognised under international law as being legitimate. These are very similar in most laws since the types of interests that need protecting do not really vary from country to country. Second, information should only be withheld if disclosure of that information would pose a risk of harm to one of the protected interests, rather than whenever the information "relates" to a particular interest (this is known as the harm test). Third, even if disclosure of information creates a risk of harming an interest, the information should still be disclosed whenever the benefits of disclosure – for example in terms of combating corruption or facilitating participation – would outweigh the harm to the interest (this is known as the public interest override).

Better practice in this area is for the RTI law to protect all of the legitimate interests through rendering information the disclosure of which would harm them confidential, subject to a public interest override. Then, where there is a conflict between the RTI law and a secrecy provision in any other law – i.e. because that secrecy provision goes beyond the RTI law, whether by protecting interests the RTI law does not recognise, or by failing to include a harm test or public interest override – the RTI shall override that provision. Under this approach, other laws or provisions may elaborate on the legitimate interests which the RTI law recognises, for example by defining them in greater detail, but they may not extend them.

The reason this approach is so important is because secrecy provisions in other laws often do not respect the key standards governing exceptions to the right of access. There may be many reasons for this. They may have been drafted a long time ago when attitudes towards transparency were not as developed as they are today. They may be focused on other issues, and so not be very sophisticated when it comes to balancing the protection of legitimate interests and the need for transparency. Whatever the reason, by including a general override in the RTI law, any problems with these laws will automatically be addressed (of course only to the extent that the RTI law itself includes appropriate standards).

The ATI Law does not take this approach. Instead, Article 2(3) provides that it does not apply to "information of restricted access in accordance with the legislation of the Kyrgyz Republic". This is then expanded upon in Article 5(2), which restricts access to information by reference to a number of secrecy laws which it specifically refers to, as well as to laws in general which provide for secrecy.

Beyond the general rule that the RTI law should override other laws, there are a number of exceptions in the RTI law or incorporated into it via other laws that are not recognised as legitimate under international law. These are listed below. Other exceptions fail to incorporate a harm test and are listed below that. The following are those exceptions which are not in line with international standards:

- Article 2(3) provides that the ATI Law shall not apply at all to information connected to "citizens' addressing with suggestions, complaints and petitions to the state bodies and local self-governments, except for complaints filed in connection with violations of this Law". This is not legitimate. First, no category of information should be excluded entirely from the scope of application of the Law. Rather, where legitimate, information should be exempted from the requirement to provide it to applicants upon request. Excluding information entirely from the ambit of the law would, among other things, have the effective of preventing the application of the public interest override. Second, this category of information is simply not, of itself, sensitive. It may be that certain private or commercially sensitive information was included in a suggestion or complaint, and that may fall within the scope of those exceptions. But suggestions, complaints and petitions are not, of themselves, recognised under international law as a category of sensitive information.

- Article 2(3) also provides that the ATI Law shall not apply at all to information connected to "access of state bodies or local self-government bodies to information held by other state bodies or local self-government bodies". Here again, complete exclusion from the ambit of the RTI law is not appropriate. Furthermore, this category of information is also not recognised as a legitimate exception under international law. If one public authority holds information that was provided

to it by another public authority, it should process any request for that information, if necessary after consulting with the authority that originally provided it with the information. At a minimum, it should transfer the request to the other public authority. Of course, if an authority does not hold requested information it should, in accordance with Article 12 of the Law, either transfer the request to another authority or inform the applicant that it does not hold that information.

- Article 5(1)(3) of the ATI Law restricts access to information to "protect rights and freedoms of others". This may appear to be a reasonable restriction but in fact it has the effect of granting broad discretion to public authorities to refuse to provide information. This is because the category of rights and freedoms is very broad indeed and arguments could often be made about how releasing information might impact those rights in one way or another. It is also unnecessary, as is shown by the fact that almost all of the nearly 130 national RTI laws around the world do not include a broad exception along these lines.

- Article 1 of the Law on State Secrets[13] defines a "state secret" as including, among other things, "information stored and transported by any kind of data carrier affecting the … economic, scientific, technical and political interests of the Kyrgyz Republic, controlled by the state and limited by special lists and rules drafted in accordance with this Law and other regulatory legal acts of the Kyrgyz Republic". These are not recognised under international law as legitimate interests to be protected by secrecy. Where they are linked to some other, more specific, interest, such as the competitive position of a State-owned enterprise, public order or national security, that other interest might warrant protection. But, as they are described in Article 1, these interests should not, according to international standards, be relied upon to keep information secret.

A number of exceptions also do not incorporate a proper, or any, harm test, as follows:

- Article 129 of the Law on the National Bank[14] defines as a "bank secret" any information that was "transmitted by the client to the bank or was created by the bank or created from the mutual relationship of the bank and the client". This rule does not include any harm test or, indeed, any interest which might need protection against harm. Instead, it defines a category of information. Some banking information might be sensitive on grounds of privacy, and if this provision was limited to that it could be legitimate, but it goes far beyond that. In any case, most RTI laws do not refer to specific rules on banking secrecy because that is automatically covered, to the extent that it applies, by privacy.

- Article 1 of the Law on State Secrets[15] defines a "state secret" as including, among other things, "information stored and transported by any kind of media affecting the defence, security … interests of the Kyrgyz Republic, controlled by the state and limited by special lists and rules drafted in accordance with this Law and other regulatory legal acts of the Kyrgyz Republic". It is legitimate to protect defence and security, but this provision does not include a harm test, instead applying to all information "affecting" defence and security.

- Article 3 of the Law on Personal Data[16] defines "personal information (personal data)" as: "[R]ecorded information on a material medium about a particular person, identified with a specific person or that can be identified with a specific person, allowing to identify this person directly or indirectly". This information is, in turn, rendered secret by Article 5(2)(2) of the ATI Law. The problem here is that "personal data" is not the same as private information. For example, technically a work telephone number or email address is personal data but clearly it is not private. Better practice is to exempt only private information and not the wider category of personal data.

- Article 15 of the Law on Operational and investigative activity[17] defines, among other things, as a State secret information "on the organisation and tactics of conducting law enforcement intelligence operations". In some cases, the disclosure

13 Law of the Kyrgyz Republic "About protection of the state secrets of the Kyrgyz Republic", December 15, 2017, No. 210(15). Available in Russian at: http://cbd.minjust.gov.kg/act/view/ru-ru/111719.

14 Law of the Kyrgyz Republic "About the National Bank of the Kyrgyz Republic, banks and banking", December 16, 2016, No. 206. Available in Russian at: http://cbd.minjust.gov.kg/act/view/ru-ru/111486.

15 Law of the Kyrgyz Republic "About protection of the state secrets of the Kyrgyz Republic", note 13.

16 The Law of the Kyrgyz Republic "On Personal Information", 14 April 2008, No. 58. Available in Russian at: http://cbd.minjust.gov.kg/act/view/ru-ru/202269/.

17 The Law of the Kyrgyz Republic "On operational and investigative activities", October 16, 1998 No. 131. Available in Russian at: http://cbd.minjust.gov.kg/act/view/ru-ru/138.

of this information will cause harm to criminal investigations but in other cases it would not. This exception does not include a harm test and so is not limited to the former category of information.

- Article 160(1) of the Criminal Procedure Code[18] provides: "Data obtained in the course of pre-trial criminal proceedings is not subject to disclosure." As with the previous provision, this is not limited by a harm test to information the disclosure of which would harm pre-trial proceedings but, instead, covers all such information, regardless of the consequences that would or would not flow from its disclosure.

The two lists above track the first two conditions mentioned above, namely whether or not the exceptions are legitimate and whether they are limited to cases where disclosure of the information would cause harm. Unfortunately, the Kyrgyz legal framework for RTI contains any very limited references to the third condition, a public interest override. This would call for the disclosure of information even where this would pose a risk to a legitimate interest where, on balance, the benefits of disclosure outweigh this harm. That might be the case, for example, because the disclosure exposed corruption, promoted accountability, fostered participation, exposed human rights problems and so on. As such, public interest overrides are important information safety values that help ensure that information of public importance is released.

Specifically, Article 11 of the Law on State Secrets and Article 13(5) of the Law on E-Government[19] contain lists of types of information that should not be classified as secret. These are, for the most part, public interest types of information. For example, Article 11 of the Law on State Secrets refers to information on disasters and emergencies, the environment and violations of the law, among other things, while Article 13(5) of the Law on E-Government refers to similar ideas.

Almost all of the interviewees, including even the official, indicated that there were problems with the regime of exceptions. A common complaint was that it was not easy to understand the scope of the exceptions, with several interviewees specifically mentioning a lack of clarity around the scope of personal data. One interviewee suggested that even personal data which was widely available via public sources had been refused on request. Several interviewees also suggested that officials abused their broad powers to claim that information was, in particular an "official secret", so as to release uncontroversial information. A few gave examples of access being refused in cases where this should not have happened. On the other hand, a few interviewees suggested that the category of "State secrets" was not a problem, just "official secrets". One journalist even indicated that information which had freely been given before was blocked after it had been used in a media report. Two interviewees complained that officials also refused to indicate the legal grounds for refusing requests, so that they could not assess the validity of this, although Article 15(3) of the ATI Law makes it very clear that the specific legal norms which justify a refusal must be notified to the requester.

Some interviewees also indicated that provision of incomplete information was a major problem. Technically, this is not about exceptions, but it is somehow related. The issue of redaction, and how this was to be done, was also raised as a problem here.

Beyond the three general conditions for exceptions, the legal framework for RTI is also missing a few other elements of a strong regime of exceptions. Better practice, for example, is to place an overall limit on the duration of those exceptions which protect public interests, such as national security and public order. In many countries, these limits are set at 20 or 30 years, with a strong trend towards shorter limits as information moves ever more quickly in our society. These limits are in recognition of the fact that the sensitivity of information declines rapidly over time and that it is simply not necessary to keep it secret after a certain period of time. In some countries, the law establishes a special procedure for keeping information confidential beyond the time limit where it really does remain sensitive. This might, for example, involve a minister issuing a certificate extending the overall time limit, always subject to review, of course.

The legal regime also fails to provide for a system for consulting with third parties where information which was provided by them on a confidential basis is requested. This is important to ensure that those parties are able either to consent to the disclosure of the information, if it is no longer sensitive, or to put forward their reasons for wanting to keep the information confidential. In the latter case, the public authority should take those reasons into account when assessing whether the information is exempt but it should not treat those reasons as a veto on disclosure. Rather, that should be decided on the basis of objective standards and the legal rules governing this issue.

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18 The Criminal Procedure Code of the Kyrgyz Republic, February 2, 2017, No. 20. Available in Russian at: http://cbd.minjust.gov.kg/act/view/ru-ru/111530/.

19 Notes 13 and 12 respectively.

Article 4(4) of the ATI Law addresses the situation where only part of a document is confidential, calling for the disclosure of those parts of the document that are not confidential, which is often called a severability clause. Such clauses are very useful because in most cases confidentiality only applies to part of a document and there is no reason to keep the whole document confidential just for that reason. However, according to the information we have received, this provision is not applied well in practice, due to the lack of clarity on how exactly to apply it.

Recommendations:

- The ATI Law should include a full list of the legitimate interests protected by secrecy, along with a requirement of harm and a public interest override, and then override secrecy provisions in other laws to the extent of any conflict (i.e. to the extent that they go beyond those interests, or do not include a harm test or public interest override).
- The exceptions should be carefully limited to narrow and specific interests which can justify secrecy; the problematical exceptions listed above should be removed or narrowed in scope.
- All of the exceptions should be made subject to a harm test.
- The limited public interest overrides found in the Laws on State Secrets and E-Government should be made general in nature and this should apply to all of the exceptions to the right of access.
- An overall time limit for exceptions which protect public interests should be added to the law.
- The right of third parties to be consulted in relation to requests for information provided on a confidential basis by them should be added to the law, allowing them to consent to the release of the information or to present reasons why they believe it should not be disclosed, which officials should then be required to take into account when they assess whether or not to disclose the information.
- Consideration should be given either to amending Article 4(4) of the ATI Law to make it clearer or to adopting a sub-ordinate legal instrument elaborating more clearly on how to apply it.

Indicator		Max	Points	Article
28	The standards in the RTI Law trump restrictions on information disclosure (secrecy provisions) in other legislation to the extent of any conflict.	4	0	2(3), 5(2), Law on Guarantees, 8, 9
29	The exceptions to the right of access are consistent with international standards. Permissible exceptions are: national security; international relations; public health and safety; the prevention, investigation and prosecution of legal wrongs; privacy; legitimate commercial and other economic interests; management of the economy; fair administration of justice and legal advice privilege; conservation of the environment; and legitimate policy making and other operations of public authorities. It is also permissible to refer requesters to information which is already publicly available, for example online or in published form.	10	6	2(3), 5, 18-2, State Secrets, 1

Indicator		Max	Points	Article
30	A harm test applies to all exceptions, so that it is only where disclosure poses a risk of actual harm to a protected interest that it may be refused.	4	0	National Bank, 129, State Secrets, 1, Personal Information, 3, Criminal Intelligence, 15, Criminal Procedure, 160
31	There is a mandatory public interest override so that information must be disclosed where this is in the overall public interest, even if this may harm a protected interest. There are 'hard' overrides (which apply absolutely), for example for information about human rights, corruption or crimes against humanity.	4	0	
32	Information must be released as soon as an exception ceases to apply (for example, for after a contract tender process decision has been taken). The law contains a clause stating that exceptions to protect public interests do not apply to information which is over 20 years old.	2	0	
33	Clear and appropriate procedures are in place for consulting with third parties who provided information which is the subject of a request on a confidential basis. Public authorities shall take into account any objections by third parties when considering requests for information, but third parties do not have veto power over the release of information.	2	0	
34	There is a severability clause so that where only part of a record is covered by an exception the remainder must be disclosed.	2	2	4(4)
35	When refusing to provide access to information, public authorities must a) state the exact legal grounds and reason(s) for the refusal and b) inform the applicant of the relevant appeals procedures.	2	2	4(3), 15(3)
	TOTAL	**30**	**10**	

5. Appeals

The ATI Law does relatively well in this category of the Rating, scoring 21 out of the possible 30 points or 70%, its second best score by category. At the same time, the system for appeals could still be significantly improved.

Better practice in terms of appeals is to provide for appeals at three levels, internally, normally within the same public body which rejected the request in the first place, externally to an independent administrative body and then to the courts. Formally, the legal framework for RTI in Kyrgyzstan provides for all three levels of appeal. Article 35 of the ATI Law provides for appeals "in the manner prescribed by" the Law on administrative procedures.[20] This is the first level of appeal, namely an internal appeal, which goes either back to the public authority that processed the request in the first place or to a lexically superior public authority. The Law on administrative procedures includes a number of details and procedures about how internal appeals shall work.

There is also a right of appeal to the courts, the third level of appeal. This is not provided for in the ATI Law but in general laws governing the operations of the courts. An appeal to the courts may only be made following the internal appeal, where that is provided for (as it is in the case of RTI).

However, it is the second level of appeal, to an independent administrative body, that is the most important. Indeed, the existence of an independent and effective administrative oversight body is, in practice, the single most significant factor in distinguishing more successful from less successful RTI regimes. Put differently, almost all of the RTI regimes which are more effective in practice benefit from strong and independent oversight bodies. There are many reasons for this, starting with the issue of appeals. The vast majority of requesters simply do not have the money or time to take cases to courts, so an administrative oversight body is the only way they can expect to get any independent review of their requests. In addition, in most cases, these bodies have far broader mandates than simply dealing with appeals, including to undertake a number of promotional roles.

In Kyrgyzstan, the body which most closely resembles an independent administrative level of appeal is the Ombudsman, established by the Law on Ombudsman.[21] The Ombudsman is an independent administrative body that addresses, among other things, failures by public authorities to respect human rights. Since the right to information is protected in the Constitution, it falls within the remit of the Ombudsman.

Another option is open to individuals wishing to lodge appeals against failures to apply the ATI Law properly, which is to appeal to the Prosecutor, which has a general mandate to ensure that laws are respected. For example, Article 3(1)(1) of the Law on the Prosecutor's office[22] states, as one of its functions: "Supervision of exact and uniform execution of the laws by executive bodies, local government bodies, their officials". Outside of cases that involve criminal wrongs, which does not arise in the context of appeals by right to information applicants, the Prosecutor can investigate and, in case of a breach of the law, order a public authority to provide a remedy, which may include restoring the rights that have been violated. These orders are binding on public authorities. This option thus presents an interesting alternative to an appeal before the Ombudsman.

An initial point regarding independent administrative oversight of right to information laws is that experience in other countries shows clearly that it is far preferable to have a dedicated body – such as an information commission – to undertake this function than simply to allocate it to a pre-existing body, whether that is an ombudsman, human rights commission or prosecutor. This is because, for these other bodies, the right to information will only be one of a number of issues that they have to deal with. Having a dedicated body ensures both that it will develop the necessary expertise for addressing this issue and that it will be able to serve a promotional, as well as an appellate, role vis-à-vis this right (see below under Promotional Measures).

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20 The Law of the Kyrgyz Republic "About the basics of administrative activities and administrative procedures", July 31, 2015, No. 210. Available in Russian at: http://cbd.minjust.gov.kg/act/view/ru-ru/111254.

21 The Law of the Kyrgyz Republic "About the Ombudsman (Akyikatchy) of the Kyrgyz Republic", July 31, 2002, No. 136. Available in Russian at: http://cbd.minjust.gov.kg/act/view/ru-ru/1093?cl=ru-ru and in English at: https://www.asiapacificforum.net/resources/law-136-akyikatchy-kyrgyz-republic/.

22 The Law of the Kyrgyz Republic "About prosecutor's office of the Kyrgyz Republic", July 17, 2009, No. 224. Available in Russian at: http://cbd.minjust.gov.kg/act/view/ru-ru/202597.

For purposes of the following analysis, this Analysis focuses on the Ombudsman rather than the Prosecutor, because it is the body that most closely resembles an independent administrative oversight body for RTI. This should not be taken as a comment on which of these two appeal options – before the Ombudsman or before the Prosecutor – is more effective but simply as a way of providing a consistent assessment in line with the RTI Rating.

The Ombudsman scores strong points on the three indicators on the RTI Rating relating to independence. Some of the conditions for removing members in Article 7 of the Law on Ombudsman are a bit vague, such as Article 7(9), which refers to "unfaithful, unprofessional or non impartial performance of duties", but there are strong procedural protections against abuse of these rules. The Ombudsman also has effective powers to investigate appeals (described as "petitions and grievances" in the Law). However, unlike for the Prosecutor, the power of the Ombudsman to recommend remedies is not very clear from the Law, although it is to be presumed that he or she may at least recommend the disclosure of information. Furthermore, he or she is limited to making recommendations, as opposed to binding orders, another contrast between this position and the Prosecutor.

Article 10(1) of the Law on Ombudsman sets out the conditions under which he or she may consider an appeal, which covers "actions taken by bodies of the state ... and their officials, or their acts in violation of rights and freedoms established by the legislation of the Kyrgyz Republic, international agreements and treaties, ratified by the Kyrgyz Republic". This seems quite broad but it would be preferable from a right to information perspective for it to be made quite clear that it covers any action or inaction by a public authority that was not in line with the rules in the legislation, including the procedures for processing requests.

Article 10 also sets out some procedures for the processing of appeals. However, these are relatively brief in nature and fail to include an overall time limit within which the processing of appeals must be competed.

Better practice in case of administrative appeals is to place the burden of proof on public authorities to show that they acted in accordance with the rules in the ATI Law. This flows from the facts both that the right to information is a human right and that the public authority is normally in a far better position to do this than the applicant. For example, where an authority claims that information is exempt, it can justify that based on the content of the information whereas it is extremely difficult for the applicant, who does not have access to the information, to show that it is not exempt. The Law on Ombudsman does not appear to address the question of the burden of proof.

Finally, better practice is to give the oversight body the power to order public authorities to put in place structural measures – such as appointing an information officer, improving their records management or adopting a protocol for the processing of requests – where they are having general challenges in processing requests in accordance with the ATI Law. This is also absent from the Law on Ombudsman.

As a matter of practice, most interviewees did not respond enthusiastically when asked about appeals. For the journalists, these took too long and it was easier for them just to approach a more senior official with whom the had a personal connection than to bother with an appeal. A few interviewees suggested that internal appeals were useful as they could help resolve issues relatively easily and quickly, although one specifically indicated that 95% of these appeals were not successful. Almost no one had made a successful appeal to the Ombudsman and there were only a few successful cases of appeals to the Prosecutor.

Recommendations:

- Consideration should be given to amending the law to establish a dedicated administrative oversight body – such as an information commission – to deal with appeals relating to requests for information and otherwise to play a general promotional role vis-à-vis the right to information.
- Consideration should be given to making the grounds for removing the Ombudsman more precise and objective in nature so as to limit further any possibility of abuse of this power.
- It should be made clear in the law that the Ombudsman has the power, at least in the context of the right to information, to make binding orders for remedies and that he or she may order a wide range of appropriate remedies where public authorities do not respect the rules in the ATI Law.

- The law should make it clear that the grounds for lodging an appeal based on the ATI Law cover any failure to respect the rules in that Law relating to the making and processing of requests for information.
- Clearer procedures, including overall time limits, for the processing of appeals should be added to the law.
- It should be made explicit in the law that, in an appeal, the concerned public authority bears the burden of proving that it acted in accordance with the ATI Law.
- The law should explicitly grant the oversight body the power to order public authorities to undertake such structural measures as may be required to ensure that they are able to comply with their legal obligations in relation to the processing of requests.

Indicator		Max	Points	Article
36	The law offers an internal appeal which is simple, free of charge and completed within clear timelines (20 working days or less).	2	2	35, Law on Administrative Procedures
37	Requesters have the right to lodge an (external) appeal with an independent administrative oversight body (e.g. an information commission or ombudsman).	2	2	Law on Ombudsman, 1, 2, 10(1)
38	The member(s) of the oversight body are appointed in a manner that is protected against political interference and have security of tenure so they are protected against arbitrary dismissal (procedurally/substantively) once appointed.	2	2	Law on Ombudsman, 4, 6, 7
39	The oversight body reports to and has its budget approved by the parliament, or other effective mechanisms are in place to protect its financial independence.	2	2	Law on Ombudsman, 11, 16
40	There are prohibitions on individuals with strong political connections from being appointed to this body and requirements of professional expertise.	2	2	Law on Ombudsman, 4(1), (2), 6(7)
41	The independent oversight body has the necessary mandate and power to perform its functions, including to review classified documents and inspect the premises of public bodies.	2	2	Law on Ombudsman, 8, 12(3)
42	The decisions of the independent oversight body are binding.	2	0	
43	In deciding an appeal, the independent oversight body has the power to order appropriate remedies for the requester, including the declassification of information.	2	1	
44	Requesters have a right to lodge a judicial appeal in addition to an appeal to an (independent) oversight body.	2	2	Administrative Procedure Code, 110, Law on the Prosecutor's Office

Indicator		Max	Points	Article
45	Appeals (both internal and external) are free of charge and do not require legal assistance.	2	2	Law on Ombudsman, 10(11), (12)
46	The grounds for the external appeal are broad (including not only refusals to provide information but also refusals to provide information in the form requested, administrative silence and other breach of timelines, charging excessive fees, etc.).	4	3	Law on Ombudsman, 10(1)
47	Clear procedures, including timelines, are in place for dealing with external appeals.	2	1	Law on Ombudsman, 10(9), (10), (16)
48	In the appeal process, the government bears the burden of demonstrating that it did not operate in breach of the rules.	2	0	
49	The external appellate body has the power to impose appropriate structural measures on the public authority (e.g. to conduct more training or to engage in better record management)	2	0	
	TOTAL	**30**	**21**	

6. Sanctions and Protections

This is the category of the RTI Rating where the Kyrgyz legal framework for RTI does least well, scoring just two out of a possible eight points, or 25%. In terms of sanctions for obstructing access, Article 36 of the ATI Law provides generally that officials who violate the law bear "disciplinary, material, administrative, civil or criminal liability according to the legislation of the Kyrgyz Republic". While this is useful, it falls well short of a detailed set of rules governing what behaviour will attract sanctions, such as obstructing access to information or failing to cooperate with an information officer. Article 13(2) of the Law on Ombudsman includes far more specific rules on failing to cooperate with that office.[23]

Several interviewees indicated that one of the weaknesses of the system was that there was no clear or effective system for sanctioning individuals who had failed to respect the rules on access. Some called for stronger rules and systems for this.

There is also no provision establishing the general (corporate) responsibility of public authorities as a whole for systemic failures to respect the provisions of the ATI Law. Such responsibility is important since systemic failures are often not the fault of an individual officer but, instead, result from more general corporate cultures, misaligned incentive structures or even messages from senior officials not to respect the law. It is neither appropriate nor effective in such cases simply to impose liability on an individual. Rather, the whole authority must be held responsible.

The legal regime also fails to provide protection for individuals who release information in good faith. This is a crucially important part of an RTI system since, absent such protection, officials are likely to be worried about the risk of sanctions for wrongly releasing information, even if they have done their best to interpret the law correctly. This is particularly the case given that both the ATI Law (Article 5(5)) and many other laws with secrecy provisions have very clear provisions on the responsibility of officials for disclosing confidential information. In other words, the legal framework is very clear about the responsibility of officials for wrongly disclosing information but fails to provide any protection for those who, in good faith, release information.

Better practice is, in addition to protecting those who release information in good faith pursuant to the RTI Law, to provide protection for individuals who release information in good faith with a view to exposing wrongdoing or serious problems of maladministration (whistleblowers). This is an important information safety valve, a sort of supplement to the public interest override, encouraging the release of these high public importance types of information. In many countries, this form of protection is found in a dedicated (i.e. separate) whistleblower law. Kyrgyzstan does have a very limited form of this type of protection, in the Law on protection of persons reporting on corruption.[24] Ideally, this should be generalised to protect those who report on a much wider range of problems, such as a breach of the law, serious maladministration, other forms of wrongdoing, environmental problems and so on.

Recommendations:

- A more specific regime of responsibility for officials who fail to respect or obstruct the right of access should be established.
- The law should impose direct responsibility on public authorities for general (systemic) failures to respect or implement the ATI Law.
- Individuals who release information in good faith pursuant to the law should be protected against legal or employment related sanctions.
- At least basic protection should be provided in the ATI Law for individuals who release information about a wide range of types of wrongdoing. As an alternative, a fully-developed whistleblower law could be adopted.

23 Law on Ombudsman, note 21.

24 The Law of the Kyrgyz Republic "On protection of persons reporting on corruption", January 28, 2019, No. 19. Available in Russian at: http://cbd.minjust.gov.kg/act/view/ru-ru/111829?cl=ru-ru.

Indicator		Max	Points	Article
50	Sanctions may be imposed on those who wilfully act to undermine the right to information, including through the unauthorised destruction of information.	2	1	5(5), 36, Law on Ombudsman, 13(2)
51	There is a system for redressing the problem of public authorities which systematically fail to disclose information or underperform (either through imposing sanctions on them or requiring remedial actions of them).	2	0	
52	The independent oversight body and its staff are granted legal immunity for acts undertaken in good faith in the exercise or performance of any power, duty or function under the RTI Law. Others are granted similar immunity for the good faith release of information pursuant to the RTI Law.	2	0	
53	There are legal protections against imposing sanctions on those who, in good faith, release information which discloses wrongdoing (i.e. whistleblowers).	2	1	Law on protection of persons reporting on corruption
	TOTAL	**8**	**2**	

7. Promotional Measures

The legal framework for RTI does moderately well on this category of the RTI Rating, earning eight out of the possible total of 16 points or 50%, just below its overall average score.

Although the ATI Law does call for "structural units" to be appointed to process requests, one interviewee suggested that a problem was that often it was not clear who was responsible for processing requests for information. This suggests that perhaps in practice not all public authorities have appointed these units. The official who was interviewed suggested that in some cases the locus of responsibility for responding to a request was not clear due to the information being held at a remote location or being spread among different offices of a public authority.

One problem here is that there is no central body with responsibility for this issue, as noted above under Appeals. In many countries, these bodies play a key role in undertaking promotional measures, as well as hearing appeals. But even in the absence of a specialised oversight body focusing on this issue, this role can still be allocated to one or another central body, such as the ministry responsible for information or for the civil service.

According to Article 34(1) of the ATI Law, each public authority is responsible for reaching out to the public to raise awareness about RTI. Formally, this is a good system and full points are awarded for this on the RTI Rating. However, in practice, while it is important to have each public authority making an effort to raise public awareness, this does not avoid the need to have a central body with overall responsibility for public awareness raising efforts.

Most of those interviewed indicated that public awareness about the right to information is very low, with one claiming that even journalists did not know about it. One suggested that citizens were afraid to make requests, while another suggested that most citizens were not interested in this. Almost none of the interviewees were aware of any public efforts to raise awareness, although one did mention that they had heard about some such efforts. This is, then, clearly an area where more needs to be done.

Article 23(5) of the ATI Law calls on public authorities to keep various folders both to organise their documents and other records, and to make it easier for members of the public to understand what types of documents they hold. This is useful but it does not constitute a fully developed system for records management. This starts by having a central body adopt a code of practice setting out standards for records management. But it should also involve the provision of training to build the capacity of public authorities to apply those standards. Furthermore, some system for monitoring performance in this area and for addressing cases where public authorities are failing to meet the standards should be put in place.

Several interviewees indicated that records management and an inability to find requested information was a problem. The idea of improving digitalisation of information, with the benefits this brings in terms of records management, was mentioned by a few interviewees, although it may be noted that digitalisation also brings records management challenges (such as inadvertent destruction – deletion – of records and authentication issues). One interviewee suggested that a barrier to digitalisation was limited technical storage capacity within public authorities.

Article 25(5) requires relevant actors to establish a full list of the legal acts that are in force in the country. Better practice is to extend this obligation to all public authorities (i.e. to require them to keep full lists of all of the records they hold). Good practice is at least to require them to publish lists of all of the types or categories of records they hold. While Article 23(5), noted above, does require public authorities to make some effort to help applicants identify relevant records, it does not go so far as to call on them to publish full lists of the documents they hold.

Better practice is also for the legal framework to place an obligation on public authorities to provide training to their staff on RTI. Training should start with the members of the specialised information service that each public authority is required to create to support the provision of information, pursuant to Articles 30 and 33(1) of the ATI Law, but, over time, it should be expanded to cover at least some training for all officials. This is not mentioned in the legal framework for RTI.

Training was another area where many interviewees felt that more needed to be done, although some felt that this was less of a problem and a few distinguished between more senior, experienced staff and newly hired officials. One interviewee cast this in the wider framework of a need to increase professionalism generally in the civil service. One interviewee called for a simple guide to be prepared to provide instructions to both requesters and officials on making and responding to requests.

Pursuant to Article 34(2) of the ATI Law, supplemented by Article 1 of Decree No. 240,[25] each public authority is required to publish a report annually in the media about what it has done to implement the ATI Law. This is very positive. However, there is no obligation on any body to publish a central report bringing all of this information together. Article 11 of the Law on Ombudsman does require that body to publish an annual report on its activities, but there is no mention of a special report or even section of that report on RTI.

Recommendations:

- A central body should be given overall responsibility for promoting and advancing the right to information, including by leading on public awareness raising efforts. Ideally this should be a dedicated RTI oversight body but this task could also be allocated to another body.
- The ATI Law should create a proper records management system involving the setting of records management standards, the provision of training on this and a system to monitor performance and to address cases where public authorities are not meeting minimum standards.
- Consideration should be given to requiring public authorities to publish lists of the records they hold or at least the categories or types of records they hold.
- Each public authority should be required to provide adequate training to its staff on RTI.
- A central body should be required to publish a central report annually on what has been done, overall across all public authorities, to implement the right to information.

Indicator		Max	Points	Article
54	Public authorities are required to appoint dedicated officials (information officers) or units with a responsibility for ensuring that they comply with their information disclosure obligations.	2	2	30, 33(1), Decree, 1
55	A central body, such as an information commission(er) or government department, is given overall responsibility for promoting the right to information.	2	0	
56	Public awareness-raising efforts (e.g. producing a guide for the public or introducing RTI awareness into schools) are required to be undertaken by law.	2	2	34(1), Decree, 1
57	A system is in place whereby minimum standards regarding the management of records are set and applied.	2	1	23(5)
58	Public authorities are required to create and update lists or registers of the documents in their possession, and to make these public.	2	0	23(5), 25(5)
59	Training programmes for officials are required to be put in place.	2	0	

25 Decree of the President of the Kyrgyz Republic On the implementation of the Law of the Kyrgyz Republic "On access to information held by state bodies and local self-government bodies of the Kyrgyz Republic", May 8, 2007, No. 240. Available in Russian at: http://cbd.minjust.gov.kg/act/view/ru-ru/62641/10?mode=tekst.

Indicator		Max	Points	Article
60	Public authorities are required to report annually on the actions they have taken to implement their disclosure obligations. This includes statistics on requests received and how they were dealt with.	2	2	34(2), Decree, 1
61	A central body, such as an information commission(er) or government department, has an obligation to present a consolidated report to the legislature on implementation of the law.	2	1	Law on Ombudsman, 11
	TOTAL	**16**	**8**	

Westminster Foundation for Democracy
Artillery House, 11-19 Artillery Row, London, SW1P 1RT
@WFD_Democracy | @WestminsterFoundation
www.wfd.org