



**Organization for Security and Co-operation in Europe
The Office of the Representative on Freedom of the Media**

Access to information by the media in the OSCE region:

Country Reports

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Remarks

The country reports for this survey are based on data that have been received from the governments of the OSCE participating States and from other sources, including OSCE field operations and international and local media NGOs. These sources have provided information to the best of their knowledge; however, some responses are incomplete. In each country report, we have indicated sources which provided the information. We have obtained information on some OSCE participating States' from different sources. In such cases, several reports have been published.

Disclaimer

The data for this survey have been received from the governments of the OSCE participating States and from other sources, including OSCE field operations and international and local media NGOs. The Office of the OSCE Representative on Freedom of the Media was not in the position to verify all of the data. Therefore, we cannot guarantee the accuracy and completeness of the facts contained in this survey.

In some cases, when more than once response per country has been received, not all of them are published in full text.

The Office of the OSCE Representative on Freedom of the Media decided not to publish all the supplementary materials (texts of legal provisions, tables and maps) provided by our sources. Where possible, web links are provided for the documents available online.

We reserve the right to correct or complete some of the data as necessary, as well as include new country reports into this document.

Albania

Prepared by the OSCE Presence in Albania

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Yes (see below).

Article 23

The right to information is guaranteed.

Everyone has the right, in compliance with law, to obtain information about the activity of state organs, and of persons who exercise state functions.

Everyone is given the possibility to attend meetings of elected collective organs.

Article 56

Everyone has the right to be informed about the status of the environment and its protection.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

The Constitutional Court has not been asked to specifically interpret the right to information. However, in several rulings on different issues, the Court has stressed the importance of the right to information as indispensable for a free and constitutional rule.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

The right to information is limited.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

See articles from the Law on Information Classified State Secret below. Also, the Law on Protection of Personal Data aims at guaranteeing the personal data protection and their legal use by the public authority.

Article 1

Meaning and Importance of a Secret

This law specifies the rules for the classification, use, safekeeping and de-classification of information about the national security, which, by this law, will be considered a state secret.

The state is the sole possessor of state secrets, regulating this right with the right of the public to learn about its activity.

Article 6
Categories of Classification

Information will be subject to the process of classification when it is related to:

- a) military plans, armaments or operations;
- b) capability or weakness, capacities of systems, installations, projects and plans that have to do with national security;
- c) activity of the information services, with the forms and methods of work, with cryptology in objects and technical means, in places where information is processed and the archives where it is kept;
- ç) information of foreign governments, international relations or with international activity of the Republic of Albania, as well as with confidential sources;
- d) scientific, technological and economic issues that are related to national security.

5. Are there other specific constitutional limits on access and dissemination of information?

The Constitution protects personal data (see below).

Article 35

No one may be compelled, except when the law requires it, to make public the data related to his person.

The collection, use and making public of the data about a person is done with his consent, except for the cases provided by law.

Everyone has the right to become acquainted with the data collected about him, except for the cases provided by law.

Everyone has the right to request a correction or deletion of untrue or incomplete data or data collected in violation of law.

Article 36

The freedom and secrecy of correspondence or any other means of communication are guaranteed.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

Yes, the Law on the Right to Information on Official Documents, No. 8503, dated 30.6.1999

<http://www.freedominfo.org/documents/AL%20RightInfoOffDocs.doc>.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

No.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

No.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

There are no statistics. However, in the roundtables on access to information that the OSCE Presence and the Albanian Ombudsperson's Office organized all around Albania in 2006, it turned out that only a few journalist had used the law.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

No. However, the Constitutional Court recognized in a ruling that the right of the media to have access and disseminate information should be always considered special, because of the special role of the media in a free and democratic society.

11. Are there any limits in this law on access to, and publication of, information?

N/A

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

N/A

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

Yes, there is the Law on Information Classified as a State Secret. See below relevant articles.

Article 3

Levels of Classification

On the basis of its content, values and the state interest, a state secret is classified into one of the following three levels:

- a) "top secret," when unauthorized disclosure might cause especially serious damage to national security.
- b) "secret," when unauthorized disclosure might cause serious damage to national security.
- c) "confidential," when unauthorized disclosure might cause damage to national security.

No other term shall be used for the definition of a state secret.

The rules for the process of classifying a state secret, as well as delegating the classifying authority, are determined by substatutory act of the Council of Ministers.

Article 7

Time Extension of Classification

Information is classified for as long as the interest of national security requires it.

In the original classification, the classifying authority sets the time period for safekeeping, according to the value of the information.

If the classifying authority does not determine a shorter time period for de-classification, the time period will be ten years from the date of the original classification.

A classifying authority may extend the time period of classification or may re-classify a piece of information for continuous periods that do not exceed 10 years, in compliance with the provisions of this law.

Article 8

Calculation of the Time Period

The time period is the period of time during which a certain piece of information stays classified.

The time period is calculated as follows:

- When the information is problematic, from the date of the original classification;
- When its object is an event or occurrence, from the date of the event or occurrence.

De-classified information is considered ordinary.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

The Criminal Code punishes the disclosure and dissemination of information and documents that constitute state secret.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

The prohibitions apply to all. See below relevant articles from the Criminal Code.

Article 294

Spreading state secrets by the person entrusted with it

Divulging, spreading, and informing facts, figures, content of documents or materials which, according to a publicly known law, constitute state secrets, by the person entrusted with it or who became informed of it because of his capacity, are punished with a fine or up to five years of imprisonment.

When the same act is committed publicly, it is punished with a fine or up to ten years of imprisonment.

Article 295

Spreading state secrets by citizens

Divulging, spreading, and informing facts, figures, content of documents or materials which, according to a publicly known law, constitute state secrets, by any person who becomes informed on them, are punished with a fine or up to three years of imprisonment.

When the same act is committed publicly, it is sentenced to a fine or up to five years of imprisonment.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

No.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

N/A

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

See below. The penalties are part of the Criminal Code.

Article 294

Spreading state secrets by the person entrusted with them

Divulging, spreading, and informing facts, figures, content of documents or materials which, according to a publicly known law, constitute state secrets, by the person entrusted with them or who became informed of them because of his capacity, are punished with a fine or up to five years of imprisonment.

When the same act is committed publicly, it is punished with to a fine or up to ten years of imprisonment.

Article 295

Spreading state secrets by citizens

Divulging, spreading, and informing about facts, figures, content of documents or materials which, according to a publicly known law, constitute state secrets, by any person who becomes informed on them, are punished with a fine or up to three years of imprisonment.

When the same act is committed publicly, it is sentenced to a fine or up to five years of imprisonment.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

The penalties apply to all. The penalties are higher in case of mass publication of information (see answer to question 18 above).

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

No information is available.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

No. The law only says that "In special cases, classified information may be de-classified when its publication is dictated by state interests that are more important than the need for keeping it classified".

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

No. However, the judiciary has had only a few cases, if any, to take a stand on this issue.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

Article 44 of the law on electronic media No 8410 guarantees confidentiality of sources of information. The Article is only applicable to electronic media journalists. (Article 15 of the draft print media law, which has still to be approved by the Assembly, provides for print media journalists' right to protect confidentiality of the source of information.)

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

There are no such divisions; there are only communes, municipalities and regions, which follow the same law.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

N/A

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

The OSCE Presence in Albania is not aware of any such cases.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

Paragraph 3 of Article 159 of the Code of Criminal Procedures speaks about the protection of professional secrecy for journalists and some other professionals, but its third paragraph says that, the court orders journalists to give sources of their information in case the data are indispensable to prove a given criminal offence and truthfulness of these data may become clear only through the identification of the source. See below the whole Article.

Article 159

Professional Secrecy

1. There may not be forced to give evidence for facts learnt due to their duty or profession, except when they have to present them to the proceeding authorities:
 - a) the representatives of the religious belief, whose statutes are not in opposition to the Albanian rule of law;
 - b) practicing lawyers, legal representatives and notaries;
 - c) doctors, surgeons, pharmacists, obstetricians and anybody else exercising a medical profession,
 - d) the ones who exercise other duties or professions, whom the law recognises the right not to give evidence for what concerns the professional secret.
2. When there are reasons to suspect that these persons try to not give evidence under unmotivated grounds, the court orders for necessary verification. When it finds the refusal ungrounded, the court decides that the witness must give evidence.
3. The provisions set forth in paragraph 1 and 2 shall also apply to the professional journalists as far as the names of the persons from whom they have collected information during the performance of their profession are concerned. But, in case the data are indispensable to prove the criminal offence and the truthfulness of these data may become clear only through the identification of the source, the court orders the journalist to give the source of his information.

28. What are the penalties for refusing to reveal sources of information?

There is no specific Article on journalists. As a general law, second paragraph of Article 165 of the Code of Criminal Procedures the Court asks the Prosecution Office to proceed in line with relevant laws when the testifier (who can be a journalist as well in his capacity as a defendant or witness) insists on refusing to testify.

Article 307 of the Criminal Code states that refusing to answer questions concerning knowledge of a criminal act or its executor constitutes a criminal contravention and is sentenced to a fine or up to one year's imprisonment. Below are the full texts of the two Articles.

Article 165

Responsibility for false evidence or refusal to give evidence

1. When during the interrogation the witness gives contradictory, incomplete evidence or evidence which runs against the taken proof, the court forewarns him for false evidence. The same forewarning shall apply to the witness who unlawfully refuses to give evidence.
2. In case the witness persistently refuses to give evidence or when it is evident that the witness has given false testimony, the court requests the prosecutor to proceed according to the law.

Article 307

Refusal to testify

Refusal to answer questions concerning the knowledge of a criminal act or its perpetrator constitutes criminal contravention and is punished with a fine or up to one year's imprisonment.

When refusal to testify occurs for profit or any other interests, this is punished with a fine or up to three years' imprisonment.

29. Are the journalists prohibited from revealing their source without the permission of the source?

This is not provided for by any Albanian legislation.

30. In the media, who is protected from disclosure of sources:

- **The journalist? The editor? The publisher?**
- **Freelance journalists or commentators?**

There is no specification about the category of journalists.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

As mentioned above, the law on electronic media speaks about electronic media journalists. A draft law on print media has not yet been accepted.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

There is no specification for these categories in the Albanian legislation.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

There is no specification for journalists. The Constitution of Albania guarantees in its Article 36 inviolability of residence. According to the fundamental law, searches of a residence as well as the premises that are equivalent to it are allowed only in cases provided by law. Inviolability of residence is also guaranteed by the Criminal Code, again, with no specification for journalists. Also, the Criminal Code provides for the cases when and the conditions in which the search is allowed for all citizens (Articles 202-206), with no specification for journalists.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

Again, there is no specification for journalists. The Constitution of Albania guarantees in its Article 36 the freedom and secrecy of correspondence or any other means of communication.

Albania

Prepared by the Centre for Development and Democratization of Institutions (CDDI)

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Yes, Article 23 of the Albanian Constitution provides for this.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

No.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

No, it does not apply to all information held by government.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

Data protection and classified information.

5. Are there other specific constitutional limits on access and dissemination of information?

Yes, article 17 for the reasons mentioned above.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

Yes, it is the law on Access to Official Documents, number 8503, of July 1999, entered in force January 2000.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

No.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

No.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

There are no statistics on the use of law by journalists.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

There are no specific laws, which provide journalists with any additional right.

11. Are there any limits in this law on access to, and publication of, information?

N/A

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

N/A

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- **Different categories in terms of level of confidentiality?**
- **The period of classification and declassification?**

Yes, it is a law on Classified Information which specifies four categories of levels and also the period of declassification.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

Yes, is the Criminal Code.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

Yes, it is applicable only for officials whose duty is to protect secret information.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this?

Yes, the law on gathering of police information and on tax law.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

The prohibitions only apply to officials.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

Yes, they are part of the Criminal Code.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

No, they are not applied to media.

20. Have there any cases been brought in the last five years against:

- Officials in charge of the leaked classified information?
- Members of the public?
- Journalists or media organisations?

Please describe the outcomes, including the date of the case, the defendants and the charges.

In each of the three cases the answer is no.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

No.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

No.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

No¹.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

N/A

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

No.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

There was only one case in 2004.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

In case of defamation, classified information, tax law, law on gathering police information and data protection.

28. What are the penalties for refusing to reveal sources of information?

They vary from monetary penalties to starting a criminal case.

29. Are the journalists prohibited from revealing their source without the permission of the source?

¹ OSCE/RFOM's note: Article 44 of LAW No. 8410, dated 30.09.1998 On Public and Private Radio-Television in the Republic of Albania provides that "Confidentiality of sources of information (including materials researched by journalists) is guaranteed. They are disclosed only in special cases as provided in the law."
http://www.ijnet.org/FE_Article/ml/Radio-TV%20Law.html

No.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

None of these categories are protected.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

No.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

No.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

No.

Andorra

Prepared by the Government of Andorra

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Article 12 of the Constitution of the Principality of Andorra of 1993 “recognises freedom of expression, communication and information”. The same article says that “the law will regulate the right of reply, the right of rectification and professional secrecy. Censorship or any other means of ideological control by the public authorities is prohibited”.

Further, Article 5 of the Constitution states that “The Universal Declaration of Human Rights is in force in Andorra” and therefore its Article 19 applies:

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 3(3) and (4) of the Constitution also states that:

Article 3

(...)

1. Andorra incorporates into its ordinance the universally recognised principles of international public law.
2. International treaties and agreements are integrated into the legal ordinance from their publication in the Official Journal of the Principality of Andorra, and cannot be amended or repealed by laws.

Thus, Article 10 of the European Convention for the Protection of Fundamental Humans Rights and Liberties, ratified on 22 January 1996, is effectively of application in Andorra:

Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

It must also be noted that the United Nations International Covenant on Civil and Political Rights and its two protocols will come into force in Andorra on 22 December 2006. Article 19 states:

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 1. For respect of the rights or reputations of others;
 2. For the protection of national security or of public order, or of public health or morals.

It must be pointed out that the principal means of dissemination of the information that the Government uses is the Official Journal of the Principality of Andorra, regulated by the Official Journal of the Principality of Andorra Act of 19 March 1983, in which Article 1 sets out:

Provisions of a general nature emanating from the General Council, the Government, the Communes and the Quarts, will be, hereafter, published in the Official Journal of the Principality of Andorra, without prejudice to publication in it of the provisions emanating from other authorities of bodies, and legal or other notices not of an advertising nature.

Also reference must be made to Article 5 of the General Council (Parliament) Regulation which defines the methods by which the Government delivers information to the Council, and Articles 89, 90 and 91 of the Regulation, which indicate the procedures of publication by the legislative body.

Article 5

For compliance with the parliamentary activity, Members of the General Council have the right to require the Public Authorities to deliver to them the data, reports and documents in their possession. The application is made through the Speaker of the House.

Chapter eleven. On publications

Article 89

The "Official Journal of the General Council" will reproduce all the speeches, events and resolutions adopted in the public sessions of the General Council.

Article 90

The "General Council Bulletin" will publish all the bills and white papers for law, the corrections ordered by the Reporter and reports from legislative Committees with the amendments and particular votes which are to be debated in the Plenary sessions, the resolutions of the Committees and the Plenary, the proposals of resolutions, questions and answers, the communications and resolutions that the Government transmits to the General Council, and any other text or document which this Regulation requires or which may be ordered by the Speaker, according to its interest in the parliamentary process.

Article 91

For reasons of urgency the Speaker may, for the purpose of debating and voting on them, order the documents to which the above paragraph refers to be reproduced by other mechanical means and distributed to the Members of the General Council who need to be aware of them. In every case they must be published in the "General Council Bulletin".

Finally, the Penal Procedure Code, of 16 February 1989, determines the conditions under which the documents of the Administration of Justice may be published:

Title six. Legal resolutions and other actions

Chapter I. Court resolutions, orders and judgments

Article 184

The following may not be published without the express authorisation of the court:

a) Hearings or any other procedural action.

b) The internal deliberations of the courts or personal impressions of officials of the judiciary.

In no case may there be comments on the debates, actions and decisions of the courts, except those of a technical-legal nature. Neither may there be any comment which attacks the standing and dignity of the courts, their members or the parties, or any other person who has taken part in the hearing.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

The Senior Council of Justice, which is the organ of representation, government and administration of the legal organisation, in accordance with Article 89(1) of the Constitution of the Principality of Andorra, knows of no cases of interpretation or application of this right by the Andorran courts.

There is, however, a judgment of the Constitutional Court in relation to Article 14 of the Andorran Constitution and which refers to the publication of documents by professional journalists.

Constitution of the Principality of Andorra:

Article 14

The right to privacy, reputation and personal image is guaranteed. Everyone has the right to be protected by the law against unwarranted intrusions into their private and family life.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

The Administration Code, of 29 March 1989, regulates in Chapter III the form of administrative acts, and sets forth in Article 37(7) that “except where provided otherwise, the public will have the ability to have knowledge of the acts”. More precisely, Article 42 of the Administration Code says:

Article 42

1. Members of the public will have the right to demand knowledge of administrative documents, save for the exceptions established, for the benefit of both the Authorities and the general public, by sections 2, 3 and 4 of this article.

The information will take place, according to cases, either by free enquiry to the offices of the Authorities, or through the issue of copies at the expense of the applicant.

Any fraudulent use of the information thus obtained will be subject to criminal proceedings. Members of the public who believe themselves to have been refused information can appeal directly to the administrative and taxation jurisdiction.

2. The Authorities can refuse to allow consultation of documents covered by secrecy established by law.

3. Nominative information contained in administrative documents can only be communicated to persons who are holders of a subjective right or have a personal and direct legitimate interest in the issue.

Information which allows the identification of the persons to whom it refers in whatever form, whether direct or not, will be considered nominative.

4. Documents containing personal data of a police, procedural or clinical nature or any other, which could affect the safety of people, their reputation, the privacy of their private and family life, or their personal image, can only be communicated with the express consent of those affected, or when fifty years have passed since their death, or by court order.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

Article 42(2) of the Administration Code refers to documents of the Authorities covered by secrecy established by law.

The Government Act, of 15 December 2000, does not say which documents are covered by secrecy but it does say in Article 14(5): “In every case, the discussions taking place in Government meetings are secret. The members of the Government and all the people attending the meetings are obliged to keep secret the discussions, the opinions and the votes cast by each one. Neither can they disclose documents of which they are aware by reason of their jobs, until they have been made public officially”.

This article is the only mention of limits or restrictions on public access to administrative documents regarding the Government’s management.

However, there is a regulation for administrative documents which are transferred to the Andorran National Archive as part of the documentary heritage:

The Regulation of the Andorran National Archive, approved by the General Council on 22 December 1975, covers all the documentation produced and received by the Andorran public authorities. With regard to consulting the documentation, Article 10 of the Regulation expresses “that documents more than 50 years old may be consulted by the public” respecting a series of conditions of a technical and formal kind. These conditions are defined in Articles 11 to 15, and are concerned with the respect for privacy, reputation and the requirements demanded by the Archive for consultations (filling in a form, the use of microfilm, etc.).

Chapter three of the Andorran National Archive Regulation defines the means of access to the documentation and more precisely Articles 18 and 19 regulate the restriction of access and classified material in documents constituting the documentary heritage:

Article 18: Restriction of access

The documentation, from its entry into the archive, is of free access except when excluded by the provisions contained in the following articles.

Article 19: Classified material

Article 19(1) Material classified in conformity with the legislation on official secrets, and documentation which is expressly excluded by law or the dissemination of which could mean a risk to the defence or security of the State or to enquiries into offences, is excluded from public consultation.

Article 19(2) Without prejudice to the above, the authority which declared the secrecy or reservation can grant authorisation for access to documents of this kind. The grant of an authorisation in all the other suppositions corresponds to the Head of the Archives Service.

5. Are there other specific constitutional limits on access and dissemination of information?

Article 14 of the Constitution of Andorra of 1993 “guarantees the right to privacy, reputation and personal image. Everyone has the right to be protected by the law against unwarranted intrusions into their private and family life”.

The development of this fundamental right, especially the regulation of the data to which the public has the right of access, is regulated by the Qualified Law of Personal Data Protection of 18 December 2003.

In this context, Article 42(3) of the Administration Code limits the dissemination of Government documents containing nominative information (see question 3).

It must also be taken into account that there is the “Law covering Public Radio and Television Broadcasting and creating the Public Authority Company Ràdio i Televisió of Andorra, SA”, of 13 April 2000, which in Article 2 sets out the obligation of respect for the principles of the Constitution:

Article 2

The public services of radio and television broadcasting must subject their programming and broadcasts to the following general principles:

Respect for the principles established in the Constitution of the Principality of Andorra and the rights and freedoms recognised and guaranteed in it.

Objectivity, truth and impartiality of the information.

Respect for freedom of expression and information.

d) Respect for the rights to reputation, personal and family privacy, and personal image.

e) Respect for political, cultural and social plurality.

f) The promotion of the language, and the carrying out of cultural, educational and social purposes proper to Andorra.

g) Respect and special attention to youth and children, both in the treatment of the contents and in the general programming.

h) Respect for the principles of equality and non-discrimination by reason of birth, race, sex or any other personal or social circumstance”.

And Article 9 of Chapter V of the same Law provides for the right of rectification envisaged in Article 12 of the Constitution of the Principality of Andorra.

Chapter V. Right of rectification

Article 9

1. Anyone who considers himself prejudiced by the broadcasting of data or facts contrary to the truth and alluding to him can petition the director general of the company Ràdio i Televisió of Andorra, SA, within seven days article following the broadcast, for the corresponding rectification of the information to be made.
2. The petition must be reasoned. The director general must respond accepting or refusing the petition, within the three days following if the programme is daily; in other cases, within seven days. If no response is given the petition is considered refused.
3. An appeal can be made against the director general's decisions, within seven days following, to the Andorran Audiovisual Council, which will give the director general two days to declare the reasons why the rectification has not been broadcast, and will resolve that this shall take place within the next three days.
4. Once this has been settled, the rectification must be broadcast within three days following, under audience conditions equivalent to those of the space in which the data or facts the subject of rectification were issued. If the decision of the Andorran Audiovisual Council does not accept the rectification, the party who urged it can file a claim before the Civil Section of the Courts, where it will be processed by a short-form procedure.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

There is no national Law of freedom of information.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

There is no national Law of freedom of information.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

There is no national Law of freedom of information.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

There is no national Law of freedom of information.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

There is no national Law of freedom of information.

11. Are there any limits in this law on access to, and publication of, information?

There is no national Law of freedom of information.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

There is no national Law of freedom of information.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- **Different categories in terms of level of confidentiality?**
- **The period of classification and declassification?**

There is no law specifically addressed to the regulation of State secrets.

As we have said in answers 3 and 4 to this questionnaire, the Administration Code provides in its Article 42(2) that “The Authorities can refuse to allow consultation of documents covered by secrecy established by law”.

Also, Articles 18 and 19 of the Andorran National Archive Regulation, referred to in question 4, regulate restriction of access and classified material of the documents constituting the documentary heritage.

Article 14(5) of the Government Act, of 15 December 2000, describes the only restriction on Government documentation considered secret:

Article 14(5), Government Act

In every case, the discussions taking place in Government meetings are secret. The members of the Government and all the people attending the meetings are obliged to keep secret the discussions, the opinions and the votes cast by each one. Neither can they disclose documents of which they are aware by reason of their jobs, until they have been made public officially.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

There is no kind of legal regulation with regard to State secrets related specifically with national security.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

There is no kind of legal regulation with regard to State secrets related specifically to national security.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this.

There are various provisions which regulate the duty of discretion and reticence of Government officials over the disclosure of administrative information.

The Administration Code, of 29 March 1989, in Chapter VI regulates the condition of the public function in Article 66:

Article 66, Chapter VI, Administration Code

Officials shall observe at all times a conduct of perfect dignity, shall respect the duty of discretion and reticence with respect to the issues of which they are aware by reason of their functions and shall devote to the service the best of their professional abilities and working capacity. The officials can be bound to professional secrecy by reason of their function.

Article 60 of the Public Service Law, of 25 December 2000, develops the regime of sanctions established by the Administration Code, and regulates the obligations of the officials.

Article 60 Obligations

The officials must exercise the functions attributed to them with loyalty, efficiency and technical objectiveness, guided by the ethical values of public service of neutrality, impartiality and integrity; and specifically they have the following obligations:

1. To respect and obey the Constitution and the legal ordinance; respect the institutions of the Principality, and not to undertake demonstrations or acts which could prejudice its good name.
2. To maintain political neutrality in the exercise of their functions.
3. Not to take part in the development of matters in which they or their families have a personal interest, up to the fourth degree of consanguinity or second of affinity.
4. To comply with the regime of the working timetable established.
5. To apply diligently the legitimate instructions given by their immediate superiors within the ambit of their functions.
6. To cooperate in the execution of functions and/or additional work as requested by their immediate superiors or, in the case of need, required by the general Authorities, provided that these are connected or compatible with the place they occupy in the relevant work place.
7. To be reticent over the matters of the Authorities in general and their work in particular, and to watch over the security of the instruments and documents in their charge.
8. To maintain responsible conduct of attention, cordiality and good manner with the public, their superiors, subordinates and working colleagues.
9. To disseminate the knowledge and abilities acquired in seminars, courses and other studies subsidised by the general Authorities”.

Article 38(2) of the Qualified Law of the Police Force, of 27 May 2004, specifies that the officers of the force must observe “conduct of perfect dignity and respect for the duty of discretion and reticence with respect to issues of which they have knowledge through their functions, applicable to all officials, the members of the Police Force being bound, by reason of their function, to professional secrecy.”

Article 45(5) of the Government Act, mentioned above, also sets out:

The members of the Government and all the people attending the meetings are obliged to keep secrecy over the discussions, opinions and votes cast by each one. Neither can they disclose the documents of which they are aware by reason of their jobs, until they have been made public officially.

Article 12(3) of the Government Act specifies the other people who may attend Government meetings:

Government meetings may be attended also by the Secretary General of the Government. The Secretaries of State may attend when called to do so or when this is provided in the corresponding decree. The personnel of the General Authorities may also attend when called to do so.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

These regulations refer only to Andorran officials as defined by the body of officials; the members of the Government, composed of the Prime Minister and Ministers (Article 1(2) of the Government Act); people who are considered as senior executives (Article 6(1) of the Government Act): the Secretaries of State, the Secretary General of the Government, the head of the Prime Minister's Office and the head of Protocol; occasional personnel and personnel with a special relationship as defined in Articles 7 and 8 of the Public Function Law of 15 December 2000:

Article 7
Agents of the Authorities of an occasional nature.

Agents of the Authorities of an occasional nature is understood to mean people who are linked temporarily with the public Authorities.

Article 8
Personnel of special relationship

Personnel of special relationship are those who supply, confidentially, services of advice or assistance to the Prime Minister, the ministers, the president of the Senior Council of Justice and local government representatives; their appointment corresponds directly to these authorities; they can be dismissed at any time and in any event their appointment ceases when the holder of the post who appointed them also leaves office.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

Although there is no Law which develops provisions in matters of classified administrative information, there are in fact sanctions for the unauthorised disclosure of information. Hereunder we set out a list of the various disciplinary and criminal sanctions.

The Administration Code of 29 March 1989 provides for civil, criminal and disciplinary sanctions for officials who fail in their duty according to Article 66 (see question 16). Thus, Articles 70 to 75 declare:

Article 70

Officials will answer, in the civil and criminal courts and through disciplinary measures, for failures in their duties and for damage caused to the service or the general public.

Article 71

Officials will answer to the Authorities for the loss and damages which they may cause to the assets and services in their charge. These cases will be settled in the administrative route.

The official may appeal before the administrative and prosecuting jurisdiction against the decisions made against him.

Article 72

Disciplinary faults fall into three categories: slight, serious and very serious.

1. Slight faults will be sanctioned directly by the immediate superior, after hearing the official, previously informed of the facts imputed to him. The sanction will be documented in a report drawn up by the superior, a copy of which will be given to the interested party.

Article 73

The terms of prescription are two months for slight faults, one year for serious faults and two years for very serious faults. These terms are computed from the time when the fault has become known to the official or authority vested with the power of sanction.

Article 74

The disciplinary liability is independent of the civil or penal liability which could correspond to the same facts.

Article 75

All questions which may arise between officials and the public body on which they depend, whether the General Council, the Executive Council, the Communes, para-public entities or others, may be appealed against before the administrative and prosecuting jurisdiction”.

Article 60 of the Public Service Law of 25 December 2000 (see question 16), implements the regime of sanctions established by the Administration Code and regulates the obligations of the officials.

Disciplinary sanctions:

Articles 67 to 74 of the Public Service Law set the disciplinary regime of personnel in the public service. The most relevant parts of these articles are:

Chapter VIII. Regime and disciplinary procedure **Section one. Disciplinary regime**

Article 67 **Disciplinary liability**

1. The officials of the General Authorities must respect the duties and obligations established in the Constitution and the legal ordinance, and those expressly regulated by this Law, and will be liable to disciplinary action in the case of non-compliance.

2. A disciplinary fault is considered to be any action or omission which means non-compliance with the obligations of officials.

The committing of a fault leads to the requirement of disciplinary liability by means of the imposition of the appropriate sanction according to the type and procedure established in this Law.

3. The disciplinary liability will not only be attributable to the perpetrator of the fault, but also to other officials who consent to, abet or induce the non-compliance with the obligations.

4. The requirement of disciplinary liability is understood without prejudice to the third party or criminal liability that the officials may incur through non-compliance with their duties and obligations.

Article 68 **Disciplinary faults**

Faults are classified as:

- a) Slight
- b) Serious
- c) Very serious
- (...)

Article 70 **Serious faults**

(...)

e) The issue of reports and agreements which through negligent action may cause serious prejudice to the General Authorities and the public, and do not constitute a very serious fault.

(...)

j) The lack of reticence with respect to matters of which they have knowledge by reason of their own functions in the work place.

Article 71 **Very serious faults**

(...)

d) Not respecting or obeying the Constitution or legal ordinance; not respecting the institutions of the Principality, or making statements or acts which could prejudice its good name.

e) The issue of reports, the taking of agreements or any clearly illegal action or omission which may cause very serious prejudice to the Authorities or the general public.

(...)

i) The lack of discretion and reticence respecting matters which are known by reason of the work place, when they cause serious prejudice to the Authorities or the general public.

(...)

Article 72

Disciplinary sanctions

1. By reason of the faults defined in the Law, the sanctions which can be imposed are the following:

a) For committing a slight fault:

A written warning.

Temporary suspension from work and loss of salary for a maximum period of fifteen days.

b) For committing a serious fault:

Obligatory relocation to another work place, with the corresponding adjustment of the salary structure to the new work place.

Temporary suspension of work and salary for a time of fifteen days to one month. Dismissal from a controlling post, with the corresponding adjustment of the salary structure to the new work place.

c) For committing a very serious fault:

Temporary suspension of work and salary from one month to six months.

Dismissal and disqualification, temporary or permanent, for the supply of services in any other work place of the Public Authorities.

Committing a very serious fault can also, in addition to the sanction imposed, lead to the relocation and/or dismissal mentioned in the section on serious faults.

2. No sanctions may be imposed for slight, serious or very serious faults except by virtue of a disciplinary file, examined pursuant to the procedure regulated in this chapter and the implementing rules.

3. Between the fault committed and the sanction imposed there must be a relative balance.

4. When the examination of a disciplinary file gives reasonable indications of criminal activity, the process shall be suspended and the matter brought to the knowledge of the Public Prosecutor's Office.

Article 73

Evaluation of faults and disciplinary sanctions

The degrees of faults and disciplinary sanctions are assessed in accordance with the following criteria:

The official's background.

Responsibility in the work place corresponding to the position occupied.

Seriousness of the damage caused to the Authorities.

Intention.

Degree of participation.

Repeated incidents.

(...)

Criminal sanctions:

The Penal Code of 21 February 2005, in Title X, Articles 182 to 196, develops the regime of criminal sanctions in this aspect.

Penal Code

Title X. Offences against privacy and the inviolability of the home

Chapter one. Discovery and disclosure of secrets

Article 182 Discovery of documentary secrets

Anyone who, in order to intrude into the privacy of another without their consent, takes possession of papers, letters or any other documents or personal effects shall be punished with a prison sentence of three months to three years.

The attempt is punishable.

Article 183 Illegal listening and similar conduct

Anyone who, in order to intrude into the privacy of another without their consent, intercepts their telecommunications or uses technical devices for listening, electronic enquiry, transmission, recording or reproduction of sound or image, or any other communication signal, shall be punished with a prison sentence of one to four years. The attempt is punishable.

Article 184 Illegal obtaining or use of computerised personal data

Anyone who, without authorisation and in prejudice of a third party, perpetrates any of the following actions, shall be punished with a prison sentence of two to five years:

- a) Electronic creation or use of clandestine files of computerised personal data, in infringement of what is set out in the legal rules of personal data protection.
- b) Collection of personal data for the purpose of electronic computing or to computerise them in contravention of the legal rules of personal data protection.
- c) Modification, change or crossing of computerised personal data, contravening the legal rules of personal data protection.

The attempt is punishable.

Article 185 Classification for disclosure

1. A penalty of four years of prison shall be imposed if the data or facts discovered, as referred to in Article 182, should be disclosed to third parties.
2. A penalty of two to five years of prison shall be imposed if the data or facts discovered or pictures taken, as referred to in Article 183, should be disclosed or assigned to third parties.
3. A penalty of three to six years of prison shall be imposed if the computerised personal data referred to in Article 184 should be disclosed, assigned or transmitted to third parties.

Article 186 Specially protected data

When the facts described in Articles 184 and 185(3) affect personal data referring to ideology, religion, health, social origin, sexual orientation or behaviour, the penalties provided shall be imposed in their more severe half.

Article 187 Classification for organisation

If the facts described in this chapter are carried out for profitable ends by an organised group, the penalties provided shall be imposed in their more severe half.

Article 188 Offence of disclosure

Anyone who, with knowledge illegally gained, and without having taken part in the conduct described in Articles 182, 183 and 184, discloses to third parties the data or facts discovered, the pictures taken or the personal data, shall be punished with a prison sentence of three months to three years.

Article 189 Classification for an official or authority

The authority or official who, outside the cases permitted by the law, without having an initially legal reason referring to the prosecution of a crime, and taking advantage of his position, carries out any of the conduct described in the above articles of this chapter, shall be punished with the penalties provided respectively in these same articles in their more severe half and, further, with the penalty of disqualification from holding public office for up to six years if the maximum limit of the penalty does not exceed three years in prison and up to nine years if it is longer.

Article 190 Violation of secrecy in the working ambit

Anyone who discloses secrets other than those of a personal nature, of which he has knowledge by reason of his job or employment relationship, shall be punished with a prison sentence of three months to three years.

This article does not include private information supplied for purposes of guarantee by the administrators of one bank to any other banking entity in the Principality, relating strictly to loans agreed or risks accepted by the former for any of its customers.

Article 191 Violation of professional secrets

The professional who, through non-compliance with the obligation of secrecy or reticence, discloses another person's secrets, shall be punished with a prison sentence of three months to three years and disqualification for the exercise of the office or post for up to six years.

Article 192 Continuation of the obligation of secrecy

The violation of secrecy typified in Articles 190 and 191 continues to be punishable in spite of the fact that the person has ceased to exercise the profession or trade, or that the contractual relationship has terminated.

Article 193 Regime of prosecution

1. To proceed against the offences described in this chapter an accusation must be made by the person offended, a legal representative or the person in charge of the personal data files. When the offended person is under age, incapacitated or disabled, the Public Prosecutor's Office can also make the complaint, duly weighing up the interests present.
2. The accusation required in the above section is not required to proceed against the facts described in Articles 185 and 189, nor when the offence affects a number of people.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

These sanctions, according to the exposé of reasons of the Penal Code of 21 February 2005, refer to persons criminally responsible, starting from the principle of personal subjection to criminal law and dismissing any form of direct responsibility attaching to legal persons. This precept includes journalists and the persons criminally responsible in the communication media.

The sanctions are no higher or additional for the mass publication of information.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

The Senior Council of Justice, which is the body of representation, government and administration of the judicial organisation in accordance with Article 89(1) of the Constitution of the Principality of Andorra, has no knowledge that cases of this type have been heard by the Andorran courts in the last five years.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

There is no Law regulating classified material.

As we have said above, Article 14(5) of the Government Act, of 15 December 2000, describes the only restriction of Government documentation considered secret:

Article 14 (5), Government Act

In every case, the discussions taking place in Government meetings are secret. The members of the Government and all the people attending the meetings are obliged to keep secret the discussions, the opinions and the votes cast by each one. Neither can they disclose documents of which they are aware by reason of their jobs, until they have been made public officially.

There are no cases in which there has been unauthorised disclosure of secret Government acts. The Andorran Courts have never had to interpret the law on the part of the general public to know issues of public interest in the classification of Government acts as secret.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

There is no classification of confidentiality of Government documentation outside that which has already been set out in answers 3, 4 and 5 of this questionnaire.

The sanctions which are applied to journalists and the communication media for unauthorised actions of disclosure of information are set out in answer 18.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

There is no specific Law for the protection of journalists.²

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

The communes, the local corporations of the Principality of Andorra, follow the national regulations.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

There is no regulation which explicitly recognises the protection of sources.

The Penal Procedure Code, of 16 December 1989, provides the obligation for people to give statements and the exceptions to that rule in the name of professional secrecy or certain family relationships. Also Article 147 contains a provision which leaves to the discretion of the court the right of a person to take refuge in professional secrecy.

Chapter IV. The collection of evidence and specifying of charges Section six. Statements by witnesses

(...)

Article 67

Every person, national or foreign, has the obligation to give evidence in any criminal case, in order to say everything that he knows on whatever the examining magistrate or court may ask him. Excepted from this obligation are the persons referred to in Article 147.

(...)

Chapter III. The oral trial Section three. Witnesses

(...)

Article 147

Exempted from the obligation of deposition are priests and lawyers who know the facts by reason of their ministry or profession, ascendants and descendants in direct line, the spouse or person linked by an equivalent relationship situation and the siblings of the party indicted. Any other exemption on the grounds of professional secrecy must be in the court's discretion. In these cases the court must advise the witnesses that, if they wish, they may testify, under promise or oath".

² OSCE/RFOM's note: Article 12 of the Constitution of Andorra provides that:

"Freedoms of expression, of communication and of information are guaranteed. The law shall regulate the right of reply, the right of correction and professional secrecy. Preliminary censorship or any other means of ideological control on the part of the public authorities shall be prohibited."

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

The Senior Council of Justice, which is the body of representation, government and administration of the judicial organisation in accordance with Article 89(1) of the Constitution of the Principality of Andorra, has no knowledge that cases of this type have been heard in the last five years.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

There is no regulation which explicitly recognises the protection of sources.

The Penal Procedure Code, of 16 December 1989, provides the obligation for people to give evidence and sets out the exceptions to that rule in the name of professional secrecy and/or certain family relationships. Also Article 147 contains a provision which leaves to the discretion of the court the right of a person to take refuge in professional secrecy (see question 25).

28. What are the penalties for refusing to reveal sources of information?

Articles 67 and 146 of the Penal Procedure Code provide the sanctions which can be applied to those who refuse to appear or to give evidence:

Article 68

If the witness refuses to appear or to make a statement, he must be notified that this fact may constitute a criminal offence. In the case of persistence in the refusal to give evidence or appear, in addition to being brought, in the latter case, before the judicial authority, the examining magistrate will specify the corresponding charges.

Article 146

If the witness refuses to appear or to make a statement, he must be notified that this fact may constitute a criminal offence. In the case of persistence in the refusal to give evidence or appear, he can be brought, in the latter case, before the judicial authority, without prejudice to the criminal liability which he may have incurred.

29. Are the journalists prohibited from revealing their source without the permission of the source?

There is no regulation which explicitly recognises the protection of sources.

The Penal Procedure Code, of 16 December 1989, provides the obligation for people to give evidence and sets out the exceptions to that rule in the name of professional secrecy and/or certain family relationships. Also Article 147 contains a provision which leaves to the discretion of the court the right of a person to take refuge in professional secrecy (see answer 25).

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

There is no regulation which explicitly recognises the protection of sources.

The Penal Procedure Code, of 16 December 1989, provides the obligation for people to give evidence and sets out the exceptions to that rule in the name of professional secrecy and/or certain family relationships. Also Article 147 contains a provision which leaves to the discretion of the court the right of a person to take refuge in professional secrecy (see answer 25).

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)

There is no regulation which explicitly recognises the protection of sources.

The Penal Procedure Code, of 16 December 1989, provides the obligation for people to give evidence and sets out the exceptions to that rule in the name of professional secrecy and/or certain family relationships. Also Article 147 contains a provision which leaves to the discretion of the court the right of a person to take refuge in professional secrecy (see answer 25).

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

There is no regulation which explicitly recognises the protection of sources.

The Penal Procedure Code, of 16 December 1989, provides the obligation for people to give evidence and sets out the exceptions to that rule in the name of professional secrecy and/or certain family relationships. Also Article 147 contains a provision which leaves to the discretion of the court the right of a person to take refuge in professional secrecy (see answer 25).

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

The methods according to which the police may make searches are defined in Article 26 of the Penal Procedure Code, of 16 February 1989. The only exception to this procedure and concerned with lawyers is found set out in Article 87(2)(f).

Article 26

To collect the necessary evidence, Police Officers, whenever necessary, must:

1. Go to the place of the infringement; prepare a full material record, making, when necessary, the corresponding photographic or audiovisual report; assisted by persons with special competence, called upon for the purpose; take statements from any person able to supply information; proceed to the necessary searches with the previous signed consent of the occupant of the premises and always with the obligation of notifying such occupant beforehand of the right to refuse.

In the case of refusal or absence of the interested party, the police need a formal search warrant from the magistrate.

The warrant from the magistrate must specify the addresses or premises where the search is to be made and must give the reasons why the search is to be made.

This warrant will be presented to anyone occupying the place or premises. In the absence of the occupant the search must be carried out in the presence of a clerk of the court who shall draw up a minute with a list of all the documents and goods appropriated.

Exceptionally and for reasons of urgency, the search may be made without the presence of the clerk of the court, with the prior verbal authorisation of the magistrate, who must justify such authorisation subsequently.

2. Retain all the pieces and objects referring to the infringement, in particular weapons and instruments which have been used or were intended for its perpetration, and also everything which seems to have been a product of the infringement or which could constitute evidence. The objects taken must be sealed and attached to the procedural records, together with a complete inventory. When, for their volume or other characteristics, the exhibits cannot be attached to the file, the corresponding list must be prepared indicating where each was found and the person who was in charge, and they must remain at the disposal of the court. The seal on all the exhibits taken can only be broken by the magistrate or the court. Those goods which are of no interest for the case will be destined, as soon as possible, as set out in Article 79.

Even in the case that the police have not had sufficient time to examine all the objects retained, these must be delivered to the magistrate, unless, by the corresponding reasoned court order, the magistrate authorises the police to examine them during a maximum of ten days, without prejudice that the taking of expert evidence may subsequently be resolved in accordance with the provisions in Articles 80 and following of this Code.

3. Enter an address or other premises and examine them when a delinquent being pursued is hiding or taking refuge there, or is caught in flagrant in committing an offence. If there is a search the formalities set out in points 1 and 2 above must be met.

4. Intercept telephone, telegraph, postal or other communications, with prior court authorisation, under the conditions provided in the second section of Article 87.

5. Make the appropriate technical audiovisual recordings.

Article 87

(...)

2.

(...)

f) No intervention can take place when dealing with a lawyer's office or home, without the magistrate having informed the Dean of the Andorran Bar beforehand.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

There is no regulation which explicitly recognises the protection of sources.

The Penal Procedure Code, of 16 December 1989, provides the obligation for people to give evidence and sets out the exceptions to that rule in the name of professional secrecy and/or certain family relationships. Also Article 147 contains a provision which leaves to the discretion of the court the right of a person to take refuge in professional secrecy (see question 25).

Armenia

Prepared by the OSCE Office in Yerevan

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Articles 27 and 27.1 of the RA Constitution:

Article 27

Everyone shall have the right to freely express his/her opinion. No one shall be forced to recede or change his/her opinion.

Everyone shall have the right to freedom of expression including freedom to search for, receive and impart information and ideas by any means of information regardless of the state frontiers.

Freedom of mass media and other means of mass information shall be guaranteed.

The state shall guarantee the existence and activities of an independent and public radio and television service offering a variety of informational, cultural and entertaining programs.

Article 27.1

Everyone shall have the right to submit letters and recommendations to the authorized public and local self-government bodies for the protection of his/her private and public interests and the right to receive appropriate answers to them in a reasonable time.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?
No.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

Article 8 of the Armenian FOI Law gives grounds for refusal.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

The RA FOI Law

Article 8. Limitations on Freedom of Information

1. Information holder, with the exception of cases defined in the 3rd clause of the proceeding Article, refuses to provide information if:

- a. contains state, official, bank or trade secret;
- b. infringes the privacy of a person and his family, including the privacy of correspondence, telephone conversations, post, telegraph and other transmissions;
- c. contains pre-investigation data not subject to publicity;
- d. discloses data that require accessibility limitation, conditioned by professional activity (medical, notary, attorney secrets).
- e. infringes copy right and associated rights.

5. Are there other specific constitutional limits on access and dissemination of information?

No.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

The Armenian Law on “Freedom of Information”, adopted in September 23 2003, entered into force on November 15, 2003. See www.foi.am

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

No limits exist.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

No.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

About 30 percent of overall users are journalists according to the statistics registered by the FOI Center.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

There is a law on Mass Media, however it doesn't grant any additional privileges for journalists in access to information.

11. Are there any limits in this law on access to, and publication of, information?

The same limits as stated in the FOI Law.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

See answer 9.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

There is a law on State Secrets adopted in 1996.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

The Criminal Code of Armenia prohibits disclosure of any state secret. However, the Law of Armenia on FOI, article 8, clause 3 states that:

Information request can not be declined, if:

- a. it concerns urgent cases threatening public security and health, as well as natural disasters (including the officially forecast ones) and their aftermaths;
- b. it presents the overall economic situation of the Republic of Armenia, as well as the real situation in the spheres of nature and environment protection, health, education, agriculture, trade and culture;
- c. if the decline of the information request will have a negative influence on the implementation of state programs of the Republic of Armenia directed to socio-economic, scientific, spiritual and cultural development.”

In addition, Article 14, clause 2 states:

“In the cases foreseen by the 3rd clause of the Article 8 of the following law, the disclosure of information can not cause administrative or criminal responsibility.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

No, the prohibition applies only to officials.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this?

Other secrets, such as bank, or trade secrets, are also protected by specific legislation.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

The prohibition applies only to officials.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

The penalties are prescribed in the Criminal Code.

Criminal Code, Article 306. Divulging a state secret

1. Willful publicizing of a state secret by the person who was entitled to access to state secrets and who was entrusted with secrets, or learnt due to service, if elements of high treason are absent, is punished with arrest for the term of 2-3 months, or with imprisonment for the term of up to 4 years, with or without deprivation of the right to hold certain posts or practice certain activities for up to 3 years.
2. The same action committed negligently, is punished with arrest for up to 2 months, imprisonment for the term of up to 2 years, with deprivation of the right to hold certain posts or practice certain activities for up to 3 years.
3. The acts envisaged in part 1 or 2 of this Article, that negligently caused grave consequences, are punished with imprisonment for 3-7 years, with deprivation of the right to hold certain posts or practice certain activities for up to 3 years.

Criminal Code, Article 307. Breach of rules for handling documents containing state secrets or computer data

1. Breach of rules for handling documents containing state secrets or computer data, as well as, other items containing state secrets, by the person who must observe these rules, if this negligently caused the loss of these documents or items or computer data, is punished with correctional labor for the term of up to 1 year, or with arrest for the term of up to 2 months, or imprisonment for the term of up to 1 year, with or without deprivation of the right to hold certain posts or practice certain activities for up to 2 years.
2. The same act which negligently caused grave consequences, is punished with correctional labor for the term of up to 2 years, or with arrest for 2-3 months, or imprisonment for the term of up to 3 years, with deprivation of the right to hold certain posts or practice certain activities for up to 3 years."

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

No.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?** N/A
- **Members of the public?** N/A
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

Concrete records are not available.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

Please see answer 14. No, the Law does not prescribe the application of the public-interest test.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

In practice, the right to know isn't considered as overriding. There are 17 court cases on access to information right most of them with positive outcome. However, in none of them this right was considered to be as overriding.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

The RA Law on “Mass Media”, Article 5. Journalists are not obliged to reveal their news sources. Only the courts may make such an order and in very limited cases.

Article 5. Protection of Sources of Information

1. The persons conducting mass media activity and journalists shall not be obliged to disclose the sources of information with the exceptions described in section 2 of this Article.
2. A person conducting mass media activity or journalist may be enforced to disclose the information source only upon making a court decision directly related with a criminal case and only for the sake of clearance of heinous crimes or highly heinous crimes, particularly if the need of public interest defence under criminal law outweighs the public interest in non-disclosure of information source, and there are no more alternative means for defending the public interests. In that case, if the journalist demands so, the court trial shall be closed for public."

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

All regions follow the same legislation.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

-

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

There were two orders by courts in the last 5 years.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

Please see answer 23.

28. What are the penalties for refusing to reveal sources of information?

No criminal penalties exist, however in some cases the law enforcement bodies involve the journalists into the criminal case as a witness and force them to testify according to the criminal Code Article 339:

Article 339. Refusal from testimony

1. Refusal from testimony by a witness or the aggrieved person, is punished with a fine in the amount of 50 to 100 minimal salaries, or correctional labor for up to 1 year, or with arrest for the term of up to 2 months.
2. The person who refuses to testify against one's spouse or close relative is exempted from criminal liability.

29. Are the journalists prohibited from revealing their source without the permission of the source?

No, this is an ethical issue in Armenia.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher? –
- Freelance journalists or commentators? –

All of the listed categories of media workers are protected as well as on-line freelancers.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

Yes.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

Yes.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

No special protection exists.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

No.

Austria

Prepared by the Government of Austria

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Article 20 paragraph 4 of the Federal Constitution (B-VG) stipulates:

“All functionaries entrusted with Federation, Laender and municipal administrative duties as well as the functionaries of other public law corporate bodies shall impart information about matters pertaining to their sphere of competence in so far as this does not conflict with a legal obligation to maintain secrecy; an onus on professional associations to supply information extends only to members of their respective organizations and this inasmuch as fulfilment of their statutory functions is not impeded. The detailed regulations are, as regards the Federal authorities and the self-administration to be settled by Federal law in respect of legislation and execution, the business of the Federation; as regards the Laender and municipal authorities and the self-administration to be settled by Land law in respect of framework legislation, they are the business of the Federation while the implemental legislation and execution are Land business.”

Under Article 20 Paragraph 4 of the Federal Constitution (B-VG) the organs charged with federal, provincial und municipal administration, as well as other public bodies are under the obligation to give information on matters relating to their scope of activity, unless barred from doing so by a legal duty to maintain secrecy. Interest groups are only obliged to give information to their members, if this does not affect the regular fulfilment of their legal functions. The duty to give information, and the corresponding right of the individual to such, is laid down in more detail in federal and provincial legislation.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

Several times the Constitutional Court as well as the Administrative Court have interpreted the right to information as laid down in the federal and provincial “Auskunftspflichtgesetze”.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

As mentioned above under Article 20 Paragraph 4 of the Federal Constitution the organs charged with federal, provincial und municipal administration, as well as other public bodies are under the obligation to give information on matters relating to their scope of activity, unless barred from doing so by a legal duty to maintain secrecy (for example Federal Act concerning the Protection of Personal Data). Interest groups are only obliged to give information to their members, if this does not affect the regular fulfilment of their legal functions.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

Under Art. 20 paragraph 3 of the Federal Constitution, the organs charged with federal, provincial and municipal administration, as well as other public bodies, are sworn to secrecy concerning all facts that come to their knowledge during their official duty, the secrecy of which is in the interest of maintaining public peace, order and security, comprehensive national defence, foreign relations, in the economic interest of a public body, in the preparation of a decision, or in the major interest of the parties, unless otherwise laid down by law.

Article 20 paragraph 3 of the Federal Constitution (B-VG) stipulates:

“(3) All functionaries entrusted with Federal, Laender and municipal administrative duties as well as the functionaries of other public law corporate bodies are, save as otherwise provided by law, pledged to secrecy about all facts of which they have obtained knowledge exclusively from their official activity and whose concealment is enjoined on them in the interest of the maintenance of public peace, order and security, of universal national defence, of external relations, in the interest of a public law corporate body, for the preparation of a ruling or in the preponderant interest of the parties involved (official secrecy). Official secrecy does not exist for functionaries appointed by a popular representative body if it expressly asks for such information.”

5. Are there other specific constitutional limits on access and dissemination of information?

The constitutional provision in section 1 of the Federal Act concerning the Protection of Personal Data stipulates as follows:

Fundamental Right to Data Protection

- (1) Everybody shall have the right to secrecy for the personal data concerning him, especially with regard to his private and family life, insofar as he has an interest deserving such protection. Such an interest is precluded when data cannot be subject to the right to secrecy due to their general availability or because they cannot be traced back to the data subject.
- (2) Insofar personal data is not used in the vital interest of the data subject or with his consent, restrictions to the right to secrecy are only permitted to safeguard overriding legitimate interests of another, namely in case of an intervention by a public authority the restriction shall only be permitted based on laws necessary for the reasons stated in Art. 8, para. 2 of the European Convention on Human Rights (Federal Law Gazette No. 210/1958). Such laws may provide for the use of data that deserve special protection only in order to safeguard substantial public interests and shall provide suitable safeguards for the protection of the data subjects' interest in secrecy. Even in the case of permitted restrictions the intervention with the fundamental right shall be carried out using only the least intrusive of all effective methods.
- (3) Everybody shall have, insofar as personal data concerning him are destined for automated processing or manual processing, i.e. in filing systems [without automated processing, as provided for by law,
1. the right to obtain information as to who processes what data concerning him, where the data originated, for which purpose they are used, as well as to whom the data are transmitted;
 2. the right to rectification of incorrect data and the right to erasure of illegally processed data.
- (4) Restrictions of the rights according to para. 3 are only permitted under the conditions laid out in para. 2.
- (5) The fundamental right to data protection, except the right to information, shall be asserted before the civil courts against organisations that are established according to private law, as long as they do not act in execution of laws. In all other cases the Data Protection Commission shall be competent to render the decision, unless an act of Parliament or a judicial decision is concerned.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

Apart from the mentioned federal and provincial “Auskunftspflichtgesetze” there are federal (Informationsweiterverwendungsgesetz – IWG) and provincial laws implementing the directive 2003/98/EC of the European Parliament and the Council of 17 November 2003 on the re-use of public sector information.

Futhermore there is the “Umweltinformationsgesetz” implementing the directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information.

Please note that all Austrian federal and state laws are available over the internet (in German) from <http://www.ris.bka.gv.at>.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

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8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

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9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

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10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

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11. Are there any limits in this law on access to, and publication of, information?

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12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

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RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

There are the Information Security Act (Informationssicherheitsgesetz or InfoSiG), BGBl. I Nr. 23/2002 and the Information Security Decree (Informationssicherheitsverordnung or InfoSiV), BGBl. II Nr. 548/2003.

The aim of the Information Security Act is the implementation of obligations under international law concerning the secure utilization of classified information by federal agencies. The Act regulates the classification of information into different security categories.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

Section 252 (Betrayal of State secrets), section 253 (Disclosure of State secrets), section 254 (Reconnaissance of State secrets) and section 255 (Definition of State secret) of the Penal Code (StGB).

Sections 26 and 27 of the Military Penal Code (MilStG) penalize the deliberate or negligent disclosure of military secrets.

Section 9 InfoSiG calls for criminal liability for passing on information classified as “confidential”, “secret” or “top secret”.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

Section 253 StGB only penalizes disclosure by persons required by way of a particular legal obligation to keep secrets. Sections 252, and 254 StGB and sections 26, 27 MilStG apply to everyone.

The provisions of section 9 InfoSiG refer exclusively to the holders of secrets specified in that law.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this?

Section 310 StGB (Violation of an official secret) penalizes the passing on by a public official of secrets entrusted to him exclusively by virtue of his office and also the passing on of secrets entrusted to a person by virtue of having participated in confidential sessions of parliamentary committees of inquiry or standing committees as defined in article 52a of the Federal Constitution. Europol officers and liaison officers are also criminally liable if they pass on secrets of which they become aware through their positions. This means in principle that the passing on of all secrets/information is penalized provided that they could harm a public or justified private interest. According to section 301 StGB the publication of certain information in spite of a legal prohibition is a criminal offence. This refers primarily to the content of court or administrative proceedings and consultations and the results of phone tapping or video surveillance that have not yet been included in a case file.

According to sections 122, 123 and 124 StGB, the violation of a business or operating secret of a public company might also be penalized.

The Information Security Act covers all types of classified information irrespective of the type of presentation and data carrier, dealing with public security, comprehensive national defence or foreign relations.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

Prohibitions apply to any person who is granted access to classified information under the Information Security Act.

The prohibitions of section 310 StGB apply exclusively to the holders of the secrets designated in that provision, even after they have left the position or terminated their period of office. Section 301 can apply to everyone or to certain holders of secrets, depending on the circumstances. Section 122 penalizes the betrayal of secrets only by particular holders of secrets, while sections 123 and 124 can apply to anyone where the act is committed intentionally.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

Reference is made again to sections 252 et seq. StGB, which carry penalties of up to ten years' imprisonment depending on the offence. Section 301 provides for a fine of up to 360 per diem rates or imprisonment of up to one year. Section 310 carries a penalty of up to three years' imprisonment, while sections 122, 123 and 124 provide for fines of up to 360 per diem rates or imprisonment of up to three years.

Sections 26 and 27 MilStG provide for imprisonment of up to ten years.

Under section 9 InfoSiG a fine of up to 360 per diem rates or imprisonment of up to one year can be ordered.

Only the Information Security Law has provisions exclusively referring to the secrecy of classified information. All other obligations to secrecy are to be found in the core area of the Penal Code and Military Penal Code.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

The media and their representatives are not excluded from criminal liability under sections 123, 124, 252, 254 and 301 StGB or sections 26 and 27 MilStGB (which can apply to anyone). A qualification of the offence or increase in the penalty as a result of mass distribution is not provided for, but might be an aggravating circumstance to be considered when sentencing.

The penalties laid down in the Information Security Act apply to any person who violates a regulation of the Federal Act and reveals or takes advantage of classified information if this information interferes with public security, comprehensive national defence or foreign relations.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

-

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

According to section 122 paragraph 4 StGB, the betrayal of a secret that is warranted in a public or justifiable private interest is not penalized. There is no special provision for the media, however.

The overriding public interest in the publication is to be taken into account and the media owner or employee is not punishable only in the case of media offences (Article 1 section 1.12 of the Media Law). These refer solely to the content of a publication and its illegality without the necessary existence of fault, since the multiplication effect of the medium rather than the action of the perpetrator is at issue. This is to be taken into account by the judge, however, only if due journalistic care has been exercised, there are sufficient grounds for assuming the published assertion to be true and it is an offence for which proof of truth is admissible.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

-

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

According to section 31 of the Media Law, media employees have the right as witnesses in court and administrative proceedings to protect their confidential sources by refusing to testify.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

The Media law is a federal law and is therefore applicable to provincial authorities.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

-

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

-

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

According to section 31 paragraph 2 of the Media Law, this protection may not in principle be breached (e.g. through the seizure of journalistic documents). This right of refusal refers only to testimony, however. Journalists who are themselves defendants in a case cannot claim the right to journalistic secrecy. Nor may the protection be extended to cover an offence by the journalist under section 299 StGB (Accessory after the fact) or section 286 (Failure to prevent a criminal act).

The journalist is not entitled either to claim this protection if he is a party (and not just a witness) in (civil) proceedings.

28. What are the penalties for refusing to reveal sources of information?

No penalties of this nature are provided for in criminal law. If a journalist is to give testimony, he may refuse to do so under section 31 of the Media Law. If he is the defendant, he has a constitutional right to remain silent and may not therefore be coerced into making a statement or handing over certain items.

29. Are the journalists prohibited from revealing their source without the permission of the source?

No.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

All of these persons are protected by section 31 of the Media Law.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

Yes. Article 1 section 1.1 of the Media Law defines “medium” in general terms that include not only print media. To that extent, employees, publishers, etc., of other media are also protected by section 31 of the Media Law.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

Yes. The Internet and specific websites are also media in the meaning of the law.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

These searches are based on the general provisions of sections 139 et seq. of the Code of Criminal Procedure and are admissible in principle. A house search may not, however, be carried out in order to circumvent the protection of journalistic secrecy (section 31 Media Law).

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

Employees of media services (article 1.7 Media Law) are protected under section 31 of that law provided that they work for a media enterprise. Media services are enterprises that repeatedly provide media enterprises (article 1 section 1.6 Media Law) with contributions to the medium and are thus connected with the content of the medium. Other third parties who work for the media enterprise only as service providers (telephone companies, Internet providers, etc.) are not protected under section 31 of the Media Law.

Azerbaijan

Commissioned by the OSCE Office in Baku from Rashid Hajili, Head of the Institute of Media Rights

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Yes. Article 50 of the Constitution guarantees freedom of information. According to this article, everyone has the freedom to seek, acquire, produce, transfer and disseminate, by legal methods, any information they wish.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

No. There have been no judicial interpretations of this constitutional provision.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

According to Article 3.6 of the Constitutional Law on Regulating the Exercise of Human Rights and Freedoms, freedom of information may be restricted for the following reasons:

- in the interests of national security;
- to protect the public health and morality, as well as the rights and interests of other persons;
- to prevent crimes;
- to prevent disorders;
- to protect public safety;
- to protect the territorial integrity of the country;
- to protect the reputation or the rights of other persons;
- to prevent disclosure of information received in a confidential manner;
- to guarantee the authority and impartiality of the courts.

According to Article 3.1 of the said law, freedom of information may be restricted only on the grounds of a law, that is, an act of parliament.

The Constitution does not specify the type of information to which access is restricted.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

Specific restrictions are imposed by specific laws.

For example: the Law on Protection of State Secrets, the Law on Commercial Secrets, and the Criminal Procedure Code, which restricts right of access to information received during investigation of crimes, and so on.

5. Are there other specific constitutional limits on access and dissemination of information?

No.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies?

Yes. The Law on Acquisition of Information of 2005.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc.)?

No.

8. Does the FOI law give journalists or media organizations a greater right of access to information than citizens?

No. The Code on Administrative Offences, however, envisages administrative sanctions for failure to supply information at the request of journalists.

No such sanctions are envisaged for failure to supply information at the request of ordinary citizens.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

No precise statistical data are available. In any case, no one has, as yet, gathered these data. Journalists enjoy this right but rarely obtain what they are entitled to under the law.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

Yes. The Law on the Mass Media. Article 8 of the Law contains a number of provisions regulating the rights of journalists to receive information. In general, however, they do not differ from the rights enjoyed by other persons.

11. Are there any limits in this law on access to, and publication of, information?

The Law on the Mass Media does not envisage any restrictions on access.

Article 11 of the Law on the Mass Media prohibits publication of information in the following cases:

- Information that was provided to a journalist on the condition of confidentiality.
- Information allowing the source of the information to be identified if the informant stipulated that he/she should not be identified.
- Preliminary investigation and inquiry secrets, without the permission of the investigator, prosecutor and the person conducting the inquiry.
- Information about the identity of a minor accused of committing a crime, without his/her permission or without the permission of his/her legal representative.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

Unfortunately, no such statistics are maintained.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

Yes. The Law on State Secrets establishes three levels of confidentiality.

For information constituting state secret the usual term for classification is 30 years.

The Law on Acquisition of Information establishes a classification period for official and personal information. According to Article 40 of this law, access for official use information is usually restricted for a period of 5 years. For personal data it is 75 years.

Rules on Limitations

14. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

Article 284 of the Criminal Code of the Republic of Azerbaijan envisages criminal sanctions for disclosing state secrets. Persons to whom state secrets are entrusted and persons to whom such information is accessible by virtue of their official position or the nature of their work bear liability for disclosure of these secrets.

Article 202 of the Criminal Code establishes sanctions for disclosing commercial secrets.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

Articles 202 and 284 of the Criminal Code do not expressly envisage liability of other citizens, including journalists, not bound by confidentiality agreements. The official interpretation of Article 284 tends, however, to include journalists in this, too. One presidential decree specifically envisaged liability of journalists and editors for disclosure of state secrets. This order is no longer in force. The danger still remains, however, that journalists might be held liable for disclosure. So far there is no case law on disclosure of secrets.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this?

Article 189.0.1 of the Code on Administrative Offences provides for sanctions to be imposed on journalists for disclosing information if its disclosure is prohibited by law. Such information includes state secrets, commercial secrets, official secrets, information about private lives, etc.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

The question of this provision applying to journalists remains open. The law contains nothing specific to this effect. So far, there has been no specific case involving this or official interpretation in this respect.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorized disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Civil Code?

Criminal sanctions are envisaged for disclosure of state secrets.

19. Do these penalties apply to the media for unauthorized disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

The official interpretation tends, however, to apply the provision to journalists, too. One presidential decree specifically envisaged liability of journalists and editors for disclosure of state secrets. This decree is no longer in force. The danger still remains, however, that journalists might be held liable for disclosure. So far there is no case law on disclosure of secrets.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organizations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

No information available.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

The laws do not contain the concept of "information of public interest". This concept is only mentioned in Article 6.0.11 of the Law on Acquisition of Information, which stipulates protection for officials disclosing information about offences. Neither is there any case law covering interpretation of the concept of "information of public interest".

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorized release of information that was of legitimate public interest?

No judicial interpretations are available.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

There is no special law protecting journalistic sources of information.

In Article 11 of the Law on the Mass Media, there is a provision according to which the editor or journalist can, by court ruling, be compelled to disclose his/her sources in the following cases:

- to protect human life;
- to prevent a serious crime;
- to protect a person accused of committing a serious crime.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

According to the Constitution, Azerbaijan is a unitary republic. In spite of this, the country includes an autonomous area (the Nakhichevan Autonomous Republic) that has its own constitution. According to of the Constitution of Azerbaijan, laws and other regulatory acts shall comply with the Constitution and laws of Azerbaijan.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

There are no rules or court resolutions recognizing protection of sources of information.

26. How many times in the last five years has a journalist or media organization been required by a court or official to disclose their sources of information under this law or any other law?

According to the law, disclosure of an information source may be required only by court ruling. There have been no court rulings on this matter so far.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

No. This protection is not absolute. An editor or journalist may, by court ruling, be compelled to disclose his/her sources in the following cases:

- to protect human life;
- to prevent a serious crime;
- to protect a person accused of committing a serious crime.

28. What are the penalties for refusing to reveal sources of information?

There is no specific judicial indication on this matter. A journalist may, however, be held liable as a witness refusing to give evidence under Article 298 of the Criminal Code.

29. Are the journalists prohibited from revealing their source without the permission of the source?

Yes. Article 11 of the Law on the Mass Media prohibits disclosure of the name of an informant if he/she stipulated this condition.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

Article 11 of the Law protects editors and journalists. The concept of journalist embraces freelance journalists and commentators, too. The law does not envisage such protection for publishers.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

Yes. The rules of the Law on the Mass Media regulating the rights and obligations of journalists and the mass media cover correspondents of television and radio-broadcasting companies.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

Yes. The rules of the Law on the Mass Media regulating the rights and obligations of journalists and the mass media also cover Internet media and Internet correspondents and commentators.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

No. Neither the Law on the Mass Media, nor the laws governing criminal procedure actions and criminal investigation prohibit searching premises and property belonging to journalists and mass media, though this may be assumed from the meaning of the rules protecting journalists' sources. So far there have not, however, been any official interpretations of these provisions.

34. Are third parties who act for journalists or media organizations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

No. Neither the Law on the Mass Media nor the laws governing criminal procedure actions and criminal investigation prohibit searching premises and property belonging to journalists and mass media, though this may be assumed from the meaning of the rules protecting journalists' sources. So far there have not, however, been any official interpretations of these provisions.

Belarus

Data for this section was provided to the Office of the OSCE Representative on Freedom of the Media by the Government of the Republic of Belarus and the OSCE Office in Minsk

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Yes, Article 34 of the Constitution of the Republic of Belarus.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

Yes. See decisions Z-12/95 of 14 April 1995, No. R-76/99 of 12 February 1999 and No. R-7/94 of 9 November 1994 of the Constitutional Court of the Republic of Belarus.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

Article 34 (3) of the Constitution of the Republic of Belarus envisages limitations on the use of information.

The Constitutional Court decision of 14 April 1995 indirectly applies to citizens' right to access to information. It considers the decisions relating to two monopoly companies on the information services market. First, the constitutionality of Presidential Decree No. 19 of 4 August 1994 is considered, under which Belarus Press House Publishers was transferred to the jurisdiction of the Business Management Office of the President of the Republic of Belarus; the conclusion is that this decision does not contradict the RB Constitution. Second, it is acknowledged that Presidential Decree No. 128 of 28 September 1994 establishes the monopoly of the Belteleradio Company, which contradicts the Constitution³.

Constitutional Court decisions No. R-76/99 of 12 February 1999 and No. R-7/94 of 9 November 1994 concern the timely publication of normative acts to which the public should have unequivocal access.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

Under Article 34 (3) of the Constitution of the Republic of Belarus, the use of information may be limited by law to protect the honour, dignity, and personal and family life of citizens and to ensure full implementation of their rights.

5. Are there other specific constitutional limits on access and dissemination of information?

There are no other specific limits.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

There is no special law.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

³ According to the Belarusian Association of Journalists (BAJ), this Constitutional Court decision was not enforced.

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8. Does the FOI law give journalists or media organizations a greater right of access to information than citizens?

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9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

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10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

Yes.

Article 32 “The Right to Access to Information” of the Law on the Press and Mass Media of 13 January 1995 (Law on the Press).

11. Are there any limits in this law on access to, and publication of, information?

Yes.

Article 5 of the Law on the Press prohibits the use of mass media for:

- committing acts that are criminally punishable;
- disclosing information that constitutes a state or other secret specially protected by the law;
- calling for a seizure of power, a forcible change in the constitutional system, or violation of the country’s territorial integrity;
- fomenting ethnic, social, racial, or religious intolerance or discord;
- promulgating war and aggression;
- spreading pornographic products;
- impinging on the morality, honour, and dignity of citizens;
- spreading information detrimental to the honour and dignity of the President of the Republic of Belarus, or leaders of government bodies, the status of whom is set forth by the Constitution of the Republic of Belarus;
- spreading information in the name of political parties, trade unions, or other civic associations that have not undergone due state registration (re-registration);
- publishing information on incomplete inquest, pre-trial investigation, or court proceedings without written permission from the examining authority, investigator, or judge, as well as material obtained as a result of criminal investigation.

Article 33 of the Law on the Press sets forth that requests to provide information may be denied if such information contains facts constituting a state, commercial, or other secret protected by the law.

Article 30 of the Law on the Press and Mass Media does not permit publication in the mass media of advertisements on activity requiring a special permit (license), without confirmation by the advertiser of its right to carry out such activity.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations⁴.

⁴ The OSCE Office in Minsk received an indirect response to this question from the Belarusian Association of Journalists (BAJ). In 2005, BAJ polled 140 journalists, representing civic organizations, white-collar workers, and ordinary citizens, about their access to information. The response to the question is indirect since it applies not only to Article 32 on the right of the journalist to obtain information under the Law on the Press, but also to Article 34 of the RB Constitution on the right of all RB citizens to obtain, possess, and spread various information on the activity of government bodies, civic organizations, and so on.

To the question “Have you encountered cases where officials refused to give you the information you requested?” most of the respondents (102 people) responded “Yes.” According to BAJ, “some respondents answered the question of whether they encountered cases where officials refused to give a journalist information with “almost every week” and “very often.” To the question “Is refusal by government bodies to provide information a regular practice?” 55 respondents said “yes,” 61 respondents said “rather yes than no,” 19 responded with “rather no than yes,” and five respondents said “no.” To the question “How do you evaluate the activity of the government bodies in your region with regards to observing the legislation on citizen right to information access?” 0 respondents answered “good,” 39 said “satisfactory,” 75 responded with “unsatisfactory,” and 26 respondents said “extremely unsatisfactory.”

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

Yes.

The general criteria for defining state and official secrets are set forth in the Law on State Secrets, Arts. 13 and 14. Arts. 15 and 16 set forth the classification procedure and refer to the government bodies that are authorized to confer a level of classification. Art. 17 singles out two categories of state secrets: state secrets and official secrets.

This article sets forth that the difference between a state secret and an official secret lies in the gravity of the consequences of disclosing the secret. For example, disclosure of a state secret may entail extremely grave consequences, while disclosure of an official secret may cause significant harm. In both cases, the consequences affect the national security of the Republic of Belarus, as well as the security of its citizens and their constitutional rights and freedoms. Art. 17 also clarifies that an official secret has “the nature of separate data included in the information that constitutes a state secret, but which do not disclose it entirely.”

Art. 17 defines the following degrees of classification: “extremely important,” “top secret,” and “secret.”

The time terms of classification are not set forth in Art. 18; however, qualitative grounds are given for declassifying secret information. Art. 15 points out that the list of data subject to classification is reviewed no less frequently than every five years.

Presidential Decree No. 186 of 12 April 2004 sets forth 87 categories of information constituting a state secret. Presidential Decree No. 300 of 9 July 2003 lists 63 government bodies and organizations that have the right to classify information as state secrets.

Art. 140 of the Civil Code envisages that official, as well as commercial, secrets also include information that has actual or potential commercial value due to the fact that third parties are unaware of it, to which there is no free access on a legal basis, and the owner of the information shall take measures to protect its confidentiality.

Rules on Limitations

14. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

Yes.

The Criminal Code envisages:

- Art. 356 “High Treason” – disclosing a state secret to a foreign state, foreign organization, or a representative of such.
- Art. 358 “Espionage” – transferring, stealing, collecting, or possessing information constituting a state secret for the purpose of transferring it to a foreign state, a foreign organization, or a representative of such, or transferring or collecting other information on the assignment of a foreign intelligence service for use detrimental to the interests of the Republic of Belarus.
- Art. 373 “Deliberate Disclosure of a State Secret” – deliberate disclosure of information constituting a state secret of the Republic of Belarus in the absence of signs of high treason or espionage.
- Art. 374 “Disclosure of a State Secret through Negligence” – disclosure of a state secret of the Republic of Belarus or loss of documents or computer information containing a state secret of the Republic of Belarus, or items, the information about which constitutes a state

- secret, committed through negligence, if the loss was a result of violating the established rules for dealing with the said documents, computer information, or items.
- Art. 375 “Deliberate Disclosure of Information Constituting an Official Secret” – deliberate disclosure of economic, scientific and technical, or other information constituting an official secret.

Art. 5 of the Law on the Press does not permit the use of the mass media for “disclosing information constituting a state or other specially protected secret.”

The Code of Administrative Violations does not contain provisions on liability for violating the procedure regarding the handling of state secrets.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

The Criminal Code stipulates:

Art. 356 “High Treason” applies to RB citizens, including, therefore, journalists.

Art. 358 “Espionage” applies to foreign citizens and stateless persons, including, therefore, journalists.

Art. 373 “Deliberate Disclosure of a State Secret,” Art. 374 “Disclosure of a State Secret Through Negligence” and Art. 375 “Deliberate Disclosure of Information Constituting an Official Secret” define persons to whom “information was entrusted or became known by virtue of service or work.” That is, journalists also hold responsibility.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this?

Yes.

Art. 172-1 of the Code of Administrative Violations envisages liability for “violating the procedure relating to coverage of the activity of the higher bodies of state power in the state mass media.”

Art. 5 of the Law on the Press says that information relating to incomplete inquest, pre-trial investigation, or court proceedings may not be published without the written permission of the examining authority, investigator, or judge. This also applies to materials obtained as a result of criminal investigation.

Clause 4 of the Resolution of the Ministry of Justice of 1 April 2006 on the Procedure for Providing Information on the Activities of the RB Law Courts Regarding Coverage in the Mass Media indicates that information on incomplete proceedings may not be disclosed without the written permission of the judge conducting the case. Clause 6 prohibits the publication of accusatory information on criminal, civil, or administrative cases, the sentence for which has not yet come into force. Clause 8 grants the judge the right to prohibit journalists from video-filming or photographing the judge. Clauses 9 and 10 grant the judge the right to prohibit video-filming or photographing of the court proceedings.

Presidential Decree No. 19 of 12 January 1998 sets forth regulations for covering events in which the RB President participates. It sets forth that the presidential press service determines the list of journalists and photo correspondents for such events by agreement with the Security Service.

Provision on commercial secrets approved by the Resolution of the RB Council of Ministers of 6 November 1992. Art. 60 of the Law on Public Healthcare regulates protection of “medical secrets.”

Art. 21 of the Tax Code demands the keeping of tax secrets. Art. 83 obligates tax agencies and their officials to keep tax secrets.

Art. 122 of the Banking Code protects banking secrets.

Art. 16 of the Law on the Bar regulates the protection of advocate secrets.

Art. 5 of the Law on the Notariate and Notary Activity stipulates the need for protecting the secrets of notarial actions.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

Art. 172-1 of the Code of Administrative Violations envisages the responsibility of officials, including journalists who were in charge of the publication.

Art. 16 “Suspending and Ceasing Operation” of the Law on the Press places responsibility on the mass media outlet as such.

The requirements of Art. 5 of the Law on the Press regarding the publication of information on incomplete inquest, pre-trial investigation, and court proceedings without the written permission of the investigating authority, investigator, or judge, as well as material obtained as a result of criminal investigation apply to the mass media editorial boards, including journalists.

Resolution of the Ministry of Justice on the Procedure for Providing Information places responsibility both on court officials and on journalists.

Presidential Decree No. 19 of 12 January 1998 is not available for public use.

Legal Sanctions

18. What are the civil or criminal penalties for unauthorized disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

In the Criminal Code:

- Art. 356 “High Treason” envisages 7-15 years’ imprisonment.
- Art. 358 “Espionage” envisages 7-15 years’ imprisonment.
- Art. 373 “Deliberate Disclosure of a State Secret” envisages a fine or deprivation of the right to occupy certain positions, or engage in certain activity, or restraint of liberty for up to 3 years, or imprisonment for up to 3 years. If disclosure entailed grave consequences, imprisonment of up to 5 years or restraint of liberty of up to 5 years are envisaged.
- Art. 374 “Disclosure of a State Secret Through Negligence” envisages a fine or deprivation of the right to occupy certain positions, or engage in certain activity, or restraint of liberty for up to 2 years, or imprisonment for up to 2 years. If disclosure entailed grave consequences, restraint of liberty of up to 3 years or imprisonment of up to 3 years are envisaged.
- Art. 375 “Deliberate Disclosure of Information Constituting an Official Secret” envisages deprivation of the right to occupy certain positions, or engage in certain activity, or restraint of liberty for up to 3 years, or imprisonment for up to 3 years. If disclosure entailed grave consequences, restraint of liberty for up to 5 years or imprisonment of up to 5 years are envisaged.

Art. 16 “Suspending and Ceasing Operation” of the Law on the Press envisages suspending or ceasing the operation of a mass media outlet.

Art. 254 of the Criminal Code envisages liability for commercial espionage: a fine or detention for up to 6 months, or restraint of liberty for up to 3 years, or imprisonment for the same term. In the event of damage caused in an especially large amount – detention for 2 to 6 months, or restraint of liberty for 2 to 5 years, or imprisonment for 1 to 5 years.

Art. 178 of the Criminal Code envisages liability for deliberate disclosure of medical information, depending on the gravity of the crime: a fine, deprivation of the right to occupy certain positions, or engage in certain activity, or detention for up to 6 months, or restraint of liberty for up to 3 years, imprisonment for up to 3 years with deprivation of the right to occupy certain positions or engage in certain activity, or without such deprivation.

Arts. 254 and 255 of the Criminal Code envisage liability for disclosing banking and commercial secrets. See above for Art. 245. Art. 255 envisages a fine or deprivation of the right to occupy certain positions, or engage in certain activity, or detention for up to 6 months, or restraint of liberty for up to 3 years, or imprisonment for the same term. In the event of selfish or personal interest – restraint of liberty for up to 4 years or imprisonment for up to 5 years.

The envisaged measures are not regulated by the Law on State Secrets.

19. Do these penalties apply to the media for unauthorized disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

The penalties envisaged in Art. 16 of the Law on the Press apply to mass media editorial boards.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organizations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

According to the information obtained from the RB Ministry of Justice, in the past five years, the country's courts have not considered any cases brought against citizens accused of leaking information constituting a state or other specially protected secret. The Ministry of Justice does not have inquest or investigation documents at its disposal or material obtained from carrying out criminal investigation on this issue.

According to information obtained by the OSCE Office from BAJ, with respect to the second category: between 2001 and 2006, there were several cases of warnings issued to periodicals for violating Chapter 1, Art. 5 of the Law on the Press "disclosure of information constituting a state or other specially protected secret." In all cases, the authorities accused journalists of disclosing investigation secrets.

For example, in 2005, the Prosecutor's Office in Borisov issued an official warning to Anatoly Bukas, editor-in-chief of *Borisovskiye Novosti*. The reason for the warning was two publications entitled "The Court Proceedings Were a One-Way Street" and published in issues No 26 and 27 in June-July 2005 which described the court proceedings where Bukas himself was the defendant. According to the prosecutor's office, the sentence on the Bukas case came into force after the appearance of the above-mentioned publications.

In 2005, the Ministry of Information issued a warning to the editorial office of the *Narodnaya Volya* newspaper for the publication of materials of a pending court case. According to the court, in an article entitled "Virtual War Between Granddaughter and Grandmother," the author (A. Sivy) published information about the court proceedings before they were over without written permission from the judge.

In 2001, the *Belorusskaya Delovaya Gazeta* (Belarus Business Newspaper, BBN) was issued a warning by the RB Prosecutor General's Office for publishing a journalist investigation called "Blood of the Diamond" in December 2000, which concerned the disappearance of TV cameraman Dmitry Zavadsky. The prosecutor's office considered the published information to be disclosure of an investigation secret.

PROTECTION OF PUBLICATIONS IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

There are no such provisions in the legislation.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

There are no such provisions in the legislation.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

There is no special law, but Art. 34 of the Law on the Press, "Non-Disclosure of a Source of Information" envisages the possibility of a journalist not disclosing his/her source of information.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

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25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

See the answer to question 23 above.

26. How many times in the last five years has a journalist or media organization been required by a court or official to disclose their sources of information under this law or any other law?

According to our information, there have been so such cases.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

Art. 34 of the Law on the Press stipulates that a source or the name of a person may only be disclosed at the request of the court or examining authority or investigator if this is necessary for the investigation or consideration of the case under review. The expression “may be disclosed” formally indicates a journalist’s right to disclose or not to disclose the source of information⁵. This article imposes a fine in the amount of ten minimum wages or administrative detention of up to 15 days.

28. What are the penalties for refusing to reveal sources of information?

There is no direct reference in the legislation to liability for refusing to reveal sources of information⁶.

29. Are the journalists prohibited from revealing their source without the permission of the source?

According to Art. 34 of the Law on the Press, a medium’s editorial office is not obliged to reveal its source of information and does not have the right to disclose the name of the person who provided data to it without this person’s consent. A source of information or the name of a person who provided data may only be revealed at a court order, or at an order of a person who performs a preliminary investigation or an investigation, if this is necessary for investigating or adjudicating the case in charge.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

Article 34 of the Law on the Press does not contain provisions on the category of journalists; the generalized word “editorial board” is mentioned. See also the answer to question 29 above.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programs)?

Yes. Under Art. 1 of the Law on the Press, radio and television programs are classified as mass media and the Law on the Press applies to them.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

There are no provisions in the legislation concerning this matter.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

⁵ However, some BAJ lawyers consider this to be a loose interpretation of the obligations of the journalist.

⁶ Some BAJ lawyers point to Art. 166-1 “Contempt of Court” of the Code of Administrative Violations.

There are no provisions in the legislation concerning this matter.

34. Are third parties who act for journalists or media organizations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

There are no provisions in the legislation concerning this matter.

Belgium

Prepared by the Government of Belgium (unofficial translation from French by OSCE/RFOM)

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Article 32 of the Constitution regarding administrative documents entered into force on 1 January 1995. Referring to article 19 of the International Covenant on Civil and Political Rights and article 10 of the European Convention on Human Rights, the aim of the Belgian legislation in this article is to ensure that administrative documents are recognized by the Constitution, in other words that all persons are guaranteed access to such documents (Doc. parl. Chambre, 1992-1993, no. 839/1, 4).

Article 32 states that “Everyone has the right to consult any administrative document and to have a copy made, except in the cases and conditions stipulated by the laws, decrees or ruling referred to in Article 134”, in other words the decrees issued by the Brussels-Capital region.

This basic law is applied equally at the federal, community and regional levels (see below). This provision does not require that a citizen must justify his/her interest in requesting access to an administrative document, except where the law or decrees specify otherwise, for example with regard to personal privacy or access to documents concerning a particularly named person. The type of document – written document, recording or database – is irrelevant.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

-

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

-

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

-

5. Are there other specific constitutional limits on access and dissemination of information?

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

The Law of 11 April 1994 regulates the right of access of federal bodies. The Decree of 23 October 1991 contains regulations for the Flemish community, the Decree of 14 December 1994 does the same for the French community, the Decree of 30 March 1995 regulates the region of Wallonia and the Decree of 30 March the region of Brussels⁷. It is

⁷ Decree of the Flemish Council of 23 October 1991 concerning the disclosure of administrative documents within the departments and institutions of the Flemish executive authorities (M.B. 27 November 1991); Decree of the French Community of 14 December 1994 concerning the disclosure of administrative documents (M.B. 31 December 1994); Decree of the Regional Council of Wallonia of 30 March 1995 (M.B. 28 June 1995); Order of the Brussels Regional Council of 30 March 1995 concerning the disclosure of administrative documents (M.B. 23 June 1995).

interesting to note that all of these texts enshrine the principle of active transparency, the citizen being recognized as having the right to obtain explanations about the documents requested by him/her. The administration may refuse access only to confidential documents referring, for example, to public security, national defence, currency (strictly mandatory, mandatory and discretionary exceptions). The law and decrees mentioned above each call for the setting up of a commission for access to administrative documents, which has the responsibility of reconciling the different interests in the event of a dispute.

As a second aspect of administrative transparency, the Law of 29 July 1991 requires that the public administration justifies its decisions. This permits a citizen who is dissatisfied with the justification to contest the decision before the competent body. The justification requirement applies only to legal documents and does not apply to substantive documents or unilateral deeds as opposed to contracts.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

There are nevertheless exceptions justifying the confidentiality within a number of bodies that together with the justice system are responsible for the defence of public interests as part of their specific mandates, including combating money laundering, supervision of bank and insurance transactions, taxes or state security. The legislation establishing administrative bodies responsible for monitoring these sectors specifies that their activities are covered by professional secrecy.

Under the Law of 11 April 1994 above, the request for consultation, explanation or provision of a copy of an administrative document is to be refused if the administrative body concerned deems that the interest in releasing the document is superseded by one of the following interests:

1. public security;
2. the freedoms and fundamental rights of the citizens;
3. Belgium's international relations;
4. public order, security or national defence;
5. the investigation or prosecution of punishable offences;
6. a federal financial or economic interest or an interest relating to the legal tender or public credit;
7. the confidential nature of business or manufacturing information communicated to the public authorities;
8. the need to keep secret the identity of the person providing a confidential document or information to the public;
9. authority to inform of a punishable or possibly punishable act.

The request may also be refused if the disclosure of the administrative document violates:

1. personal privacy unless the person concerned has given his/her prior authorization in writing to the consultation or communication of a copy of the document;
2. a legal obligation to secrecy;
3. the confidentiality of consultations by the Federal Government or federal executive authorities or associated authorities.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

No.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

We do not have this information.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

-

11. Are there any limits in this law on access to, and publication of, information?

-

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

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RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

- The criminal investigation department, like other public authorities, is subject to the Law of 11 April 1994 on the disclosure of information. As an investigative and security service, it may invoke special circumstances for refusing a request for disclosure. The justification for the refusal may be based on article 6 paragraph 1 numbers 3 and 4 and paragraph 2 number 2 of the Law of 11 April 1994 on disclosure by the public authorities.

- Articles 36, 37 and 43 of the Organic Law of 30 November 1998 on investigation and security services provides for an obligation to secrecy with respect to information received by members of the criminal investigation department in the course of their work.

- Article 18 of the above-mentioned Law of 30 November 1998 requires that the investigation and security services protect their human sources and the information provided by them.

- The Law of 11 December 1998 on security classifications and authorizations protects the fundamental state interests cited in article 3 by classifying information, whose misuse could prejudice the interests to be protected. The classification (confidential, secret or top secret) limits access to the information to authorised security personnel who require such access in the course of their work.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

See answer 13.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

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16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this?

-

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

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Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

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19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

-

20. Have there any cases been brought in the last five years against:

- Officials in charge of the leaked classified information?
- Members of the public?
- Journalists or media organisations?

Please describe the outcomes, including the date of the case, the defendants and the charges.

-

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

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22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

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PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

Mention should be made of the amendment to the Law of 7 April 2005 on the protection of journalists' sources (M.B., 27 April 2005) adopted following the case of Ernst v. Belgium of 15 July 2003.

The law permits journalists and media employees to protect their sources. A journalist is defined as "any self-employed or non-self-employed person and any natural person who contributes regularly and directly to the acquisition, editing, production and dissemination of information by way of a medium in the public interest". A media employee is "any person who, by virtue of his/her position, has the possibility of obtaining information that would enable him/her to identify a source, be it through the acquisition, editing, production or dissemination of this information."

These persons "are entitled to keep their sources of information secret" (article 3). Except in the cases provided for under article 4, they cannot be forced to reveal their sources of information or to provide any details, recordings or documents, in particular, that disclose:

1. the identity of their informants;
2. the source of their information;
3. the identity of the author of a text or audiovisual production;
4. the content of the information or documents themselves that would permit identification of the informer.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

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25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

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26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

-

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

According to article 4 of the Law of 7 April 2005 “the persons specified in article 2 may not be obliged to reveal their sources of information (...) except at the request of a judge in the event that such information could prevent the commission of an offence constituting a serious threat to the physical integrity of one or more persons, including the offences specified in article 137 of the Criminal Code where they prejudice physical integrity, provided that the following conditions are met:

the requested information is vital to the prevention of an offence;
the requested information cannot be obtained by any other means.”

28. What are the penalties for refusing to reveal sources of information?

Article 6 states that the persons protected from revealing their journalistic sources may not be prosecuted for concealment when exerting their right not to reveal their sources. Article 7 states that they may not be prosecuted under article 67 paragraph 4 of the Criminal Code in the event of a violation of professional secrecy in the meaning of article 458 of the Criminal Code.

29. Are the journalists prohibited from revealing their source without the permission of the source?

-

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

According to the law journalists and media employees may protect their sources. A journalist is defined as “any self-employed or non-self-employed person and any natural person who contributes regularly and directly to the acquisition, editing, production and dissemination of information by way of a medium in the public interest”. A media employee is “any person who, by virtue of his/her position, has the possibility of obtaining information that would enable him/her to identify a source be it through the acquisition, editing, production or dissemination of this information.”

In its judgement no. 91/2006, however, the Court of Arbitration extended the applicability to all persons conducting journalistic activities. This covers persons who do not conduct such activities on a self-employed or non-self-employed basis and persons who do not conduct such activities on a regular basis.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

The law applies by the nature of the material to a range of data carriers: printed matter, radio and television broadcasts (i.e. both visual and audio) with information content, electronic communication containing information, photos, etc. There is no need for the information to have been already published for it to be covered by the regulations for protection of sources.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

See answers 30 and 31.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

The law does not prohibit them in general but seizures and confiscation of material cannot be made in order to identify a journalistic source except in the cases provided by the law (article 4)

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

-

Bosnia and Herzegovina

Data for analysis have been received from the Government of Bosnia and Herzegovina, a written contribution is pending

Bulgaria

This response has been prepared by the Government of Bulgaria

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Yes. Article 41 of the **Constitution of the Republic of Bulgaria** stipulates the following:

(1) Everyone has the right to seek, receive, and disseminate information. The exercise of this right may not be prejudicial to the rights and reputation of other citizens, or to national security, public order, public health and morals.

(2) Citizens have the right to obtain information from any state body or institution on any matter of legitimate interest to them, provided that such information is not classified as a state secret or other secret protected by the law and does not affect the rights of others.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

In its Ruling No.7 of 4.07.1996, the **Constitutional Court** confirmed that:

“...V. The right to seek and obtain information under Article 41 (1) of the Constitution covers the obligation of the state authorities to ensure access to information of importance to the public. The contents of this obligation are to be determined by a law. They include the obligation of the state authorities to publish official information, as well as to ensure access to information sources. The particular state authorities the above duty covers, the circumstances under and extent to which they are entitled to a share of the broadcasting time on the national television and radio, should be settled in a law, taking into account their responsibilities and the principle for division of powers, of the freedom of the media and the right to obtain and disseminate information.

The right established under Article 41 (1) of the Constitution is granted to everybody, including the media. Imposing restrictions to this right on the grounds, as given in sentence 2, requires legislative justification of the circumstances, relating to considerations for national security or the protection of the public order.

The same holds true for the grounds, which entitle the state authorities or agencies to deny information to the citizens, foreseen in Article 41 (2) of the Constitution. The right this provision establishes is a personal one. It arises from a justified legitimate interest of the individuals, and is subject to limitations, specified through the establishment of a legal regime for the hypothetical cases in which information constitutes a state or another type of secret, for the protection of which there exist legal grounds.”

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

See the information provided above.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

The **Law on Access to Public Information** stipulates the following:

Art. 5. The right of access to public information may not be exercised against others' rights and reputation, as well as against the national security, public order, national health and the moral standards.

Art. 7. (1) (Amended, SG No. 45/2002) The right of access to public information shall not be abridged, except where the said information is classified information constituting a state or another protected secret in the cases provided for by a law.

(2) Access to public information may either be full or partial.

Art. 8. This act shall not apply to information, which is:

1. obtainable in the course of provision of administrative services to citizens and legal entities;
2. kept with the State archives of the Republic of Bulgaria.

Art. 13. (1) Access to administrative public information shall be unrestricted.

(2) Access to administrative public information may be restricted, if it:

1. relates to the preparatory work of an act of the bodies, and has no significance in itself (opinions and recommendations prepared by or for the body, reports and consultations);
2. contains opinions and statements related to on-going or prospective negotiations to be led by the body or on its behalf, as well as any data relating thereto, and was prepared by the respective bodies' administrations.

(3) (Amended, SG No. 45/2002) The restrictions under para. 2 shall not apply after a period of 2 years as from the creation of such information.

Art. 37. (1) Grounds for refusal to grant access to public information is in place where:

1. (Amended, SG No. 45/2002) the information requested is information classified as state or administrative secret, as well as in cases described in art. 13, para. 2;
2. the access is of a nature to affect third party's interests and the third party did not give its explicit written consent for the disclosure of the requested public information;
3. access to the requested public information was provided to the applicant within the preceding six months.

(2) In the cases described in para. 1, partial access may be granted to such parts of the information, access to which is not restricted.

The Law on Protection of Classified Information provides the following definitions:

Art. 25. State secret is such information, as listed in Schedule 1, the unauthorized access to which might threaten or prejudice such interests of the Republic of Bulgaria as relate to national security, defence, foreign policy or the protection of the constitutional order.

Art. 26. (1) Official secret is such information as is generated or stored by government authorities or by the authorities of local self government, is not a State secret, and the unauthorized access to which might adversely affect the interests of the State or prejudice another interest protected by law.

Art. 27. Foreign classified information is such classified information as has been disclosed by another State or by an international organization in pursuance of an international treaty to which the Republic of Bulgaria is a party."

Additionally, **the Law on Protection of Personal Data** stipulates the inviolability of personality and privacy by ensuring protection of individuals in case of unauthorized processing of personal data relating to them, in the process of free movement of data. The Law defines "personal data" as: "any information relating to an individual who is identified or identifiable, directly or indirectly, by reference to an identification number or to one or more specific features relating to his or her physical, physiological, genetic, mental, psychological, economic, cultural or social identity." (Art. 2)

5. Are there other specific constitutional limits on access and dissemination of information?

No.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

Yes – **the Law on Access to Public Information**. An English translation of this Law, as well as other relevant legislation may be found at www.aip-bg.org.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

No. The Law clearly states that:

“Persons entitled to the right of access to public information

Art. 4. (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 para. 1 in the Republic of Bulgaria.

(3) Legal entities shall enjoy the right under para.1, too.”

8. Does the FOI law give journalists or media organizations a greater right of access to information than citizens?

See the information on **Ruling No.7/4.07.1996 of the Constitutional Court** of the Republic of Bulgaria provided above.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

All relevant information, including statistical reports and research, may be found at www.aip-bg.org

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

No.

11. Are there any limits in this law on access to, and publication of, information?

See the information under question 10.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

See the information under question 10.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

The Law on Protection of Classified Information stipulates the following:

- “...Art. 28 (1) The information classification levels and their respective wordings shall be the following:
1. "Top Secret";
 2. "Secret";
 3. "Confidential";
 4. "For Official Use Only".
- (2) The information which is a State secret shall be marked for security level as follows:
1. where the unauthorized access to such information might pose an exceptionally high threat to the sovereignty, the independence or the territorial integrity of the Republic of Bulgaria, or to its foreign policy or international relations in the field of national security, or might pose a threat of irreparable or exceptionally grave damage, or cause such damage in the field of national security, defence, foreign policy or the protection of the constitutional order, - "Top Secret";
 2. where unauthorized access to such information might pose a high threat to the sovereignty, the independence or the territorial integrity of the Republic of Bulgaria, or to its foreign policy or international relations in the field of national security, or might pose a threat of nearly irreparable or grave damage, or cause such damage in the field of national security, defence, foreign policy or the protection of the constitutional order, - "Secret";
 3. where unauthorized access to such information might pose a threat to the sovereignty, the independence or the territorial integrity of the Republic of Bulgaria, or to its foreign policy or international relations in the field of national security, or might pose a threat of damage, or cause damage in the field of national security, defence, foreign policy or the protection of the constitutional order, - "Confidential".
- (3) The information classified as an official secret shall be marked "For Official Use Only".
- (4) With a view to ensuring a higher level of protection, as necessary having regard to the character of the subject information or the provisions of international treaties to which the Republic of Bulgaria is a party, SISC may by its decision, subject to the advice of the Minister of the Interior or the Minister of Defence or any of the directors of the security services, prescribe:
1. additional markings for materials and documents classified higher than "Top Secret";
 2. a special procedure for the generation, use, reproduction, release, and storage of such materials and documents;
 3. the categories of persons cleared for access to such materials and documents.

Art.29 The classification levels of foreign classified information received by the Republic of Bulgaria from, or of classified information disclosed by the Republic of Bulgaria to, another State or an international organization, in pursuance of an international treaty which has come into force for the Republic of Bulgaria and for that other State or international organization, shall be aligned in accordance with such treaty.”

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

Yes.

The Law on Protection of Classified Information states that:

- “Art. 3 (1) Access to classified information shall not be allowed to any person other than those having an appropriate clearance in keeping with the "need- to-know" principle, unless otherwise provided hereunder.
- (2) The "need-to-know" principle is the restriction of access to particular classified information to such persons whose official duties, or a special assignment, require such access.”

The Penal Code of the Republic of Bulgaria provides the following:

“Art.104 (1) (Supplemented, SG No. 50/1995, amended, SG No. 153/1998, SG No. 26/2004) A person who reveals or collects information qualifying as a state secret for the purpose of revealing it to a foreign state or to a foreign organization, shall be punished for spying by deprivation of liberty for ten to twenty years, by life imprisonment or by life imprisonment without substitution.
 (2) If the perpetrator reveals to the state authorities the committed crime of his own accord, he shall be punished under attenuating circumstances.
 (3) (Amended, SG No. 95/1975, SG No. 99/1989, SG No. 26/2004) Information qualifying as a state secret shall be determined by law.”

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

The Penal Code provides the following:

“Art.145 (1) (Previous Article 145, amended, SG No. 28/1982, SG No. 10/1993) A person who unlawfully reveals the secret of another, dangerous to his good name, which was confided to him or has come to his knowledge in connection with his vocation, shall be punished by deprivation of liberty for up to one year or a fine from BGN 100 to BGN 300.
 (2) (New, SG No. 28/1982) A person who makes public the secret of adoption with the intent of causing harmful consequences to the adopted person, to the adopter or their family, shall be punished by deprivation of liberty for up to six months or by probation, and where serious consequences have set in from the act - by deprivation of liberty for up to one year.
Art.145a (New, SG No. 62/1997) (1) A person who makes use of information collected by special intelligence devices for purposes other than protection of the national security or for the purposes of penal proceedings, shall be punished by deprivation of liberty for up to three years and by fine of up to BGN five hundred.
 (2) Where the act has been committed by an official who has acquired such information or it has come to his knowledge within the sphere of his office, the punishment shall be deprivation of liberty for one to five years and a fine of up to BGN five thousand.
 (3) In cases under the preceding paragraph the court may rule also deprivation of rights under Article 37, paragraph (1), subparagraphs 6 and 7.”

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this?

The Penal Code states that:

“Art. 284 (Amended, SG No. 26/2004) (1) An official who, to the detriment of the state, of an enterprise, an organisation or private person, informs another or publishes information which has been entrusted or accessible to him officially and of which he knows it constitutes an official secret, shall be punished by deprivation of liberty for up to two years or by probation.
 (2) The punishment for an act under paragraph 1 shall be also imposed on a person who is not an official, who works in a state institution, enterprise or public organisation, to the knowledge of who information has come, in connection with his work, constituting an official secret.
 (3) If the act under paragraph (1) has been committed by an expert witness, translator or interpreter with respect to information which has become known to him in connection with a task assigned thereto, and which such a person has been obliged to keep in secret, the punishment shall be deprivation liberty for up to two years or probation.

Art. 357 (1) (Repealed, renumbered from Paragraph 2, amended, SG No. 95/1975, SG No. 26/2004) The one who divulges information, qualifying as a state secret, which has been entrusted to him or has come to his knowledge officially or in connection with his work, as well as the one who divulges such information, being aware of the fact that therefrom may follow impairment of the interests of the Republic of Bulgaria, if he is not subject to more severe punishment, shall be punished by deprivation of liberty for up to five years.

(2) (Renumbered from Paragraph 3, SG, No. 95/1975) If as a result of the act, particularly grave consequences have set in or may set in for the security of the state, the punishment shall be deprivation of liberty for three to ten years.

(3) (New, SG No. 26/2004) The punishment under paras 1 and 2 shall also be imposed on the one who divulges foreign classified information obtained by virtue of an international agreement to which the Republic of Bulgaria is a party.

Art. 360 A person who divulges information of military, economic or other nature, which is no state secret, but the divulgence of which is forbidden by law, an order, or other administrative instruction, shall be punished by deprivation of liberty for up to one year or by probation”.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

See the information provided above.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorized disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

See the information provided above.

19. Do these penalties apply to the media for unauthorized disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

See the information provided above.

20. Have there any cases been brought in the last five years against:

- Officials in charge of the leaked classified information?
- Members of the public?
- Journalists or media organizations?

Please describe the outcomes, including the date of the case, the defendants and the charges.

For all case-law relevant to the issue of access to information, see www.aip-bg.org.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

For all relevant case-law regarding the media, see www.aip-bg.org; www.bmc.bulmedia.com; www.sbj-bg.org, www.mediacentrdbg.com, www.investigation-bg.com; www.mediaethics-bg.org, www.blhr.org/bk_jur.htm, www.bghelsinki.org, etc.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorized release of information that was of legitimate public interest?

For all relevant information, see the links provided above.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

This specific issue is within the general scope of the right to freedom of expression and freedom of the media, which are guaranteed by the Bulgarian legislation in strict accordance with the international standards, *inter alia*, the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe.

In this regard, the **Constitution of the Republic of Bulgaria** clearly states that:

Art.38 No one may be persecuted or restricted in his rights because of his convictions, or be obligated or forced to provide information about his own or another person's convictions.

Art. 39. (1) Everyone has the right to express an opinion or to impart an opinion by means of words - either in writing or orally, through sound, image, or by any other medium.

Art. 40. (1) The press and the other mass communication media are free and shall not be subjected to censorship.

A suppression and seizure of a print publication or of another information medium shall be admissible solely in pursuance of an act of the judiciary, by reason of moral turpitude or incitement to a change of the constitutionally established order by force, to the commission of a criminal offence, or to personal violence. Unless seizure follows within 24 hours, the effect of any suppression shall lapse.

Furthermore, the commitment to protecting the confidential sources of information is included in **the Code of Ethics of the Bulgarian Media** (for details, see www.mediaethics-bg.org).

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

The question is not applicable to Bulgaria.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

For relevant information, see the links provided above.

26. How many times in the last five years has a journalist or media organization been required by a court or official to disclose their sources of information under this law or any other law?

For relevant information, see the links provided above.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

See the excerpts of **the Penal Code** and other relevant legislation provided above.

28. What are the penalties for refusing to reveal sources of information?

See the excerpts of **the Penal Code** and other relevant legislation provided above.

29. Are the journalists prohibited from revealing their source without the permission of the source?

See the information provided above.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

For relevant information, see the links provided above.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programs)?

Yes. See the information provided above.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

Yes. See the information provided above.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

“...Art. 68. (1) Police bodies carry out search of any person:

1. detained under the conditions of Article 63 (1);
2. who is reportedly in possession of hazardous or prohibited objects;
3. found at the scene of a crime or violation of the public order, when there is sufficient evidence that he/she is in possession of objects, related to the crime or the violation.

(2) Personal search may be carried out only by a person of the same gender as the person searched.

Art. 69. (1) Police bodies may search the personal belongings of persons:

1. in the cases under Article 61 (1), items 1, 2 and 4, Article 62 (1), items 1 and 3 and Article 63 (1), items 3, 4, 6 and 7;
2. when there is sufficient evidence of concealment of physical evidence of crime perpetrated;
3. in other cases, prescribed by a law.

(2) Motor vehicles may be searched in cases when there is evidence of perpetration of a crime or of violation of public order.

Art.70. (1) A protocol is drawn up by the police body of each instance of performing a search of belongings or vehicles.

(2) The protocol under paragraph (1) is signed by the police body, by one witness and by the respective person, to whom a copy thereof is provided.

(3) Personal searches, inspections of belongings and vehicles are carried out in a manner which is not degrading the personal esteem and dignity of citizens.

The **Law on the Ministry of Interior** stipulates the following:

Art.71. (1) Police bodies may carry out inspections in premises without the consent of the owner or the occupant, or in their absence, only when:

1. when an imminent serious crime or one in progress must be prevented;
2. there is evidence that a perpetrator of a serious crime is hiding on premises;
3. it is required in order to provide urgent assistance to persons whose lives, health or personal freedom are endangered, or another in case of ultimate necessity is at hand.

(2) Upon completion of the inspection police bodies must draw up a protocol, indicating:

1. the name and position of the official and his/her place of work;
2. the identity of the owner or of the occupant;
3. the legal grounds for the inspection;
4. the time and place of conducting it;
5. the outcome.

(3) The protocol is signed by the police body, by one witness and by the owner/occupant of the premises if present. Any instance of rejection by the owner or the occupant to sign the protocol will be certified by the signature of the witness.

(4) A copy of the protocol is provided to the owner or the occupant of the premises.

(5) The respective prosecutor is notified without delay of the inspection made.”

34. Are third parties who act for journalists or media organizations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

For relevant information, see the links provided above.

Bulgaria

Prepared by the Access to Information Programme, Bulgaria

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

<p style="text-align: center;">CONSTITUTION OF THE REPUBLIC OF BULGARIA Chapter Two FUNDAMENTAL RIGHTS AND OBLIGATIONS OF CITIZENS Article 41</p> <p>(1) Everyone shall be entitled to seek, obtain and disseminate information. This right shall not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health and morality.</p> <p>(2) Citizens shall be entitled to obtain information from state bodies and agencies on any matter of legitimate interest to them which is not a state or official secret and does not affect the rights of others.</p>

<http://www.parliament.bg/?page=const&lng=en>

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

Constitutional Court of the Republic of Bulgaria

Ruling No 7 of June 4, 1996 on constitutional case No 1/96

Constitutional case of 1996 was opened on request of the President of the Republic for a binding interpretation of the provisions of Articles 39, 40 and 41 of the Constitution.

English translation at:

<http://www.aip-bg.org/documents/ruling.htm>

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

This right applies to all information except: "the rights and reputation of others, or to the detriment of national security, public order, public health and morality."

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

Under the Access to Public Information Act, the exemptions are defined as:

<p>"Art. 37. (1) Grounds for refusal to grant access to public information is in place where:</p> <ol style="list-style-type: none">1. (Amended, SG No. 45/2002) the information requested is information classified as <u>state or official secret</u>, as well as in cases described in art. 13, sub-art. 2 (these are consultations related to a final decision and negotiations);2. the access is of a nature to affect third party's interests and the third party did not give its explicit written consent for the disclosure of the requested public information;3. access to the requested public information was provided to the applicant within the preceding six months. <p>(2) In the cases described in sub-art. 1, partial access may be granted to such parts of the information, access to which is not restricted."</p>

"State secret" and "official secret" are defined in the Protection of Classified Information Act (PCIA) as follows:

Information classified as a state secret:

"Article 25

State secret is such information, as listed in Schedule 1 (*Appendix to the Law, containing three general types of information: information concerning defence-24 categories; concerning foreign policy and internal security - 33 categories; information concerning economic security of the state - 7 categories*), the unauthorised access to which might threaten or harm the interests of the Republic of Bulgaria related to national security, defence, foreign policy or the protection of the constitutional order."

Information classified as an official secret:

"Article 26

(1) Official secret is such information as is generated or stored by government authorities or by the authorities of local self government, is not a State secret, and the unauthorised access to which might adversely affect the interests of the State or prejudice another interest protected by law.
(2) The information which shall be the subject of classification as an official secret shall be determined by law.
(3) The heads of organisational units shall, within the limits hereunder, announce a list of the classes of information under paragraph 2 within their respective field of activity. The procedure for, and the manner of, such announcement shall be laid down in the Detailed Rules for the Application hereof."

Regulations of the APIA shall not apply to access to personal data. "Personal data" is defined in the Personal Data Protection Law and quoted in the Additional provision of APIA:

"2. (Amended, SG No. 1/2002, SG No. 103/2005) "personal data" shall be any data relating to a given individual, whose identity could be directly or indirectly established, irrespective of its form and way of recording and revealing his/her physical, psychological, intellectual, economical, cultural or social identity, as well as the information containing the said data for non-incorporated groups of individuals, as well as data for personal, economical, cultural or social identity of legal entities, created directly or indirectly by physical persons, the procedure for which collection, processing, protection, and access is determined in law."

5. Are there other specific constitutional limits on access and dissemination of information?

No. Prior censorship is forbidden under the Constitution.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

Access to Public Information Act (APIA)

Promulgated, SG No. 55/7.07.2000, amended, SG No. 1/4.01.2002, effective 1.01.2002, SG No. 45/30.04.2002, SG No. 103/23.12.2005, SG No. 24/21.03.2006, SG No. 30/11.04.2006, effective 12.07.2006.

<http://www.aip-bg.org/library/laws/apia.htm>

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

No.

Art. 4. (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.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

Bulgarian Access to Public Information Act does not provide for greater right of access to information for journalists and media organizations.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

According to the APIA:

"Art. 16. (1) (Amended, SG No. 24/2006) The Minister of State Administration and Administrative Reform shall publish an annual summary of the reports on the bodies and their administrations, containing the information under art. 15., as well as other information relating to the implementation of this act.
(2) (Amended, SG No. 24/2006) The Minister of State Administration and Administrative Reform shall be responsible for distributing the summary. The information contained in the summary shall be made available in every administration for review by the citizens."

Statistics from the 2005 Report on the State of the Administration by the Minister of State Administration and Administration Reform:

For 2004:

Total number of requests submitted to the executive branch of public institutions:

49,296

Number of requests submitted by journalists: 5,577.

For 2005:

Total number of requests submitted to the executive branch of public institutions: 56,139

Number of requests submitted by journalists: 9,661.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

Bulgarian legislation does not provide for additional rights of access to information for journalists.

11. Are there any limits in this law on access to, and publication of, information?

N/A

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

N/A

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

Protection of Classified Information Act

Promulgated, SG No. 45/30.04.2002, Corrected, SG No. 5/2003, Amended, SG No. 31/4.04.2003, supplemented, SG No. 52/18.06.2004, No. 55/25.06.2004, SG No. 89/12.10.2004

Section II

Classification Levels

"Article 28

(1) The information classification levels and their respective wordings shall be the following:

1. "Top Secret";
2. "Secret";
3. "Confidential";
4. "For Official Use Only".

(2) The information which is a State secret shall be marked for security level as follows:

1. where the unauthorised access to such information might pose an exceptionally high threat to the sovereignty, the independence or the territorial integrity of the Republic of Bulgaria, or to its foreign policy or international relations in the field of national security, or might pose a threat of irreparable or exceptionally grave damage, or cause such damage in the field of national security, defence, foreign policy or the protection of the constitutional order, - "Top Secret";
2. where unauthorised access to such information might pose a high threat to the sovereignty, the independence or the territorial integrity of the Republic of Bulgaria, or to its foreign policy or international relations in the field of national security, or might pose a threat of nearly irreparable or grave damage, or cause such damage in the field of national security, defence, foreign policy or the protection of the constitutional order, - "Secret";
3. where unauthorised access to such information might pose a threat to the sovereignty, the independence or the territorial integrity of the Republic of Bulgaria, or to its foreign policy or international relations in the field of national security, or might pose a threat of damage, or cause damage in the field of national security, defence, foreign policy or the protection of the constitutional order, - "Confidential".

(3) The information classified as an official secret shall be marked "For Official Use Only".

Section III

Protection Periods of Classified Information

Article 34

(1) The following shall be the protection periods of classified information, to commence from the date of generation:

1. of information marked as "Top Secret", 30 years;
2. of information marked as "Secret", 15 years;
3. of information marked as "Confidential", five years;
4. of information classified as an official secret, two years.

(2) Where national interest so requires, State Commission on Information Security (SCIS) may decide to extend the periods under paragraph 1, provided however that the extension shall not exceed the original protection period.

(3) Upon the expiration of the periods under paragraphs 1 and 2, the subject information shall be declassified and the access to such information shall be governed by the Access to Public Information Act.

(4) Where an organisational unit is completely abolished, its classified information which is a State secret or an official secret, and all its powers to modify the classification levels thereof, shall be transferred to SCIS, except as otherwise may be provided by a special legislative instrument.

(5) The periods under paragraphs 1 and 2 shall apply as well to foreign classified information, except as may be provided by an international treaty to which the Republic of Bulgaria is a party.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

Yes, the Penal Code of Republic of Bulgaria (Promulgated, 1968, last amendment effective SG No. 26/2004 Art.357 – 359).

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

According to the Penal Code, the prohibitions apply to everybody who disseminates secret information.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this?

Yes, the Penal Code of Republic of Bulgaria (Art. 360 stipulates that persons who disclose non-national security information are penalized).

Art. 145, Para. 1 and 2 (Personal data – PDPA quoted above – and information related to child adoption).

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

Yes, the prohibitions apply to all.

Art. 284, Para 1 and 2 incriminates disclosure of official (administrative) secrets in detriment of a state or other protected interest. Everyone is liable. The penalty is prison up to 2 years or probation.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

For the different offences, these are: fines, prison sentences from 1 up to 10 years and/or probation.

Protection of Classified Information Act provides for administrative sanctions, which are fines.

The Penal Code of Republic of Bulgaria provides for criminal penalties such as prison and probation.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

Yes, the penalties apply to everybody.

No, there are not additional or higher penalties for mass publication of information.

20. Have there any cases been brought in the last five years against:

- Officials in charge of the leaked classified information?
- Members of the public?
- Journalists or media organisations?

Please describe the outcomes, including the date of the case, the defendants and the charges.

No. We have no data about such cases.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

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22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

-

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

**Radio and Television Act - Promulgated, State Gazette No. 138/24.11.1998;
Article 15**

(1) Radio and television broadcasters shall not be obligated to disclose their sources of information to the Council for Electronic Media, save in the case of pending legal proceedings or pending proceedings initiated on the complaint of a person affected.

(2) Journalists shall not be obligated to disclose their sources of information either to the audience or to the management of a broadcaster, save in the cases under Paragraph (1).

(3) Radio and television broadcasters shall have the right to include information from an unidentified source in their broadcasts, expressly stating this fact.

(4) Journalists shall be obligated to protect the confidentiality of the source of information should this have been expressly requested by the person who has provided the said information.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

Not applicable.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

Print media are not covered by the Radio and Television Act. Practically in court cases they are recognized the right to enjoy the same protection. There are not court decisions known to deal specifically with the issue and to be used as precedents.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

We do not have data of such cases.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

The protection is not absolute. The journalists do not enjoy protection from courts requirement to disclose their sources and from the Council for Electronic media (a state body).

28. What are the penalties for refusing to reveal sources of information?

Potentially prison up to 5 years (Art. 290 of the Penal Code). Originally the legal text is designed for false testimony, so its applicability is questionable. There is a lack of court practice in this respect.

29. Are the journalists prohibited from revealing their source without the permission of the source?

Yes, see Art.15, para 4 of the Radio and Television Act.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

Both broadcasters and journalists are protected. About print media and freelance journalists see the answer to question 25 above.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

Protection is only extended to broadcasting media. There is no statute regulating the press in Bulgaria. Practically the protection of sources is extended to their work as well, but there is no case-law specifically on that.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

No, it is not. No such cases have been registered.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

No, but they are permissible only by court order. In emerging cases, if otherwise the evidence is at risk of being destroyed, searches could be done without such an order, but should be approved by a judge within 24 hours.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

There are no special regulations for these servants.

Canada

Prepared by the Government of Canada

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

The Canadian Constitution does not explicitly recognize any right of access to government-held information. However, to a limited extent, such a right has been held to flow from the application of the “open court principle” in conjunction with freedom of expression (including freedom of the press) protected under s. 2(b) of the *Canadian Charter of Rights and Freedoms* (the *Charter*). As a result, public and media access to court proceedings, as well as to all documents revealed or used in such proceedings, is constitutionally protected (subject to reasonable limits, as discussed below).

It has also been recognized that this right of access extends to administrative tribunals. Given that administrative bodies exercise functions that straddle the line between the executive and the judiciary, the application of the open court principle to administrative tribunals will depend on the nature and functions of the tribunal or administrative body. Thus, the open court principle has been held to apply to tribunals exercising quasi-judicial functions, such as immigration boards and police disciplinary proceedings, but not to commissions of inquiries or grievances proceedings before a labour arbitrator.

Canadian courts have so far refused to recognize any constitutional right of access to information held by bodies that do not exercise adjudicative functions, such as investigation files held by police or the Canadian Security Intelligence Service (CSIS).

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

The Supreme Court of Canada and appellate courts in various provinces have considered and applied the open court principle in a number of freedom of expression cases dealing with access to courts or dissemination of court documents.

The foundational case in this area is *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326, where the court declared invalid a provincial law restricting the publication of certain information obtained in matrimonial proceedings and at pre-trial stages of civil actions. The Supreme Court held in *Edmonton Journal* that members of the public have, as listeners and readers, “a right to information pertaining to public institutions and particularly the courts”, and that the press plays in this regard a critical role.

Despite the broad reference to “public institutions” in *Edmonton Journal*, subsequent jurisprudence has never expanded the right to information beyond the courts and administrative tribunals. For example, in *Travers v. Canada (Chief of Defence Staff)*, [1994] F.C.J. No. 93, affirming [1993] F.C.J. No. 833 (FC), the Federal Court of Appeal confirmed that the right to information under s. 2(b) in conjunction with the open court principle does not extend to a board of inquiry that does not perform adjudicative functions. Also see *Yeager v. Canada (Correctional Service)*, [2003] F.C.J. No. 73 (FCA).

The right of access flowing from the open court principle may, nonetheless, incidentally apply to grant access to documents held by non-adjudicative bodies. In *CTV Television Inc. v. Ontario Superior Court of Justice (Toronto Region) (Registrar) et al.* (2002), 59 O.R. (3d) 18, the Ontario Court of Appeal ruled that the right of access extended to documents that were no longer in possession of the court, and that the trial court's jurisdiction over its own records enabled it to compel the police to provide media access to and the right to photocopy and reproduce exhibits filed at the preliminary hearing and sentencing hearing in criminal proceedings.

Other important Supreme Court rulings (which are further discussed below) include: *Vickery v. Nova Scotia Supreme Court (Prothonotary)*, [1991] 1 S.C.R. 671; *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996] 3 S.C.R. 480; *Michaud v. Quebec (Attorney General)*, [1996] 3 S.C.R. 3; *R. v. Mentuck*, [2001] 3

S.C.R. 442; *Ruby v. Canada (Solicitor General)*, [2002] 4 S.C.R. 3; *Vancouver Sun (Re)*, [2004] 2 S.C.R. 332; *Toronto Star Newspapers v. Ontario*, [2005] 2 S.C.R. 188.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

The right of access under s. 2(b) of the *Charter* does not apply to all facets of the criminal or civil justice system, but is limited to those facets that are captured by the open court principle. This would include information revealed in court proceedings but not, for example, access to a judge's trial notes or jury deliberations, which are traditionally private: *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996] 3 S.C.R. 480, at para. 28.

Apart from these inherent limitations, the right of access under s. 2(b) of the *Charter* is subject to common law and statutory restrictions that can be justified under s. 1 of the *Charter* as "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

While transparency of the adjudicative process is viewed as essential to ensuring "that justice is administered in a non-arbitrary manner, according to the rule of law" (*Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996] 3 S.C.R. 480, at par. 22), exceptions are provided at common law and pursuant to various statutes. These exceptions are generally aimed at protecting the administration of justice, privacy rights or national security. Depending on the interest at stake, this may lead to publication bans, private or "*in camera*" hearings, or *ex parte* applications.

- Publication bans

In *R. v. Mentuck*, [2001] 3 S.C.R. 442, the Supreme Court defined the common law power of a trial judge to issue a publication ban where:

(a) such a ban is necessary in order to prevent a real and substantial risk to the fairness of the trial or the administration of justice, because reasonably available alternative measures will not prevent the risk; and

(b) the salutary effects of the publication ban outweigh the deleterious effects to the free expression of those affected by the ban.

In that case the Court upheld a one-year ban as to the identity of undercover police officers in order to protect the efficacy of current and similar police operations involving these officers. However the Court refused to issue a ban as to the operational methods used in investigating the accused, on the basis that such methods are likely to be known by criminals based on their common sense or on similar situations depicted in popular films and books, as well as past media reports. Accordingly, the Court found that publication of this information in the media did not "constitute a serious risk to the efficacy of police operations, and thus to that aspect of the proper administration of justice" (para. 45, emphasis in the original).

It is important to distinguish a publication ban, which does not prevent public and media access to the proceedings or the evidence (just reporting on them), from an order for *in camera* proceedings, which prevents public access to the courtroom, as well as to the evidence.

- *In camera* proceedings

In *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, *supra*, the Supreme Court upheld s. 486 of the *Criminal Code*, which allows a trial judge to exclude members of the public where the judge believes that it is "in the interest of [...] the proper administration of justice" (other grounds provided in s. 486 were not examined by the Court). While finding that s. 486 is valid, the Court issued instructions as to the considerations that should inform a decision to exclude the public. According to the Court (at para. 69):

- a) the judge must consider the available options and consider whether there are any other reasonable and effective alternatives available;

- b) the judge must consider whether the order is limited as much as possible; and
- c) the judge must weigh the importance of the objectives of the particular order and its probable effects against the importance of openness and the particular expression that will be limited in order to ensure that the positive and negative effects of the order are proportionate.

In that instance, the Supreme Court held that the exclusion of the public and the media from the courtroom during part of the sentencing proceedings in relation to charges of sexual assault against two young women was not justified given that the victims were not witnesses in the proceedings and their privacy was already protected by a non-publication order.

In *Vancouver Sun (Re)*, [2004] 2 S.C.R. 332, the Supreme Court held that the *Mentuck* test for publication bans also applies to decide whether investigative hearing in relation to terrorism offences (s. 83.28) are to be held *in camera*. As a result, such investigative hearings are presumptively held in open court.

- *ex parte* applications

Applications may sometimes be heard *ex parte*, in which case one of the parties is excluded from the proceedings, which are also closed to the public. This is typically the case in applications for search warrants or wiretap applications, the purpose of which would be defeated by the presence of the party against which the warrant is to be issued.

In the context of a challenge to a refusal to disclose personal information to the individual concerned (request to be given access to personal information under the *Privacy Act*), applications may also be heard *ex parte* where it is necessary to protect information that relates to national security or which has been obtained in confidence by foreign governments. However the courts have been careful to restrict *ex parte* and *in camera* hearings to only those portions of the hearings that require the exclusion of the public or other parties. See *Ruby v. Canada (Solicitor General)*, [2002] 4 S.C.R. 3.

- Subsequent access

The fact that proceedings are not held in public does not necessarily mean, however, that information cannot be made available subsequently. In that sense, the open court principle extends beyond the court hearing itself.

For example, affidavits in support of search warrant applications may subsequently be disclosed: *Phillips v. Vancouver Sun* (2004), 238 D.L.R. (4th) 167 (British Columbia Court of Appeal); *Toronto Star Newspapers Ltd. v. Ontario*, [2005] 2 S.C.R. 188. The same is true of affidavits in support wiretap authorizations, although the jurisprudence is more restrictive: *Michaud v. Quebec (Attorney General)*, [1996] 3 S.C.R. 3.

5. Are there other specific constitutional limits on access and dissemination of information?

Constitutional restrictions on access to and dissemination of government-held information flow from privacy rights under s. 7 and, more importantly, s. 8 of the *Charter*. The latter, which deals with searches and seizures, has been interpreted broadly to protect against government interferences with an individual's reasonable expectation of privacy. The reasonable expectation of privacy or right to be left alone by the state protected by s. 8 includes the ability to control the dissemination of confidential information (*R. v. Mills*, [1999] 3 S.C.R. 668, at para. 80).

Accordingly, disclosure by the government of documents of a personal and confidential nature, or that reveal a personal core of biographical information, such as medical information, business records or tax information, may violate s. 8 of the *Charter* if not supported by appropriate lawful authority. This is true not only where disclosure is made to the general public [see, for example, *Gernhart v. Canada*, [2000] 2 F.C. 292 (FCA)], but can also be true of disclosure of an individual's private information among government institutions (e.g., *R. v. Law*, [2002] 1 S.C.R. 227).

In the context of youth criminal justice, it was held by courts of appeal in Quebec and Ontario that the protection of personal security under s. 7 of the *Charter* includes a right to identity protection: *Renvoi relatif au projet de loi C-7 sur le système de justice pénale pour adolescents*, [2003] J.Q. no 2850 and *R. v. D.B.*, [2006] O.J. No. 1112 (leave to appeal to the Supreme Court of Canada granted at [2006] S.C.C.A. No. 195). As a result, the identity of a person prosecuted as a minor will normally be protected.

Legal Rights

- 6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.**

Yes, it's called the *Access to Information Act*. The link to the *ATIA* is listed below.

- 7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?**

Yes, the right of access in the *ATIA* is available to Canadian citizens and permanent residents [ss. 4(1)]. Its availability has been extended by order to include other individuals and corporations present in Canada [ss. 4(2)].

- 8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?**

No.

- 9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.**

No reliable statistics on the use of the *ATIA* by journalists and the media are kept.

- 10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.**

No.

- 11. Are there any limits in this law on access to, and publication of, information?**

While there is no specific media or press law on access to information, concerning the *ATIA*, the basic principle has been held to be that public access to government information should not be frustrated by the courts except in the clearest of circumstances and a heavy burden of persuasion rests upon the party resisting disclosure. Under the *ATIA*, access to information is subject to several exemptions and a few exclusions.

There are mandatory (no discretion), quasi-mandatory (discretion in certain circumstances) and discretionary exemptions.

Mandatory exemptions relate to: policing services for provinces or municipalities (ss. 16(3)); information created for the purpose of making a disclosure under the *Public Servants Disclosure Protection Act* or in the course of an investigation into a disclosure under that Act (s. 16.5); and statutory prohibitions listed in Schedule II (s. 24).

Quasi-mandatory exemptions relate to: information obtained in confidence from other governments (s. 13); investigational information obtained by or on behalf of certain agents of Parliament (s. 16.1, 16.2 and 16.4); personal information (s. 19); and third party information (s. 20).

Discretionary exemptions relate to: federal-provincial affairs (s. 14); international affairs and defence (s. 15); law enforcement and investigation (ss. 16(1) and (2)); investigational, examinational and audit information obtained under the Canada Elections Act (s. 16.3); safety of individuals (s. 17); economic interests of Canada (s. 18); advice or recommendations developed by or for a government institution etc. (s. 21); testing procedures, tests and audits (s. 22); draft internal audit reports and working papers (s. 22.1); solicitor-client privileged information (s. 23); and refusal to allow for print publication (s. 26).

Exclusions relate to: published material or material available for purchase by the public, or certain other library or museum material (s. 68); and confidences of the Queen's Privy Council for Canada (s. 69). These exclusions mean that the *ATIA* does not apply to these materials.

- 12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.**

Not applicable.

Here is the link to the *Canadian Charter of Rights and Freedoms*: [Canadian charter of rights and freedoms](#).

Here is the link to the *Access to Information Act*: [Access to Information Act](#)

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

Yes, it is called the *Security of Information Act*. Here is the link: [Security of Information Act](#).

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

Yes, in the *Security of Information Act* ([Security of Information Act](#)) and s. 38 of the *Canada Evidence Act* (<http://laws.justice.gc.ca>).

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

The prohibition decreed by section 38 of the *Canada Evidence Act* applies to whomever happens to control the information, even if a member of the public who has not signed a security agreement. However, before an order can be made against a member of the public in those circumstances, the State must demonstrate that there is a potential injury which would flow from further disclosure by this non-governmental source to the public.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

Yes. There are numerous statutes that establish confidentiality regimes concerning various kinds of non-national security information.

Some types of information may be discerned by reviewing the statutory provisions listed in Schedule II of the *Access to Information Act*. For example, other types of information include “personal information” as defined in the *Privacy Act*; “taxpayer information” as defined in s. 241 of the *Income Tax Act*; “confidential information” as defined in s. 295 of the *Excise Tax Act*; and information about the location or a change of identity of a protectee or former protectee as prescribed in s. 11 of the *Witness Protection Program Act*.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

This is specified in the particular legislation.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

The penalties for unauthorised disclosure, possession or publication of classified information include contempt of court and jail. The regulation on classification is found in the *Criminal Code of Canada* and the *Security of Information Act*.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

Penalties do apply to the media and there are no additional or higher penalties for mass publication of information.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information? No**
- **Members of the public? No**
- **Journalists or media organisations?**

There are no such cases. However, it is worth noting that a recent decision (*O'Neill v. Canada (Attorney General)* [2006] O.J. No. 4189), parts of s. 4 of the *Security of Information Act* were declared unconstitutional as they infringed the reporter's right of freedom of press under the *Canadian Charter of Rights and Freedoms*. The RCMP relied on sections of the *Security of Information Act* to obtain search warrants to raid and seize documents from journalist Juliet O'Neill's home and office in January 2004. Ontario Superior Court judge Lynn Ratushny ruled that parts of Section 4 of the *Security of Information Act* violate the *Charter of Rights and Freedoms*, specifically [Section 2\(b\) freedom of expression](#) including freedom of the press, and Section 7 the right to life, liberty, and security of the person. The Judge ruled the provisions of the *Act* relied on by the RCMP to conduct the searches to be vague, overly broad, and open to abuse by government authorities.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

No.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

Various statutes provide public interest to be considered in balance with government concerns. See for example sections 37 and 38 of the *Canada Evidence Act* (<http://laws.justice.gc.ca>).

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as (shield law) from sanctions for refusing to disclose their sources of information?

No.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

The Federal laws are followed in all provinces.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

The *O'Neill* decision is the most informative pronouncement we have from the courts.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

None.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

There is no such protection.

28. What are the penalties for refusing to reveal sources of information?

The penalties include contempt of court and jail.

29. Are the journalists prohibited from revealing their source without the permission of the source?

No.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

No one.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

No.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

No.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

No – there is no special protection for journalists. However, the *O'Neill* case may influence future decisions.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

No.

Croatia

Prepared by the Government of the Republic of Croatia

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Article 38 of the Constitution of the Republic of Croatia (the Official Gazette No. 41/01 and 55/01) guarantees journalists right to access information. Article 38 paragraph 3 stipulates “Journalists shall have the right to freedom of reporting and access to information”. A redress is guaranteed to anyone whose constitutional or legal rights have been violated by public news. This constitutional principle has been further developed through other laws regulating the right to the access to information. The Law on the Right to Access to Information (Official Gazette of the Republic of Croatia /„Narodne novine“/ No. 172/03) prescribes that the purpose of the Law is to enable and ensure the exercise of the right to the access to information to natural and legal persons through the openness and public operation of the authorities in accordance with the legislation.

2. Has the Constitutional court, the highest court or appellate court interpreted or enforced this right?

According to Article 55 paragraph 1 and 3 of the Constitutional Law on the Constitutional Court of the Republic of Croatia (Official Gazette of the Republic of Croatia /„Narodne novine“/ No. 99/99, No. 29/02), the Constitutional Court shall repeal the Law or any of its individual provisions, if it finds that they are not in conformity with the Constitution, or shall repeal another regulation or any of its individual provisions, if it finds that they are not in conformity with the Constitution and law. The Constitutional Court may repeal a regulation, or its respective provisions, taking into account all the circumstances relevant to the protection of constitutionality and legality and, particularly, how grave the nature of the violation of the Constitution or law and the interest of legal security is, if such a regulation:

- Violates the constitutionally guaranteed human rights and fundamental freedoms;
- Puts individual persons, groups or association unjustifiably in a more, or less, favourable position.

The Constitutional Court of the Republic of Croatia has in 17 instances considered cases related to Article 38 of the Constitution. (Decisions can be seen at www.usud.hr).

For conducting constitutional right of journalists right to access information (the Official Gazette No. 59/04) County Court is authorized for proceedings caused by complaint related to illegal action Article 6 paragraph 7 of the Media Act stipulates “In case of withholding of public information, a journalist shall have the right to file a complaint due to the illegal act with the competent court. The competent court shall decide on the complaint under a special law in the emergency procedure, during which it shall examine the reasons for withholding of public information. Should the Court establish that no reason for withholding of information exists as stipulated by this Act, it shall abolish the decision on withholding of information and order the provision of requested information”.

The law on administrative disputes (Official Gazette No. 53/91, 9/92 and 77/1992) in Article 74 stipulates “The appeal shall be lodged with the county court which rendered the challenged decision, and the Supreme Court of the Republic of Croatia shall rule on the appeal”.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

Article 37 of the Constitution of the Republic of Croatia guarantees safety and secrecy of personal data. Article 37 stipulates „Everyone shall be guaranteed the safety and secrecy of personal data. Without consent from the person concerned, personal data may be collected, processed and used only under conditions specified by law. Protection of data and supervision of the work of information systems in the State shall be regulated by law”. Usages of personal data are prohibited opposite to purpose for which personal data are gathered.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

Under Article 6 paragraph 5 of the Media Act, journalists may withhold the provision of information when the requested information has been defined, in the proper manner and for the purpose of protecting the public interest, as a state or military secret or if the publishing would represent a violation of the confidentiality of personal data in compliance with the law, unless their publication may prevent the execution of a severe criminal acts or immediate danger to the life of people and their property;

The question of data protection is regulated in The Law on the Protection of Data Secrecy (the Official Gazette No. 108/96), which deals with issue of national, military, official, business, and professional secrets,

5. Are there other specific constitutional limits on access and dissemination of information?

There are no other limits in the Constitution of the Republic of Croatia.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

The Law on the Right of Access to Information (the Official Gazette No. 172/03) regulates access to information. This Law is available on web page: <http://www.nn.hr/clanci/sluzbeno/2003/2491.htm>.

In 2003, the aforementioned Law on the Right to Access to Information was passed, regulating the right to access to information held, disposed with or controlled by public authorities, and prescribing the principles of the right to access to information, exemptions from the right to access to information and the procedure for the exercise and protection of the right to access to information. Furthermore, the same Law prescribes that the information provided i.e. published by the public authorities must be complete and correct, and that the right to access to information is enjoyed by all the beneficiaries alike and under the same conditions, them being equal in its exercise. Public authorities must not put into a more favourable position any beneficiary in that they provide the information earlier to a particular beneficiary. The right to access to the information containing personal data are exercised in the manner prescribed by another law: the Law on Protection of Personal Data (Official Gazette of the Republic of Croatia /„Narodne novine“/ No. 103/03).

Article 31 of the Courts Act (Official Gazette of the Republic of Croatia /„Narodne novine“/ No. 150/05) prescribes that courts have spokespersons. The spokesperson is a judge or a court consultant appointed in the annual work schedule. The spokesperson provides information about the work of the court in accordance with the Courts Act, Court's Rules of Procedure, and the Law on the Right to Access to Information.

7. Are there limits on who can use this law (for reasons of citizenship, legal status etc)?

Under the Article 3 paragraph 1 subsection 1 of the Law on the Right of Access to Information “person authorized to information (hereinafter: the Authorized person) is any domestic or foreign natural person or legal person who requires access to information”. In this Law there are no limits for the person authorized to information.

8. Does the FOI law give journalists or media organisations a greater right to access to information than citizens?

Under the Article 6 paragraph 1 and 2 of the Law on the Right of Access to Information “the right to access to information belongs to all the authorized persons in the same manner and under the equivalent conditions and they are equal in the realization thereof. The public authorities may not put into a more favourable position none of the authorized persons in the manner the particular authorized person is given the information prior than to the others.”

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

There is no statistics data on the use of the law by journalists and media organizations.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

Article 6 of the Media Act (the Official Gazette No.59/04) gives journalists additional rights of access to information and right to complaint to the competent court
(web link: <http://www.nn.hr/clanci/sluzbeno/2004/1324.htm>).

(1) With the aim of publishing information through the media, bodies of executive, legislative and judiciary power and bodies of local and regional self-government units, as well as other legal and natural persons who perform public service and/or duty, shall be obliged to provide accurate, complete and timely information on issues from their scope of activity.

(2) Information held by persons referred to in paragraph 1 of this Article shall be accessible to journalists under equal conditions.

(3) The head of the body or a legal person referred to in paragraph 1 of this Article shall be obliged, in compliance with the law, to regulate the manner of providing information to the public and determine a person who shall ensure access to public information in compliance with this Act and other special laws.

(4) The head of the body or legal person referred to in paragraph 1 of this Article and the person referred to in paragraph 3 of this Article shall be obliged to provide journalists with the requested information in an appropriate time framework, and shall be accountable for the accuracy of the information provided.

(5) The person referred to in paragraph 3 of this Article may withhold the provision of information when:

the requested information have been defined, in the proper manner and for the purpose of protecting the public interest, as a state or military secret;

the publishing would represent a violation of the confidentiality of personal data in compliance with the law, unless their publication may prevent the execution of a severe criminal acts or immediate danger to the life of people and their property;

(6) In the case referred to in paragraph 5 of this Article, a responsible person shall be obliged to explain in writing the reasons for withholding information within three working days from the day on which the written request for information was received.

(7) In case of withholding of public information, a journalist shall have the right to file a complaint due to the illegal act with the competent court. The competent court shall decide on the complaint under a special law in the emergency procedure, during which it shall examine the reasons for withholding public information. Should the Court establish that no reason for withholding of information exists as stipulated by this Act, it shall abolish the decision on withholding of information and order the provision of requested information.

11. Are there any limits in this law on access to, and publication of, information?

Under the Article 6 paragraph 5 of the Media Act “the person referred to in paragraph 3 of this Article may withhold the provision of information when: the requested information have been defined, in the proper manner and for the purpose of protecting the public interest, as a state or military secret or if the publishing would represent a violation of the confidentiality of personal data in compliance with the law, unless their publication may prevent the execution of a severe criminal acts or immediate danger to the life of people and their property;”

The question of data protection is regulated in The Law on the Protection of Data Secrecy (the Official Gazette No. 108/96), which deals with issue of national, military, official, business, and professional secrets.

12. If there is a legal right in a media or press to access information, please provide the statistics on the use of that law by journalists and media organizations.

There is no statistics data on the use of the law by journalists and media organizations.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- **Different categories in terms of level of confidentiality?**
- **The period of classification and declassification?**

The Secret Data Protection Act (Official Gazette of the Republic of Croatia / „Narodne novine“/ No. 108/96) prescribes the concept, types and levels of secrecy, as well as measures and procedures to determine, use and protect secret data.

According to the type, secret data includes state, military, official, commercial or professional secret, and by the level of secrecy data may be state secret, top secret and confidential. Heads of public authorities and authorized officials of the Republic of Croatia shall, by special decisions within the limits of their powers and in accordance with law and other regulations or a by-law of the authority in charge, determine the type and secrecy level of data, as well as special protective measures and persons to whom they will be disclosed. This Law prescribes which data can be a state or military secret, and what may be considered an official secret.

It is important to note that a new Law on the Protection of Data Secrecy will be approved by the end of March 2007.⁸

The Secret Data Protection Act, Article 7

State secret, within the meaning of this Act, shall be in particular data relating to:

1. military, political, business and other evaluations of particular significance for defence, national security or national interests of the Republic of Croatia,
2. defence plans, mobilisation plans and wartime organisation of the Republic of Croatia,
3. defence plans of companies and other legal persons that are of particular significance for the defence of the Republic of Croatia, weapons production plans, military equipment and ammunition as well as more detailed data on the implementation thereof,
4. types, overall quantities and deployment of stocks needed in the event of war, as well as the capacities of wartime production,
5. the analyses of command and evaluations of the state of defence preparedness of the Republic of Croatia,
6. plans for arrangement and structure of national territory for the defence purposes of the Republic of Croatia,
7. facilities of particular significance for national security and defence of the Republic of Croatia,
8. scientific and technological inventions of particular interest for national security and defence of the Republic of Croatia,
9. evaluations, analyses and individual activities of intelligence bodies and security services of particular interest for national security and defence of the Republic of Croatia,
10. organisation of the system of cryptographic protection, cryptographic systems, plans, means, rules and implementation procedures of crypto protection for the needs of public entities, as well as of other legal persons of particular significance for the Republic of Croatia,
11. data on the overall state of mineral resources of strategic significance for the Republic of Croatia – resources of non-ferrous, rare or precious metals, radioactive substances, gas and oil reserves,
12. discoveries and inventions having substantial military and scientific, as well as economic significance,
13. data concerning organisation, composition, number, equipment and personnel deployment of intelligence services, military forces and police authorities of the Republic of Croatia.

⁸ At the time of publication this law has not been approved. The OSCE Representative on Freedom of the Media prepared a review of the draft law on the protection of data secrecy.
(See RFOM's press release of 13 April 2007: http://osce.org/fom/item_1_24025.html)

IV. Military secret

Article 8

Military secret shall be data that have been declared a military secret by law, other regulation, general act or act of a competent body adopted on basis of the law.

Article 9

Military secret bearing a degree of secrecy "Very secret" within the sense of this Act shall be the data referring in particular to:

1. defence and mobilisation plans of units of local government and self-government, as well as of the unit of local self-government,
2. the defence plans and wartime organisation of public entities and other legal persons of particular significance for defence,
3. structure of a service, plans, means and the system of wartime communications,
4. structure and operation plans of the monitoring and alert service,
5. types, total quantities and deployment of stocks for units of government and self-government and the unit of local self-government,
6. exploration of a geological composition of soil, geomagnetism, hydrological characteristics of the area and marine parameters of particular significance for the defence,
7. scientific and technological inventions and discoveries important for defence,
8. analyses and evaluations of the state of preparedness of particular public entities, companies and other legal persons of particular importance for defence,
9. reports of inspection controls concerning the state of defence preparedness,
10. wartime regulations and other regulations of significance for defence,
11. planned reposition, demolition or incapacitating of facilities, as well as of material-technical and other devices,
12. duties and workplaces of particular significance for defence that are to be protected by employing special safety measures.

Article 10

Military secret bearing a degree "Secret" within the sense of this Act shall be the data relating in particular to:

1. cartographic editions of particular significance for defence,
2. aerial photographs of special significance for defence,
3. facilities of special significance for defence,
4. duties and workplaces of significance for defence.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

Criminal Act, Disclosure of State Secrets , Article 144

- (1) Whoever makes a state secret which has been entrusted to him accessible to an unauthorized person shall be punished by imprisonment for one to five years.
- (2) Whoever makes a state secret which he learned by accident or in an unlawful way accessible to an unauthorized person, knowing that it is a state secret shall be punished by imprisonment for six months to three years.
- (3) Whoever makes a state secret which has been entrusted to him, or which he learned by accident or in an unlawful way, accessible to an unauthorized person at the time of war or armed conflict in which the Republic of Croatia takes part, or whoever makes accessible to an unauthorized person a state secret related to the defense or security of the Republic of Croatia, shall be punished by imprisonment for one to ten years.
- (4) Whoever commits the criminal offense referred to in paragraph 1 of this Article by negligence shall be punished by imprisonment for three months to three years.
- (5) Whoever commits the criminal offense referred to in paragraph 2 of this Article by negligence shall be punished by a fine or by imprisonment not exceeding one year.
- (6) Whoever commits the criminal offense referred to in paragraph 3 of this Article by negligence shall be punished by imprisonment for one to five years.

Criminal Act, Publishing the Contents of a State or Military Secret, Article 145

(1) Whoever publishes the contents or part of the contents of data or a document which he knows to be a state or military secret shall be punished by a fine or by imprisonment not exceeding three years.

(2) If the criminal offense referred to in paragraph 1 of this Article is committed at a time of war or immanent peril for the independence and unity of the Republic of Croatia, or brings about a peril against the security, economic or military power of the Republic of Croatia, the perpetrator shall be punished by imprisonment not exceeding five years.

Violation of the Freedom of Expression, Article 107

(1) Whoever denies or limits freedom of speech or public appearance, the incorporation of companies, funds or institutions of public communication, freedom of the press or other media of communication shall be punished by a fine or by imprisonment not exceeding one year.

(2) The same punishment as referred to in paragraph 1 of this Article shall be imposed on a person who orders or implements censorship or denies or restricts a journalist's access to information or his freedom of reporting, unless there is a question of a state, military or official secret.

Civil Obligations Act

4. Compensation for Material Damage in the Event of Violation of Personality Rights and Disclosure of False Information

Article 1098

(1) A person who has compromised reputation of another person, stated or disclosed false information on another person's past, knowledge, competence, or similar, and is aware or should be aware that they are false, thereby causing material damage to that person, shall compensate for that damage.

(2) Nevertheless, the person shall not be liable for damage caused if the false information has been disclosed to another without knowledge that it is false, or if none of the parties had serious interest in that.

5. Redress for Non-Material Damage

Disclosure of Judgement or its Modification

Article 1099

In the event of violation of personality rights, an injured party may request, at the expense of the defendant, a disclosure of the judgement or its modification, withdrawal of statement which has caused damage, or similar action which may attain the purpose of achieving a just pecuniary compensation.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

Refer to answer to question no. 14.

Criminal Act, Disclosure of State Secrets Article 144 Paragraph 2 and 3.

Criminal Act, Publishing the Contents of a State or Military secret, Article 145, Paragraph 1.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this?

-

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

Refer to answer to question no. 14.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

Refer to answer to question no. 14.

20. Have there any cases been brought in the last five years against:

- Officials in charge of the leaked classified information?
- Members of the public?
- Journalists or media organisations?

Please describe the outcomes, including the date of the case, the defendants and the charges.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public interest test to evaluate the government's classification concerns?

Refer to answer to question no. 10, paragraph 5.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorized release of information that was of legitimate public interest?

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Protection of sources

23. Is there a national law on the protection of journalists (also referred to as „shield law“) from sanctions for refusing to disclose their sources of information?

The Media Act in Article 30 (the Official Gazette No.59/04) stipulates protection of a source that provides data.

- (1) A journalist shall not be obliged to provide data about the source of published information or the information he intends to publish.
- (2) The right of a journalist referred to in paragraph 1 of this Article shall also pertain to editor in chief, editors and authors of published reports who are not journalists.
- (3) Prior to publication, the journalist shall be obliged to inform the editor in chief of the fact that the information is from an unidentified source in the manner stipulated in the media statute. In that case all the provisions on the protection of the source of information shall also apply to the editor in chief.
- (4) The State Attorney's Office, when such limitations are required in the interest of national security, territorial integrity and protection of health, may lodge a request with the competent court to order the journalist to disclose data on the source of the published information or information he intends to publish.
- (5) The court may order the journalist to disclose data on the source of the published information or information he intends to publish, if so required for the protection of public interest and if it concerns particularly important and serious circumstances and the following has been indisputably established:
 - that a reasonable alternative measure for disclosing data on the source of information does not exist or that the person or body from paragraph 4 of this Article seeking the disclosure of the source of information has already used that measure,
 - that legal public interest for disclosing data on the source of information clearly prevails over the interest for protecting the source of information.
- (6) When assessing the circumstances of the case, the court shall exclude the public in the course of the procedure of disclosing information and warn the persons present that they are obliged to keep confidential everything they have found out in the procedure as well as of the consequences of disclosing confidential information.

24. If there are sub-national divisions, such as states or provinces, do they follow that recognize protection of sources and limit their disclosure?

The Media Act, including its Article 30 which is used all over Croatia.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

Refer to answer to question no. 24.

26. How many times in the last five years has a journalist or media organization been required by court or official to disclose their sources of information under this law or any other law?

-

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

The Media Act in its Article 30 paragraph 4 to 6 stipulates that

The State Attorney's Office, when such limitations are required in the interest of national security, territorial integrity and protection of health, may lodge a request with the competent court to order the journalist to disclose data on the source of the published information or information he intends to publish. The court may order the journalist to disclose data on the source of the published information or information he intends to publish, if so required for the protection of public interest and if it concerns particularly important and serious circumstances and the following has been indisputably established:

- that a reasonable alternative measure for disclosing data on the source of information does not exist or that the person or body from paragraph 4 of this Article seeking the disclosure of the source of information has already used that measure,
- that legal public interest for disclosing data on the source of information clearly prevails over the interest for protecting the source of information.

28. What are the penalties for refusing to reveal sources of information?

In the Media Act there are no sanctions for journalist who is refusing to reveal sources of information to the Court.

29. Are the journalists prohibited from revealing their sources without the permission of the source?

In the Media Act there is no prohibition of that kind.

30. In the media, who is protected from disclosure of sources:

- **The journalist? The editor? The publisher?**
- **Freelance journalists or commentators?**

Under the Article 30 paragraph 1 and 2 „a journalist shall not be obliged to provide data about the source of published information or the information he intends to publish. The right of a journalist referred to in paragraph 1 of this Article shall also pertain to editor in chief, editors and authors of published reports who are not journalists.“

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

The Media Act (applied on all kinds of media) in Article 30 stipulates that „the right of a journalist referred to in paragraph 1 of this Article shall also pertain to editor in chief, editors and authors of published reports who are not journalists“.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators“

Because of the media publisher definition stipulated in Article 2 of the Media Act and Article 2 of the Electronic Media Act, (Official Gazette no. 122/03) Article 30 of the Media Act as a basic Act on protection of source of information, is applied to journalists, editor in chief, editors and authors of published electronic publications, including Internet publications.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

-

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or Internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

Article 30 of the Media Act does not stipulate that kind of protection but this kind of protection is guaranteed in Article 36 of the Constitution of the Republic of Croatia “Freedom and privacy of correspondence and all other forms of communication shall be guaranteed and inviolable. Restrictions necessary for the protection of the State security and the conduct of criminal proceedings may only be prescribed by law”.

Croatia

Prepared by the OSCE Mission to Croatia and GONG NGO

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

The Constitution of the Republic of Croatia does not directly stipulate right to access information, although the right is derived from the Article 38 which provides access to government-held information for journalists rather than citizens (i.e. the public). This right is detailed and expanded in secondary legislation.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

There have been several successfully resolved cases in front of Administrative Court in relation to the subject right, as it is the highest court in administrative procedure.

For example, journalist Jelena Berković of Radio 101 filed and won a complaint against the Government in autumn 2005⁹. Ms. Berković sought the information as a citizen and the [Administrative Court](#) found the Prime Minister responsible for failing to reply to her request within the deadline provided by the Law on the Right to Access Information thus confirming the extended scope of the right.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

The constitutional right is not precisely defined. Its definition and limitations are provided by the Law on the Right to Access Information (available at [The Official Gazette web pages](#)).

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

Article 8 of the aforementioned Law provides that the public authority bodies shall deny access if the information has been declared a state, military, official, professional or business secret or if it is protected by the law regulating personal data protection. PABs can deny access for criminal procedure/investigation, judicial, inspection, security, economic or copyright grounds.

5. Are there other specific constitutional limits on access and dissemination of information?

Article 38 of the Constitution forbids censorship and regulates freedom of expression and, freedom of the press. There are no other specific constitutional provisions relating to this matter.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

⁹ OneWorld.net article [Court decision against the Prime Minister confirms the bad communication of Government and Public](#) (in English); accessed 30 July 2006

Law on the Right to Access Information allows individuals to demand specific information (information disposed of or controlled by public authorities). The Law extends to all public authorities rather than government bodies only¹⁰. For the exceptions to the right of access please see the answer to question 4.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

The Law does not impose limitations on status grounds but grants the right to access to all natural and legal persons. Article 3 specifically provides that the person can be either a citizen or a foreigner.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

In terms of right to access information, the FOI law does not favour different parties, as its provisions affect all parties equally.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

The Central state administration office reported¹¹ that during 2004 the Office of the President received no requests, the Government received 3 (and denied 2), the Government Offices received 1,774 requests (all accepted), varied ministries received 4,302 requests (16 denied, 8 delegated), central state administration offices received 14 requests (1 delegated, 13 accepted) and so on¹². Out of the total of **19,473 requests that year none were addressed to courts. The NGO campaigning for active participation of citizens in political processes "GONG" published a report for 2005 claiming one third of submitted requests remained unanswered**¹³. The NGO coalition conducted its research too and submitted 256 requests in 2004 out of which 135 were answered (118 approved, 17 denied)¹⁴. The general consensus is that the law is unevenly applied in practice.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

N/A. Croatian Law on Media regulates journalists' rights of access to information. The Law on media stipulates the obligation of public institutions to provide journalists with right, accurate and timely information. Presidents of public institutions are obliged to appoint officials to provide such information in due time.

11. Are there any limits in this law on access to, and publication of, information?

Limitations are set in cases of state and military secrets and information which negatively affect solving criminal offences, cause damage to public health and moral etc.

The Law on Media, Article 6

The person as per Paragraph 3 of this Article may withhold the provision of information when:

- the requested information are defined in the stipulated manner as state or military secret for the purpose of protection of public interest;
 - the publishing would represent the violation of secrecy of personal data in compliance with the law, unless its publication may prevent the conduct of a severe criminal act or prevent an immediate danger to the life of people and their property;
- (6) In the case as per Paragraph 5 of this Article, the responsible person shall explain in writing the reasons why the information was withheld, in writing or verbally, within three working days from the day the information was requested in writing.

¹⁰ The list of the public authorities is updated by the Government. In September 2005 the Government removed HRT from the list of institutions required to comply with the law.

¹¹ NetNovinar article [online](#) (in Croatian); accessed 30 July 2006

¹² This report was criticised in the Parliament by the opposition for its shortness (only two pages): [One World Article](#) (in Croatian) ; accessed 30 July 2006

¹³ GONG report [summary online](#) (in Croatian) and full GONG [report online](#); accessed 30 July 2006

¹⁴ NetNovinar article available [online](#) (in Croatian); accessed 30 July 2006

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

N/A

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- **Different categories in terms of level of confidentiality?**
- **The period of classification and declassification?**

The Criminal Code defines state, military, business, official and professional secrets in Article 89.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

The Criminal Code penalises unauthorised disclosure of state secrets related to security with a one to ten years prison sentence in Article 144. Espionage related to national security information carries a sentence of 1 to 8 years (Article 146).

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

The prohibition applies to "anybody" disclosing information without authorisation.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

The Criminal Code also penalises unauthorised disclosure of professional, military and official secrets.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

The prohibition regarding professional secrets applies only to persons bound by confidentiality. The prohibitions regarding military and official secrets apply to anybody.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

The Criminal Code penalises unauthorised disclosure, possession or publication of classified information. The penalties range from pecuniary fines to 10 or more years' imprisonment, depending on the offence.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

The penalties apply equally.

20. Have there any cases been brought in the last five years against:

- Officials in charge of the leaked classified information?
- Members of the public?
- Journalists or media organisations?

Please describe the outcomes, including the date of the case, the defendants and the charges.

N/A

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

There is no reference to public interest being able to override prohibition of disclosure in the FOI law. The Criminal Code acknowledges 'general interest or interest of another person which prevails over the interest of non-disclosure' regarding professional secrets¹⁵.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

N/A

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

'Shield provisions' are found in several laws and by-laws (i. e. Criminal Procedure Act, Code of Ethics for Journalists). The Media Law is the basic act regarding protection of sources. Article 30 of this Law regulates cases in which journalists can be required to disclose information.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

This right is regulated on a national rather than a regional basis.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

N/A

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

N/A

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

The protection is not absolute. The State Prosecution service can submit a request for disclosure on grounds of national security, territorial integrity or protection of health.

28. What are the penalties for refusing to reveal sources of information?

¹⁵ Article 132 of the Criminal Code

The Media Law sets no penalties for refusing to reveal sources of information.

29. Are the journalists prohibited from revealing their source without the permission of the source?

The Code of Ethics of the Croatian Journalists' Society provides that the journalist refusing to reveal his source has 'moral, material and criminal responsibility' but does not specify it further.

30. In the media, who is protected from disclosure of sources:

- **The journalist? The editor? The publisher?**

The Media Law provides that the editor is protected only if s/he has been informed of the decision not to disclose the source by the journalist in accordance with the statute of the media.

- **Freelance journalists or commentators?**

The definition of 'journalist' in the Media Law includes freelance journalists.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

Yes.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

Internet-based media are included in the definition of 'media' in the Media Law.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

There is no special legal regime foreseen for searches of media or journalists' premises.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

Third parties are not foreseen in the law.

Cyprus

No data have been received

Czech Republic

Prepared by the Government of the Czech Republic

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Yes, there is constitutional right of public access to information. Article 17 of The Charter of Fundamental Rights and Basic Freedoms (Law No. 2/1993 Coll.), which is a part of the constitutional order of the Czech Republic, reads as follows:

Article 17

- (1) The freedom of expression and the right to information are guaranteed.
- (2) Everyone has the right to express his views in speech, in writing, in the press, in pictures, or in any other form, as well as freely to seek, receive, and disseminate ideas and information irrespective of the frontiers of the state.
- (3) Censorship is not permitted.
- (4) The freedom of expression and the right to seek and disseminate information may be limited by law in the case of measures that are necessary in a democratic society for protecting the rights and freedoms of others, the security of the state, public security, public health, or morals.
- (5) State bodies and territorial self-governing bodies are obliged, in an appropriate manner, to provide information with respect to their activities. Conditions and implementation thereof shall be provided for by law.

Web link to Constitutional court (Constitutional laws in English): www.concourt.cz.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

Judgments and resolutions of the Constitutional Court

No. I.ÚS 394/04 - Resolution

Free press depends on a free flow of information from the media to their readers and from readers to the media. Journalists in the whole world, whether they work for local or national newspaper, for national or international TV, generally depend on non-journalists with the supply of information in the issues of public interest. Some individuals (further referred to as sources) provide secret or sensitive information, relying on journalists, that they will supply it to the national or international public, to achieve publicity and arouse public discussion. In many cases the anonymity of the source is a preliminary condition on which the provision of the information from the source to the journalist is based, this might be motivated by, for example, fear of divulgement that could unfavorably affect physical safety or employment security of the informer. In this regard journalists often argue with a right to refuse reveal both their source and nature of information that was handed confidentially; such argument is used not only in connection with written information, but to other documents and materials, including photographs as well. Journalists argue, that without means to secure confidentiality of their sources, the ability to lay obstacles, for example to the corruption of state officials or to perform investigative journalism, would be substantially limited.

The need to protect information sources is such that many journalists feel bonded by professional ethical codes, which impose not to reveal the source. Many journalists rely upon these codes even during court hearing, when they are ordered to reveal identity of their sources. Despite this, there are situations, when the interest of journalists and the right of public access to information collide with interest of more or less powerful individuals or institutions. Frequently such

collision relate to questions of justice, usually if given information is – or may be – relevant to criminal or civil proceedings. This then is a task of the Constitutional Court to consider such a conflict with a test of proportionality and weigh, whether in the specific case the public interest to disclose a source of the journalist is such, that it will outweigh even the constitutional right of freedom of expression, whose derivative is the right of media on non-disclosure of the source of information.

The answer is positive. Articles 17, para 1 of the Charter and 10 para 1 of the Convention (on Human Rights and Basic Freedoms) confirm right of freedom of expression, which is one of the cornerstones of a democratic state. Those are especially press, radio and television who distribute and mediate the information; in this connection, the freedom of information has an extraordinary importance (compare e.g. decision of the European Court of Human Rights in a suit *Sunday Times vs. Great Britain* 1978, A-30). According to the established practice of the European Court, one of the aspects of freedom of media is a protection of sources, exactly the subject of this Constitutional Appeal.

Constitutional Court infers that authorities in charge of the criminal proceedings (“authorities”) ignored basic rules set for security of journalist sources of information. Procedure of these authorities was not in accord with articles 17 para 4 of the Charter and art. 10 para 2 of the Convention, because necessity of interference with right to freedom of expression – as was stipulated – has to be interpreted restrictively and not vice versa. From contents of the file results that authorities in charge of the criminal proceedings did not consider at all (Police) or insufficiently (Public prosecution) reasons of the plaintiff to deny disclosing identity of his source, although his concrete information, consistently speaking, identity of the source, although not particularly, revealed. The aforementioned authorities had – in view of detailed plaintiff’s information – alternative possibility to identify the source themselves. In this connection it is not possible to overlook, as the plaintiff rightfully objects, that when the journalist discloses his source – in spite of the promise of not disclosing it – he jeopardizes his own journalistic work, especially in the sphere of investigative journalism, which is with a serious approach valuable and conductive for the society. It is obvious, that such a conclusion does not signify the non-existence of events when journalist has a duty to disclose his source.

III. ÚS 11/04 - Judgment

In relation to publicly known or politically active persons the Constitutional Court believes that right to criticize, confirmed by art. 17 para 2 of the Charter and art. 10 of the Convention on protection of Human Rights and Basic Freedoms, which are an inseparable part of the freedom of speech and right of access to information, has to respect the balance between these rights and personal rights of the actual person and cannot cross certain borders connected with attributes of a democratic society. These specified borders in relation to a natural person, acting or behaving as a “public personality”, are wider then in relation to a private person. Such regard is not a consequence of “a degradation” of protection of the personal rights of the politician, but is a natural consequence of his decision to make his actions an object of public attention, thereby the politician deliberately exposes his actions and behavior to sharp and not always objective inspection, not only from his voters and members of his political party, but especially from the side of political opposition, media and whole public. Inevitable aspect of practice of a public function is a need for a higher degree of tolerance to negative attitudes and evaluations to which a publicly active person is exposed with accepting the function, and last but not least, an understanding of such a person to tolerate consequences concluded of their social and political responsibility. Whether the actual person is really apt to withstand these unpleasant aspects of his position or not depends on his own consideration.

In this case the plaintiff seeks satisfaction and an apology for statements criticizing her actions as a community mayor through the action on the protection of personal rights. General courts dismissed action, Constitutional court dismissed the constitutional complaint as apparently groundless.

II. ÚS 357/96 - Resolution

Provided that every opinion, attitude, criticism is, with respect to the meaning of the right of speech based on art. 17 para 1 of the Charter as one of the pillars of every democratic society, essentially admissible issue, so much the more it is admissible with a criticism expressed in a polemical manner (I cannot venture to imply). Similarly you cannot measure this polemical statement by truthfulness of all information, included in the actual article, but only by the information with which it is explicitly connected.

IV. ÚS 154/97 - Resolution

In case of a conflict of right to access to information and their distribution with the protection of personal rights, basic rights of the same value, it is primarily concern of general courts to decide, considering circumstances of every case, whether one right was not groundlessly preferred to another.

III. ÚS 359/96 - Resolution

Freedom of expression and expression of one's opinions does not have a character of a philosophical category, but as a constitutional concept applied on concrete factual bases is subject to usual principles and rules of legal interpretation.

Constitutionally guaranteed right to express opinion (art. 17 para 2 of the Charter of Fundamental Rights and Basic Freedoms), without regard to possible restriction by law (art. 17 para 4 of the Charter), is contently limited by rights of others, whether these rights result as constitutionally guaranteed by constitutional order of the republic or from other barriers set by law protecting interests or values of the society; not only these content limitations might deprive the right to express opinions of its constitutional protection, for the form of expression is closely connected to the constitutionally guaranteed right, to which it is attached. When a published opinion deviates from the pale of decency universally accepted in a democratic society, it loses the character of a correct judgment (news, commentary) and as such it usually ends outside the limits of a constitutional protection.

Judgment of the High Administrative Court, SJS 711/2005

Neither the closed meeting of the Community board, nor the right of the member of the local council to inspect the report of the meeting of the community board (section 101 para 1 and 3 of the Act no. 128/2000 Coll., on local government) do not all on themselves limit the right to information (art. 17 para 1 of the Charter) about information included in such a report.

The liable person, who provides information from the Report of the meeting of the community board to other person than a member of the board, is obliged to secure legally required protection of rights and freedoms of other persons by methods foreseen in section 12 of the Act no. 106/1999 Coll., on free access to information; this provision does not apply to situations, when a citizen of the community requests information from the resolution of the board to which the direct access to search and make copies is guaranteed by section 16 para 2, letter e of the act 128/2000 Coll.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

Access to information is limited in order to protect certain types of information from disclosure.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

Limits of access to information are defined by Act no. 412/2005 Coll. on Safety of Classified Information and Security Capacity. There are four levels of security classification (Article 4 of the Act no. 412/2005):

top secret, provided that divulging the information to unauthorized person or abusing such information may cause exceptionally serious damage to Czech Republic's interests,
secret, provided that divulging the information to unauthorized person or abusing such information may cause serious damage to Czech Republic's interests,
confidential, provided that divulging the information to unauthorized person or abusing such information may cause a damage to Czech Republic's interests,
restricted, provided that divulging the information to unauthorized person or abusing such information may be disadvantageous to Czech Republic's interest.

5. Are there other specific constitutional limits on access and dissemination of information?

No there are no other specific constitutional limits on access and dissemination of information then those provided for in Art. 17 para 4 of The Charter of Fundamental Rights and Basic Freedoms (answer to q. 1).

RECEIVING AND PUBLISHING INFORMATION

Rules on Limitations

14. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this.

Criminal law prohibits the unauthorized disclosure of classified information, irrespective of the fact, whether the information is related to national security or not. The criminal law uses term “information classified under a special act” (Criminal Code, No. 140/1961 Coll.).

Section 106

Endangering a Classified Information

- (1) Whoever seeks out a classified information stipulated in a special Act with intent to disclose it to an unauthorised person, or who collects data containing a classified information with the said intent or intentionally divulges a classified information to an unauthorised person, shall be sentenced to a term of imprisonment of up to three years, or to prohibition of a specific activity or to a pecuniary penalty.
- (2) A term of imprisonment from two to eight years shall be imposed on an offender:
 - (a) who intentionally divulges to an unauthorised person a classified information classified in a special Act as „top secret“ or „secret“;
 - (b) who commits an act under sub-provision (1), even though the protection of classified information was his special responsibility; or
 - (c) who acquires by such act substantial benefit, or who causes substantial damage or some other exceptionally serious consequence.
- (3) A term of imprisonment from five to twelve years shall be imposed on an offender:
 - (a) if his act is stipulated in sub-provision (1) and concerns an information classified “top secret” related to the safeguarding of defensibility of the Republic, another state or international organization whose interests the Czech Republic undertook to protect,
 - (b) if such an act is committed during a state defence emergency or belligerence.

Section 107

Whoever through negligence causes disclosure of a classified information classified in a special Act as „top secret“ or „secret“ or „confidential“ shall be sentenced to a term of imprisonment of up to three years, or to prohibition of a specific activity or a pecuniary penalty.

Section 148

- (1) Natural person commits an infraction if he:
 - .c) breaches the duty to maintain confidentiality about a classified information,
 - d) enables access to classified information to an unauthorized person,
 - .i) secures access to a classified information, though he does not satisfy conditions set by sec. 6 para 1 or sec. 11 para 1.
- (2) A pecuniary penalty can be imposed of up to:
 - .d) 1 000 000 CZK for an infringement under para 1, letter i),
 - e) 5 000 000 CZK for an infringement under para 1, letter c), d) or j).

Section 149

- (1) Natural person with access to classified information commits an infringement by:
- .
 - .
 - c) handing over a classified information contrary to sec. 21 para 8
 - d) lending, transferring or transporting a classified information contrary to sec. 21 para 7 or 9, etc.
- (2) A pecuniary penalty can be imposed of up to:
- a) 500 000 CZK for an infringement under para 1 letters a),b),c),d),e),f),g) or h), etc.

Section 154

- (1) Business person who has access to classified information commits an administrative infringement by:
- .
 - c) provides “restricted” classified information to a foreign business partner contrary to sec. 73 letter b),
 - d) provides “top secret”, “secret” or “confidential” classified information to a foreign business partner contrary to sec. 73 letter a),
 - .
- (2) A pecuniary penalty can be imposed of up to:
- a) 1 000 000 CZK for an infringement under para 1 letter a),b) or c),
 - b) 5 000 000 CZK for an infringement under para 1 letter d) or e).

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

As results from answers to questions no. 14 and 16, criminally liable are persons who have official access to classified information. On the other hand, everybody (including the media) is liable according to administrative law (Act no. 412/2005 Coll. on Safety of Classified Information and Security Capacity), if that person secures access for himself to the classified information.

Legal Sanctions

18. What are the civil or criminal penalties for unauthorized disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

See answers to questions 14 and 16.

19. Do these penalties apply to the media for unauthorized disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

Administrative penalties apply to the media only. There are no additional or higher penalties for mass publication of information.

20. Have there any cases been brought in the last five years against:

- Officials in charge of the leaked classified information?
- Members of the public?
- Journalists and media organizations?

Please describe the outcomes, including the date of the case, the defendants and the charges.

We have no statistics regarding defendants of such cases. For Constitutional Complaints, see answer to question 2.

Denmark

Prepared by the Government of Denmark

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

The Danish Constitution does not provide for a right of public access to information or to documents held by government bodies. Nor has the Danish Supreme Court interpreted such a right as stemming from the Constitution.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

1. There are two principal statutes governing public access to documents held by government bodies.

The Danish Access to Public Administration Files Act, Act No 572 of 19 December 1985 as amended by Acts No 347 of 6 June 1991, No 504 of 30 June 1993, No 276 of 13 May 1998, No 429 of 31 May 2000 and No 552 of 24 June 2005 (“offentlighedsloven”) applies to any person requesting access to documents received or issued by a public administration authority.

Web link: <http://www.retsinfo.dk/GETDOCI/ACCN/A19850057230-REGL>

Furthermore, the Danish Public Administration Act, Act No 571 of 19 December 1985 as amended by Acts No 347 of 6 June 1991, No 215 of 22 April 2002, No 382 of 6 June 2002, No 215 of 31 March 2004 and No 552 of 24 June 2005 (“forvaltningsloven”) provides for special rules concerning the right of access to documents for parties to a matter in which a decision has or will be made by a public administration authority.

Web link: <http://www.retsinfo.dk/GETDOCI/ACCN/A19850057130-REGL>

2. According to the Danish Access to Public Administration Files Act the right of access applies to all documents relating to the matter in question; cf. Section 5(1) of the Act.

The right of access is, however, subject to the exceptions listed in Sections 7-14 of the Act.

The right of access does not apply to an authority’s internal case material; cf. Section 7. Nevertheless, according to Section 8 the right of access to files shall comprise internal case material available in final form in some cases, for instance where such documents render exclusively the substance of the authority’s final decision in the matter, etc.

In addition, where factual information in an authority’s internal case material is of material importance to the matter in question, such information shall be disclosed pursuant to Section 11(1).

Where information relates to the private circumstances of individual persons, including their finances, or to technical, industrial or business procedures of material importance to a third party, the right to information shall not apply according to Section 12(1).

Section 10 of the Act enumerates a list of documents which because of their sensitive nature are not the subject of a right of access. Also, information concerning criminal matters in particular is not subject to a right of access; cf. Section 2(1).

Furthermore, Section 13(1) enumerates a list regarding the specific subject-matter of certain pieces of information where, if the need for protection is essential, the right of access may be limited in this regard.

According to Section 4(1) of the Act an administration authority may grant wider access to documents unless this is not allowed under the rules on secrecy etc.

3. As a general rule, the right of access, according to the Danish Public Administration Act, applies to all documents relating to the matter in question; cf. Section 10(1).

Nevertheless, there are exceptions to this general rule.

Certain documents are exempt from access because of their particular nature. Such documents include an authority's internal case material according to Section 12(1); documents concerning cases involving criminal proceedings according to Section 9(3) (for which there are special provisions in Section 18 of the Act); and certain other particularly sensitive types of documents as listed in Section 14(1).

Apart from cases involving criminal proceedings exempt according to Section 9(3), this does not however limit the duty to disclose factual information contained in the exempt document which is important to the making of a decision, cf. Sections 12(2) and 14(2) of the Act.

Furthermore, certain types of pieces of information enumerated in Section 15(1) are exempt from access because of their sensitive subject-matter, provided the considerations for limiting access decisively outweigh the interests of the involved party.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

According to Section 4(1) of the Access to Public Administration Files Act, **any person** may demand to be apprised of documents received or issued by an administration authority in the course of its activity.

According to Section 9(1) of the Public Administration Act, **any party** to a matter in which a decision has or will be made by an administration authority may demand to be apprised of the documents of the matter.

Thus, the right to public access that follows from the Access to Public Administration Files Act and the Public Administration Act applies to foreigners under the same conditions as it applies to Danish nationals.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

The Access to Public Administration Files Act as well as the Public Administration Act apply to journalists and media organizations in the same way as to private individuals and do not contain specific rules concerning journalists and media organizations.

However as previously mentioned, Section 4(1) of the Access to Public Administration Files Act provides that an administration authority may grant wider access to documents unless this is not allowed under the rules on secrecy etc. This rule is according to practice of particular relevance to journalists and media organizations.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organisations.

The Ministry of Justice does not know of any statistics on the use of the law by journalists and media organizations.

Questions 10-12:

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

11. Are there any limits in this law on access to, and publication of, information?

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organisations.

As previously mentioned, the Access to Public Administration Files Act as well as the Public Administration Act apply to journalists and media organizations in the same way as to private individuals.

Moreover, the Administration of Justice Act Chapter 3a contains provisions concerning public access to court judgments and decisions. According to these provisions the mass media has additional rights of access to information compared to

citizens. Thus, according to Section 41(3), cf. Section 41f, the media has, *inter alia*, access to examine all judgments passed in the previous 4 weeks, obtain copies of indictments, etc.

The right of access to information pursuant to Section 41f is subject to certain limitations. The right of access to information does e.g. not apply to matrimonial cases, paternity suits, etc., and does not apply to evidence given in camera. Furthermore, the right of access to information can be limited due to the protection of e.g. the security of the state or Danish foreign policy; in exceptional cases the prevention and clearing-up of infringements of the law or interests of individual persons or private entities.

Documents and copies obtained by the media pursuant to Section 41f of the Act may not be accessible to other than journalists and editorial staff of the mass media and may solely be used to support journalistic and editorial work, cf. Section 41f(6).

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- **Different categories in terms of level of confidentiality?**
- **The period of classification and declassification?**

Rules on classification are contained in Government Circular No 204 of 7 December 2001 concerning the Protection of Information of Common Interest to the Member States of NATO, the EU or the WEU, other Classified Information and Information Regarding other Protected Interests Relating to Security.

The Circular operates with four different levels of classification, cf. Section 1: top secret, secret, confidential and restricted information.

The Circular does not set a formal period of classification and declassification.

However, Section 7(2) of the Circular provides that the issuer of classified information should frequently examine previously issued information with a view to downgrading or declassifying such information if possible.

14. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

According to Section 27(1) of the Public Administration Act, any person acting within the public administration is bound by professional secrecy, cf. Section 152 and Sections 152c-152f of the Danish Criminal Code, whenever information is designated as confidential by statute or other legally binding provision or whenever it is otherwise necessary to keep the information secret to protect material public or private interests, including in particular:

- 1) **the security of the State and the defence of the realm.**
- 2) Danish foreign policy and Danish external economic interests, including relations with foreign powers and international institutions;
- 3) prevention and clearing-up of any infringement of the law, prosecution of offenders, execution of sentences and the like, and protection of persons accused, of witnesses and others in matters of criminal or disciplinary prosecution;
- 4) implementation of public supervision, control, regulation and planning of activities and of measures planned under taxation law;
- 5) protection of public financial interests, including interests relating to public commercial activities;
- 6) the interests of individual persons or private enterprises or societies in protecting information on their personal or internal, including financial circumstances; and
- 7) the financial interest of individual persons or private enterprises or societies in protecting information on technical devices or processes or on business or operation procedures and policies.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

Private individuals are not subject to the rules of the Public Administration Act, nor the Access to Public Administration Files Act. As a principal rule, they are therefore not subject either to the rules on professional secrecy.

Nevertheless, according to Section 27(3), an administrative authority may bind a person outside the public administration to secrecy in respect of any confidential information passed on by the authority to the person concerned without the authority being obliged to do so.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this.

As mentioned above, Section 27(1) of the Public Administration Act contains provisions in regard to professional secrecy. Please refer to the answer to question 14.

17. Do these provisions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

Please refer to the answer to question 15.

Legal Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

According to Section 27(1), 1° of the Public Administration Act, any person acting within the public administration is bound by professional secrecy; cf. Section 152 and Sections 152c-152f of the Danish Criminal Code, whenever information is designated as confidential by statute or other legally binding provision or whenever it is otherwise necessary to keep the information secret.

According to Section 27(4) of the Act, where a public authority has bound a private person to secrecy according to Section 27(3) of the Act, Section 152 and Sections 152c-152f of the Danish Criminal Code apply correspondingly to any infringement of such rules or enjoinders.

Section 152(1) of the Danish Criminal Code provides that any person who is exercising or who has exercised a public office or function, and who unlawfully passes on or exploits confidential information, which he has obtained in connection with his office or function, shall be liable to a fine or to imprisonment for any term not exceeding six months.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

According to section 152 d (2) and (3) the media can publish information which originates from unauthorised disclosure unless the information is strictly private or confidential because of its importance to the safety of the state or to the protection of the state defence.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

During the last five years there have been seven cases printed in the Weekly Law Review concerning section 152 in the Criminal Code. There have been cases against inter alia a police officer, an employee at the Danish Defence Intelligence Service, a member of a social welfare committee and a defence attorney.

The most recent case regards the employee from the Danish Defence Intelligence Service. It is printed in the Weekly Law Review 2006 page 65. An employee from the Danish Defence Intelligence Service had made copies of three classified threats assessments on the possible Danish participation in a military operation in Iraq and passed them on to a journalist. The employee was found guilty by the Eastern High Court for violating Section 152 of the Criminal Code and sentenced to four months of imprisonment. His actions were not exempted from punishment according to Section 152 e of the Criminal Code.

The case against the member of the social welfare committee is printed in the Weekly Law Review 2003 page 1860. The defendant had passed on information concerning two boys obtained in a closed meeting at the social welfare committee, to a journalist. The information included among others information on the boys' criminal record and misuse of substances. The Western High Court found the member of the committee guilty and sentenced him to six day fines of five hundred Danish kroner.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

According to Section 152 e of the Criminal Code the provisions in section 152-152 d do not apply if the person in question was under an obligation to pass on the information or acted in order to lawfully safeguard obvious public interests or the interest of himself or other persons.

Both the prosecution authorities and the judiciary have to take this into account when considering a case of unauthorised disclosure.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

According to Section 152 e of the Criminal Code the person in question has to have acted in *obvious* interest of the public. However, the judiciary has to make a concrete assessment in every case also considering the need to protect the media's right to freedom of expression, cf. inter alia the European Convention on Human Rights art. 10.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

According to the Administration of Justice Act Section 172 (1) editors and editorial staff of the mass media cannot be ordered to testify regarding the source of information, or the author of an article or a photo story. Furthermore, the right of exemption from the duty to give evidence includes information on the identity of a person in a photograph or the subject of an article etc. if a promise of anonymity has been made. If the article, photo, story etc. has been published the right of exemption from the duty to give evidence will only apply if the information on the identity of the source or subject has not been made public in connection with the publication. According to Section 172 (2), the protection also applies to television and radio. Subsection 4 extends the protection to all news media similar to the above mentioned.

According to Section 804 (4) an order of disclosure cannot be issued if it will produce information about matters, which the individual would be excluded or exempted from testifying about as a witness pursuant to Sections 169-172 of the Administration of Justice Act.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

There are no such sub-national divisions in Denmark.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

Please refer to the answer to question 23.

26. How many times in the last five years has a journalist or media organization been required by a court or official to disclose their sources of information under this law or any other law?

During the last five years there have been four cases printed in the Weekly Law Review concerning Section 172 of the Administration of Justice Act. In two of these cases the journalist or mass media organisation was required to give the police access to unedited tapes.

The first case is printed in the Weekly Law Review 2002 page 2503. The Supreme Court ruled that the television station TV2 had to give the police access to some of the unedited tapes and some notes produced for a television program on paedophiles in Denmark. Based on the program the police charged a man appearing in the program for sexual abuse of boys under 15 years of age.

The second case is printed in the Weekly Law Review 2004 page 2487. The Western High Court ordered a film company to give the police access to unedited tapes in a case where the cameraman was reported to the police for having presented himself as a police officer. The cameraman had, together with a man from the union, contacted a Lithuanian worker who the union believed did not have a working permission. The Lithuanian worker had reported the cameraman to the police accusing him of having presented himself as a police officer. The man from the union declared that he accepted the tapes being handed over to the police.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

According to the Administration of Justice Act Section 172 (5) the court can order a person - who would otherwise be exempted from giving evidence - to testify if the criminal offence is serious and if the offender can be made liable to imprisonment for a term of four years or longer according to the relevant law. However, the examination of this witness must be of vital importance to the detection of the case, and the interest of the detection of the criminal offence must clearly exceed the interest of the media's protection of their sources. According to Subsection 6, the court can order a person to reveal a source if the case concerns a violation of Section 152-152 c of the Criminal Code. These provisions deal with the unlawful forwarding or exploitation of confidential information by a person who is exercising or has exercised a public office or function and who has obtained the information in connection with his office or function. However, this does not apply if the author or source intended to expose conditions and publication was of public interest.

28. What are the penalties for refusing to reveal sources of information?

According to Section 178 of the Administration of Justice Act a witness can be sentenced to a fine or default fines if he fails to appear or refuses to give evidence in court. Furthermore, the court can decide for the witness to be taken into custody by the police until a statement is made. The custody period must not exceed 6 months in connection to the same case.

29. Are the journalists prohibited from revealing their source without the permission of the source?

There are no criminal provisions prohibiting journalists from revealing the identity of their sources.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists and commentators?

According to Section 172 (1) of the Administration of Justice Act, editors and all editorial staff are protected from disclosing their sources. Subsection 3 extends the protection to all persons who obtain knowledge of the identity of a source because of a connection to a printed media or a television or radio channel etc.

31. Is protection extended to those working for broadcasting media (televisions, radio, including cable and satellite programs)?

Please refer to the answer to question 30.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

The protection in Section 172 of the Administration of Justice Act also includes internet based media such as e.g. internet newspapers.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

Searches of property belonging to the media or the journalists are not prohibited. However, according to Sections 794 (3) and 795 (2), of the Administration of Justice Act, material found during a search of premises cannot be subject to this search if it belongs to a person who is encompassed by Section 172 and if this person would be exempted from giving evidence about the material according to Section 172.

34. Are third parties who act for journalists or media organizations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

As mentioned in relation to question 30 all persons who obtain knowledge of the identity of a source because of a connection to a printed media or a television or radio channel etc. are protected pursuant to Section 172 (3) of the Administration of Justice Act. This includes for example printing houses, publishers and photographic laboratories.

Beyond this third parties like telephone or internet providers are not protected from disclosure of data on journalists' communication with sources, or from interception.

Estonia

Prepared by the Government of Estonia

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- **Different categories in terms of level of confidentiality?**
- **The period of classification and declassification?**

In the legislation in force the limitations to access to information are mainly regulated by the State Secrets Act and Public Information Act. The State Secrets Act established four levels of state secrets:

- 1) Limited - 30 a (§ 4¹);
- 2) Confidential - 10-50 a (§ 5);
- 3) Secret - 10-50 a (§ 6);
- 4) Fully secret – 15-75 a (§ 7).

State Secrets Act in English:

<http://www.legaltext.ee/text/en/X30057K6.htm>

§ 35 of the Public Information Act enables to limit the access of the public to certain information by declaring the information for internal use only.

Public Information Act in English:

<http://www.legaltext.ee/text/en/X40095K2.htm>

In addition, relevant regulation is also contained in the Surveillance Act, according to § 5 2) of which the methods of surveillance, tactics and information regarding technical equipment used only in the course of surveillance or equipment adapted for that are internal and are not subject to disclosure, except in case their disclosure is necessary for using the collected information as evidence.

The Surveillance Act in English:

<http://www.legaltext.ee/text/en/X30011K7.htm>

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

The State Secrets Act (see above):

<http://www.legaltext.ee/text/en/X30057K6.htm>

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

The limitations apply only to persons, to whom the grounds for access to information are extended proceeding from the law:

State Secrets Act § 22:

Access to state secret is a person's right to get acquainted with a state secret and to process state secret and secret information medium:

- 1) proceeding from the office (e.g. President of the Republic, Member of the Parliament, Member of the Government, judge, etc);
- 2) on the grounds of permit to access state secret (is only issued to a person who has a justified need to know);
- 3) on the grounds of order by an investigator, prosecutor or the court (in case access is unavoidably necessary for solving the case).

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

The Personal Data Protection Act – the purpose of this Act is protection of the fundamental rights and freedoms of natural persons in accordance with public interests with regard to processing of personal data.

The Act covers following types of information:

§ 4. Personal data

- (1) Personal data are information relating to an identified natural person or a natural person identifiable by reference to the person's physical, mental, physiological, economic, cultural or social characteristics, relations and associations.
- (2) The following are private personal data:
 - 1) data revealing details of family life;
 - 2) data revealing an application for the provision of social assistance or social services;
 - 3) data revealing mental or physical suffering endured by a person;
 - 4) data collected on a person during the process of taxation, except data concerning tax arrears.
- (3) The following are sensitive personal data:
 - 1) data revealing political opinions or religious or philosophical beliefs, except data relating to being a member of a legal person in private law registered pursuant to the procedure provided by law;
 - 2) data revealing ethnic or racial origin;
 - 3) data relating to the state of health or disability;
 - 4) data relating to genetic information;
 - 5) data relating to sexual life;
 - 6) data concerning membership in trade unions;
 - 7) information collected in criminal proceedings or in other proceedings to ascertain an offence before a public court session or before a judgment is made in a matter concerning an offence, or if this is necessary in order to protect public morality or the family and private life of persons, or where the interests of a minor, a victim, a witness or justice so require.

Personal Data Protection Act in English:

http://www.legaltext.ee/et/andmebaas/ava.asp?tyyp=SITE_ALL&ptyyp=I&m=000&query=isikuandmete+kaitse+seadus

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

They also apply to members of the public, including the media.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

Penalties for violation of State Secrets Act is foreseen both in § 32¹ of the State Secrets Act as a misdemeanour as well as in §-des 232, 234, 241 and 242 of the Penal Code as a crime.

Penal Code in English:

<http://www.legaltext.ee/text/en/X30068K6.htm>

Disclosure of information declared for internal use is misdemeanour according to § 54¹ of the Public Information Act. Also § 243 of the Penal Code foresees criminal punishment for forwarding internal information.

Public Information Act

§ 54¹. Violation of requirements for disclosure and release of public information

(1) Knowing release of incorrect public information or knowing disclosure or release of information intended for internal use or failure to comply with a precept of the Data Protection Inspectorate is punishable by a fine of up to 300 fine units.

(2) The provisions of the General Part of the Penal Code (RT I 2001, 61, 364; 2002, 86, 504; 105, 612; 2003, 4, 22) and the Code of Misdemeanour Procedure (RT I 2002, 50, 313; 110, 654) apply to the misdemeanours provided for in this section.

(3) The Data Protection Inspectorate is the extra-judicial body which conducts proceedings in matters of misdemeanours provided for in this section.

Penal Code

§ 232. Treason

A citizen of the Republic of Estonia who assists a foreign state, an organisation of a foreign state, an alien or a person acting at the request of a foreign state in non-violent activities directed against the independence and sovereignty of the Republic of Estonia, or collects information classified as a state secret or classified information of a foreign state or an international organisation communicated to Estonia on the basis of an international agreement with the intention of communication thereof, or communicates such information to a foreign state, organisation of a foreign state, alien or a person acting at the request of a foreign state shall be punished by 3 to 15 years' imprisonment.

§ 234. Espionage

An alien who collects information classified as a state secret or classified information of a foreign state or an international organisation communicated to Estonia on the basis of an international agreement with the intention of communication thereof, or communicates such information to a foreign state, organisation of a foreign state, alien, or a person acting at the request of a foreign state shall be punished by 3 to 15 years' imprisonment.

§ 241. Disclosure of state secrets

(1) Disclosure or illegal communication of or provision of illegal access to information classified as a state secret or classified information of a foreign state or an international organisation communicated to Estonia on the basis of an international agreement, if such act does not comprise the necessary elements of an offence provided for in § 234 of this Code, is punishable by a pecuniary punishment or up to 5 years' imprisonment.

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

§ 242. Disclosure of state secrets through negligence

Disclosure or illegal communication of or provision of illegal access to information classified as a state secret or classified information of a foreign state or an international organisation communicated to Estonia on the basis of an international agreement, if committed through negligence, or loss of a data medium containing a state secret, is punishable by a pecuniary punishment or up to one year of imprisonment.

§ 243. Communication of internal information

Collection of information classified as internal information with the intention of communication thereof, or communication of such information to a foreign state, organisation of a foreign state, alien, or a person acting at the request of a foreign state, is punishable by up to 3 years' imprisonment.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

No special regulation has been established for the media. The law does not establish specifications regarding the so-called mass disclosure.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

Data from 2004:

Penal Code 232, 234, 243: there were no registered crimes.

Penal Code 241: 2 criminal proceedings have been started in 2004 (on 2 episodes).

Penal Code 242: 1 criminal proceeding started in 2004 and 2 in 2005 (total of 8 episodes).

None of the proceedings have yet reached a decision in court.

There is no data regarding criminal proceedings started according to the Criminal Code (in force before the Penal Code).

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

There is no such obligation under law – all issues concerning state secrets are regulated by the State Secrets Act.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

There are no special regulations concerning the media.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

There is no separate law in Estonia which would protect the journalists from sanctions if he/she refuses to disclose his/her sources. In this case it must be proceeded from § 45 of the Constitution of the Republic of Estonia. Right of expression is directly connected also with the principle of democracy, human integrity and depending on the context it may have connections with many other rights, e.g. right to privacy, right for secrecy of messages, right to information and right to petition.¹⁶

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

Estonia does not have sub-national divisions, all the above mentioned laws are national.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

¹⁶ OSCE/RFOM's note: Broadcasting Act, Passed 19 May 1994 (RT I 1994, 42, 680)

§ 7. Protection of source of information

(1) Broadcasters shall not disclose information concerning a person who provided information to them unless so requested by the person.

(2) Broadcasters are not required to disclose information which becomes known to them in their activities.

(3) In order to establish the truth, broadcasters are required to submit the data and information specified in subsections (1) and (2) of this section to courts on the bases and pursuant to the procedure prescribed by law.

(16.06.99 entered into force 24.07.99 - RT I 1999, 59, 613).

There are national laws (see above).

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

There are no such statistics unfortunately, however, it can be said that extremely seldom (if ever).

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

There is no specially regulated “protection of sources”. Upon disclosing information all parties must proceed from the State Secrets Act, Public Information Act, Personal Data Protection Act, Constitution (human and civil rights).

28. What are the penalties for refusing to reveal sources of information?

Penal Code foresees criminal penalty for refusing to testify (no special regulation regarding revealing of the sources).

Penal Code

§ 318. Refusal by witness, victim, translator or interpreter to perform duties

Unjustified refusal by a victim or witness to give testimony in a criminal or misdemeanour proceeding, or civil or administrative court proceeding, or unjustified refusal by a translator or interpreter to perform his or her duties is punishable by a pecuniary punishment or up to one year of imprisonment.

29. Are the journalists prohibited from revealing their source without the permission of the source?

No special regulation regarding media and sources (see above answers).

30. In the media, who is protected from disclosure of sources:

- **The journalist? The editor? The publisher?**
- **Freelance journalists or commentators?**

See above.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

See above.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

See above.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

The law does not foresee any exclusions or separate stipulations regarding searches connected with journalists or the media.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

No separate regulation regarding the media. The searches and secret surveillance of information passed through technical communication channels or other form of secret surveillance of information (listening or observing) is regulated in § 91 and 118 of the Criminal Proceedings Code.

Code of Criminal Procedure in English:

<http://www.legaltext.ee/text/en/X60027K4.htm>

§ 91. Search

(1) The objective of a search is to find an object to be confiscated or used as physical evidence, a document, thing or person necessary for the adjudication of a criminal matter, property to be seized for the purposes of compensation for damage caused by a criminal offence, or a body, or to apprehend a fugitive in a building, room, vehicle or enclosed area.

(2) A search shall be conducted on the basis of an order of a Prosecutor's Office or a court ruling. The search of a notary's office or advocate's law office shall be conducted at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling.

(3) In cases of urgency, an investigative body may conduct a search on the basis of an order of the investigative body without the permission of a Prosecutor's Office, but in such case the Prosecutor's Office shall be notified of the search within twenty-four hours and the Prosecutor's Office shall decide on the admissibility of the search.

(4) A search warrant shall set out:

- 1) the objective of the search;
- 2) the reasons for the search.

(5) A person may be searched without a search warrant:

- 1) in the event of detention of a suspect or arrest;
- 2) if there is reason to believe that the object to be found is concealed by the person at the place of the search.

(6) If a search is conducted, the search warrant shall be presented for examination to the person whose premises are to be searched or to his or her adult family member, or a representative of the legal person or the state or local government agency whose premises are to be searched, and he or she shall sign the warrant to that effect. In the absence of the appropriate person or representative, the representative of the local government shall be involved.

(7) A notary's office or an advocate's law office shall be searched in the presence of the notary or advocate. If the notary or advocate cannot be present at the search, the search shall be conducted in the presence of the person substituting for the notary or another advocate providing legal services through the same law office, or if this is not possible, any other notary or advocate.

(8) If a search is conducted, the person shall be asked to hand over the object specified in the search warrant or to show where the body is hidden or the fugitive is hiding. If the proposal is not complied with or if there is reason to believe that the person complied with the proposal only partly, a search shall be conducted.

§ 118. Wire tapping or covert observation of information transmitted through technical communication channels or other information

(1) Information obtained by wire-tapping or covert observation of messages or other information transmitted by the public telecommunications network shall be recorded and entered in the surveillance report.

(2) Information recorded upon wire-tapping or covert observation shall be entered in the surveillance report in so far as is necessary for the adjudication of the criminal matter.

(3) Information communicated by a person specified in § 72 of this Code which is subject to wire-tapping or covert observation shall not be used as evidence if such information contains facts which have become known to the person in his or her professional activities, unless the person has already given testimony with regard to the same facts or if the facts have been disclosed in any other manner.

Finland

Prepared by the Government of Finland

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

The article 12 of the Finnish constitution guarantees the right to access authorities' public documents (principle of publicity) to everybody. This right can be limited only by law and only when there are inevitable reasons to do this.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

The right to information as guaranteed by the constitution is nowadays implemented within the Act on the Openness of Government Activities, also known as Publicity Law (621/1999; unofficial translation to English can be found at <http://www.finlex.fi/en/laki/kaannokset/1999/en19990621.pdf>). The right to information has been in effect almost without exception since 1776. Therefore the right to information has been confirmed in several decisions issued by the Supreme Administrative Court (Constitutional Court does not exist in Finland).

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

The right to information is limited by the regulations pointed out in the very Publicity Law. These regulations define to what databases or documents the law is applied to (Publicity Law section 5). On the other hand the rules of secrecy and the regulations concerning the publishing date can be limiting factors.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

Like above and section 24 of the Publicity Law.

5. Are there other specific constitutional limits on access and dissemination of information?

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Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

Like above the Act on the Openness of Government Activities:
<http://www.finlex.fi/en/laki/kaannokset/1999/en19990621.pdf>

The homepage of the Ministry of Justice of Finland provides additional information:
<http://www.om.fi/Etusivu/Perussaannoksia/Julkisuuslaki?lang=en>

Act on the Exercise of Freedom of Expression in Mass Media (460/2003):
<http://www.finlex.fi/en/laki/kaannokset/2003/en20030460.pdf>

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

No. The right to access information is guaranteed to everybody.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

In principle, no. However, it might be easier for journalists to get information from the authorities' registers containing public information, since Personal Data Act does not limit the processing of the information for journalistic purposes. (Personal Data Act: <http://www.tietosuoja.fi/uploads/hopxtvf.HTM>)

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

It is not possible to provide statistics because requests of information and replies immediately given to these are not filed by the authorities.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

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11. Are there any limits in this law on access to, and publication of, information?

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12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

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RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

Publicity Law provides for the secrecy and classification of information. A decree issued by the virtue of the Publicity Law is being currently readjusted.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

The Act on the Openness of Government Activities provides for the secrecy of official documents, (Section 24, eg. Subsection 1:1, 2, 9).

Chapter 12 of the Penal Code of Finland concerns treason. Disclosing information classified as secret for reasons of national security constitutes an act subject to punishment, for example, for espionage (Section 5), aggravated espionage (6), disclosure of a national secret (Section 7), negligent disclosure of a national secret (Section 8) or treasonable conspiracy (Section 11).

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

The Act on the Openness of Government Activities provides mainly authorities.

Chapter 12 of the Penal Code applies to everybody.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related information* held by government bodies or those conducting public business? Please list what types of information are covered by this?

As regards the Penal Code, Section 5 of Chapter 40 concerning the breach and negligent breach of official secrecy applies to, in addition to public officials, persons tending to a public elected office, exercising public authority and employees of a public corporation (Chapter 40, Section 12: 1-2). Also, the Penal Code provides for secrecy offence and secrecy violation which apply to everybody (Chapter 38, Sections 1-2).

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

See answer 16.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

For each specific offence, the legal provisions concerned provide for applicable sanctions. The offences referred to in Section 5 of Chapter 40 of the Penal Code, are punishable by a fine or imprisonment for at most two years. In addition, a public official may be sentenced to dismissal for deliberately committing an offence. For committing an offence through negligence, one may be sentenced to a fine or six months of imprisonment at most. Committing a secrecy offence referred to in Section 1 of Chapter 38 of the Penal Code, is punishable by a fine or imprisonment for at most one year, and a secrecy violation by a fine (Section 2). More severe sanctions are provided for offences involving treason. The offence of aggravated espionage may even be punishable by a term for life, and the disclosure of a national secret by at most four years of imprisonment.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

Yes they do (Penal Code Chapter 38, Sections 1-2).

No there are not. But these cases can be taken into account when measuring the length of the sentence.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

There are only few precedents by the Supreme Court.

There is one case concerning a public official (KKO 2000:70). A, a former public official at the Ministry for Foreign Affairs, had submitted documents prepared by the European Union to a citizen of a foreign state, third party. Any damage done to the reputation, credibility and the prerequisites of Finland for cooperating with the member states of the European Union was deemed, specifically, to have been caused by his conduct in his position, not by the information contained in the document submitted. Therefore, the damage done to Finland's external relations by his conduct was not regarded as having resulted from an offence in terms of that referred to in Section 5 of Chapter 12 of the Penal Code.

The Supreme Court amended the judgment of the Court of Appeal insofar as the latter had considered that the damage caused by A's conduct had resulted from matters other than the issue referred to in Section 5 of Chapter 12 of the Penal Code having been disclosed to the foreign state. Therefore, the Supreme court, for his conduct, instead of sentencing A for espionage, sentenced him for disclosure of a national secret, breach of official secrecy or unauthorized disclosure of a document. What was more, the Supreme Court, while amending the Court of Appeal judgment for other items on grounds of the arguments mentioned, reduced A's overall conditional sentence of imprisonment to one year and two months.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

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22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

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PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

The right to the protection of sources has been specifically extended to cover mass media in all of its forms on an equal basis. According to Section 16 of the Act on the Exercise of Freedom of Expression in Mass Media, the publisher, broadcaster and the originator of a message provided to the public are entitled to maintain the confidentiality of the source of the information in the message. The publisher and broadcaster are entitled to maintain the confidentiality of the identity of the originator of the message. According to Section 24:2 of Chapter 17 of the Code of Judicial Procedure, the originator of a message provided to the public, the publisher or broadcaster referred to in the Act on the Exercise of Freedom of Expression in Mass Media may, as a witness, refuse to answer when asked who has provided the information in the message as well as decline to provide an answer to any question that cannot be answered without revealing the source. Anyone having received information concerning the same matters while being employed by the originator, publisher or broadcaster of the message is entitled to the same. See also Section 27 of the Criminal Investigations Act.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

Yes (Municipalities, Åland Islands).

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

A decision by the Supreme Court (2004:30) provides an example of the application of the principles concerning the protection of sources. The chief executive officer of a publishing company was heard as a witness in the preliminary investigations of a case concerning gross insult. The investigations arised the issue concerning CEO H's right to refuse to answer questions if answering them would make him reveal the name of the originator of a book published by the company or that of the provider of the information in it. In accordance with Section 16 of the Act on the Exercise of Freedom of Expression in Mass Media and Section 24:2 of Chapter 17 of the Code of Judicial Procedure, H was not obligated to disclose the identity of the originator of the book his company had published nor that of the source of the information. He was not obligated to answer any questions that could not have been answered without revealing the originator of the book or the source, either.

See also answer 23.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

One example is a decision by the Supreme Court (KKO 2004:30). See answer 25.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

The protection is not absolute. According to Section 24:4 of Chapter 17 of the Code of Judicial Procedure, when a case ... concerns an offence punishable by imprisonment for six years or more, or the attempt of or participation in such an offence, or information that has been given in violation of a duty of secrecy, subject to punishment under a separate provision, the person referred to in said paragraph may nonetheless be ordered to answer the question.

28. What are the penalties for refusing to reveal sources of information?

Chapter 17:37 of the Code of Judicial Procedure.

29. Are the journalists prohibited from revealing their source without the permission of the source?

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30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

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31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

-

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

-

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

-

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

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France

Prepared by the Government of France (unofficial translation from French by OSCE/RFOM)

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

No.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

-

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

-

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

-

5. Are there other specific constitutional limits on access and dissemination of information?

-

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

The right of access to information is guaranteed, access to administrative documents being specified in the provisions of the amended Law No. 78-753 of 17 July 1978 on various measures for improved relations between the civil service and the public and various arrangements of an administrative, social and fiscal nature (referred to hereinafter as Law of 1978).

This law entitles any person to obtain documents drafted or held by the State, municipalities or other entities under public law or by entities under private law charged with managing a public service in their capacity as such. It also contains the parallel obligation that these authorities must provide the administrative documents held by them to persons who request them under legally determined conditions. This right and obligation are subject to certain conditions (see reply to question 16).

The Law of 1978 also charges an independent administrative authority, the Committee of Access to Administrative Documents (CADA), with the task of ensuring compliance with the freedom of access to administrative documents and public archives. A person who is refused access to an administrative document may refer to CADA to adjudicate on this refusal. The referral for adjudication by CADA is a mandatory prerequisite for recourse to the courts.

There are a number of texts providing for special arrangements for certain types of administrative documents, such as the list of persons subject to income tax or business tax by municipality, which must be made available to taxpayers

within that municipality by the tax office (article L.111 of the Code of Fiscal Procedure), or the budgets and administrative accounts of municipalities and their public service institutions, and other municipal service documents (access to which is governed by article L.212-26 of the General Territorial Authority Code, which effectively guarantees a right equivalent to that provided by the Law of 1978).

Link: text of the Law of 1978

<http://www.legifrance.gouv.fr/WAspad/Ajour?nor=&num=78-753&ind=1&laPage=1&demande=ajour>

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

The right to access to administrative documents is available to all natural persons or legal entities regardless of their nationality.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

No, the Law of 1978 treats all entitlement holders equally without regard for their profession.

In accordance with Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information, all public information covered by a right of access must be capable of being freely re-used. Under article 10 of the Law of 1978 information contained in documents drafted or kept by administrations subject to a right of access may be used by any person who wishes to do so for purposes other than those of the public service for whose needs the documents were drafted or are kept.

Article 17 of this Law states that the administrations that produce or keep public information must make available to users a list of the principal documents in which this information is contained. They are then accessible to everyone without consideration of the purpose for which they are to be used.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

This information is not available. First, the administrations to whom requests are addressed for access to administrative documents drafted or kept by them do not keep such statistics. Second, although CADA keeps certain general statistics on persons referring to it for adjudication, it does not disclose either the identity or the precise professional activity of such persons. The maximum precision available is provided in the table below taken from the last annual report of CADA.

Referrals by type of person making the request						
Year	Natural persons		Private legal entities		Public entities	
	Number	%	Number	%	Number	%
2001	2 936	67.8	1 329	30.7	63	1.5
2002	3 114	69.3	1 324	29.5	56	1.2
2003	3 229	72.4	1 197	26.8	35	0.8
2004	3 134	64.7	1 681	34.7	30	0.6
2005	3 311	74.7	1 066	24.1	55	1.2

Source: CADA

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

No.

11. Are there any limits in this law on access to, and publication of, information?

In accordance with Directive 2003/98/EC mentioned earlier, article 12 of the Law of 1978 states that documents drafted or kept by public bodies in performance of a public service of an industrial or commercial nature and documents to which third parties have intellectual property rights are not regarded as freely re-usable public information.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

National defence secrets are defined in article 413-9 of the Penal Code. This article provides for levels of classification of all documents with the quality of national defence secrets (“protected information and media”) and which are subject to prior authorization. These levels are defined in Decree No. 98-608 of 17 July 1998 on the protection of national defence secrets (“top secret”, “highly confidential” and “confidential”).

French law does not provide for automatic declassification of protected information and media after a defined period. By virtue of the principle of procedural consistency (“parallélisme des formes”), only the authority or administration competent to decide on the classification of information can declassify it.

The assertion of this exclusive competence is, however, qualified. The National Defence Code (article L. 2312-1 et seq.) authorizes an independent administrative authority, the Consultative Committee on National Defence Confidentiality (CCSDN), which is made up of three judges and two parliamentarians, to advise on the declassification of protected information and media. In the framework of an action brought before it, a French court may thus request the declassification and communication by the competent administration of information protected as a national defence secret. This administration is required to refer to the CCSDN for consultation on this request.

Links:

Penal Code

<http://www.legifrance.gouv.fr/WAspad/RechercheSimplePartieCode?commun=CPENAL&code=CPENALLL.rcv>

National Defence Code

<http://www.legifrance.gouv.fr/WAspad/RechercheSimplePartieCode?commun=&code=CDAFENSL.rcv>

Decree No. 98-608 of 17 July 1998 as amended

<http://www.legifrance.gouv.fr/WAspad/Ajour?nor=DEFD9801641D&num=98-608&ind=1&laPage=1&demande=ajour>

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

Article 413-11 of the Penal Code calls for a penalty of five years’ imprisonment and a fine of 75 000 euros for any unauthorized person who acquires possession of any information or medium which is in the nature of a national defence secret, who destroys, removes or duplicates in any manner any such information or medium or who brings them to the knowledge of the public or of an unauthorized person.

Article 413-10 of the Penal Code calls for a penalty of seven years’ imprisonment and a fine of 100 000 euros for the destruction, misappropriation, theft or duplication, as well as the communication to the public or to an unauthorized person, by any person holding confidential information by virtue of his position or occupation or a permanent or temporary mandate, of any such information or media. The same penalties apply to the holder who permits the destruction, misappropriation, removal, duplication or disclosure of protected information or media.

Finally, article 413-12 of the Penal Code calls for the same penalties for an attempt to commit the offences described in articles 413-10 et 413-11.

Link: Penal Code

<http://www.legifrance.gouv.fr/WAspad/RechercheSimplePartieCode?commun=CPENAL&code=CPENALLL.rcv>

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

See reply to the previous questions.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this?

The Law of 1978 itself defines the limitations to the right of access to administrative documents and the corresponding obligation of administrations to communicate administrative documents in its possession to requesting persons (see reply to question 6 above).

Article 6 of this Law thus states that:

administrative documents other than national defence secrets whose consultation would be prejudicial to the secrecy of the deliberations of the Government and of the relevant executive authorities, the conduct of France's foreign policy, State security, public safety and the safety of individuals, the currency and public credit, the conduct of procedures before the courts or of operations prior to such procedures unless authorized by the competent authority, investigations by the competent bodies of tax and customs offences, or generally secrets protected by the law may not be communicated;

documents whose communication could be prejudicial to personal privacy and the secrecy of personal files, medical, commercial or industrial secrecy, that contain an appreciation or a value judgement of a named or easily identifiable natural person or that reveal the behaviour of a person, if the disclosure of this behaviour could be prejudicial to that person, may be communicated only to the person principally involved.

This article also adds that if the request refers to an administrative document containing references that are not communicable for the reasons listed above but which can be concealed or removed, the document is to be communicated to the persons requesting after these references have been concealed or removed.

Moreover, if a document is not accessible by virtue of the provisions of the Law of 17 July 1978 or of any other special law, it becomes accessible by virtue of articles L 213-1 and L 213-2 of the Heritage Code after a period of between 30 and 150 years depending on the nature of the information it contains. Under article L 213-3, however, exceptions to this rule may be made by the archive authorities.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

The restrictions of article 6 of the Law of 1978 apply only to the administrations drafting or holding the administrative documents concerned.

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

Article 226-13 of the Penal Code provides for a penalty of one year's imprisonment and a fine of 15 000 euros for the disclosure of secret information by a person entrusted with it by virtue of his position or profession, function or temporary mandate.

In the course of his professional activities, a journalist may have reason to obtain and disseminate not only information but also confidential documents. These documents may be provided by persons who have obtained them illegally by theft or by breach of secrecy. Although the journalist is not subject to the investigation secrecy of article 11 of the Code of Criminal Procedure as he does not participate in the investigation procedure, he may be prosecuted for receiving if he possesses or distributes secret documents subject to criminal penalties.

The offence of receiving stolen goods or objects can apply to journalists with regard to documents (case files, photographs) taken from an investigation file. Journalists are subject to criminal penalties under common law if they disseminate a document obtained by way of a criminal offence of which they cannot but be aware, such as theft or fraud or, more especially, violation of investigation secrecy¹⁷.

By contrast, the Court of Cassation has explicitly stated that information, regardless of its nature or origins, is not an “object” and is not therefore subject to the provisions of article 321-1 penalizing the offence of receiving. The use of information, except for probative documents, is not therefore subject to prosecution for receiving. On the basis of this case law, the journalist may legally use “leaked” court files, whatever the source.

Moreover, article 67 of the Law of 6 January 1978 on data processing, data files and individual liberties calls for an exception to the rules for prohibition or authorisation by the French data protection authority (Commission nationale de l’informatique et des libertés – CNIL) for the processing of information concerning offences, convictions or security measures and the rules prohibiting the processing of sensitive data (race, age, health, religion, political or trade union membership) for journalistic purposes.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

No.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

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PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society’s right to know about issues of public interest might override the government’s classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government’s classification concerns?

No.

22. In practice, does the judiciary consider the public’s right to know as being overriding or equal to the government’s classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

-

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

French law provides for certain criminal procedure arrangements protecting journalistic sources in France.

Article 109 of the Code of Criminal Procedure states that “any person summoned to be heard in the capacity of a witness is obliged to appear, to swear an oath, and to make a statement” and “any journalist heard as a witness in respect of information collected in the course of his activities is free not to disclose its origin”.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

¹⁷ In a decision of 3 April 1995, the Court of Cassation (*Fressoz and Roire vs. Calvet*) ruled that the violation of the professional secrecy to which tax officers are subject through the partial reproduction of a fax copy of three tax statements for Jacques Calvet by the “Canard Enchaîné” constituted an offence of handling stolen goods.

The legal provisions cited above apply without exception to the entire national territory including overseas departments and territories.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

-

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

Information is not available.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

The limits of this protection are defined in article 109 of the Code of Criminal Procedure (see reply to question 23).

28. What are the penalties for refusing to reveal sources of information?

Article 435-15-1 of the Penal Code calls for a fine of 3 750 euros for failure without excuse or justification by a person summoned to be heard to appear, take an oath or make a statement before an investigating judge or police officer acting on instructions.

29. Are the journalists prohibited from revealing their source without the permission of the source?

No, this question relates to the professional code of conduct, which is not sanctioned by the law.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

-

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

-

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

Yes. Article 109 is applicable to all journalists employed by or working free-lance for a written medium, audiovisual communication service (radio, television), online service (Internet site) or press agency, be it as a reporter, photographer or commentator.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

Article 56-2 of the Code of Criminal Procedure states that a search of the premises of a press or audiovisual communications enterprise may be made only by a judge or prosecutor, who must ensure that such investigations do not violate the freedom of exercise of the profession of journalist and do not unjustifiably obstruct or delay the distribution of information.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

No.

Georgia

Prepared by the Georgian Young Lawyers' Association

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Articles 24, 37, and 41 of the Georgian Constitution promulgate the right of access to information. Article 24 envisages the right of each person to freely receive and disseminate information, express and disseminate his/her opinions in oral, written, or other form. It fully corresponds to Article 10 of the European Convention on Human Rights and Freedoms. The right of access to information is not absolute, it can be limited by the law under conditions necessary in a democratic society for ensuring national or public security, territorial integrity, preventing crime, protecting the rights and dignity of other people, preventing the spread of information recognized as confidential, and for ensuring the independence and impartiality of justice.

Article 24 recognizes the mass media as free and prohibits censorship. Under the Constitution of Georgia, the state or individual persons **do not have the authority** to monopolize the mass media or means of disseminating information.

Separate mention should be made of Article 37, Clause 4, according to which a person has the right to obtain full, objective, and timely information on the state of the environment in which he/she lives and work conditions.

Under Article 41 of the Georgian Constitution, **every citizen of Georgia** enjoys the right of access to official documents of government agencies. The right of access to official documents is limited if they contain a state, professional, or commercial secret. Clause 2 of Article 41 prohibits access to information related to the state of a person's health, his/her financial or other private matters, without consent of the said person. Exceptions are cases set forth by the law when this is necessary for ensuring national or public security, protecting the health, or observing other rights and freedoms of other people.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

The Constitutional Court has reviewed cases concerning the right of access to official documents. According to the court's interpretation, whereas Article 24 of the Georgian Constitution imposes a negative obligation on the state not to interfere in the dissemination and receipt of information, Article 41, in addition to the negative, also imposes a positive obligation, in accordance with which the state is obliged to issue official documents. The court also notes that the state may limit this right only if such is envisaged by the law.

The Supreme and appeal courts have reviewed cases concerning both freedom of speech and access to official documents. The practice of the general courts on this question is non-uniform.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

In the first question, the articles of the Constitution of Georgia were mentioned which envisage limits on access to information. Under the Constitution, limits are possible if:

- they are envisaged by the law;
- necessary in a democratic society;

- pursue a legitimate interest to ensure national or public security, territorial integrity, prevent crime, protect the rights and dignity of other people, prevent the dissemination of information recognized as confidential, or ensure the independence and impartiality of justice.

As for the right of access to official documents, it can be limited in the following cases, if the information contains:

- a state;
- professional;
- or commercial secret.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

The constitutional limits according to which information may be classified were set forth above. Classification (the procedure and so on) of information is regulated by Georgian legislation: Law on State Secrets, General Administrative Code of Georgia, Criminal Procedural Code of Georgia, and others.

5. Are there other specific constitutional limits on access and dissemination of information?

There are no other special constitutional limits on access and dissemination of information.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

The General Administrative Code of Georgia, more precisely, its third chapter, applies to freedom of information.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

The General Administrative Code of Georgia does not envisage any limits on who can use this law, but **citizens of Georgia**, not everyone, can take advantage of the limits set forth by the Constitution of Georgia on the right of access to official documents.

8. Does the FOI law give journalists or media organizations a greater right of access to information than citizens?

The General Administrative Code of Georgia does not give journalists or media organizations a greater right of access to information than ordinary citizens.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

We do not have such statistics.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

The Georgian Law on Broadcasting and the Georgian Law on Freedom of Speech and Expression do not give journalists or media organizations additional rights of access to information.

11. Are there any limits in this law on access to, and publication of, information?

The Georgian Law on Broadcasting and the Georgian Law on Freedom of Speech and Expression do not envisage any limits on access to and publication of information.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

Since Georgian legislation does not give journalists or media organizations additional rights to access to information, there are no such statistics.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- **Different categories in terms of level of confidentiality?**
- **The period of classification and declassification?**

The Law on State Secrets defines the list of information that may be considered as a state secret, differentiates the degree of sensitivity, and sets forth the procedure for classifying information. In addition to the Law on State Secrets, the list of information constituting a state secret is set forth by a regulatory act – Decree of the President of Georgia on Approving the List of Information Constituting a State Secret. As a state secret, information may be classified for 5, 10, and 20 years, the period of classification depends on the degree of secrecy of the information (extremely sensitive, top secret, and secret), but even in the event of extremely sensitive information, the period of classification may not exceed 20 years.

The General Administrative Code of Georgia envisages which information may be recognized as a commercial, professional, or personal secret, and set forth the procedure for classifying this information. According to the code, professional and commercial information is classified for an indefinite period. Information containing a commercial secret should be declared open if it no longer represents the value for which was previously classified. A personal secret is classified throughout the life of the person in question, unless otherwise stipulated by the law.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

According to the Law on State Secrets, the state inspection agency for protecting state secrets is engaged in organizational issues regarding the classification of information by the government for the purpose of national security.

According to the Criminal Procedural Code of Georgia, a decision on disclosing information regarding preliminary investigation is made by the investigator or prosecutor, etc.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

Prohibitions on disclosing secret information apply to officials and government employees as a whole. As for other members of the public, including journalists, prohibitions on disclosing classified information do not apply to them and, consequently, they are not held liable under the law for disseminating such information. Persons are held liable only for disclosing a secret they were entrusted with protecting in accordance with their job or a civilian transaction and the disclosure of which creates express, immediate, and material danger to welfare protected by the law.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this?

The Law of Georgia on Freedom of Speech and Expression sets forth that persons are held liable only for disclosing a secret they were entrusted with protecting in accordance with their job or a civilian transaction and the disclosure of which creates express, immediate, and material danger to welfare protected by the law, but they are released from liability if the disclosure of the secret was made with the purpose of protecting the legitimate interests of society and the ensuing good from this action is greater than the damage done. Such information may be a commercial or personal secret.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

The prohibition on disclosing classified official documents held by public institutions only applies to officials.

Legal Sanctions

18. What are the civil or criminal penalties for unauthorized disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

Penalties for unauthorized disclosure, possession or publication of classified information are envisaged by the Criminal Code; penalties are stipulated for:

- Unauthorized disclosure of personal or family secrets;
- Unauthorized bugging and recording of telephone conversations;
- Unauthorized gathering and unauthorized disclosure of commercial and banking secrets;
- Disclosure and transfer of state secrets.

19. Do these penalties apply to the media for unauthorized disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

Criminal punishment does not apply to journalists. As for civil liability, if a person who believes his/her legitimate rights have been infringed upon appeals to the court and, moreover, succeeds in proving that his/her legitimate rights were infringed upon, the court may pass a resolution on compensation for the moral damage, but even in this case compensation of moral damage is to be paid by the owner of the information, and not the journalist.

20. Have there any cases been brought in the last five years against:

- Officials in charge of the leaked classified information?
- Members of the public?
- Journalists or media organizations?

Please describe the outcomes, including the date of the case, the defendants and the charges.

No such cases have been brought to court in the past five years.

PROTECTION OF PUBLICATIONS IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

During dissemination by the mass media of classified information, society's right to obtain information overrides the government's classification of such information. This is not unequivocally envisaged by the law, but the fact that those government officials who are in line of duty obliged to protect classified information are held liable for disclosing such classified information, and the mass media, as mentioned above, are not held liable for disseminating classified information, makes it possible to interpret this legal rule in favour of public interest. In passing a decision affecting the right of access to information, the judiciary must evaluate each individual case to assess which interest should prevail. The Law of Georgia on Freedom of Speech and Expression sets forth: in considering a question of assigning the status of public attention or curiosity, any reasonable doubt, which is not confirmed in due legal order, should be decided in favour of assigning the phenomenon the status of public attention. What is more, according to the law, any limitation of the rights recognized and protected by the Law of Georgia on Freedom of Speech and Expression may be imposed only if this is envisaged explicitly, transparently, and purposefully by the law and the good protected by the limitation is greater than the harm caused by it. The law limiting the recognized and protected rights should:

- (a) be directly aimed at carrying out legitimate goals;
- (b) critically necessary for the existence of a democratic society;
- (c) non-discriminatory;
- (d) proportionally limiting.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorized release of information that was of legitimate public interest?

Judicial practice in Georgia has confirmed that in most cases, society's right to know may override the government's classification concerns (it should be noted that this applies to information already published). But if court proceedings concern access to classified information, they are equal. Such practice does not exist, since no penalties have been imposed on anyone for disclosing classified information.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

The Law of Georgia on Freedom of Speech and Expression protects journalists' sources of information; according to this law, a journalist is not obliged to disclose the sources of information.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

Georgia is not a federal state.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

As mentioned above, journalists' sources of information are protected by the law.

26. How many times in the last five years has a journalist or media organization been required by a court or official to disclose their sources of information under this law or any other law?

There have been no court decisions requiring journalists to disclose their sources of information.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

Sources of journalists' information are protected by absolute privilege and no one has the authority to demand disclosure of such a source. During court hearings of a dispute on restrictions of freedom of speech, the defendant may not be required to reveal the source of confidential information. Confidential information may only be revealed with the consent of the owner of this information or under a justified court decision in cases stipulated by the Law on Freedom of Speech and Expression.

28. What are the penalties for refusing to reveal sources of information?

Since the Law on Freedom of Speech and Expression protects sources of journalists' information by absolute privilege, penalties for refusing to reveal sources of information do not exist.

29. Are the journalists prohibited from revealing their source without the permission of the source?

The law prohibits journalists from revealing their source without the permission of the source.

30. In the media, who is protected from disclosure of sources:

- **The journalist? The editor? The publisher?**
- **Freelance journalists or commentators?**

The Law on Freedom of Speech and Expression sets forth the general term **professional secret**, according to which information entrusted to a member of parliament, doctor, journalist, human rights activist or defence lawyer in line with their professional activity, as well as information of professional value, which became known to the person on the condition that it be kept confidential in accordance with his/her professional duties or the disclosure of which could damage the person's professional reputation is protected by absolute privilege.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

The abovementioned protection applies to those working for the mass media.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

The abovementioned protection applies to different types of mass media, as well as the Internet, journalists, and commentators, but it should be noted that there are no special regulations in Georgian legislation for regulating the placement of information on the Internet. At this point in time, such a problem exists in every country.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

Georgian legislation does not envisage any prohibitions (apart from the general rules established by the Criminal Procedural Code) for searching facilities and property belonging to the mass media or journalists.

34. Are third parties who act for journalists or media organizations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

Professional secrets apply to third parties, as for the interception of such contacts, this is a criminally punishable act.

Relevant legislation in English can be found at <http://www.lexadin.nl/wlg/legis/nofr/oeur/lxwegeo.htm>

Germany

Prepared by the Government of Germany (unofficial translation from German by OSCE/RFOM)

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Article 5 paragraph 1 of the Basic Law (GG) protects the right to obtain information without hindrance from generally accessible sources. A generally accessible information source is one that is technically appropriate and designed to provide information to the general public, i.e. to a non-specified group of persons. The information managed by the state authorities, e.g. official files, is not normally regarded as generally accessible sources as defined in Article 5 paragraph 1 sentence 1 above. If the state makes information managed by it generally accessible, e.g. in databases, archives, documentation or museums, such information then comes under the right to information in Article 5 paragraph 1 above.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

The definition given above that generally accessible sources are those that are technically appropriate and designed to provide information to the general public, i.e. to a non-specified group of persons, is based on the corresponding consistent practice of the Federal Constitutional Court. On this basis the Federal Constitutional Court also decided that official files are not normally regarded as generally accessible sources as defined in Article 5 paragraph 1 sentence 1 of the Basic Law (BVerfG NJW 1986, 1243).

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

As mentioned in the answer to Question 1, freedom of information is restricted to generally accessible sources. Exceptions for particularly sensitive information are not provided for. It is for the possessor of the information to determine its sensitivity and to decide to what extent it should be made accessible to the public.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security?)

According to Article 5 paragraph 2 of the Basic Law, the limits to freedom of information are set by the provision of general laws, the provisions for the protection of young persons and the right to personal honour. These limits are of significance more with regard to access to other types of information than that provided by the Government, e.g. access to media that are harmful to young persons, since the state can in any case determine the extent to which Government information should be made publicly accessible.

5. Are there other specific constitutional limits on access and dissemination of information?

No. However, limits are always set on the exercise of a freedom protected by the Basic Law – freedom of information or freedom of the press, for example – by virtue of the fundamental rights of other individuals or other constitutional principles.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

a) Federal level

Yes. The Law on the Control of Access to Federal Information (IFG) came into force on 1 January 2006 (Federal Law Gazette (BGBl.) I p. 2722).

The text can be seen at: <http://bundesrecht.juris.de/bundesrecht/ifg/gesamt.pdf>

b) State level

Laws on freedom of information have existed for some time in the following federal states:

Brandenburg, Law on Insight into Documents and Access to Information (AIG) of 10 March 1998.

The text can be seen at: <http://www.datenschutz-berlin.de/recht/bbg/rv/allg/aig.htm>

Berlin, Law on Promotion of Freedom of Information in the State of Berlin of 15 October 1999.

The text can be seen at: www.informationsfreiheit.de/info_berlin/gesetze/ifg_01.htm

Schleswig-Holstein, Law on Freedom of Access to Information for the State of Schleswig-Holstein of 9 February 2000.

The text can be seen at: www.datenschutzzentrum.de/material/recht/infofrei/infofrei.htm

North Rhine Westphalia, Law on Freedom of Access to Information for the State of North Rhine Westphalia of 27 November 2001.

The text can be seen at: www.im.nrw.de/bue/doks/ifg.pdf

Hamburg, Hamburg Freedom of Information Law (HmbIFG) of 11 April 2006

The text can be seen at:

www.bfdi.bund.de/cln_029/nm_672870/SharedDocs/IFG/IFGLandesgesetze/HamburgischesIFG.html

Bremen, Bremen Freedom of Information Law (BremIFG) of 16 May 2006

The text can be seen at: www.informationsfreiheit-bremen.de/pdf/ifg.pdf

Mecklenburg-Vorpommern, Freedom of Information Law (IFG M-V) of 10 July 2006

The text can be seen at: www.lfd.m-v.de/content/ges_ver/ifg/ifgmV/ifgmV.html

Saarland, Saarland Freedom of Information Law (SIFG) of 12 July 2006

The text can be seen at: www.lfdi.saarland.de/ifg-internet/index.htm

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc.)?

No. In principle **anyone** may gain access to official information from public federal offices (e.g. ministries, Federal Labour Agency, German Pension Insurance, federal health insurance and accident insurance agencies under public law). This derives from Section 1 paragraph 1 sentence 1 of the IFG, which states: *“Every person shall be entitled to access to official information from agencies of the Federal Government under the terms of this Law.”*

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

No.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

It is not possible to answer this question, since no separate statistics are kept on applications by journalists and media organizations.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

The individual states have competence for the press in Germany. The regulations governing the press are therefore to be found in the individual state press laws. According to the Basic Law the Federal Government is entitled to pass framework legislation regarding the press, but has not to date availed itself of this right. There is therefore no federal press or media legislation at present.

The right of access to information by the press is regulated in the press legislation of the individual states. For example:

Section 4 paragraph 1 Bavaria Press Law

The press shall have the right to information from official agencies. This right may be exercised only by journalists or other suitable identified employees of newspapers or magazines.

Section 6 paragraph 1 Rhineland Palatinate Press Law

The authorities shall provide the media with information to enable them to fulfil their obligation to the public.

Section 4 paragraph 1 Baden-Württemberg Press Law

The authorities shall provide representatives of the press with information to enable them to fulfil their obligation to the public.

Section 4 paragraph 1 Saxony Press Law

All authorities shall provide representatives of the press and broadcasting identified as such with information to enable them to fulfil their obligations to the public unless specified to the contrary in this Law or in general legal provisions. The right to information may be asserted only with respect to the head of the official agency or a person delegated by him/her.

See also Section 4 paragraph 1 Berlin Press Law, Section 5 paragraph 1 Brandenburg Press law, Section 4 paragraph 1 Bremen Press Law, Section 4 paragraph 1 Hamburg Press law, Section 3 paragraph 1 Hesse Law on Freedom and Rights of the Press, Section 4 paragraph 1 and 2 Mecklenburg-Vorpommern State Press Law, Section 4 paragraph 1 Lower Saxony Press Law, Section 4 paragraph 1 Press Law of the State of North Rhine Westphalia, Section 5 paragraph 1 Saarland Media Law, Section 4 paragraph 1 Press Law of the State of Saxony Anhalt, Section 4 paragraph 1 Schleswig Holstein State Press Law and Section 4 paragraph 1 Thuringia Press Law.

The 16 state press laws, which all contain similar provisions, are listed at:

<http://www.presserecht.de/gesetze.html>

11. Are there any limits in this law on access to, and publication of, information?

Yes, the state press laws contain certain restrictions on the right to information, but do not contain any restrictions regarding the publication of information once it has been provided.

Section 4 paragraph 2 Bavaria State Press Law

The right to information may be asserted only with respect to the head of the department or a person delegated by him/her. The information may be refused only if it is subject to confidentiality in accordance with legislation governing public officials or other legal provisions.

Section 8 paragraph 2 Rhineland Palatinate State Media Law

Information may be refused if

1. the due performance of pending proceedings could be frustrated, aggravated, delayed or endangered,
2. it conflicts with secrecy regulations,
3. a greater public or protection-worthy private interest would be violated, or
4. the scope exceeds the acceptable amount.

Section 4 paragraph 2 Baden-Württemberg Press Law

Information may be refused if

1. the due performance of pending proceedings could be frustrated, aggravated, delayed or endangered,
2. it conflicts with secrecy regulations,
3. a greater public or protection-worthy private interest would be violated, or
4. the scope exceeds the acceptable amount.

Section 4 paragraph 2 Saxony Press Law

Information may be refused if and in so far as

1. it conflicts with secrecy or personal protection regulations,
2. the due performance of pending proceedings could be frustrated, aggravated, delayed or endangered,
3. a greater public or protection-worthy private interest would be violated, or
4. the scope exceeds the acceptable amount.

According to Section 3 paragraph 2 of the Hesse Press Law, authorities may refuse to impart information only:

1. in so far as the due performance of criminal or disciplinary proceedings could be frustrated, aggravated, delayed or endangered,
2. in so far as the request is for information on the personal affairs of individuals for the public disclosure of which there is no justified interest, and

3. in so far as measures in the public interest could be frustrated, aggravated, delayed or endangered as a result of their premature public discussion.

See also Section 4 paragraph 2 Berlin Press Law, Section 5 paragraph 2 Press Law of the State of Brandenburg, Section 4 paragraph 2 Bremen Press Law, Section 4 paragraph 2 Hamburg Press Law, Section 3 paragraph 1 sentence 2 Hesse Law on Freedom and Rights of the Press, Section 4 paragraph 3 State Press Law of Mecklenburg-Vorpommern, Section 4 paragraph 2 Lower Saxony Press Law, Section 4 paragraph 2 Press Law for the State of North Rhine Westphalia, Section 5 paragraph 2 Saarland Media Law, Section 4 paragraph 2 Press Law of the State of Saxony Anhalt, Section 4 paragraph 2 Schleswig Holstein State Press Law and Section 4 paragraph 2 Thuringia Press Law.

The 16 state press laws, which all contain similar provisions, are listed at:
<http://www.presserecht.de/gesetze.html>

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

No statistics are available on the use made of the federal state laws.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

A) Secrecy classifications

Yes. The classification of state and official secrets is governed by the following criteria:

1. Instructions on State and Official Secrets for Federal Authorities (VSA)

The VSA is a General Administrative Regulation relating to federal affairs issued by the Federal Ministry of the Interior. It is intended in accordance with Section 35 of the Security Verification Law (SÜG) for federal authorities and federal agencies under public law dealing with state and official secrets and thus required to take measures to protect this information. It is also intended for persons who have access to state and official secrets or who perform an activity in which they could access state and official secrets and who are thus required to observe certain precautionary measures. Corresponding regulations exist in the federal states.

Section 2 VSA defines state and official secrets with reference to Section 4 paragraph 1 SÜG.

Section 3 VSA defines the various confidentiality classifications with reference to Section 4 paragraph 2 SÜG.

According to Section 8 VSA, the issuing agency decides on the need for classification of state and official secrets and the degree of confidentiality.

Instructions on state and official secrets also exist at the state level. See, for example, the instructions for the State of Lower Saxony at: http://cdl.niedersachsen.de/blob/images/C4262954_L20.pdf or North Rhine Westphalia at: <http://www.im.nrw.de/sch/seiten/vs/gesetze/vsa.htm>.

2. Security Verification Law (SÜG)

The “Law on Provisions and the Procedure for Security Verification by the Federal Government”, or Security Verification Act (SÜG), regulates the provisions and procedure for verifying the security of persons about to perform certain types of sensitive security-related activities (security verification) or those that already do so (repeat verification).

Section 4 SÜG also contains a definition of state and official secrets:

“(…) facts, objects or knowledge, irrespective of their nature, whose confidentiality is in the public interest. The level of confidentiality is classified directly or indirectly by an official body (classification)”

The individual classifications are defined in Section 4 paragraph 2 SÜV:

- TOP SECRET, if knowledge by unauthorized persons could jeopardize the existence or vital interests of the Federal Republic of Germany or its States,
- SECRET, if knowledge by unauthorized persons could seriously damage the security or interests of the Federal Republic of Germany or its States,
- CONFIDENTIAL if knowledge by unauthorized persons could damage the interests of the Federal Republic of Germany or its States,
- RESTRICTED if knowledge by unauthorized persons could be disadvantageous to the interests of the Federal Republic of Germany or its States.

The text of the SÜG can be found at: http://bundesrecht.juris.de/s_g/index.html

3. Confidentiality Regulation of the German Bundestag (BTGO) and Confidentiality Regulation of the German Bundesrat

Special regulations for the German Bundestag and Bundesrat can also be found in the Confidentiality Regulation of the German Bundestag (BTGO) (Annex 3 to the Rules of Procedure of the German Bundestag). The degrees of confidentiality are listed in Section 2 BTGO. The complete text of the Regulation can be found at:

http://www.gesetze-im-internet.de/bundesrecht/btgo1980anl_3/gesamt.pdf

The corresponding regulation for the Bundesrat is the Confidentiality Regulation of the German Bundesrat. The degree of confidentiality are listed in Section 3. The complete text can be found at:

http://www.bundesrat.de/cln_050/nn_9720/DE/struktur/recht/geheimschutz/geheimschutz-node.html_nnn=true#doc41738bodyText3

4. State secret as defined in Section 93 of the Penal Code (StGB)

A criminal definition of a state secret is given in Section 93 StGB:

Section 93 StGB

- (1) State secrets are facts, objects or knowledge that are only accessible to a limited category of persons and must be kept secret from foreign powers in order to avert a danger of serious prejudice to the external security of the Federal Republic of Germany.
- (2) Facts that constitute violations of the independent, democratic constitutional order or of international arms control agreements by virtue of having been kept secret from the treaty partners of the Federal Republic of Germany are not state secrets.

7. Confidentiality regulations are also to be found in:

- Section 30 Tax Code (tax secrecy), the text of which can be found at: <http://www.datenschutz-berlin.de/recht/de/rv/fin/ao/teil1.htm>
- Section 32 Deutsche Bundesbank Law (professional discretion), the text of which can be found at: <http://www.gesetze-im-internet.de/bundesrecht/bbankg/gesamt.pdf>
- Section 9 Banking Law (professional discretion), the text of which can be found at: <http://www.bafin.de/gesetze/kwg.htm#p9>
- Section 6 paragraph 1 Federal Minister Law, the text of which can be found at: <http://bundesrecht.juris.de/bundesrecht/bming/gesamt.pdf>
- Section 49 paragraph 1 Member of Parliament Law, the text of which can be found at: <http://www.bundestag.de/parlament/funktion/gesetze/abggges.pdf>

B) The period of classification and declassification

1. Declassification according to the VSA

According to Section 9 paragraph 1 sentence 1 VSA the issuing agency may change or cancel the classified status of classified material as soon as the reason for its classification has changed or become inapplicable. According to Section 9 paragraph 3:

The classified material is to be declassified after 30 years unless a shorter or longer period is specified for it. The time limit starts on 1 January of the year following the classification and remains in force if the classification is changed. The following applies for time limits in excess of 30 years:

- 1) The time limit may be extended by a maximum of 30 years. The extension should only be used if necessary and the reasons are to be stated in writing on the classified material or an annex thereto.
- 2) An extension of the time limit may be ordered only for an individual piece of classified material or globally for classified material referring to a particular area. It requires the approval of the highest competent federal authority.
- 3) An indication of the extended time limit must be provided on the first page of the draft classified material and on all copies thereof.
- 4) An extension of the initial time limit is to be treated like a change as described in paragraph 1. If the classified material is in the secret archive of the Federal Archive, the Federal Archive is also to be informed accordingly.

According to Section 9 paragraph 5 VSA, paragraph 3 does not apply to classifications by foreign and interstate authorities. Their classification can be changed or cancelled only by the issuing agency unless interstate agreements provide for a different procedure.

According to Section 28 VSA classified material that is no longer needed and that is not transferred to the Federal Archive is to be destroyed so that the contents cannot be identified or reconstituted. TOP SECRET, SECRET and CONFIDENTIAL classified material is to be destroyed by the administrator of classified material only on the instruction of an authorized agent and in the presence of suitable entitled witnesses (dual control principle). The machines used for destruction must be approved by the Federal Office for Security in Information Technology.

The classified material instructions for the states contain similar regulations.

2. Declassification according to the BTGO

Classified information can also be declassified according to the BTGO.

Section 3 BTGO – Selection and modification of secrecy classification states:

- (1) Security classifications are to be used only when strictly necessary. Classified material should not be given a higher classification than its contents warrant.
- (2) The level of classification is determined by the issuing agency, which shall notify the recipient in writing of changes in the level or of declassification of the classified material.
- (3) The issuing agencies in the meaning of paragraph 2 for classified material within the Bundestag are
 - a) the Speaker
 - b) the committee chairpersons
 - c) other agencies authorized by the Speaker.

Section 9 BTGO concerns the destruction of classified material and states that when it is no longer needed such material, including any intermediate material, originating in the Bundestag is to be transferred to the Secret Records Office [*Geheimregistratur*], where it is to be destroyed unless it needs to be kept.

3. Release of information in accordance with the Federal Archives Law

The Law on the Preservation and Use of Federal Archival Documents (Federal Archives Law) specifies the time limits for the release of confidential material.

The text of the Federal Archives Law can be found at:

<http://www.bundesarchiv.de/benutzung/rechtsgrundlagen/bundesarchivgesetz/index.html>.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

1. Relevant provisions of the Criminal Code

The publication, transfer or notification of information defined under Section 93 of the Criminal Code (StGB) as a state secret is punishable in accordance with Sections 94, 95, 96, 97, 97a, 97b and 98 StGB.

According to the definition in 93 StGB (see part 4 of the answer to Question 13 A) the subject of protection of the term state secret and thus of the elements of the offence that refer to this constituent fact is the external security of the federal republic of Germany.

Penalties for the disclosure of a state secret are defined in the following Sections:

Section 94 StGB ***Treason***

- (1) Whoever:
 1. communicates a state secret to a foreign power or one of its intermediaries; or
 2. otherwise allows a state secret to come to the attention of an unauthorized person or to become known to the public in order to prejudice the Federal Republic of Germany or benefit a foreign powerand thereby creates a risk of serious prejudice to the external security of the Federal Republic of Germany shall be punished with imprisonment for not less than one year.
- (2) In especially serious cases the punishment shall be imprisonment for life or for not less than five years. An especially serious case exists as a rule if the offender:
 1. abuses a position of responsibility that especially obligates him to safeguard state secrets; or
 2. creates by the act the risk of an especially serious prejudice to the external security of the Federal Republic of Germany.

Section 95 StGB ***Disclosure of state secrets***

- (1) Whoever allows a state secret that has been kept secret by or at the behest of an official agency to come to the attention of an unauthorized person or become known to the public and thereby creates the risk of serious prejudice to the external security of the Federal Republic of Germany shall be punished with imprisonment from six months to five years if the act is not punishable under Section 94.
- (2) The attempt is also punishable.
- (3) In especially serious cases the punishment shall be imprisonment from one year to ten years. Section 94 paragraph 2 sentence 2 shall be applicable.

Section 96 StGB ***Treasonous espionage; gathering information about state secrets***

- (1) Whoever obtains a state secret in order to betray it (Section 94) shall be punished with imprisonment from one year to ten years.
- (2) Whoever obtains a state secret that has been kept secret by or at the behest of an official agency in order to disclose it (Section 95) shall be punished with imprisonment from six months to five years. The attempt is also punishable.

Section 97 StGB

Disclosure of state secrets

- (1) Whoever allows a state secret that has been kept secret by or at the behest of an official agency to come to the attention of an unauthorized person or become known to the public and thereby negligently causes the risk of serious prejudice to the external security of the Federal Republic of Germany shall be punished with imprisonment for not more than five years or a fine.
- (2) Whoever recklessly allows a state secret that has been kept secret by or at the behest of an official agency and that was accessible to him by reason of his/her public office, government position or assignment by an official agency to come to the attention of an unauthorized person and thereby negligently causes the risk of serious prejudice to the external security of the Federal Republic of Germany shall be punished with imprisonment for not more than three years or a fine.
- (3) The act shall be prosecuted only with the authorization of the Federal Government.

Under Section 353b StGB the violation of an **official secret** and of a **special duty of secrecy** is also a punishable offence. Concurrence of offences under Section 353b paragraph 1 StGB and Section 94 ff. StGB is possible.

353b StGB

Violation of official secrecy and of a special duty of secrecy

- (1) Whoever, without authorization, discloses a secret that has been confided or become known to him/her as:
 1. a public official;
 2. a person with special public service obligations; or
 3. a person who exercises duties or powers under the law on staff representationand thereby endangers important public interests shall be punished with imprisonment for not more than five years or a fine. If by the act the offender has negligently endangered important public interests, he/she shall be punished with imprisonment for not more than one year or a fine.
- (2) Whoever, apart from cases under paragraph 1, without authorization, allows to come to the attention of another or makes publicly known an object or information:
 1. that he/she is obligated to keep secret on the basis of the resolution of a legislative body of the Federal Government or a federal state or one of their committees; or
 2. that he/she has been formally obligated to keep secret by another official agency upon notice of the punishability for a violation of the duty of secrecy and thereby endangers important public interestsshall be punished with imprisonment for not more than three years or a fine.
- (3) The attempt is also punishable.
- (4) The act shall be prosecuted only with authorization. The authorization shall be granted:
 1. by the President of the legislative body:
 - a) in cases under paragraph 1 if the secret became known to the offender during his/her activity in or for a legislative body of the Federal Government or a federal state;
 - b) in cases under paragraph 2 number 1;
 2. by the highest federal public authority:
 - a) in cases under paragraph 1 if the secret became known to the offender during his/her activity otherwise in or for a public authority or in another official agency of the Federal Government or for such an agency;
 - b) in cases under paragraph 2 number 2 if the offender was under obligation of an official agency of the Federal Government;
 3. by the highest state public authority in all other cases under paragraph 1 and paragraph 2 number 2.

The text of the German Criminal Code can be found at: <http://dejure.org/gesetze/StGB>.

For inventions and utility or work objects that are state secrets in the meaning of Section 93 StGB, see Section 50 Patent Law (available at <http://bundesrecht.juris.de/patg/>) and Article. II section 4 International Patent Agreement Law (available at: http://www.gesetze-im-internet.de/intpat_bkg/BJNR206499976.html).

2. Relevant provisions of the Instruction for State and Official Secrets for Federal Authorities (VSA)

Section 44 VSA concerns measures in the event of violation of security regulations or the identification of security weaknesses. Paragraph 1 states that in the event of violation of security regulations or the identification of security weaknesses the security authorities are to take the necessary measures to avert or limit the damage and to prevent repetition.

According to Section 44 paragraph 5 VSA, violations of the VSA, even if not prosecuted under the Criminal Code, can lead to disciplinary or labour law sanctions (including dismissal or caution).

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

Sections 94-98 StGB apply to all persons and no distinctions are made.

According to Section 1 paragraph 2 VSA, the Instruction is intended for all persons who have access to classified material or who exercise a function in which they could have access to classified material and therefore need to observe specific security measures.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this?

The transfer/disclosure of information that is not a state secret as defined in Section 93 StGB is a punishable offence under Sections 353a, 353b, 353d, 355, 356 StGB. The violation of private secrets is punishable under Section 203 StGB.

Section 353a StGB deals with breach of trust in the Foreign Service; Section 353b StGB refers to violation of official secrecy and a special duty of secrecy. The offence defined in Section 353b paragraph 1 StGB consists of the unauthorized disclosure of a secret that has been confided to or become known by a public official, thereby endangering important public interests. Confidential material known to public officials (*Dienstgeheimnisse*) are facts, objects or knowledge that are known and accessible only to a limited number of persons and that are subject to secrecy by their nature or on the basis of a legal provision or special regulations. This can apply not only to state secrets in the meaning of Section 93 StGB or official secrets but also to secrets relating to the personal private sphere.

Section 353d StGB concerns the offence of forbidden communications about judicial hearings; Section 355 StGB concerns violations of tax secrecy.

Sections 201-206 StGB (Chapter 15 of the StGB) protect against violation of the realm of personal privacy and confidentiality. Section 203 StGB and Section 17 of the Law Against Restraints on Competition (UWG – available at: http://www.gesetze-im-internet.de/uwg_2004/index.html) penalize the disclosure or betrayal of business or trade secrets.

Section 203 paragraph 2 StGB penalizes the unauthorized disclosure of the secret of another, in particular a secret belonging to the realm of personal privacy or a business or trade secret by a public official (Section 11 paragraph 2 StGB) or other person in public office. The object of the offence according to paragraph 2 sentence 1 is the secret of another that was confided in or otherwise made known to the offender in one of the capacities listed in Section 203 paragraph 2 numbers 1-6. A condition for the criminal liability under Section 203 StGB is a specific relationship of trust, i.e. the secret has to have been made known to the offender in his/her capacity as a member of one of the professional groups listed in Section 203 StGB. Section 203 paragraph 2 StGB contains an extension of the elements of the offence in paragraph 1 in a personal and material sense in that the unauthorized disclosure of a secret by a public official or certain persons in public office is punishable and that data collected for public administration purposes are also regarded to a certain extent as secrets.

Section 203 paragraph 2 StGB differs from Section 353b StGB not only in the size of the group of persons involved and the absence of the requirement that the disclosure jeopardize important public interests but also in the fact that confidential material made known to public officials (*Dienstgeheimnisse*) is only partly covered by paragraph 2, whereas this section also covers specific information concerning the personal and material situation of a person regardless of whether the information is confidential or not. Because of the different legal objects protected, concurrence of offences under Section 353b and Section 203 StGB is possible.

Section 203 StGB

Violation of private secrets

- (1) Whoever, without authorization, discloses a the secret of another, in particular a secret that belongs to the realm of personal privacy or a business or trade secret, that was confided to or otherwise made known to him/her in his/her capacity as a:
1. physician, dentist, veterinarian, pharmacist or member of another healing profession that requires state-regulated education to engage in the profession or to use the professional title;
 2. professional psychologist with a state-recognized final scientific examination;
 3. lawyer, patent attorney, notary, defence counsel in a statutorily regulated proceeding, certified public accountant, sworn auditor, tax consultant, tax agent or executive body or member of an executive body of a law, patent law, accounting, auditing or tax consulting enterprise;
 4. marriage, family, education or youth counsellor, counsellor in matters of addiction at a counselling agency recognized by a public authority or body, institution or foundation under public law;
 - 4a. member or agent of a counselling agency recognized under Sections 3 and 8 of the Law on the Avoidance and Management of Pregnancy Conflicts;
 5. a state-recognized social worker or state-recognized social education worker; or
 6. member of a private health, accident or life insurance company or a private medical clearing house,
- shall be punished by imprisonment for not more than one year or a fine.
- (2) Whoever, without authorization, discloses the secret of another, in particular a secret that belongs to the realm of personal privacy or a business or trade secret, that was confided to or otherwise made known to him/her in his/her capacity as a:
1. public official;
 2. person with special public service obligations;
 3. person who exercises duties or powers under the Law on Staff Representation;
 4. member of an investigative committee working for a legislative body of the Federal Government or a federal state, another committee or council that is not itself a member of the legislative body, or as an assistant for such a committee or council; or
 5. publicly appointed expert who is formally obligated by law to conscientiously fulfil his/her duties,
- shall be similarly punished.
- Individual statements about the personal or material situation of another person that have been collected for public administration purposes shall be deemed to be the equivalent of a secret within the meaning of sentence 1; sentence 1 shall not, however, be applicable in so far as such individual statements have been made known to other public authorities or other agencies for public administration purposes and the law does not prohibit it.
- (3) Other members of a bar association shall be deemed to be the equivalent of a lawyer named in paragraph 1 number 3. The same status as the persons named in paragraph 1 and sentence 1 shall be accorded to their professional assistants and to those persons who work with them in preparation for exercise of the profession. After the death of the person obligated to safeguard the secret, whoever acquired the secret from the deceased or from his/her estate shall also be accorded the same status as the persons named in paragraph 1 and in sentences 1 and 2.
- (4) Paragraphs 1 to 3 shall also be applicable if the offender, without authorization, discloses the secret of another after the death of the person concerned.
- (5) If the offender acts for remuneration or with the intent of enriching himself/herself or another or of harming another, the punishment shall be imprisonment for not more than two years or a fine.

Section 17 UWG

Betrayal of business and trade secrets

- (1) Whoever, as a person employed in an enterprise, during the duration of his/her employment, communicates without authorization a trade or industrial secret that has been entrusted to him/her or has become accessible to him/her by reason of his/her employment relationship to any person for the purposes of competition, for personal gain, for the benefit of any third party or with the intention of causing prejudice to the proprietor of the enterprise shall be liable to imprisonment of up to three years or to a fine.
- (2) Likewise, any person who for the purposes of competition, for personal gain, for the benefit of a third party or with the intention of causing a prejudice to the proprietor of the enterprise
 1. obtains or secures without authorization through
 - (a) the use of technical means;
 - (b) the manufacture of reproduction incorporating the secret; or
 - (c) the removal of an object in which the secret is incorporated; or
 2. exploits or communicates to another person without authorization a business or industrial secret that he/she has acquired or in some other way without authorization, obtained or secured through a communication as referred to in paragraph 1 or through his/her own or another's act under number 1,shall be liable to the same penalty.
- (3) The attempt to commit the act is also punishable.
- (4) In particularly serious cases, the penalty shall be imprisonment of up to five years or a fine. A particularly serious case is normally a case when the offender commits the act in a professional capacity or knows when making the communication that the secret is to be exploited abroad or himself/herself exploits the object abroad as described in paragraph 2 number 2.
- (5) The offence shall be prosecuted only on application unless the prosecuting authority deems that official intervention is necessary because of the particular public interest in prosecution.
- (6) Section 5 paragraph 7 of the Criminal Code shall apply accordingly.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

Both Section 203 paragraph 2 StGB and Section 353b StGB are **special offences** that can be committed only by members of the groups of persons specified therein. It should be noted, however, that journalists can under certain circumstances be penalized in connection with these offences as accessories (Section 27 StGB) to the offences committed by their informers if they publish the material obtained. The punishment is to be mitigated, however (Section 28 paragraph 1 StGB). According to court rulings and the prevailing opinion in the literature, involvement in an offence under Section 353b StGB is also possible after commission of the primary offence, i.e. after disclosure of the secret by the public official. In other words, a journalist can be an accessory to a primary offence through publication of the secret revealed to him/her without any additional action on his/her part since the prejudice to public interest is often intensified by his/her contribution.

Rules on sanctions

18. What are the civil or criminal penalties for unauthorized disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

1. Criminal penalties

Criminal penalties are derived from the above-mentioned provisions of the Criminal Code and include both imprisonment and fines. Section 94 paragraph 1 StGB, for example, provides for imprisonment of not less than one year; according to Section 94 paragraph 2 StGB a punishment of life imprisonment is impossible in particularly serious cases.

Violation of official secrecy and of a special duty to secrecy as defined in Section 353b paragraph 1 StGB is punishable by imprisonment of up to five years or a fine. If the offender has negligently endangered important public interests he/she may be punished by imprisonment of not more than one year or a fine.

2. Compensation under the Civil Code

Compensation can be inferred from Sections 823, 826 of the Civil Code (BGB) and injunctions from Section 1004 BGB. If the unauthorized use of secret information occurs in the framework of an employment relationship, dismissal or a caution in accordance with general rules are also possible.

3. Administrative regulations

The Law on the Conditions and Procedure for Security Verification by the Federal Government (SÜG) does not contain any separate penalties.

According to Section 44 paragraph 2 VSA, violations of the Instruction on State and Official Secrets, even if not prosecuted under the Criminal Code, can lead to disciplinary or labour law sanctions (including dismissal).

19. Do these penalties apply to the media for unauthorized disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

In so far as the Criminal Code refers to “non-specific” offences (e.g. Sections 94ff. StGB), representatives of the media are also punishable. Sections 94 ff StGB do not refer specifically to the publication of information by the media, however, but to general activities connected with the offences described in the sections on treason and endangering public security.

Penalties relating to the media have to do primarily with violations of the personal rights of individual private persons. In this context, the right to reply incorporated in the state press laws (e.g. Section 10 of the Bavaria Press Law) is of particular significance.

In so far as damage results from publication in the media, claims for compensation or injunction under Civil Law can be asserted against the media representative.

There are no higher penalties for mass publication. This circumstance could possibly be taken into account in accordance with general rules in determining the severity of the punishment or the amount of compensation under civil law.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organizations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

1. Cases concerning violations of Sections 93 ff. StGB

No details are available of pending cases concerning violations of Sections 93 ff. StGB.

2. Cases concerning violations of Section 353b StGB

As Section 353b StGB is a special offence that can be committed only by public officials, etc., sanctions against members of the public, journalists and media representatives (unless these persons are exceptionally members of the special group) are not applicable.

a) Cases concerning public officials

In its judgement of 11 January 2005 the Higher Regional Court (OLG) of Cologne (1st Criminal Division, file no. 8 Ss 460/04) confirmed that the secrecy of court deliberations is confidential information known to public officials (*Dienstgeheimnis*) subject to Section 353b paragraph 1 and ruled:

The publication of the vote to reject the further hearing of evidence by a **lay judge** (in criminal proceedings) in an anonymous letter (to one of the defendant’s lawyers) does not represent a direct danger to public interests since it was irrelevant to the decision itself and to the progress of the case whether the decision was made unanimously or by a majority.

A danger to public interest because of loss of respect or confidence in the judiciary may not be assumed if the disclosure of the secret to the public and the press does not affect any particular interest and no criticism of the judges or justice system in general is made.

In its judgement of 9 December 2002 the Federal Court of Justice (BGH) (5th Criminal Division, file no. 5 StR 276/02) ruled that a **data protection officer** was not criminally liable under Section 353b paragraph 1 sentence 1 if the publication of violations of data protection law was intended to rectify an unlawful state of affairs as there was no danger to important public interests.

In its judgement of 23 March 2001, the Federal Court of Justice (2nd Criminal Division, file no. 2 StR 488/00) ruled that information that a police record contains no entries can constitute a violation of the obligation to secrecy of a public official and that the appeal by the defendant against the judgement of the Regional Court in Frankfurt am Main of 22 August 2000 was to be overruled. The Regional Court had sentenced the defendant to imprisonment of one year and six months for violations of the obligation to secrecy of a public official in seven cases and had placed him on probation. The defendant appealed against this judgement on the basis of an error in substantive law.

Facts of the matter: The defendant was employed by a police task force in F. and had access to the Hepolis police database. At the request of a third party he queried personal data in Hepolis on six occasions and passed on the information obtained to the requesting party. He also informed this person in a conspiratorial and encrypted manner of details of a planned police action that failed as a result.

In its judgement of 9 December 2002 the Federal Court of Justice (5th Criminal Division, file no. 5 StR 276/02) overruled the appeal of the public prosecutor's office against the judgement of the Regional Court in Dresden of 7 November 2001. The Regional Court had acquitted the defendant, **data protection officer of Saxony**, who had been accused of having violated the obligation to secrecy of a public official in three cases.

Facts of the matter:

The accused was data protection officer of the Free State of Saxony and had been officially informed that by requesting reports the Saxony State Ministry of Justice could have unfairly influenced the public prosecutor's office in its investigations. After having informed the Ministry of Justice and given it the opportunity to reply to the allegation, the defendant made a complaint regarding violation of data protection law and made this complaint available to the public. The publication took place three years after the events had taken place.

The Regional Court had regarded the internal procedures in the Saxony State Ministry of Justice, the information to third parties in this connection concerning the status of the investigations at the time and the complaint by the defendant against the Ministry of Justice for violation of data protection law on 23 August 2000 as confidential material known to public officials (*Dienstgeheimnisse*) in accordance with Section 353b paragraph 1 StGB. In publishing this confidential material, however, the defendant had not endangered any important public interests in the meaning of the law; moreover he had not acted in an unauthorized manner but had been constitutionally justified in doing so out of necessity. The Federal Court of Justice confirmed the judgement of the Regional Court that there was no danger to important public interests in the meaning of Section 353b paragraph 1 StGB in this case – not least because of the three-year interval between the events and their publication – among other things because a public official like the defendant who is called upon to verify the legality of another public official's behaviour is not endangering important public interests by making public a violation of the law if, as was the case here, he wished to gain public sympathy so as to rectify an unlawful state of affairs.

b) Cases involving journalists

An investigation was conducted against a **journalist**, an **editor-in-chief** and the **person responsible** for a magazine in 2005 concerning the suspicion that the journalist had published a secret in the meaning of Section 353b StGB and had thereby been an accessory to a violation of the obligation to secrecy of public officials. The journalist was aware that the report had been passed on to him by a member of a public authority with a view to having the confidential content of the report published in the press. In February 2006 the investigation against the editor-in-chief was suspended on payment of €1,000 and the investigation against the journalist suspended for want of sufficient evidence. The search and seizure warrant is the object of a hearing before the Federal Constitutional Court on 22 November 2006.¹⁸

¹⁸ Apparently, the Government refers to the CICERO case. On 27 February 2007, the Constitutional Court ruled in that case that journalists cannot be legitimately accused of betrayal of state secrets for publishing classified information obtained from informers.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

Criteria for weighing up the obligation to secrecy against the right of freedom of the press or public interest are not defined by law but have been developed on the basis of the relevant court rulings (see Question 22). As information to the public and freedom of the media are basic preconditions for democracy and democratic decision-making, the public interest in information has a constitutional status and judges are therefore obliged to take account of the public right to information in their decisions. The Federal Constitutional Court infers the particular importance of freedom of the media – and the press in particular – above all in connection with its function in the democratic decision-making process. In practice the relative merits to be considered are the state's concern for secrecy as compared with the public's right to information but rather the state's concern for secrecy as compared with freedom of the press, which incorporates the public's right to information.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest.

In judicial practice the courts consider both the government's concern for secrecy and freedom of the press and the public's right to information. The following judgements provide examples of these considerations.

1. The "Spiegel" judgement by the Federal Constitutional Court

In the "Spiegel" judgement by the Federal Constitutional Court of 5 August 1966 (BVerfGE 20, 162 ff.) the Court emphasized the public responsibility of the press in the democratic decision-making process and called for effective measures to protect the freedom of the press.

The magazine *Der Spiegel* had contained an article on 10 October 1962 entitled "Bedingt abwehrbereit" ("Limited defence readiness") reporting on the military situation in Germany and NATO. Search and seizure warrants were thereupon issued against the publisher Rudolf Augstein and the journalist responsible on suspicion of treason. The *Spiegel* offices in Hamburg and Bonn were searched and a large amount of material seized. *Spiegel* appealed to the Constitutional Court against the search and seizure warrant. The Federal Constitutional Court rejected the appeal. Acknowledging the significance of the press and freedom of the press in abstract terms, it was called upon in this case to consider the specific limitation to freedom of the press in the form of search and seizure in accordance with the Code of Civil Procedure on the one hand, and the security of the state and the possibility of treason on the other. Although the Court allowed that the public should be informed of important defence policy issues, it considered that the suspicion of treason outweighed this right and ruled that the search and seizure were justified in investigation of this suspicion. In this case the survival of the state was more important.

2. Decision of the North Rhine Westphalia Higher Administrative Court

The 5th Division of the Higher Administrative Court of the State of North Rhine Westphalia ruled on 19 February 2004 (file no. 5 A 640/02) that Section 203 paragraph 2 StGB was not a secrecy regulation in the meaning of Section 4 paragraph 2 number 2 and of the Press Law of North Rhine Westphalia (PresseG NW) and that Section 4 paragraph 2 number 3 of that Law offered the possibility for weighing up the right to control information against freedom of the press. The Information Freedom Law of North Rhine Westphalia (InfFrG NW) does not restrict the right of the press to information in accordance with Section 4 paragraph 1 PresseG NW. The objection that the consideration in accordance with Section 4 paragraph 2 number 3 in the specific case should have come out in favour of the private interest was rejected. Contrary to the petition, the desire for information should prevail not just when publication is of "historical interest". Section 4 paragraph 2 number 3 PresseG does not contain an absolute condition of this nature. Of decisive importance is the result of the consideration of the relative merits of the interest of the press in publication and the private interest in non-publication. If the information represents only a minor invasion of the individual's privacy, there is no need for a historical interest to justify the information. The more sensitive, far-reaching and detailed the information, the more important must be the interest of the press for publication of the information to be legitimized. The Administrative Court in this case ruled that the request for information was more important than non-disclosure of the expert's fee. It was already doubtful whether the circumstance claimed by the defendant in the petition that the construction of the underground railway line in question had already been decided made the interest in information any

less pressing. The plaintiff in the first party had taken upon itself the task of investigating public expenditure, including past expenditure, so that even after the decision on the underground railway project had been made, it had a legitimate interest in knowing the extent of the fee. At all events, the private interest in non-disclosure was not more important since – according to the findings of the administrative court, which were not contested in the petition – the desired information about the amount of the fee did not permit any conclusions to be drawn about the price calculation by the company commissioned to provide the expert opinion nor about its financial situation.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as “shield law”) from sanctions for refusing to disclose their sources of information?

1. Constitutional protection – freedom of the press

Protection of the confidential relationship between the press and private informants is part of the freedom of the press guaranteed by Article 5 paragraph 2 sentence 2 of the Basic Law (BVerfGE 36, 193 (204)).

2. Right to refuse to testify, seizure prohibition of the Code of Criminal Procedure (StPO)

a) Right to refuse to testify

This confidential relationship is protected by the right to refuse to testify in Section 53 paragraph 1 sentence 1 number 5 StPO, which applies, inter alia, to individuals who are or were professionally involved in the preparation, production or dissemination of printed matter, radio broadcasts, film reports or information and communication services serving to inform or form opinions.

According to Section 53 paragraph 1 sentence 2 StPO these persons may refuse to testify on the person of the author or provider of contributions and documents or other informants, on information given to them on his/her activity, its content, the content of material written by themselves and the nature of observations made in the course of their work. This also applies to contributions, documents and materials for the editorial component or written information and communications services.

The right to refuse to testify is designed in the first instance to protect not the author, contributor or informant but the activity of press and broadcasting, which is in the public interest (BVerfGE 20, 162 (176)). It cannot be dispensed with and remains valid even if the informant wishes to testify. On the other hand, the informant has no legal right to insist that the member of the press asserts his/her right to refuse to testify. According to the Federal Constitutional Court, Section 53 paragraph 1 number 5 StPO as amended at the time was not conclusive, but the right to refuse to testify could be inferred directly from Article 5 paragraph 1 sentence 2 of the Basic Law.

b) Ban on acoustic surveillance

According to Section 100c paragraph 6 StPO acoustic surveillance in cases covered by Section 53 StPO is not allowed.

c) Ban on seizure

According to Section 97 paragraph 5 StPO the seizure of documents, audio, visual and recording media, illustrations and other images in the custody of persons referred to in Section 53 paragraph 1 sentence 1 number 5 or of the editorial office, publishing house, printing works or broadcasting company is inadmissible in so far as such persons are covered by the right to refuse to testify.

According to Section 97 paragraph 5 in conjunction with paragraph 2 sentence 3, this does not apply if the person entitled to refuse to testify is suspected of incitement, obstruction of justice or handling stolen goods or if the objects concerned have been obtained by a criminal offence or have been used or are intended for use to commit a criminal offence. The seizure is admissible in such cases only if, with account taken of the basic rights set forth in Article 5 paragraph 1 sentence 2 of the Basic Law, it is commensurate with the significance of the case or if the whereabouts of the offender could not be determined by other means or if the determination of his/her whereabouts would be significantly hampered.

The Code of Criminal Procedure can be consulted on the Internet at: <http://www.gesetze-im-internet.de/stpo/index.html>.

2. Provisions of the state press laws

The State Press Laws of Baden Württemberg and Berlin also contain provisions on the right to refuse to testify by members of the press and the ban on seizure.

Section 23 of the Baden-Württemberg State Press Law

Right to refuse to testify and ban on seizure

- (1) Editors, journalists, publishers, printers and others who have been professionally involved in the manufacture or publication of periodical printed matter may refuse to testify concerning the author, contributor or informant of an article in this printed matter and on the facts on which the article is based that have been confided in him/her.
- (2) Testimony may not be refused
 1. regarding a publication with criminal content unless the editor or other full-time press employee has been punished for this publication or there are no substantive or legal obstacles to his/her prosecution, or
 2. if there is reason to assume that the documents or information on which the article is based were obtained or provided by others in violation of a criminal law subject to imprisonment of no less than one year, or
 3. if there is reason to assume on the basis of the content of the article that the author, contributor or informant has committed an offence subject to life imprisonment or imprisonment of up to 15 years.
- (3) Penalization of the editor responsible in accordance with Section 20 paragraph 2 number 1 does not justify a refusal to testify in accordance with paragraph 2 number 1.
- (4) The seizure of documents in the custody of a person entitled to refuse to testify in accordance with paragraphs 1 to 3 in order to identify the author, contributor or informant of an article in a periodic printed matter shall be inadmissible; the same shall apply to a seizure whose purpose is to confirm, prove or identify the facts on which the article was based that were confided in a person entitled to refuse to testify in accordance with paragraphs 1 to 3. Sentence 1 shall apply accordingly for searches.
- (5) The seizure of documents on the premises of an editorial office, publishing company or printing works for the purpose specified in subsection 4 shall be admissible only if the conditions of paragraph 2 numbers 2 or 3 are fulfilled or if an illegal act has been committed through the publication in the form of an offence or misdemeanour as defined in Sections 80a, 86, 89, 95, 97 or 100a of the Criminal Code; the same shall apply if an illegal act has been committed in the form of an offence under Article 7 of the Fourth Criminal Law Amendment Act of 11 June 1957 (Federal Law Gazette I p.597) as amended by Article 147 of the Introductory Law to the Criminal Code of 2 March 1974 (Federal Law Gazette I p. 469) or in conjunction with an offence under Sections 89, 95 or 97 of the Criminal Code.
Sentence 1 shall apply accordingly for searches.

Section 18 Berlin Press Law:

Right of refusal to testify of members of the press and broadcasting media

- (1) Whoever contributes or has contributed to the production, publication or dissemination of periodical printed matter or to the production or dissemination of news, reports or commentaries as a member of a broadcasting company in word, sound and images may refuse to testify as to the person of the author, contributor or informant of contributions or documents and the facts he/she has been informed of.
- (2) The seizure of documents in the custody of persons entitled to refuse to testify under paragraph 1 or of the editorial board, publishing company, printing works of broadcasting company to which he/she belongs shall be inadmissible if it is for the purpose
 1. of determining the identity of the author, contributor or informant of contributions or documents, or
 2. determining facts of which the person entitled to refuse to testify has been informed.
- (3) Paragraph 2 shall apply accordingly for searches.

The other state press laws do not contain provisions of this nature. The seizure of printed matter is dealt with only in Sections 15 and 16 of the Bavaria Press Law and in Sections 12 to 17 of the Press Law of the State of Mecklenburg-Vorpommern and Sections 13 to 17 of the Bremen Press Law.

The state press laws can be found at: <http://www.presserecht.de/gesetze.html>.

3. Refusal to testify in accordance with the Code of Civil Procedure

The right to refuse to give testimony in civil proceedings is also specified in Section 383 of the Code of Civil Procedure (ZPO).

Section 383 ZPO

Refusal to testify for personal reasons

- (1) The refusal to testify is permissible by:
- ...
5. Persons who contribute or have contributed professionally to the preparation, production or dissemination of periodical printed matter or broadcast programmes concerning the identity of the author, contributor or informant of contributions and documents or information on their activity in so far as the contributions, documents or information are for editorial purposes.

The Code of Civil Procedure can be found at: <http://dejure.org/gesetze/ZPO/383.html>.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

The Code of Criminal Procedure applies at both the federal and state levels. The provisions of this Code therefore apply directly to the states. The same applies to the Code of Civil Procedure.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

See answer to Question 23.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

The right to refuse to testify in accordance with Section 53 paragraph 1 sentence 1 number 5 and paragraph 1 sentence 2 has not been denied in the last five years.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

No, protection is not absolute. There are exceptions to the right to refuse to testify in accordance with Section 53 paragraph 1 sentence 1 number 5 StPO and objects exempt from seizure in accordance with Section 97 paragraph 5 StPO.

Section 53 (5) sentence 2 StPO states:

The right to refuse to testify by the persons specified in subsection 1 sentence 1 number 5 concerning the content of material drafted by themselves and the object of the related observations shall **not apply** if the testimony contributes to the resolution of a crime or if the object under examination concerns

1. a crime against peace and endangering the democratic rule of law or treason and endangering external security (Sections 80a, 85, 87, 88, 95 also in conjunction with Section 97b and Sections 97a, 98 to 100a of the Criminal Code),
2. a crime against sexual self-determination in accordance with Sections 174 to 176 and 179 of the Criminal Code, or
3. money laundering or concealment of unlawfully acquired assets in accordance with Section 261 paragraphs 1 to 4 of the Criminal Code

and determination of the facts or the whereabouts of the suspect would be otherwise impossible or severely hampered. The witness may also refuse to testify in these cases, however, in so far as it could reveal the identity of the author or contributor of contributions and documents or other informant or of the information concerning his/her activities revealed to the witness.

These restrictions also apply to Section 97 paragraph 5 StPO.

28. What are the penalties for refusing to reveal sources of information?

As the persons specified in Section 53 paragraph 1 sentence 1 number 5 StPO are not obliged to reveal their sources, no penalties in this respect are provided for.

29. Are the journalists prohibited from revealing their source without the permission of the source?

No. Journalists may decide at their discretion whether they wish to avail themselves of their right to refuse to testify in accordance with Section 53 paragraph 1 number 5 StPO. There is, however, a code of conduct for journalists which states that journalists are required professionally to avail themselves of this right.

30. In the media, who is protected from disclosure of sources:

- The journalists? The editor? The publisher?
- Freelance journalists or commentators?

See the answer to Question 23 (number 2(a)).

The same group of persons is protected against seizure under Section 97 paragraph 5 StPO.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

Yes. See the answer to Question 23 (number 2(a)).

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

The protection under Sections 53 and 97 StPO applies to these new media in so far as it concerns information and communication services designed to inform or form opinion, i.e. editorial information and communication services.

33. Are searches of property belonging to the media or journalists, such as newsrooms or apartments, prohibited by law?

Sections 102 and 103 StPO applying to searches of press premises are drafted to take account of the freedom of the press guaranteed by the Constitution. As a result searches of property belonging to the media can be regarded as unreasonable if they severely disrupt their operation in order to clarify an improbable fact (BVerfGE 20, 162 (204)). In addition, according to prevailing opinion a search is always inadmissible if the seizure of the objects sought there would be inadmissible under Section 97 StPO.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalist's communications with sources, or from interception of them?

An order to provide information on telephone connections is subject to the general conditions of Section 100g StPO. Under the present legislation there are (as yet) no legal prohibitions on the investigation or use of information on telecommunications involving journalists.

Information on journalistic communication can also be investigated in accordance with the provisions of the Restriction of the Secrecy of Mail, Posts and Telecommunications Law (Law on Article 10 Basic Law – G 10). Section 2 paragraph 10 states:

Obligations of providers of post and telecommunications services

- (1) Whoever provides postal services on a commercial basis or is involved in the provision of such services shall provide an authorized agency on request with information on the circumstances of the postal service and shall hand over mail items that have been entrusted to him/her for collection, transfer or delivery. The above-mentioned person shall provide the authorized agency on request with information on post office boxes necessary to prepare an order without a separate order being required herefor. Whoever provides telecommunications services on a commercial basis or is involved in the provision of such services shall provide an authorized authority on request with information on the circumstances of telecommunications effected after the order has come into force and shall hand over items that have been entrusted to him/her for transmission by telecommunications channels and to permit the surveillance and recording of the telecommunication. The degree and extent to which the person obligated in accordance with sentence 3 is required to make technical and organizational arrangements for the surveillance are specified in Section 88 of the Telecommunications Law and the statutory instrument decreed in that connection.

The Law on Article 10 does not contain exceptions for journalists.

Greece

Data for analysis have been received from the Government of Greece, a written contribution is pending

Holy See

Official response of the Holy See

1). The contents of the questionnaire do not apply to the particular circumstances of the Holy See. These circumstances and the consequent regulation of the Holy See cannot be compared with the situation of the other OSCE participating States.

2). The ethical principles in the field of media communication were highlighted in the Decree *Inter Mirifica* of the Second Vatican Council. Inter alia, it is written:

In society men has a right to information, in accord with the circumstances in each case, about matters concerning individuals or the community. The proper exercise of this right demands, however, that the news itself that is communicated should always be true and complete, within the bounds of justice charity (n.5).

A special responsibility for the proper use of the media rests on journalists, writers, actors, designers, producers, displayers, distributors, operators and sellers, as well as critics and all others who play any part in the production and transmission of communications. It is quite evident what gravely important responsibilities they have in the present day when informing or influencing mankind. Thus, they must adjust their economic, political or artistic and technical aspects so as never to oppose the common good. For the purpose of better achieving this goal, they are to be commended when they join professional association, which – even under a code, if necessary, of sound moral practice – oblige their members to show respect for the morality in the duties and tasks of their craft... In addition, they should see to it that communications or presentations concerning religious matters are entrusted to worthy and experienced hands and are carried out with fitting reverence (n. 11).

3). The Office in charge of the official publication and divulgation of the acts of the Roman Pontiff and of the activities of the Holy See is the Press Office. Accreditation procedures at the Holy See Press Office are indicated in the Holy See's website (www.vatican.va) and are available both in English and in Italian. These procedures entitle journalists to have access to documents under embargo. None of the journalists accredited to the Press Office has Vatican citizenship.

4). As far as the Vatican City State is concerned, the *Regolamento per il Personale Dello Stato della Città del Vaticano* specifies an obligation to respect the so-called "*segreto di ufficio*" ("official secret") and establishes possible penalties.

Art. 16, para 3. *Everyone is obliged to observe official secrets rigorously. Therefore information concerning acts or data which has been acquired in the course of the work cannot be supplied to those not entitled to receive them.* [unofficial translation].

The penalties range from a verbal warning in case the violation was not malicious and provoked no damage (art. 53); to a written and motivated declaration of blame should the offence occur within a year, to suspension without pay (except for family allowance) in cases of violation of official secrets that is malicious or damaging (art. 57, para 3); to dismissal in case of malicious violation of official secrets which prejudices the Vatican City State or third parties (art. 60).

5). No cases have been brought before the Vatican Tribunals regarding the exercise of the right to public access to information nor against journalists and officers accused of leaking classified information. The tribunals have never requested journalists to disclose their source of information.

Hungary

Prepared by the Government of Hungary

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

- 1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?**

According to Article 61 of the Constitution, everyone has the right to access and distribute information of public interest. The statute implementing this right must be adopted by a qualified majority of the parliament.

<http://www.mkab.hu/en/enpage5.htm>

- 2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?**

The Constitutional Court defined the freedom of information and the right of access to public information as an element of the freedom of communication [30/1992. (V. 26.)]. Data of public interest must be publicly accessible. This fundamental right can be derived directly from the Constitution. The right of free access to public information facilitates control over the legality and effectiveness of legislative and executive action. This influence and public control over decision makers and their management of public matters can only be effective if the competent bodies disclose all relevant information [32/1992. (V. 29.)].

This right of access to information of public interest is a prerequisite for the freedom of speech and expression. Free access to data of public interest and the unhampered flow of this information is fundamental to the guarantee of transparent governance. Public access to such information may be restricted only in accordance with the constitutional requirements concerning restrictions on fundamental rights. Unnecessary or disproportionate restrictive measures are unconstitutional. [34/1994. (VI. 24.)].

- 3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?**

According to Section 19. Subsection (3) of the Act on Freedom of Information agencies defined in Subsection (1) shall allow free access to the public information they have on files to any person, excluding those labelled state or service secret by an agency vested with proper authorization, or if classified by virtue of commitment under treaty or convention, or if access to specific information of public interest is restricted by law in connection with

- a) defence;
- b) national security;
- c) prevention, investigation, detection and prosecution of criminal offences;
- d) central financial or foreign exchange policy;
- e) external relations, relations with international organizations;
- f) a court proceeding or administrative proceeding.

According to the practice of the Constitutional Court (summarized above), the law permitting restriction of access to public information must respond to an imperative need and must be proportionate.

- 4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?**

See the answer given to question 3.

- 5. Are there other specific constitutional limits on access and dissemination of information?**

The Constitution does not explicitly include any other grounds of restriction. All limitations are subject to the test of constitutionality described above.

Legal Rights

- 6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.**

General rules on free access to public information are included in the Act LXIII of 1992 (Annex 2). Recently, a new law has been adopted on the freedom of electronic information (Act XC of 2005) which obliges bodies providing public services to disclose data of public interest via the internet. These measures entered into force on 1 January 2006. With respect to judicial bodies, the measures will enter into force on 1 July 2007.

- 7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?**

No, the law is of universal application.

- 8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?**

No, there are no distinctions based on the identity of the claimant. The data falling within the law's scope of application must be made freely accessible to all.

- 9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.**

Given that everyone can use the FOI law, the profession of the claimant is of no relevance. Thus, there are no special statistics on the number of journalists demanding information under the scope of the law.

- 10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.**

Not especially, although the Act II of 1986 concerning the press declares that journalists may demand information from every public organisation or individual. However, the disclosure of information falls under the scope of the Act LXIII of 1992 on the protection of personal data and on the access of public information.

- 11. Are there any limits in this law on access to, and publication of, information?**

Only the general limits fixed in the special laws are applied. There are additional requirements concerning the publication of information through the means of mass communication: stricter rules of responsibility apply for diffusing false information. According to Section 79 of Act IV. of 1959:

Section 79.

(1) If a daily newspaper, a magazine (periodical), the radio, the television, or a news service publishes or disseminates false facts or distorts true facts about a person, the person affected shall be entitled to demand, in addition to other actions provided by law, the publication of an announcement to identify the false or distorted facts and indicate the true facts (rectification).

- 12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.**

There is no such specific right. (See also answer 9 and 10).

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

- 13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :**
- Different categories in terms of level of confidentiality?
 - The period of classification and declassification?

Act LXV. of 1995 on state and service secrets gives a definition on state secret and service secret, determines which data can be qualified as a state secret, by who and in what kind of procedure, and it contains the rules of access, use and protection of state and service secret.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

According to the Act IV of 1978 on the Criminal Code of the Hungarian Republic:

<p style="text-align: center;">Title III Violation of State Secret and Service Secret Violation of State Secret</p> <p style="text-align: center;"><i>Section 221.</i></p> <p>(1) Any person who: a) obtains any state secret without proper authorization; b) uses without authorization any state secret that he has obtained, or makes it available to an unauthorized person, or denies it from a competent person; is guilty of a felony punishable by imprisonment between one to five years.</p> <p>(2) The punishment shall be: a) imprisonment between two to eight years if the violation of state secret is committed upon a particularly important state secret or it results in great damage; b) imprisonment between five to fifteen years if the state secret becomes available to an incompetent foreign person.</p> <p>(3) The person who commits the violation of state secret by negligence shall be punishable for a misdemeanor by imprisonment for up to one year, in the cases of Subsection (2) by imprisonment for up to two years, or up to five years in accordance with the distinction written there.</p> <p>(4) Any person who engages in preparations for the violation of state secret defined in Subsection (2) is guilty of a felony punishable by imprisonment for up to three years, or up to five years in accordance with the distinction written there.</p>

<p style="text-align: center;">Misprision of Violation of State Secret</p> <p style="text-align: center;"><i>Section 223.</i></p> <p>(1) Any person who has positive knowledge: a) of preparations for breach of a state secret; b) of any breach of state secret committed knowingly and yet uncovered; and fails to promptly report that to the authorities is guilty of a misdemeanor punishable by imprisonment for up to one year, with community service work, or a fine.</p> <p>(2) Relatives of the persons committing the offense referred to in Subsection (1) shall not be liable for prosecution,</p> <p>Furthermore, any person, who commits espionage by disclosing state secrets shall be punishable more strictly (imprisonment between five to fifteen years instead of imprisonment between two to eight years, Section 147. of the Criminal Code).</p>

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

They apply to any person.

- 16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this?**

Violation of Service Secret

Section 222.

- (1) Any person who:
- a) obtains any service secret without proper authorization;
 - b) uses without authorization any service secret that he has obtained, or makes it available to an unauthorized person;
- is guilty of a misdemeanour punishable by imprisonment for up to one year, community service work, or a fine.
- (2) The punishment shall be imprisonment for up to three years for a felony if the crime results in great damage.
- (3) The punishment shall be:
- a) imprisonment of between one to five years, if - as a consequence of the crime - a service secret becomes available to an incompetent foreign person;
 - b) imprisonment of between two to eight years, if - as a consequence of the crime - a military service secret becomes available to an incompetent foreign person.

Service secret is defined in the Act LXV. of 1995. According to Section 4 of this act, a data can be labelled service secret by the authorized person, if its disclosure, unlawful possession or use, availability for incompetent persons or unavailability for competent persons results in the harm or danger of governmental action or public service, or threatens the free accomplishment of this duty and thus has an indirect harmful effect on the legal interests of the Hungarian Republic. However, data that falls under the scope of the act on public information cannot be labelled as a service secret.

- 17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?**

They apply to any person.

Rules on Sanctions

- 18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?**

Criminal penalties can be found in the Criminal Code.

- 19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?**

Higher penalties are ordered if violation of secret (both state and service secret) causes great damage, which can be the case in mass publication.

- 20. Have there any cases been brought in the last five years against:**

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

Judicial decisions are not published on internet, there is no register on the question at our disposal.¹⁹

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

- 21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?**

There is no such an obligation laid down in the law, judiciary can take public interest into consideration while deciding on the punishment. Moreover, judiciary might reconsider whether the conditions of the qualification were given in the particular case.

- 22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?**

See answer 20.²⁰

PROTECTION OF SOURCES

- 23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?**

According to Section 11 (1) of Act II. of 1986 on the press, a journalist is allowed to keep the source of information in secret. The journalist cannot disclose the name of his source if the person wishes so. However, information related to criminal acts falls under the scope of criminal law.

- 24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?**

National law applies all over the state.

- 25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?**

See answer 24.

- 26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?**

See answer 20.

- 27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?**

In the penal procedure, journalists can be heard as a witness, in this case they must answer to the questions (unless under certain circumstances laid down in the act on penal procedure, e.g. being a relative of the suspected person, or a doctor cannot be heard on medical secret). A witness not willing to give testimony can be fined.

- 28. What are the penalties for refusing to reveal sources of information?**

¹⁹ In the last two years RFOM intervened twice with the Hungarian authorities to request dropping charges against journalists accused of the deliberate breach of a state secret. Rita Csik, journalist of the daily newspaper *Népszava*, was acquitted in May 2006, but Antónia Rádi, journalist of the weekly *HVG*, is still awaiting a first degree court decision.

²⁰ According to the information available to RFOM, in Hungary journalists do not enjoy milder or no sanctions for the unauthorized release of information that was of legitimate public interest. RFOM has been in touch with the Hungarian authorities, urging them to protect investigative journalism and the public's right to know by lifting the responsibility of civilians when handling state secrets, and limiting the responsibility to the officials in charge of protecting classified information.

In the penal procedure the witness not willing to give testimony can be fined, furthermore, false testimony is punishable as a crime.

29. Are the journalists prohibited from revealing their source without the permission of the source?

Yes they are, see answer 23.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

The journalist (see answer 23).

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

No.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

No.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

Confiscation of papers found in a press editorial room must be ordered by the prosecutor before handing in the arraignment or by the judge after it.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

No.

Hungary

Prepared by the Hungarian Civil Liberties Union (HCLU)

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. your country, is there a constitutional right of public access to information or to documents held by government bodies?

In Hungary, the right of public access to information is a constitutional right.
(Article 61 : <http://www.mkab.hu/content/en/encont5.htm>).

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

Yes, the Hungarian Constitutional Court interpreted several times the right of public access to information. Here is a link to an important decision in English: <http://www.mkab.hu/content/en/en3/13589104.htm> .

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

It is limited.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

Reasons of limitation: state secret, service secret, national defence, national security, criminal investigation and crime prevention, financial or foreign exchange policy of the State, international relations and relations to international organisations, judicial and administrative authoritative proceedings, the data prepared or recorded, on which the decision was made during the process aiming at decision making in the field of the sphere of tasks and powers of the organs.

5. Are there other specific constitutional limits on access and dissemination of information?

The most important constitutional limit is the protection of personal data (Article 59 of the Constitution). Other important constitutional limits are the international obligations, such as regarding the NATO and the European Union (Article 2/A).

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

1992. évi LXIII. Törvény a személyes adatok védelméről és a közérdekű adatok nyilvánosságáról – Act LXIII of 1992 on the Protection of Personal Data and Public Access to Data of Public Interest, available on the web: http://abiweb.obh.hu/dpc/legislation/1992_LXIIIa.htm

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

The Act LXIII of 1992 guarantees the access for anybody, even for foreigners. Furthermore “The claim for access to data of public interest shall not be refused because the claimant, whose mother tongue is a language other than Hungarian, drafted his claim in his mother tongue or in another language spoken by him.” “The claim shall be granted in an easy to understand way” which can be understood as the public body shall translate it if needed, but the expenses can be charged.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

No, it does not.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

On the web site of the Data Protection Commissioner (<http://abiweb.obh.hu/dpc/index.htm>), you can find some statistics in the annual reports. On the court procedures there are no statistics, as the courts do not collect separate statistics on FOI cases.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

The Act II of 1986 on the Press prescribes the state organs to cooperate with the representatives of the press, and to guarantee the access to information.

11. Are there any limits in this law on access to, and publication of, information?

There are several limits, like the state security, state and service secret, and the right to privacy. The journalist has to keep in secret the source of information. The journalist has to verify the coverage of reality.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

We do not have information on available statistics to answer this question.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

Act LXV of 1995 on State and Service Secrets determines one kind of state secret which is indicated as "Top Secret". The service secret has three classes: "secret", "confidential", "restricted".

Information can not be classified longer then 90 years as state secret, and it has to be reviewed every 3 years. The period of classification is 20 years in the case of service secret, and has to be reviewed every 3 years.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

The unauthorized disclosure of state and service secret is penalised by the Criminal Code (Act IV. of 1978 Art. 221., Art. 222.). The omission of the denunciation of an unlawful disclosure of a state secret is a crime as well.

These unlawful acts could be also sanctioned by the administrative law, as a failure of official obligations.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

The Criminal Code applies to everyone, the administrative regulations only apply to officials.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this?

The NATO, the bodies of the European Union and the Western European Union can classify information as „COSMIC TOP SECRET”; „FOCAL TOP SECRET”; „TRES SECRET UE/EU TOP SECRET”; „EU TOP SECRET”; „EURA-TOP SECRET” According to international treaties other information can be classified too (“information classified by international organisation”- Act LXV of 1995 Art. 5/C). This information is to be handled as state secrets according to the rules of the Hungarian law, and by the special instructions of the international organ. All the other categories of information classified by the mentioned organisations are to be handled as service secrets according to the rules of the Hungarian law.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

These prohibitions apply to everyone.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

Unauthorized acts are penalised by the criminal law. The acts concern a state secret could be punished with prison, one year up to 5 in a simple case. If the disclosure causes heavy disadvantage, or the information get to inappropriate foreign person or organ, the punishment can be 15 years.

The unlawful acts concern service secrets are penalised by minor penalties. In a simple case, the penalty can be one year prison, communal work or fine. In a qualified case, the imprisonment is up to 5 years or 8 years, if the latter concerns a military secret.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

Yes, these penalties apply to the media too.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

Prosecutions against official persons are rare. We have found 5 cases in the last 3 years, and only one ended with prison. There is one case still pending.

As the Hungarian law does not distinguish between perpetrators, unfortunately there were prosecutions against journalists. No one has been imprisoned because the Courts interpret the regulations in favour of the freedom of speech. Experts say that amendments in criminal law are still required.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society’s right to know about issues of public interest might override the government’s classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government’s classification concerns?

No there is no law in this field which recognises public interest test, therefore the judiciary does not use public interest test. Although there is no test, seemingly the Courts interpret the law in favour of the freedom of speech, but this is not a safe situation, because in Hungary, de iure there is no obligation to follow a precedent (although de facto they often do), and the legislative regulations could be also interpreted in a restrictive way. Unfortunately the Constitutional Court, which could judge this problem according to the necessity – proportionality, test has not dealt with this problem yet.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

As the press releases about the criminal procedures on cases of publishing state secrets don't go into details and so far no publications have appeared in legal journals we can not answer the first question.

Yes to the second question.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

In case of penal procedure, the journalist can deny the testimony on information related to his/her work. The source is such "information".

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

There is unique jurisprudence and legislation in Hungary.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

We have not found any court decision or process on this subject.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

We do not have information on this.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

The Criminal Code punishes the omission of the denunciation of an unlawful disclosure of a state secret. If someone disclose a state secret to a journalist, and the journalist knows that the source committed a crime, he/she has to turn to authorities, otherwise he/she commits a crime as well.

28. What are the penalties for refusing to reveal sources of information?

For the omission of the denunciation the penalties can be prison (up to one year), communal work or fine.

29. Are the journalists prohibited from revealing their source without the permission of the source?

In every case, except the state secret, the journalist can not reveal the source without its permission.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

The Act on the Press protects the journalist.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

Yes.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

Yes.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

No, it is not. Only the searches in the property of advocates, notaries in connection with their professional secrets and in health institutions regarding personal health data are better protected as a state attorney must be present at these searches. (Act XIX of 1998 on Criminal Procedure)

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

No, they are not.

(Art 154 – 156 Act C OF 2003 on electronic communications http://en.informatika.gkm.gov.hu/data/25087/eh_t_eng.pdf)

Iceland

Prepared by the Government of Iceland

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

There is no such right in the written text of the 1944 Constitution. However, in a recent judgment (no. 397/2001), the Supreme Court of Iceland, hinted that the constitutional provision on freedom of expression in Article 73 might have an impact on how the legal provisions on access to official documents should be interpreted.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

See above.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

See above.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

See above.

5. Are there other specific constitutional limits on access and dissemination of information?

See above.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

Yes, there is a national law allowing individuals to access information held by public authorities, law no. 50 of 1996, the Information Law (Upplýsingalög).

<http://eng.forsaetisraduneyti.is/acts-of-law/nr/15>

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

No, there are no limits on who can use this law.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

It is not stated in the law, or in any other law, that journalists or media organisations have a greater right of access. However, it is stated in the explanatory report of the law, that the media is a part of the public and should therefore not have less rights. In addition, it is stated that one does not have to give reasons for asking for information.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

Such statistics only exist regarding to work of the independent Committee on Access to Official Documents. Any individual is entitled to turn to this committee if a public authority refuses to grant information. It issues binding decisions. Public authorities have to cooperate with this independent committee, which means inter alia, providing it with copies of the requested documents. Those documents remain confidential of course, unless access is granted.

In the year 2006 out of eleven cases brought before the committee on access to official documents, two of them were brought by journalists.

In the year 2005 out of twenty eight cases brought before the committee, four were brought by journalists or media organisations.

In the year 2004 out of twenty eight cases brought before the committee, four were brought by journalists and completed in the committee, additionally two cases were dropped because the journalists got the information before the case was concluded.

In the year 2003 out of ten cases brought before the committee, one of them was brought by a journalist and completed in the committee, additionally one case was dropped because the requested information did not exist.

In the year 2002 out of eighteen cases brought before the committee, four of them were brought by journalists.

In the year 2001 out of thirty cases brought before the committee, three of them were brought by journalists and completed in the committee, additionally one case was dropped because access to information was granted before the case was concluded.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

No, there is no such law.

11. Are there any limits in this law on access to, and publication of, information?

See above.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

See above.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

No, there is no such law that sets standards for state and official secrets. However in Articles 4 and 6 of the Information Law it is stated that public access to information can be limited due to various reasons such as state security. According to paragraph 2 of Article 8, all information should be accessible after 30 years from the time it was created, except information concerning private matters of individuals, which shall be accessible after 80 years, at the earliest.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

Yes, Articles 91 and 92 of the Icelandic Penal Code, no. 19/1940, deal with this issue. In Article 91 it is stated that anyone who discloses, informs, or publishes in any other way to unauthorised persons secret contracts or plans, will be punished by up to 16 years. In Article 92, it is stated that anyone who, on purpose or negligently, discloses, describes or in any other way notifies unauthorised persons of secret defense matters shall be punished by up to 10 years in prison.

An English translation of the Penal Code is available at <http://eng.domsmalaraduneyti.is/laws-and-regulations/nr/1145m>

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

These prohibitions apply to everyone who has that information.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this?

Yes, such laws exist, e.g.

Article 136 of the Icelandic criminal law, no. 19/1940, states that, a civil servant who discloses any confidential information that he has learnt in his service shall go to prison for up to 1 year.

See <http://eng.domsmalaraduneyti.is/laws-and-regulations/nr/1145>

Article 18 of the Law on Civil Service no. 70/1996 states that every civil servant is obliged to keep confidentiality about everything he has become acquainted with as an employee of the state, and that shall be kept confidential according to law or by orders or the nature of the matter.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

These prohibitions apply only to officials.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

If a civil servant discloses confidential information, he risks according to article 136 of the General Penal Code up to 1 year imprisonment. If the aim of the disclosure is to bring some benefit to the civil servant the imprisonment can be up to 3 years.

<http://eng.domsmalaraduneyti.is/laws-and-regulations/nr/1145>

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

Yes, as regards state secrets they apply to anyone in possession of such information. There is no provision providing for higher penalties for mass publication of information.

As regards other confidential information, only civil servants are liable for penalties, according to Article 136 of the General Penal Code. It is not excluded that a media professional could be held liable for aiding or participating in a punishable act, according to Article 21 of the General Penal Code.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

No.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

No, the law does not mention these considerations, but it is very likely that the courts would take them into account.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

See above.

Protection of sources

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

Both the Code of Criminal Procedure, No. 19/1991 and the Code of Procedure in Private Litigation, No. 91/1991, contain provisions allowing journalists to refuse to reveal their sources of information.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

Iceland is a unitary state. The national law spans the whole country.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

See above.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

No journalist or media organisation has been required by a court or official to disclose their sources of information in the last five years under the aforementioned law.

The latest case regarding disclosure of sources is a Supreme Court case no. 419/1995 The Department of Criminal Investigation vs. Agnes Bragadóttir. Ms. Bragadóttir wrote articles in Morgunblaðið daily newspaper about the restructuring of one of the biggest Icelandic companies. It seemed evident that some of the information originated in the bank which administrated the restructuring. The Supreme court acknowledged her right not to reveal her sources of information.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

The protection is absolute in civil cases. As for the criminal cases, it is stated in paragraph 1 of article 53 of the Code of Criminal Procedure that the one who is responsible for editorial content is not obliged to reveal the source except when it is demanded to make a testimony due to serious offence and that the testimony is essential for the investigation and much is at stake.

28. What are the penalties for refusing to reveal sources of information?

A witness who refuses to testify can be brought to the court by force, and the judge can also fine the witness if he/she has no valid motives for the absenteeism. If a witness refuses to answer a question, the judge can order the witness to pay a fine.

29. Are the journalists prohibited from revealing their source without the permission of the source?

As for civil procedure, it is stated in article 53 of the Code of Procedure of Private Litigation that the witness (for example a journalist) is unauthorized to reveal the source without the permission of the source. No such condition exists with regard to criminal procedure.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

Both under civil and criminal procedure it is the person bearing legal responsibility for the published matter, who is protected. In addition, under the code on civil procedure, any person who has gained knowledge about the source of information by working in a media company is protected.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

Yes.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

Most likely yes, since the codes on civil and criminal procedure speak about any “published” matter.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

No, general rules apply, meaning that a court order has to be obtained beforehand. It is to be assumed that the court would take the particular status of journalists into account when deciding whether to allow searches in such a case.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

No particular rules exist for interception of communications where the media are involved.

Ireland

No data have been received

Italy

Data for analysis has been received from the Government of Italy, a written contribution is pending

Kazakhstan

Prepared by the Government of Kazakhstan (unofficial translation by OSCE/RFOM)

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

The Constitution of the Republic of Kazakhstan guarantees **everyone the right to freely receive and disseminate information in any way not prohibited by the law** (Clause 2, Article 20), as well as obligates government bodies, public associations, officials, and the media outlet **to provide every citizen with the opportunity to acquaint himself/herself with documents, decisions, and information sources affecting his/her rights and interests** (Clause 3, Article 18).

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

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3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

The Law of the Republic of Kazakhstan on State Secrets (hereafter, Law on State Secrets) envisages the protection of state secrets.

Article 1 of the Law on State Secrets defines the following types of information which are protected by the state:

- state secrets – information protected by the state that constitutes a state or official secret, the dissemination of which is restricted by the state for carrying out efficient military, economic, scientific and technical, foreign economic, foreign political, intelligence, counterintelligence, operational search, and other activity that does not contradict the generally accepted norms of international law;
- state secret – military, economic, political and other information, the disclosure or loss of which is detrimental or can be detrimental to the national security of the Republic of Kazakhstan;
- official secrets – information which constitutes certain facts that could be part of a state secret, the disclosure or loss of which can be detrimental to the state's national interests, or to the interests of government bodies and organizations of the Republic of Kazakhstan.

In accordance with Article 2 of the Republic of Kazakhstan Law on the Mass Media (hereafter, Law on the Mass Media), disclosure of information constituting state secrets or other secret protected by the law, the promotion and justification of extremism or terrorism, the dissemination of information revealing techniques and tactics of antiterrorist operations during their execution, the promotion of drugs, psychotropic substances and precursors, as well as pornography are prohibited.

Failure to observe these regulations is a reason to put a stop to the publication (airing) of the offending means of mass communication (Article 13 of the Law on the Mass Media).

According to Article 14 of the Law on the Mass Media, the airing of radio and television programs and demonstration of films and video shows having pornographic and particularly sexual-erotic character, as well as the promotion of cruelty and violence cults, are prohibited. Since 1 January 2004, advertisements of alcoholic beverages are prohibited.

5. Are there other specific constitutional limits on access and dissemination of information?

Clause 2, Article 20 of the Constitution sets forth that everyone has the right to freely receive and disseminate information by any **means not prohibited by the law**.

Clause 3, Article 20 of the Constitution of the Republic of Kazakhstan sets forth that promotion or agitation of a forced change in the constitutional system, disruption of the Republic's integrity, undermining the state's security, war, social, racial, national, religious, status supremacy or supremacy by origin, as well as cruelty and violence cults **are prohibited**.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

There is no such special law. Nevertheless, Clause 3, Article 18 of the Constitution clearly states that **government bodies, public associations, officials, and the media outlet are obligated to provide each citizen with the opportunity to acquaint himself/herself with documents, decisions, and information sources affecting his/her rights and interests.**

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc.)?

Resolution No. 12 of 1 December 2003 of the Republic of Kazakhstan Constitutional Council on the official interpretation of Articles 10 and 12 of the Republic of Kazakhstan Constitution explains that the Constitution differentiates the legal status of an individual by using the terms "citizen of the Republic of Kazakhstan," "each person," "everyone," "foreigners," and "stateless persons." In so doing, it should be understood that when the Constitution mentions "each person" and "everyone," it means both citizens of the Republic of Kazakhstan and persons who are not citizens of the Republic; and when "citizens of the Republic of Kazakhstan," it means only persons related by citizenship to the state of Kazakhstan. Therefore, the Constitution sets forth different amounts of rights and freedoms for these persons and places different amounts of obligations on them.

In this way, there are no limits with respect to persons who may use the right of access to information stipulated in Clause 3, Article 18 and Clause 2, Article 20 of the Constitution.

8. Does the FOI law give journalists or media organizations a greater right of access to information than citizens?

As indicated above, the Constitution grants each person the right to freely receive and disseminate information by any means not prohibited by the law.

What is more, the Law on the Mass Media sets forth that government bodies are obligated to provide information to media representatives if asked on equal terms, regardless of their form of property and ownership, apart from information that constitutes state secrets of the Republic of Kazakhstan.

In so doing, government bodies and other organizations are obligated to provide the information requested no later than three days after such a request is made or give notification of the date such information will be provided, or the reason such a request is denied. The response to a request requiring additional analysis and investigation must be given no later than one month from the day such a request was made. In the event a request is made by the media outlet to government bodies or other organizations not competent to resolve the questions asked, such request should be sent no later than five days to the relevant bodies with notification of the particular media outlet of such.

A representative of the media outlet in question may appeal to a higher-standing body or official in the event he/she is denied the requested information, and then to a court authorized by the law to consider appeals of illegitimate actions of state government bodies and officials infringing on citizen rights (Article 18).

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

The Law on the Mass Media gives journalists the following rights of access to information:

- (1) to carry out search, make inquiries, receive, and disseminate information;
- (2) to visit government bodies and organizations of all forms of property, and, when executing their official duties, be received by officials of these bodies and organizations, attend all functions held by authorized bodies, with the exception of cases when a decision has been made to hold a closed function;
- (3) to make recordings, including with the use of audio-visual technical, filming, and photography means, with the exception of cases prohibited by legislative acts of the Republic of Kazakhstan;
- (4) to be present, after presenting a journalist identification, in natural disaster zones, at meetings and demonstrations, as well as during other forms of public, group, or personal interest and protest demonstrations;
- (5) to gain access to documents and information, with the exception of those parts that contain data constituting state secrets;
- (6) to check the authenticity of information received;
- (7) to draw the help of specialists when checking information documents received (Article 20).

11. Are there any limits in this law on access to, and publication of, information?

The Law on the Mass Media does not permit the disclosure of information constituting state secrets or other secret protected by the law, the promotion and justification of extremism or terrorism, the dissemination of information revealing techniques and tactics of antiterrorist operations during their execution, the promotion of drugs, psychotropic substances and precursors, as well as pornography (Clause 3, Article 2).

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

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RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- **Different categories in terms of level of confidentiality?**
- **The period of classification and declassification?**

Article 18 of the Law on State Secrets sets forth that the classification level of information constituting state secrets should correspond to the gravity of the damage that is inflicted or might be inflicted on the Republic of Kazakhstan's national security or on the interests of government bodies and organizations as the result of disseminating such information, and stipulates three classification levels of information constituting state secrets and corresponding classification codes for the carriers of such information: "extremely important," "top secret," and "secret."

Information constituting state secrets is classified as "extremely important" or "top secret."

Information constituting an official secret is classified as "secret."

These classification codes may not be used for classifying information that does not constitute state secrets, nor may other classification codes be used for such information.

Article 20 of the Law on State Secrets sets forth that the period for classifying information constituting state secrets may be no more than thirty years. In exceptional cases, this period may be extended by a decision of an authorized government body on the protection of state secrets.

Rules on Limitations

14. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

Administrative and criminal legislation envisages liability for violating the set requirements for ensuring classification conditions and for illegal receipt and disclosure of state secrets.

Article 386 of the Code on Administrative Offences of the Republic of Kazakhstan (hereafter, CoAO) envisages liability for violating the set requirements for ensuring the classification conditions.

Article 172 of the Criminal Code of the Republic of Kazakhstan (hereafter, CC RK) envisages liability for the illegal receipt and disclosure of state secrets.

Article 386 of CC RK envisages liability for disclosing secret military information or the loss of documents containing secret military information.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

Prohibitions mainly apply to officials whose duty it is to protect secret information (Article 386, “Liability for Violating the Set Requirements for Ensuring Classification Conditions,” of CoAO, Clauses 2, 3, Article 172, “Illegal Receipt or Disclosure of State Secrets,” Article 386 of CC RK, “Disclosure of Secret Military Information or the Loss of Documents Containing Secret Military Information”).

But the norms of Clauses 1 and 4, Article 172 of CC RK, “Gathering Information Constituting State Secrets by Stealing Documents, Ransom, or Threats to Persons Possessing State Secrets, or Their Relatives, Interception in the Means of Communication, Illegal Penetration of a Computer System or Network, Use of Special Technical Means, or by Other Illegal Method in the Absence of Signs of State Treason or Espionage, as well as When Such Entails Grave Consequences”, can also apply to other citizens who do not have the specific duty to protect secrets, including journalists.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

There are regulations in administrative and criminal legislation prohibiting the disclosure, possession or publication of the following information not related to national security issues:

CoAO. Article 128. Violating rights to inventions, useful models, production prototypes, selection achievements, and the topology of integral circuits.

Article 351. Disclosure of authorship and information source secrets.

Article 359. Disclosure of information constituting a tax secret.

Article 383. The sale, transfer, or other disclosure of statistics containing a commercial secret by an official.

CC RK

Article 135. Disclosure of an adoption secret.

Article 144. Disclosure of a medical secret.

Article 200. Illegal receipt and disclosure of information constituting a commercial or banking secret.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

The abovementioned prohibitions do not only apply to officials, but also to persons who have not signed security agreements, including journalists.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorized disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

Administrative and criminal legislation envisages penalties for disclosing, possessing or publishing the following information.

CoAQ. Article 128. Violating Rights to Inventions, Useful Models, Production Prototypes, Selection Achievements, and the Topology of Integral Circuits

1. Illegal use of an invention, useful model, production prototype, selection achievement, and the topology of an integral circuit, disclosure without the consent of the author or applicant of the invention, useful model, production prototype, selection achievement, or topology of an integral circuit prior to official publication of information on such, as well as misappropriation of authorship or compulsion to co-authorship, if such actions do not contain signs of a criminally punishable act, are punished by a fine in the amount of two hundred to five hundred monthly specified rates or in the amount of the salary or other income of the accused for two to five months, or by detention for four to six months, or by correctional work for one to two years, or by imprisonment for up to three years with a fine in the amount of up to one hundred monthly specified rates or in the amount of the salary or other income of the accused for up to one month, or without such.

2. The same acts committed repeatedly within one year after imposition of an administrative penalty set forth in part one of this article

are punishable by a fine of physical persons in the amount of fifty to one hundred, of officials, in the amount of one hundred to two hundred, and of legal persons, in the amount of four hundred to seven hundred monthly specified rates.

Administrative and criminal legislation envisages liability for violating the set requirements for ensuring classification conditions, for illegal receipt and disclosure of state secrets:

Article 351. Disclosure of authorship and information source secrets

Disclosure by a mass media official of authorship and information source secrets, if he/she assumed the duty in writing not to disclose them,

is punishable by a fine in the amount of up to fifty monthly specified rates.

Article 359. Disclosure of information constituting a tax secret

Disclosure by officials of tax service or financial police structures without professional or official necessity of information constituting a tax secret

is punishable by a fine in the amount of twenty to forty monthly specified rates.

Article 383. The sale, transfer, or other disclosure of statistics containing a commercial secret by an official

The sale or transfer to anyone or other disclosure of statistics constituting a commercial secret by an official without the consent of their legal owner, if great damage is not inflicted on the latter,

is punishable by a fine in the amount of up to ten monthly specified rates.

Article 386. Liability for violating the set requirements for ensuring classification conditions

1. Violating the established procedure of access to state secrets

is punishable by a fine in the amount of five to twenty monthly specified rates.

2. Violating the set requirements for ensuring classification conditions by officials during work with secret information and their carriers, if such actions do not contain signs of a crime,

is punishable by a fine in the amount of five to twenty monthly specified rates.

3. The same acts entailing disclosure of secret information or the loss of secret information and their carriers, which do not contain state secrets,

are punishable by a fine in the amount of ten to twenty-five monthly specified rates with deprivation of special permission to carry out certain activity, or without such.

CC RK

Article 135. Disclosure of an adoption secret

Disclosure of an adoption secret against the will of the adopter committed by a person whose duty it is to keep the fact of adoption as an official or professional secret, or by another person out of selfish or other base considerations

is punishable by a fine in the amount of one hundred to two hundred monthly specified rates or in the amount of the salary or other income of the accused for one to two months, or by correctional work for up to two years, or by detention for up to six months with deprivation of the right to occupy certain posts or engage in certain activity for up to three years, or without such.

Article 144. Disclosure of a medical secret

1. Disclosure by a medical employee without professional or official necessity of information on a patient's illnesses or medical examination results

is punishable by a fine in the amount of up to one hundred monthly specified rates or in the amount of the salary or other income of the accused for up to one month, or by correctional work for up to one year.

2. The same act in relation to reporting information on a person infected with HIV/AIDS

is punishable by a fine in the amount of one hundred to three hundred monthly specified rates or in the amount of the salary or other income of the accused for one to three months, or by deprivation of the right to occupy certain posts or engage in certain activity for two to five years, or by correctional work for up to two years.

3. Acts envisaged by parts one or two of this article, if they entailed grave consequences,

are punishable by imprisonment for up to three years with deprivation of the right to occupy certain posts or engage in certain activity for up to three years, or without such.

Article 172. Illegal receipt or disclosure of state secrets

1. The gathering of information constituting state secrets by stealing documents, ransom, or threats to persons possessing state secrets, or their relatives, interception in the means of communication, illegal penetration of a computer system or network, use of special technical means, or by other illegal method in the absence of signs of state treason or espionage is punishable by detention for four to six months or imprisonment for up to five years with deprivation of the right to occupy certain posts or engage in certain activity, or without such.

2. The disclosure of information constituting state secrets by a person to whom it was entrusted or became known through service or work, in the absence of signs of state treason,

is punishable by detention of three to six months or imprisonment of up to three years with deprivation of the right to occupy certain posts or engage in certain activity for up to three years, and without such.

3. The disclosure of information constituting an official secret by a person to whom it was entrusted or became known through service or work, in the absence of signs of state treason,

is punishable by a fine in the amount of two hundred to five hundred monthly specified rates or in the amount of the salary or other income of the accused for two to five months, or by detention for up to four months, or by imprisonment for up to two years with deprivation of the right to occupy certain posts or engage in certain activity for up to two years, or without such.

4. Acts envisaged by parts one or two of this article, if they entailed grave consequences,

are punishable by imprisonment for up to eight years with deprivation of the right to occupy certain posts or engage in certain activity for up to three years.

Article 200. Illegal receipt and disclosure of information constituting a commercial or banking secret

1. The gathering of information constituting a commercial or banking secret by stealing documents, ransom, or threats to persons possessing a commercial or banking secret, or their relatives, interception in the means of communications, illegal penetration of a computer system or network, use of special technical means, or by other illegal method for the purpose of disclosure or illegal use of this information

is punishable by a fine in the amount of one hundred to two hundred monthly specified rates or in the amount of the salary or other income of the accused for up to two months, or by correctional work for up to two years, or by detention for up to six months, or by imprisonment for up to one year.

2. Illegal disclosure or use of information constituting a commercial or banking secret without the consent of its owner by a person to whom it was entrusted in keeping with service or work committed for selfish or other personal interests and causing great damage

is punishable by a fine in the amount of two hundred to five hundred monthly specified rates or in the amount of the salary or other income of the accused for two to five months, or by detention for four to six months, or by correctional work for one to two years, or by imprisonment for up to three years with a fine in the amount of one hundred monthly specified rates or in the amount of the salary or other income of the accused for up to one month, or without such.

Article 386. Disclosure of Secret Military Information or the Loss of Documents Containing Secret Military Information

1. The loss of documents or items containing secret military information not constituting state secrets by a person to whom these documents or items were entrusted in keeping with service, if the loss was a result of violation of the established rules for handling such documents or items,

is punishable by restriction of military service for up to one year, or detention for up to six months, or imprisonment for up to one year.

2. The disclosure of secret military information not constituting state secrets by a person to whom this information was entrusted or became known in keeping with service

is punishable by restriction of military service for up to two years or imprisonment for the same term.

3. Acts envisaged by parts one and two of this article entailing grave consequences

are punishable by imprisonment for three to ten years.

19. Do these penalties apply to the media for unauthorized disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

In accordance with CoAO and CC RK, journalists will be held liable on general grounds.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organizations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

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PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

In accordance with Clause 3, Article 2 of the Law on the Mass Media, disclosure of information constituting **state secrets or other secret protected by the law**, promulgation and justification of extremism or terrorism, dissemination of information revealing techniques and tactics of antiterrorist operations during their execution, promulgation of drugs, psychotropic substances and precursors, as well as pornography are prohibited.

The current legislation does not obligate the judiciary to apply the public-interest test to evaluate the liability of a person disseminating information constituting **state secrets or other secret protected by the law**.

In turn, it should be noted that when executing justice, judges are independent and are subordinated only to the Constitution of the Republic of Kazakhstan and law (Clause 1, Article 25 of the Constitution). Article 25 of the Criminal Procedural Code (hereafter, CPC RK) stipulates that judges evaluate the evidence on their own conviction based on all the evidence being considered, guided in so doing by the law and their conscience.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorized release of information that was of legitimate public interest?

It should be noted that the particulars of bringing journalists and the media outlet as a whole to account (criminal, administrative) are not set forth by current legislation. Clause 1, Article 14 of the Constitution enforces that "everyone is equal before the law and court." In this respect, grounds are applied for exemption from criminal liability and punishment (Section 5, CC RK) and from administrative liability and administrative penalty (Chapter 8, CoAO) on general grounds.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

In accordance with Subclause 10, Article 20 of the Law on the Mass Media, a journalist has the right to keep an authorship and information source secret, apart from cases when these secrets must be publicized at the request of the court.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

In accordance with Clause 1, Article 2 of the Constitution, the Republic of Kazakhstan is a unitary state.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

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26. How many times in the last five years has a journalist or media organization been required by a court or official to disclose their sources of information under this law or any other law?

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27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

In accordance with Clause 2, Article 53 of the CPC RK, persons whom the structure conducting the criminal proceedings asks to report or provide information constituting state or other secrets may not deny the indicated request by referring to the need to keep such secrets, but have the right to request in advance that an explanation confirming the need to obtain such information for carrying out the criminal case be entered in the minutes of the proceedings in question.

Evidence containing information constituting other secrets, as well as disclosing intimate aspects of private life, may be considered in a closed court session at the request of the persons affected by the disclosure of such information.

Harm inflicted on a person as the result of a violation of the inviolability of private life, the disclosure of a personal or family secret, is subject to compensation as stipulated by the law.

The procedure for keeping the data of inquest and preliminary investigation confidential is envisaged in Article 205 of the CPC, which stipulates that the information of preliminary investigation is not subject to disclosure, it may be publicized only with the permission of the investigator, questman, or prosecutor to the degree they deem possible, if such does not contradict the interests of the investigation and does not entail violation of the rights and legitimate interests of other people. In so doing, the investigator warns the defence counsel, witnesses, victim, civil claimant, civil defendant or their representatives, expert, specialist, translator, attesting witnesses, and other persons present at the investigation proceedings about the impermissibility of disclosing the information in the case without his/her permission, to which the indicated persons must put their signatures, being warned of the liability they hold.

In the event a crime is committed, the law obligates executives of the mass media outlet that published or disseminated the report on the crime, at the request of the person authorized to instigate the criminal case, **to transfer the documents and other information in their possession confirming the report, as well as name the person providing this information, apart from cases when such person provided them on the condition that the source of information be kept a secret** (Clause 2, Article 181 of the CPC RK).

28. What are the penalties for refusing to reveal sources of information?

Article 353 of the CC RK stipulates liability of the witness or victim for refusing to give a testimony. A special subject for this corpus deficit is not identified.

29. Are the journalists prohibited from revealing their source without the permission of the source?

There is no such regulation in the national legislation of the Republic of Kazakhstan.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

A journalist (representative of a media outlet) is a physical person carrying out activity to gather, process and prepare reports and articles for the media outlet based on labour or other contractual relations (Article 1 of the Law on the Mass Media).

A media outlet is a periodical, radio and television program, film documentary, audiovisual recording, and other forms of periodical or continuous public dissemination of mass information, **including websites in accessible telecommunication networks** (the Internet and others) (Article 1 of the Law on the Mass Media).

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

We repeat that the particulars of carrying out proceedings (in particular, searches and seizure) with respect to journalists and the media outlet as a whole are not set forth by current legislation. The general procedure regulated by provisions of the Constitution and CPC RK is applied (Chapter 29).

For example, according to Clause 1, Article 25 of the Constitution, apartments are inviolable. Apartments may not be confiscated, apart from by a court decision. Penetration into apartments and searching them may only be permitted in cases and in the way established by the law.

In turn, Clause 1, Article 232 of the CPC RK envisages a procedure for **searching** and seizure, in keeping with which **searching** and seizure are carried out by an investigator on the basis of a motivated resolution. **A resolution on carrying out a search, as well as on the seizure of documents containing a state secret or other secret protected by the law should be sanctioned by a prosecutor or his/her deputy.**

34. Are third parties who act for journalists or media organizations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

There is no such regulation in the legislation of the Republic of Kazakhstan.

Kyrgyzstan

Prepared by the OSCE Centre in Bishkek in co-operation with the Independent Human Rights Group and Media Commissioner's Institute

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Excerpt from Clause 6, Article 16 of the KR Constitution:

“Everyone shall have the right to get acquainted with his/her personal information held by government agencies, local self-government bodies, institutions and organizations, unless such information constitutes a state or other secret protected by law.”

Excerpt from Clause 9, Article 16 of the KR Constitution:

“Everyone shall have the right to freely gather, store and use information as well as disseminate it verbally, in writing or otherwise.”

The meaning of these two clauses of Article 16 makes it clear that the KR Constitution does not guarantee the right of access to information and official documents.

The formulation used in Clause 9 (“Everyone shall have the right to freely gather, store and use information”) does not imply the positive obligation of a government agency to provide access to information at its disposal. The word “gather” in the usual sense means to take or acquire what is “for the taking” or in free circulation. Of course, a broader interpretation of the lexical meaning of the word “gather” can also include another meaning, such as “take, acquire what is at someone else’s disposal,” but if the legislator implied precisely this meaning, it would have been more appropriate to use the word “procure.” The current formulation can be interpreted in different ways and so access to information held by government agencies cannot be guaranteed.

Comparison of this clause with Clause 6 of Article 16 of the Constitution, which guarantees the person the opportunity to get acquainted with his/her personal information held by government agencies, provides additional reason to believe that Clause 9 implies precisely information in free circulation, since:

- if Clause 9 implied information held by a government agency, there would be no need to specify the right to get acquainted with information about oneself;
- if Clause 9 implied information held by a government agency, it should logically be this clause that also sets forth the limitations of this right, but such limitations are set forth in Clause 6, rather than Clause 9.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

The Constitutional Court of the Kyrgyz Republic has not reviewed cases on the right of access to information.

The KR Supreme Court periodically generalizes court practices regarding a particular group of similar cases, but there has been no generalization regarding cases related to exercising the right of access to information.

No appellate court in the Kyrgyz Republic may interpret any particular right other than in the form of ruling on a specific case.

Taking into account the answer to the first question, we do not think the question about courts enforcing the constitutional right of access to information applies.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

Clauses 5 and 6 of Article 16 of the Constitution envisage limitations to protect the inviolability of private life.

Excerpts from Article 19 of the KR Constitution:

5. Everyone shall have the right to confidentiality of correspondence, telephone, telegraph, postal, and other communication.

This right may only be limited in accordance with law.

6. Everyone shall have the right to inviolability of his/her private life, to respect for and protection of his/her honor and dignity.

No gathering, storage, use or dissemination of confidential information about a person without his/her consent shall be permitted, except as provided for under law.

Everyone shall have the right to get acquainted with his/her personal information held by government agencies, local self-government bodies, institutions and organizations, unless such information constitutes a state or other secret protected by law.

Each person is guaranteed judicial protection of the right to refute inauthentic information about him/herself and the members of his/her family and the right to demand withdrawal of any information, as well as the right to compensation for material and moral damage inflicted by the gathering, storage and distribution of inauthentic information.

Moreover, “the right to get acquainted with his/her personal information held by government agencies” is interpreted as a constituent element of the right to the inviolability of private life. However, the right “to get acquainted with his/her personal information held by government agencies” is limited in the interests of state secrets and, as is stated in the Constitution, “other secrets protected by law.”

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

The particular limitations envisaged in the Constitution have already been indicated in the answer to the previous question.

As for how they are defined by law, see the answers to the questions in the following sections of the questionnaire.

5. Are there other specific constitutional limits on access and dissemination of information?

Excerpts from Clause 9 of Article 16 of the Constitution:

3. “No propaganda or advocacy fomenting social, racial, ethnic, or religious hatred and enmity shall be permitted. Any propaganda of social, racial, national, religious, or linguistic superiority shall be prohibited.”

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

KR Law on Guarantees and Freedom of Access to Information.

At present, the Zhogorku Kenesh [Parliament] is considering a draft Law on Access to Information Held by Government Agencies and Local Self-Government Bodies.²¹

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

“Every citizen” has right of access to information. Since, under the Constitution, foreigners and stateless persons in the Kyrgyz Republic enjoy the same rights and freedoms as citizens, it can be maintained that there are no limitations on who can use this law.

The law does not specify access to information for legal entities, including NGOs. But since the legal rights of NGOs are formed from the legal rights of “each person,” any member of an organization may access information in the interests of this organization.

8. Does the FOI law give journalists or media organizations a greater right of access to information than citizens?

The Law on Guarantees and Freedom of Access to Information does not give journalists or media organizations a greater right of access to information.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

Media organizations may use the right of access to information when information is requested from government agencies or when someone contests, during a trial or pre-trial, instances of information dissemination by the mass media. As far as we are aware, no one keeps special record of such data. Gathering such statistical data requires a lot of work (comprehensive submission of numerous requests to various media organizations, to government agencies and judicial bodies, waiting for replies, and processing the data obtained).

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

There is the KR Law on the Mass Media. But it is doubtful that this law gives media organizations any additional rights of access to information. In this law, the right of the mass media to obtain information from government agencies is formulated as (!) “the right of government agencies, NGOs, and officials to create conditions for becoming acquainted with the relevant documents when requested by the mass media.”

Article 15 of the Law on the Mass Media.

The right of media organizations to obtain information.

Government agencies, public associations, and officials have the right, upon request of media workers, to provide available information, to create conditions for becoming acquainted with the relevant documents.

11. Are there any limits in this law on access to, and publication of, information?

Limitations on publication of information are envisaged in Article 23 of the law.

Article 23. List of information not subject to public dissemination.

The following shall not be allowed in the mass media:

- (a) divulgence of state and commercial secrets;
- (b) calling for a violent overthrow or change in the existing constitutional system, violation of the sovereignty and territorial integrity of the Kyrgyz Republic, or of any other state;
- (c) propaganda of war, violence and cruelty, ethnic and religious superiority, and intolerance of other peoples and nations;

²¹ The law was adopted by Parliament and signed by President Bakiev on 17 January 2007.

- (d) insult of the civil honour of peoples;
- (e) insult of the religious feelings of believers and ministers of religion;
- (f) dissemination of pornography;
- (g) use of indecent expressions;
- (h) dissemination of information violating the standards of civil and national ethics and dishonoring the attributes of state symbols (coat-of-arms, flag, national anthem);
- (i) infringement on the honor and dignity of individuals;
- (j) publication of knowingly false information.

Limitations on access to information are not explicitly specified in the Law on the Mass Media, but the limitations set forth in the Law on Guarantees and Freedom of Access to Information apply to media organizations, that is, with respect to data containing “confidential information, as well as information containing a state, commercial, or official secret.” Unfortunately, there is no definition of what “confidential information” is, but it goes without saying that information about private life is included in this concept.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

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OBTAINING AND DISSEMINATING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- **Different categories in terms of level of confidentiality?**
- **The period of classification and declassification?**

There is the Law on the Protection of State Secrets of the Kyrgyz Republic.

In accordance with this law, the state secrets of the Kyrgyz Republic are divided into three categories: state, military, and official secrets.

Information, the disclosure of which would entail grave consequences for the defense capability, security, and economic and political interests of the Kyrgyz Republic, is classified as a state secret. Information containing a state secret is given the classification code “critically important” or “top secret.”

Military information, the disclosure of which would be of detriment to the Armed Forces and the interests of the Kyrgyz Republic, is classified as a military secret.

Information constituting a military secret is given the classification code “top secret” or “secret.”

Information, the disclosure of which may have a negative effect on the defense capability, security, and economic and political interests of the Kyrgyz Republic, is classified as an official secret. Such information has the nature of separate facts relating to a state or military secret, but not revealing such secrets entirely.

Information constituting an official secret is given the classification code “secret.”

As for periods of classification, here is an excerpt from Article 9 of the Law:

“Information shall be declassified in the period of time set when it was classified, unless a decision on its extension is made in accordance with the established procedure.

Information constituting state secrets may be declassified ahead of time, or the period of its classification may be extended if the political and economic interests of the Kyrgyz Republic require this, as well as if factors arise requiring its correction. Decisions on declassification and extension of classification periods shall be made by the Government of the Kyrgyz Republic at the request of interested ministries, state committees, administrative departments, as well as enterprises, institutions, and organizations.”

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

The legal grounds for protecting state secrets (state, military, official secrets) are defined by the Law on the Protection of State Secrets, and infringement of them entails criminal liability for:

- ✓ high treason (Art. 292 of the Kyrgyz Republic Penal Code, KR PC);
- ✓ espionage (Art. 293 of KR PC);
- ✓ disclosure of a state secret (Art. 300 of KR PC);
- ✓ loss of documents containing a state secret (Article 301 of KR PC);
- ✓ transfer or collection for the purpose of transferring to foreign organizations of information constituting an official secret (Art. 302 of KR PC).

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

Any citizen who has reached the age of 16 may be a subject of such crimes as high treason and espionage.

Liability for disclosing a state secret or losing documents containing a state secret is borne by those who have access to such information in their line of work or duty or to whom such information has been entrusted.

Liability for the transfer or collection for the purpose of transferring to foreign organizations of information constituting an official secret is borne by those to whom such information has been entrusted or become known in their line of work or duty, or otherwise. Since an illegal way of obtaining such information falls under the definition of “otherwise,” it is clear that any person who has reached the age of criminal liability may be an offender in this crime.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

The legal grounds for protecting a commercial or banking secret are envisaged by the laws on commercial and banking secrets, respectively, and criminal liability is envisaged for infringing on them.

- ✓ illegal obtaining of information constituting a commercial or banking secret (Art. 193 of KR PC);
- ✓ disclosure of a commercial or banking secret (Art. 194 of KR PC).

The Kyrgyz Republic Civil Code [KR CC] envisages the right of citizens to personal privacy (Art. 20 of KR CC), and its individual forms, such as medical confidentiality, adoption confidentiality, correspondence confidentiality, confidentiality of telephone, postal and telegraph communication are also protected under penal legislation:

- ✓ violation of the confidentiality of correspondence, telephone, postal, telegraph and other communication (Art. 136 of PC KP)
- ✓ disclosure of medical secrets (Art. 145 of KR PC);
- ✓ disclosure of adoption secrets (Art. 160 of KR PC).

The law also envisages criminal liability for infringement on:

- ✓ computer information (Art. 289 of KR PC);
- ✓ investigation secrets (Art. 333 of KR PC);
- ✓ information on security measures applied to judges or participants in criminal proceedings (Art. 334 of KR PC);
- ✓ information on security measures applied to law-enforcement officers or supervisory body officials (Art. 344 of PC CR).

Tax legislation protects the confidentiality of information regarding specific taxpayers known to fiscal body officials (Art. 16 of the Kyrgyz Republic Tax Code).

The law also envisages criminal liability for refusal to provide a citizen with information (Art. 138 of KR PC) and for concealing or distorting information about circumstances posing a danger to human life or health (Art. 257 of KR PC).

Administrative liability may be imposed for:

- ✓ failure to provide or publish information on voting or election results (Art. 58 of KR CoAV);
- ✓ restricting the rights of citizens to acquaint themselves with voter lists (Art. 59 of KR CoAV);
- ✓ failure by the Chairman of the Election Commission to publish a report on the budget funds spent to hold elections (referenda) (Art. 60 of KR CoAV);
- ✓ unjustified refusal to provide a citizen with the opportunity to acquaint him/herself with documents affecting his/her rights and interests (Art. 63 of KR CoAV).

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

Illegal receipt of information constituting a commercial or banking secret (Art. 193 of KR PC).

Offender – any person who has reached the age of 16.

Disclosure of a commercial or banking secret (Art. 194 of KR PC).

Offender – the person to whom the information became known in line with his/her professional or official duties.

Violation of the confidentiality of correspondence, telephone, postal, telegraph, or other communication (Art. 136 of KR PC).

Offender – any person who has reached the age of 16.

Disclosure of a medical secret (Art. 145 of KR PC).

Offender – any medical or pharmaceutical or other worker who has access to medical examination or medical assistance.

Disclosure of an adoption secret (Art. 160 of KR PC).
Offender – any person who has reached the age of 16.

Illegal access to computer information (Art. 289 of KR PC).
Offender – any person who has reached the age of 16.

Disclosure of an investigation secret (Art. 333 of KR PC).
Offender – any person who has reached the age of 16 involved in the investigation who has signed a pledge of non-disclosure. If investigation data are disclosed by a law-enforcement officer, such persons are held liable for an official crime.

Disclosure of information on security measures applied to a judge and participants in a criminal proceeding (Art. 334 of KR PC). Offender – the person who was informed of the security measures or who found out about them in the line of his/her professional duties.

Disclosure of information on security measures applied to a law-enforcement officer or a supervisory body official (Art. 344 of KR PC). Offender – any person who has reached the age of 16.

Liability for disclosing information regarding specific taxpayers which became known to officials of fiscal bodies (Art. 16 of the Kyrgyz Republic Tax Code) is held by the officials of these fiscal bodies.

Legal Sanctions

18. What are the civil or criminal penalties for unauthorized disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Penal or Civil Code?

Specific penalties for disclosing classified information are found only in the Penal Code.

The Civil Code envisages protection of personal non-property rights, other incorporeal rights (Art. 17), protection of honor, dignity, and business reputation of a citizen, or the business reputation of a legal entity (Art. 18), protection of personal privacy (Art. 20), while disclosure of classified information may be detrimental, among other things, to such interests of particular persons. If material or moral damage was inflicted by the violation of said rights, the Civil Code envisages compensation of material (Art. 140) and moral (Art. 16) damage.

If criminal liability is envisaged for disclosing particular information, a civil suit may also be instigated within the framework of the criminal proceedings.

The Penal Code envisages the following sanctions for disclosing classified information:

high treason (Art. 292 of KR PC) – imprisonment for 12 to 20 years with confiscation of property;

espionage (Art. 293 of KR PC) – imprisonment for 10 to 20 years with confiscation of property;

disclosure of a state secret (Art. 300 of KR PC) – deprivation of the right to hold certain offices or engage in certain activity, or imprisonment for up to 5 years;

loss of documents containing a state secret (Art. 301 of KR PC) – deprivation of the right to hold certain offices or engage in certain activity or imprisonment for up to 5 years;

transfer or collection for the purpose of transferring to foreign organizations of information constituting an official secret (Art. 302 of KR PC) – imprisonment for up to 8 years;

illegal obtaining of information constituting a commercial or banking secret (Art. 193 of KR PC) – fine of 5,000 to 10,000 som (from 50 to 100 specified rates) or detention for up to 6 months;

disclosure of a commercial or banking secret (Art. 194 of KR PC) – fine of 10,000 to 20,000 som or community service for up to 120 hours;

violation of the confidentiality of correspondence, telephone, postal, telegraph, or other communication (Art. 136 of KR PC) – depending on the presence of certain qualifying signs, a fine of up to 50,000 som, or deprivation of the right to hold certain offices, or detention for up to 3 months, or imprisonment for up to 3 years;

disclosure of a medical secret (Art. 145 of KR PC) – depending on the consequences, either a fine of up to 5,000 som or imprisonment for up to three years;

disclosure of an adoption secret (Art. 160 of KR PC) – a fine of up to 5,000 som or detention for up to two months;

illegal access to computer information (Art. 289 of KR PC) – depending on the presence of certain qualifying signs, either a fine of up to 50,000 som, or detention for up to 6 months, or imprisonment for up to three years;

disclosure of an investigation secret (Art. 333 of KR PC) – a fine of 10,000 to 20,000 som or detention for up to 6 months;

disclosure of information on security measures applied to judges and participants in criminal proceedings (Art. 334 of KR PC) – depending on the presence of certain qualifying signs, a fine of 10,000 to 20,000 som, or detention for up to 6 months, or imprisonment for up to five years;

disclosure of information on security measures applied to a law-enforcement officer or a supervisory body official (Art. 344 of KR PC) – depending on the consequences, a fine of 20,000 to 40,000 som, detention for up to four months, or imprisonment for up to five years.

If the abovementioned crimes are committed by officials in the line of their professional duties, their actions are qualified, as a rule, in aggregate and according to Art. 304 of KR PC (abuse of office), and punished, depending on the qualifying signs, either by a fine of up to 50,000 som, or by imprisonment for up to 15 years.

There is no PC article that envisages penalties for disclosure by fiscal body officials of information regarding specific taxpayers, but such actions may be qualified as abuse of office.

19. Do these penalties apply to the media for unauthorized disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

As indicated above, any person, including a journalist, may be the offender in many of the abovementioned offences (apart from those in which the offender may only be an official).

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organizations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

Such information may only be obtained from the justice department.

PROTECTION OF PUBLICATIONS IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

KR laws contain no concept of “public interest” as a legal category with specific meaning for qualifying deeds relating to the disclosure of classified information. Correspondingly, the law does not directly oblige the judiciary to evaluate the public significance of publications when determining the liability of a person disseminating information classified by

government agencies. But some provisions of criminal proceedings in the Kyrgyz Republic could essentially permit the exemption of a person from criminal liability for disclosing information that is of greater significance to public interest than the classification code. For example, Clause 1, Part 1, Art. 29 of the KR CPC permits a criminal case to be closed if there is a change in the situation, that is, “if the deed has lost its socially dangerous nature, or the person is no longer socially dangerous.” But, in all likelihood, the motive for creating law-enforcement practice in the use of this rule of the KR CPC with respect to the authors of the publication could precisely be incorporating the concept of “public interest” into the concept system of national law (the concept of “public interest” is contained in the abovementioned draft law on Access to Information Held by Government Agencies...).

22. In practice, does the judiciary consider the public’s right to know as being overriding or equal to the government’s classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorized release of information that was of legitimate public interest?

Unfortunately, in practice, the judiciary essentially does not consider questions relating to the public’s right to know information. The judiciary considers the classification of information by government agencies to be a necessary measure for ensuring the nation’s security and it is placed above public interest. Judges do not even consider the fact that some particular information classified by the government might arouse public interest. In practice, there have been cases where journalists were accused of disclosing classified information (Vadim Nochevkin, *Delo No.* newspaper).

In the two-year practice of the Media Commissioner’s Institute, there has not been a single instance where the court gave some particular disseminated information the status of socially significant information, or released an offender or imposed a milder punishment. Unfortunately, most judges essentially do not apply the concept of information being of “public interest.” KR legislation mentions information presenting public interest, but there is no specific understanding and definition of this term. Correspondingly, it is essentially not applied in practice.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

Article 18 of the Law on the Mass Media envisages that a media organization may not disclose the name of the person that presented information on the condition of remaining anonymous, except as required by the court. Hence, journalists are essentially unprotected from sanctions for refusing to disclose the source of information, since, according to KR legislation, any person may appeal to court demanding that a journalist be forced to reveal his/her source of information.

Exemption of journalists from liability for refusing to disclose their sources of information is not directly envisaged by national legislation. But in certain cases, a journalist may, and sometimes even must, not reveal the source of information in line of professional duty. In particular, according to Art. 18 of the Law on the Mass Media (excerpt from Art. 18):

“A media organization may not disclose the name of the person that provided information on the condition of anonymity, except as required by the court,”

as well as according to Art. 5 of the Law on the Protection of the Professional Activity of Journalists (excerpt from Art. 5):

“when carrying out his/her professional duties, the journalist shall have the right to keep the secrecy of authorship.” But in certain cases, according to Art. 91 of the Criminal Procedural Code of the Kyrgyz Republic and Art. 61 of the Civil Procedural Code of the Kyrgyz, the journalist is obliged to provide information of significance for the case at the request of the court or investigation body.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

According to Art. 1 of the Constitution of the Kyrgyz Republic, the Kyrgyz Republic is a unitary state.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

There is no concept of judicial precedent in the Kyrgyz Republic, and judicial practice may not serve as grounds for application by other courts. KR legislation is interpreted literally, that is, everything must be understood as it is written in the law. Accordingly, court decisions, regulations, or processes may not be binding or underlying for other courts, and are of a recommendatory nature, which, on the whole, are rarely heeded.

26. How many times in the last five years has a journalist or media organization been required by a court or official to disclose their sources of information under this law or any other law?

Unfortunately, there is no information to that effect in the Kyrgyz Republic. But the Media Commissioner Institute knows of four cases in its practice – in three cases, the court demanded the source of information to be revealed, and in one case, the KR General Prosecutor’s Office demanded the source of information to be revealed.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

There is probably absolutely no protection of journalists. Any person may appeal to court to protect his/her honor, dignity, or business reputation or to bring a journalist to account under articles of the KR Penal Code for slander or insult, and immediately, at the beginning of the court proceedings, before the court decision is issued, demand disclosure of the source of information. In all cases in the practice of the Media Commissioner Institute, the judge satisfied such a demand and made the journalist or media organization disclose their information sources.

There is no absolute protection. The court or official has the right to demand that a journalist disclose a confidential source of information in the event such source of information is evidence in the criminal proceedings or information of significance for a civil case.

In criminal proceedings, in accordance with Clauses 2 and 3 of Article 91 of the Criminal Procedural Code of the Kyrgyz Republic:

“(2) Gathering evidence shall be carried out during the investigation and court examination of a case by means of interrogation, confrontations, identification lineups, seizures, searches and inspections, experiments, audits, expert examinations, requisition of documents, and other investigation and judicial actions envisaged by the law.

(3) In the course of examination of cases at hand, the investigator and court shall have the right to summon, as envisaged by this Code, any person for interrogation or as an expert for rendering an opinion; carry out inspections, searches, and other investigation actions; demand that organizations, their associations, officials, and citizens, as well as bodies carrying out criminal investigation, provided documents and items of significance for the case; demand that inspections and audits be carried out by authorized agencies and officials.

In civil cases, according to Article 61 of the Civil Procedural Code of the Kyrgyz Republic, the party to a civil proceeding may submit an application on requisition of evidence of significance for the case. The application on requisition of evidence must define the evidence required and indicate which circumstance of significance for the case may be confirmed or denied by this evidence, the reasons preventing obtaining of such evidence, and its whereabouts. Wherever advisable, the court issues the party a request to obtain evidence. The person who possesses the evidence requested by the court shall send it directly to the court or hand it over to the appropriate request holder for submission to the court.

28. What are the penalties for refusing to reveal sources of information?

Based on Article 25 of the Law on the Mass Media, in the event a journalist or media organization refuses to reveal their source of information, the said journalist or media organization will be considered the disseminator of inauthentic information and unequivocally acknowledged guilty. What is more, based on Article 338 of the KR Penal Code, non-compliance with a court decision may be punishable by imprisonment for up to two years. In practice, however, this sanction has so far not been applied to journalists or media organizations. In essentially all cases of refusal to reveal a source of information, the court recognized the journalist or media organization as guilty.

National legislation envisages liability of a witness or victim for refusal to give evidence or of an expert for refusing to provide an expert opinion. For example, according to Art. 331 of the Penal Code of the Kyrgyz Republic, in the event of refusal to reveal a source of information at the request of the court or an agency in charge of investigation or inquest in a court hearing or during preliminary investigation or inquest, such an action shall be punishable by a fine in the amount of up to fifty minimum monthly wages. But a person is not held criminally liable for refusing to testify or evading testifying against oneself, against his/her spouse, or against his/her close relatives (parents, children, brothers, sisters) (note to Art. 331).

29. Are the journalists prohibited from revealing their source without the permission of the source?

There is no special provision prohibiting a journalist from revealing a source of information without permission of the source, but if a journalist reveals this information it will be considered illegally obtained information and will not be viewed by the court as evidence for the journalist.

According to Art. 18 of the Law on the Mass Media, a media organization may not reveal its informant who requests anonymity, except as demanded by the court, and in accordance with Art. 20 of the same law, a journalist shall comply with the request of informants to indicate their authorship. In other cases, reference to a source of information shall be made at the journalist's discretion.

30. In the media, who is protected from disclosure of sources:

- **The journalist? The editor? The publisher?**
- **Freelance journalists or commentators?**

Not one of the media workers indicated in this question is protected from the court's demand to disclose sources of information.

According to the Civil Procedural Code, Criminal Procedural Code, Law on the Mass Media, and Law on the Protection of the Professional Activity of a Journalist, the degree of protection from requests to reveal sources of information is equal for these categories of mass media workers.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programs)?

Yes, protection is extended. In accordance with Art. 1 of the Law on the Mass Media:

"Mass media shall include newspapers, magazines, supplements thereto, almanacs, books, bulletins, one-time publications meant for public dissemination with a permanent name, as well as television, radio, film and video studios, audio-visual recordings and shows produced by government agencies, information agencies, political, public, and other organizations, and private persons."

There shall be no differences among the workers of the indicated types of mass media.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

No, it is not. Article 1 of the Law on the Mass Media (see previous answer) provides a full list of organizations that are considered mass media. The Internet-based media are not included in this list. What is more, according to Art. 6 of the same law, the mass media shall be subject to state registration, but the state registration procedure with respect to the Internet-based media is not envisaged by legislation. Under the legislation of the Kyrgyz Republic, the Internet-based media are not included in the mass media, and there are no legislative regulations to govern this category of mass media.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

Clause 2 of Article 19 of the KR Constitution sets forth that property shall be inviolable. The KR Constitution provisions apply directly. Facilities and property of the mass media and journalists are their property and searches may only be carried out with the sanction of a public prosecutor within the framework of criminal investigation.

No, they are not prohibited. According to Article 184 of the Criminal Procedural Code of the Kyrgyz Republic, a search may be conducted on the grounds of sufficient data to believe that the instrument of the crime, items, documents and valuables that may be of significance for the case may be present in the facility or other place or held by a person. Searches may also be conducted to look for wanted persons or dead bodies. Facilities and property belonging to media organizations or journalists may be searched in accordance with the general procedure.

But, according to Clauses 3 and 4 of the same article:

“(3) Searches and seizures shall be conducted in the presence of attesting witnesses based on the reasoned decree of the investigating officer with the sanction of the public prosecutor.

(4) In exceptional cases, if there is the real danger that the item missing or subject to confiscation may be lost, damaged or used for criminal purposes, or the wanted person may go into hiding, due to a delay in their discovery, a search may be conducted on the decree of the investigating officer without the sanction of the public prosecutor, but with his/her subsequent notification within 24 hours.” A more detailed description of the search procedure can be found in Art. 184 of the Criminal Procedural Code of the Kyrgyz Republic (see appendices).

34. Are third parties who act for journalists or media organizations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

All the indicated persons must reveal their sources of information at the request of a court.

No, they are not protected. See the legislative regulations given in the answer to question 27.

Latvia

Prepared by the Government of Latvia

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

According to the Constitution of the Republic of Latvia (Article 100), everyone has the right to freedom of speech, which includes the right to freely acquire, hold and distribute information and to express his/her own opinions. Censorship is prohibited. Article 116 of the Constitution however says that these rights of a person may be limited in those cases prescribed by law in order to protect the rights of other people, a democratic state system, the safety of society, welfare and morals.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

The constitutional Court operated on the basis of a special law and is competent to examine cases concerning the compatibility of the Latvian legislative acts with the Satversme, the conformity of the international treaties signed by the Republic of Latvia with the Satversme, the conformity of the Latvian by-laws with supreme legislative acts, as well as the conformity of Latvian laws with international treaties (standards) binding upon Latvia.

The Constitutional Court of Latvia has decided (6 July 1999) about conformity of Cabinet of Ministers' Regulation "On Government Agreements" with "Information Accessibility Law". The Constitutional Court decided to declare item 11 in the part on confidentiality of the Cabinet of Ministers' 21 January 1997 Regulation No. 46 "on Government Agreements" as not being in compliance with Articles 100 and 116 of the Satversme and null and void from the moment of its adoption.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

The Law "On Official Secrets" gives the definition of state secrets.

Section 4 of the Law "On Official Secrets": Recognition of Information as a State Secret

(1) A list of information and other objects to be recognised as official secrets, the amount and content thereof shall be determined by the Cabinet in compliance with the principles and information classification provisions set out in this Law, as well as proposals of the National Security Council and the Constitution Protection Bureau. The list of information and other objects to be recognized as official secrets approved by the Cabinet, as well as subsequent amendments thereto shall be considered to be public documents.

(2) The following information may be recognized as an official secret:

- 1). information regarding the military potential, defence strategy and tactics, defence and mobilisation plans of the State;
- 2). information regarding armament, communications and information systems, material and technical facilities and the acquisition thereof of State security and defence institutions;
- 3) information regarding the layout of structures, installations, facilities and other sites significant for State security and defence, defence and evacuation plans;
- 4). information regarding the types and amount of products manufactured for State security and defence purposes, as well as the potential of the facilities;
- 5). Information regarding ciphers (code), ciphering systems and equipment;
- 6). Information regarding the organisation, content, tactics and methods of investigatory operations, intelligence and counterintelligence, as well as regarding persons involved in the performance of investigatory operations and persons involved in the special procedural protection;

- 7). Information regarding the deployment of the structures and individual units of State security institutions;
- 8). Information regarding the action and activity plans of the units of the Ministry of the Interior, State security and defence institutions in case of a state of emergency, mass disorders or regarding special operations in the fights against organized crime;
- 9). Information regarding the amount, location and holders (keepers) of State material reserves;
- 10). Information regarding the keeping and transportation of State currency and precious metal reserves;
- 11). Information regarding the organisation of security guards and security measures for significant State officials and the technical means applied;
- 12). Information regarding scientific research activity, discoveries, use of inventions if they are performed with State support;
- 13). Information regarding the separate directions of the State foreign policy activities and external economic relations of strategic significance;
- 14). Information regarding the means and techniques for the protection of official secrets; and
- 15). Which Latvia has received from foreign states or has created in accordance with an entered into [force] international agreement.

- (3) If for the provision of the development and operation of publicly accessible information, objects and projects it is necessary to utilise information and objects recognized as official secrets, they shall be prepared for public use in the form of general statistical data or in any other indirect form and shall be issued only in the amount permitted and used only for the purposes for which the issue thereof was permitted.
- (4) Unauthorised extension of the status and amount of information or other secret information and objects included in the list of objects to be recognised as official secrets and the attribution thereof to information and objects which has been and are publicly usable and accessible is prohibited.

Section 5 of the Law “On Official Secrets”: Information which may not be an Official Secret

It is prohibited to grant the status of an official secret and to restrict access to the following information:

- 1). Information regarding natural disasters, natural or other calamities and the consequences thereof;
- 2). Information regarding the environmental, health protection, educational and cultural state, as well as the demographic situation;
- 3). Information regarding violations of human rights;
- 4). Information regarding the crime rate and the statistics thereof, corruption cases, irregular conduct of officials;
- 5). Information regarding the economic situation in the State, implementation of the budget, living standards of the population, as well as the salary scales, privileges, advantages and guaranteed specified for officials and employees of State and local government institutions; and
- 6). Information regarding the state of health of the heads of State.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

(See previous example)

5. Are there other specific constitutional limits on access and dissemination of information?

There are no other specific constitutional limits on access and dissemination of information. Specific limits may be prescribed in special legislative acts. At the same time the Constitution envisages (Article 104) that everyone has the right to turn to the state and local government institutions with applications and to receive an answer in point of fact.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if possible.

There is “Freedom of Information Law” in Latvia. The purpose of this Law is to ensure public access to information which is under the control of State administrative institutions and Local Government institutions for the performance of their specified functions as prescribed in regulatory enactments. The Law determines a uniform procedure by which natural and legal persons are entitled to obtain information from State administrative institutions and Local Government institutions, and how to utilise it.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc.)?

There are no limits to use the “Freedom of Information Law”. There are limits to use the Law “On Official Secrets” where special permissions (to work with state secrets) are required.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

“Freedom of Information Law” does not give journalists or media organisations a greater access to information.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organisations.

The Ministry of Justice of the Republic of Latvia does not have statistics on the use of Freedom of Information Law.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

Article 35 of the “Law on Radio and Television” states: “Broadcasting organisations shall have the right to receive information from State and Local Government institutions, voluntary organisations, and State and Local Government undertakings.”

“The Law on Press and Other Mass Media” defines basic principles of the functions of journalists and mass media including the cases when the information can be refused or when the information cannot be published.

11. Are there any limits in this law on access to, and publication of, information?

There are no qualifications of Article 35 of the “Law on Radio and Television”. According to the “Law on Press and Other Mass Media” the officials may refuse to provide the information only in cases when the information cannot be published (Article 7 of the Law) (state secrets, materials of investigations, etc.) According to Article 24 of the Law, the journalists have the following rights:

- 1). Gather information legally;
- 2). Distribute the news except the news which cannot be distributed according to Article 7 of this law, etc.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organisations.

The Ministry of Justice has no statistics about these questions.

Many of the relevant laws (Constitution, “Freedom of Information Law”, “Law on Radio and Television”, can be found in English translation of the Translation and Terminology Centre website www.ttc.lv.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- **Different categories in terms of level of confidentiality?**
- **The period of classification and declassification?**

According to the Law “On Official Secrets” information, which is an official secret, shall be classified as **top secret, secret and confidential information**.

Information shall be recognized as secret if it refers to State military, political, economic, scientific, technical, intelligence (counterintelligence) and investigatory operations.

Information shall be recognized as secret if it refers to State military, political, economic, scientific, technical, intelligence (counterintelligence) and investigatory activities and the loss or illegal disclosure of it may jeopardise State interests, causing harm to a specific State institution.

For confidential information secrecy for five years shall be specified, for secret information – for ten years, for top secret information – twenty years, but for data regarding persons involved in the performance of investigatory operations and persons who are involved in special procedural protection- for seventy-five years.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

Section 94 of the Criminal Law envisages responsibility for the disclosure of state secrets knowingly. Section 95 of the Criminal Law envisages responsibility of disclosure of state secret through negligence.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

Sections 94 and 95 of the Criminal Law give the answers to this question.

Section 94. Dissemination of Official Secrets Knowingly

For a person who knowingly commits dissemination of information which constitutes an official secret, **where the offence is committed by the person to whom this information has been entrusted or has become known in connection with his or her official position or his or her work**, provided the characteristics of espionage are not present therein,

the applicable sentence is deprivation of liberty for a term not exceeding eight years or a fine not exceeding twenty times the minimum monthly wage.

Section 95. Dissemination of Official Secrets through Negligence

For a person who commits dissemination of official secrets through negligence, or loss of documents containing official secrets, or loss of objects, information regarding which is an official secret, **where committed by a person to whom the information, documents or objects had been entrusted**, if the documents or objects were lost in violation of provisions for the safeguarding of official secrets, and if substantial harm results thereby,

the applicable sentence is deprivation of liberty for a term not exceeding three years or a fine not exceeding fifty times the minimum monthly wage.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this.

Section 145. Disclosure of Confidential Information of Another Person

For a person who commits intentional disclosure of personal confidential information of another person, if it has been committed by a person who pursuant to his or her position or employment must maintain the information entrusted or communicated to him or her in confidence, the applicable sentence is custodial arrest, or community service, or a fine not exceeding twenty times the minimum monthly wage.

Section 200. Unauthorised Acquisition and Disclosure of Information Containing Commercial Secrets, as well as Unauthorised Disclosure of Inside Information of the Financial Instrument Market

1. For a person who commits unauthorised acquisition of economic, scientific, technical, or other information in which there are commercial secrets, for use of disclosure of such information to another person, or commits unauthorised disclosure of such information to another person for the same purpose, as well as commits unauthorised disclosure of inside information of the financial instrument market, the applicable sentence is deprivation of liberty of a term not exceeding five years, or custodial arrest, or community service, or a fine not exceeding one hundred times the minimum monthly wage.

2. For a person who commits theft of the information indicated in Paragraph one of this section, the applicable sentence is deprivation of liberty for a term not exceeding eight years, or a fine not exceeding one hundred and fifty times the minimum monthly wage.

Section 329. Disclosure of Confidential Information

For a person who commits disclosure of confidential information which is not an Official secret, if commission thereof is by State official who has been warned concerning the confidentiality of the information, the applicable sentence is custodial arrest, or community service, or a fine not exceeding twenty times the minimum monthly wage.

Section 330. Disclosure of Confidential Information After Leaving Office

For a person who commits disclosure of confidential information which is not an official secret, if commission thereof is by a State official after his or her resignation, within a time limit specified in a warning to him or her concerning the non-disclosure of the information, the applicable sentence is community service, or a fine not exceeding ten times the minimum monthly wage.

“Law on Press and other Mass Media” envisages also compensation in case of moral harm.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as member of the public including the media?

See previous Article.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

Criminal penalties are envisaged in the Criminal Law about the disclosure of several kinds (different degrees of penalties for different kinds of disclosures) of information (see answers to Articles 14, 15, 16).

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information?

The Criminal Law envisages liability without dividing mass media.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

The Ministry of Justice has no statistics about these questions.

Relevant information can be found at www.ttc.lv.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

In cases of breach of secrecy press or other mass media does not have the rights to access whether this information was in public interest (according to the "Law on Press and Other Mass Media").

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

The Ministry of Justice has no information about this question.

Relevant information can be found at www.ttc.lv.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

"The Law on the Press and Other Mass Media" states that mass media is allowed not to present the source of information is so requested by person who has given the information. Article 27 of this Law speaks about the disclosure of information sources and protection of journalists.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

There are no sub-national divisions as states or provinces. The whole territory of Latvia follows the national law.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

National laws in this field are mentioned in previous examples.

26. How many times in the last five years has a journalist or media organization been required by a court or official to disclose their sources or information under this law or any other law?

The Ministry of Justice does not have statistics in this field.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

According to the Law on Press and Other Mass Media (Article 22) mass media is allowed not to reveal sources. Only the court, taking into account the principle of proportionality, can ask to reveal the source of information.

28. What are the penalties for refusing to reveal sources of information?

The section 306 of the Criminal Law speaks about withholding of evidence:

For a person who, not being a suspect, an accused or a defendant, commits intentionally withholding objects, documents or other materials which may be significant as evidence concerning a **criminal** matter, where such have been required, by a pre-trial investigation institution or court, to be provided by the person,
the applicable sentence is deprivation of liberty for a term not exceeding two years, or custodial arrest, or community service, or a fine not exceeding fifty times the minimum monthly wage.

For a person who commits theft, intentional destruction of, damage to or falsifications of materials relating to a **criminal** matter,
the applicable sentence is deprivation of liberty for a term not exceeding five years, or custodial arrest.

29. Are the journalists prohibited from revealing their source without the permission of the source?

If the editor has revealed in the mass media the source of information (in case he/she has promised in written form not to reveal the source), the Administrative Violations Code (Article 201) envisage the fine until 250 Lats.

30. In the media, who is protected from disclosure of sources:

- **The Journalist? The Editor? The publisher?**
- **Freelance journalists or commentators?**

In this context only editors and mentioned in Administrative Violations Code (see previous example).

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

“The Law on Press and other Mass Media” does not speak about several types of mass media.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

“The Law on Press and other Mass Media” does not speak about several types of mass media.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

According to the Criminal Law Process (Article 184) special regulation is only for the searches of diplomatic and consular premises.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists’ communications with sources, or from interception of them?

The Criminal Procedure Law does not envisage special procedure for the providing of information for third persons who act for journalists or media organisations?

According to Section 116 of the Criminal Procedure Law every person has the right to immunity of criminal procedures (if the requested information is state secret, professional secret or secret of private life).

Section 121 of Criminal Procedure Law states that the permission of judge is needed for examination and removal of secret and top secret documents;

Section 190 and 191 of Criminal Procedure Law states that prosecutor has the right to ask from natural and legal persons documents which are important for criminal process.

According to Section 210 of Criminal Procedure Law special investigation procedures are allowed investigating serious and especially serious crimes.

Section 215 of Criminal Procedure Law enumerates specifies special investigation operations.

According to “Investigatory operations Law” investigatory operations are the over and covert legal activities, or specially authorised – pursuant to the procedures prescribed in this Law, and by law – officials of State authorities, the objectives of which are the protection of the life and health, rights and freedoms, honour, dignity and property of persons and the safeguarding of the Constitution, the political system, national independence and territorial integrity, the capabilities of the State regarding defence, the economy, science and technology, and State official secrets, against external and internal threats.

Investigatory operations shall be organised and performed on a lawful basis, observing overall human rights, and in co-operation with and relying on the assistance of the general public.

Investigatory operations measures shall be initiated and performed only if fulfilling the tasks referred to in Section 2 of this Law and achieving the objectives determined in Section 1 are not possible by other means or are significantly more difficult.

Substance of Investigatory Operations

(1) The substance of investigatory operations is investigatory measures and the methods of their realisation. Investigatory measures are:

- 1) investigatory enquiry;
- 2) Investigatory observation (shadowing);
- 3) Investigatory inspection;
- 4) investigatory acquisition of samples and investigatory research;
- 5) Investigatory examination of a person;
- 6) investigatory entry;
- 7) investigatory experiment;
- 7¹) controlled delivery;
- 8) investigatory detective work;
- 9) investigatory monitoring of correspondence;
- 10) investigatory acquisition of information through technical means; and
- 11) investigatory wiretapping of conversations.

(2) This Section provides a complete listing of investigatory operations measures, and it may be modified or expanded only by law.

(3) In the course of investigatory operations measures, recordings may be made with video and audio, cinematography and photography equipment, and various information systems and technical, chemical and biological means may be utilised. Such means shall be utilised so as to not cause harm to the health of the population or the environment. The procedures for utilizing such means shall be determined by the body performing investigatory operations.

Investigatory Operations Procedures

(1) Investigatory operations procedures comprise all investigatory operations measures, which are performed according to prescribed procedure by officials of the bodies, performing investigatory operations. Such activities and the results

thereof shall be recorded in official documents, which shall be drawn up in conformity to this Law, the Law on Official Secrets, the Freedom of Information Law and the requirements of other regulatory enactments regulating the protection of information.

(2) Investigatory operations procedures may commence before criminal proceedings are initiated, may take place during the period of investigation of a criminal matter and continue after termination thereof.

(3) Investigatory operations procedures consist of the following stages:

- 1) Investigatory inquiry;
- 2) investigatory examination; and
- 3) investigatory process.

Relevant information can be found at www.ttc.lv.

Liechtenstein

Prepared by the Government of Liechtenstein

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

No. The Liechtenstein Constitution does not concede the right of public access to information or to documents held by government bodies.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

See question 1.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

See question 1.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

See question 1.

5. Are there other specific constitutional limits on access and dissemination of information?

See question 1.

German text of the Liechtenstein Constitution: http://www.gesetze.li/get_pdf.jsp?PDF=1921015.pdf

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

The Liechtenstein Information Act (LGBI. 1999 Nr. 159) and the Ordinance to the Information Act (LGBI. 1999 Nr. 206) in principle allow individuals to demand information from government bodies. The access to files which are still under examination is restricted and demands a written request.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

No.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

No, but according to article 12 of the Information Act inquiries and requests of journalists should be supported if possible.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

No statistics available.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

The Media Act gives journalists the same rights of access to information than citizens.

11. Are there any limits in this law on access to, and publication of, information?

The common restrictions on access to information are regulated by the Information Act and the Ordinance to the Information Act. Access to information is restricted in cases where predominant private or public interests oppose the request or when the request affects sensitive personal data.

The publication of information is limited by the Media Act. Media contents may not endanger law and order. It is particularly prohibited to offend against the law, to tolerate, to encourage, or to appeal for violence, to insult or defame state organs or to disseminate apparently wrong information which endanger state interests (article 6). Further limitations concern the private sphere of persons whose data, identity or pictures are published without their permission (articles 33 – 36).

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

Not applicable

German text of the Information Act: http://www.gesetze.li/get_pdf.jsp?PDF=1999159.pdf

German text of the Ordinance to the Information Act: http://www.gesetze.li/get_pdf.jsp?PDF=1999206.pdf

German text of the Media Act:

http://www.gesetze.li/get_pdf.jsp?PDF=2005250.pdf

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

Article 255 of the Penal Code defines state secrets whose disclosure to other states, international organisations or the public is prohibited. According to that definition state secrets can either be information whose disclosure could lead to a severe detriment for the defence of the country or information whose disclosure could severely damage the relationship of the Principality of Liechtenstein with another country or a supra- or international organisation.

The confidentiality of files is regulated by the Ordinance on the Registration in the Liechtenstein Public Administration (article 6 paragraph 1), which does not distinguish between different levels of confidentiality. According to the Archives Act (article 14), the access to confidential files is in general limited for 30 years, which can be extended for a maximum of 20 years in cases of public interest or rights of persons affected or if third parties would be violated.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

According to the definition in article 255 Penal Code state secrets can either be information whose disclosure could lead to a severe detriment for the defence of the country or information whose disclosure could severely damage the relationship of the Principality of Liechtenstein to an other country or a supra- or international organisation.

With regard to sanctions the same penalties apply for the disclosure of state secrets related to national security and of state secrets not specifically related to national security (see question 18).

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

These prohibitions apply to everybody.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

See answer to question 14.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

These provisions apply to everybody.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

According to article 252 the disclosure of a state secret to a foreign country or an international organisation is subject to imprisonment of up to ten years. The penalty is imprisonment of up to five years if a state secret is disclosed to the public.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

The law does not make differences between different forms of publication.

20. Have there any cases been brought in the last five years against:

- Officials in charge of the leaked classified information?
- Members of the public?
- Journalists or media organisations?

Please describe the outcomes, including the date of the case, the defendants and the charges.

The requested information is not available

German Text of the Liechtenstein Penal Code: http://www.gesetze.li/get_pdf.jsp?PDF=1988037.pdf

German Text of the Ordinance concerning the Registration in the Liechtenstein Public Administration: http://www.gesetze.li/get_pdf.jsp?PDF=1995117.pdf

German Text of the Archives Act: http://www.gesetze.li/get_pdf.jsp?PDF=1997215.pdf

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

No

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

The requested information is not available

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

Article 19 of the Media Act excludes media owners, journalists, editors and media employees from the obligation to disclose their source of information in legal proceedings.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

Liechtenstein consists of eleven municipalities; however they have no legislative competences.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

See answer to question 23.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

Statistics are not available

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

According to article 19 paragraph 2 of the Media Act, the protection is absolute.

28. What are the penalties for refusing to reveal sources of information?

The right to protect the sources of information is not limited. Thus, no penalties for refusing to reveal sources of information exist.

29. Are the journalists prohibited from revealing their source without the permission of the source?

No. The source is not directly protected by law.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

Everybody working for a media enterprise is protected in pursuance of his or her profession.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

Yes, see also question 30.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

See questions 30 and 31. (Online-media are explicitly included in the definition of media in the Media Act (article 2 paragraph 4).)

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

Searches of property belonging to the media or the journalists are prohibited to investigate a source (see question 27), but apart from that not more restricted than other searches of property.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

No.

Lithuania

Prepared by the Government of Lithuania

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

The Constitution of the Republic of Lithuania guarantees the right of public access to information. Article 25 of the Constitution states:

“Article 25

The human being shall have the right to have his own convictions and freely express them.

The human being must not be hindered from seeking, receiving and imparting information and ideas.

Freedom to express convictions, to receive and impart information may not be limited otherwise than by law, if this is necessary to protect the health, honour and dignity, private life, and morals of a human being, or to defend the constitutional order.

Freedom to express convictions and to impart information shall be incompatible with criminal actions—incitement of national, racial, religious, or social hatred, violence and discrimination, with slander and disinformation.

The citizen shall have the right to receive, according to the procedure established by law, any information concerning him that is held by State institutions.”

Further, this constitutional right is provided in other laws such as the Law on the Provision of Information to the Public, the Law on the Right to Obtain Information from State and Municipal Authorities, the Law on the Legal Protection of Personal Data, the Law on State Secrets and Official Secrets, the Civil Code, the Criminal Code, and others.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

The Constitutional Court of the Republic of Lithuania has interpreted a constitutional right of public access to information in several cases heard by it, namely:

In the ruling of 19 December 1996 (<http://www.lrkt.lt/dokumentai/1996/n6a1219a.htm>) on state secrets of the Republic of Lithuania and their protection, it has established that:

“Article 25 of the Constitution guarantees each individual the right to express his convictions and the right to information. Part 2 of the said article stipulates: “Individuals must not be hindered from seeking, obtaining, or disseminating information or ideas”.

It is universally recognised that in today's society information is a need of the individual, as well as the measure of his knowledge. Information eliminates ignorance, it makes human behaviour meaningful. The implementation of human rights and freedoms is directly linked with the individual's opportunity to obtain information from various sources and make use of it. This is one of pluralistic democracy achievements ensuring the progress of society.

Alongside, it should be noted that the right of the individual to seek, obtain and disseminate information is not an absolute one. The relation of this constitutional value to other legal values expressing the rights and freedoms of other persons as well as necessary public needs determines the restrictions of the right to information. One of such needs is a necessity to protect certain information for the good of interests of the society and individuals. This is state, commercial, professional, technological secrets or information concerning private life of individuals. The state proclaims some especially important military, economic, political or other information the disclosure of which may harm national

interests to be a state secret. In an attempt to prevent disclosure of such information, its protection is established by law and the use of such information is restricted. However, the protection of common interests in a democratic state may not deny the human right to information as such.

Parts 3 and 4 of Article 25 of the Constitution prescribe:

"Freedom to express convictions, as well as to obtain and disseminate information, may not be restricted in any way other than as established by law, when it is necessary for the safeguard of the health, honour and dignity, private life, or morals of a person, or for the protection of constitutional order.

Freedom to express convictions or impart information shall be incompatible with criminal actions - the instigation of national, racial, religious, or social hatred, violence, or discrimination, the dissemination of slander or misinformation."

These provisions of the Constitution circumscribing restrictions of the human right to information are the main criterion of legal regulation of protection relations of classification, use and making public of the information which is considered a state secret. The legislator determining how the information which is considered a state secret must be protected is obligated to decide on such legal measures whereby to groundlessly restrict the right of the individual to information would be impossible."

In the ruling of 23 October 2002 (<http://www.lrkt.lt/dokumentai/2002/r021023.htm>) on the Protection of the Private Life of a Public Person and the Right of the Journalist not to Disclose the Source of Information, the Constitutional Court has noted that:

"7. From Article 25 of the Constitution as well as the other provisions of the Constitution consolidating and guaranteeing the freedom of an individual to seek, obtain and impart information stems the freedom of the media. Under the Constitution, the legislator has a duty to establish the guarantees of the freedom of the media by law.

8. It needs to be emphasised that the legislator, by establishing the guarantees of the freedom of the media by law, must pay heed to the imperative of an open, just, and harmonious civil society entrenched in the Constitution, the constitutional principle of a law-governed state, and must not violate the rights and freedoms of the person. It is not permitted to establish such legal regulation by laws whereby, while consolidating the right of the journalist to preserve the secret of the source of information and not to disclose the source of information, preconditions would be created to violate the values entrenched in the Constitution.

Thus, by establishing the right of the journalist, by the Law, to preserve the secret of the source of information and not to disclose the source of information, the legislator may not establish such legal regulation, whereby pre-conditions would be created not to disclose the source of information even in the cases when in a democratic state it is necessary to disclose the source of information due to vitally important or other interests of society, which are of utmost importance, also, in attempt to ensure that the constitutional rights and freedoms of a person be protected, and that justice be administered, since the non-disclosure of the source of information might cause much graver effects than its disclosure. Thus the balance of the values protected by the Constitution, the constitutional imperative of an open harmonious civil society, the constitutional principle of a law-governed state would be violated.

9. <...> In a democratic state under the rule of law, the decision of such questions is the competence of court. The Constitutional principle of judicial defence is a universal one (Constitutional Court ruling of 2 July 2002).

Thus, the legislator, while establishing, by law, the right of the journalist to preserve the secret of the source of information and not to disclose the source of information, has a duty to establish, by law, also that in every case it is only the court that can decide whether the journalist must disclose the source of information. When establishing such powers of the court, the legislator is bound by the concept of the freedom of the media, under which it is permitted to demand that the source of information be disclosed only when this is necessary in order to ensure vitally important or other interests of society, which are of utmost importance, also, in attempt to ensure that the constitutional rights and freedoms of persons be protected, that justice be administered, i.e. only when it is necessary to disclose the source of information due to a more important interest safeguarded by the Constitution."

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

Paragraph 3 of Article 25 of the Constitution of Lithuania states that freedom to express convictions, to receive and impart information may not be limited otherwise than by law, if this is necessary to protect the health, honour and dignity, private life, and morals of a human being, or to defend the constitutional order.

Article 3 of the Law on the Provision of Information to the Public reiterates the constitutional wording by stating that "The use of freedom of information may be restricted by the requirements, conditions, restrictions or penalties set out in the laws and necessary in a democratic society to protect Lithuania's state security, its territorial integrity, public order and constitutional system, to guarantee the impartiality of its judicial authority in order to prevent law violations and

crimes, disclosure of confident information and protect people's health and morality as well as their privacy, dignity and rights."

The Law on the Right to Receive Information from State and Municipal Institutions provides that information which is a state, official, commercial, banking or private secret is not to be provided except private information about the requesting person. State agencies and local authorities are not obliged to provide such information which would affect adversely the interests of state security and defence, criminal prosecution or would violate the territorial integrity of the State or public order, the rights and lawful interests of other persons or the refusal to provide information would prevent other serious violations of law or would be essential in the protection of human health. In all above mentioned cases the applicant is notified of the refusal to provide information indicating the reasons for the refusal and informed about the possibility of appeal.

In order to protect the personal privacy it is prohibited to film, photograph, make audio or video recordings on personal premises without the person's consent; to film, photograph, make audio or video recordings during closed events without the consent of the lawful organisers of the event; to film or photograph a person or use his images for advertising purposes without the consent of the person. These prohibitions are not applicable in cases where there is sufficient reason to assume that breaches of law are being fixed. Information about a person's private life may be published only with the consent of the person concerned provided that the publication of such information does not cause him any damage. Information concerning a person's private life may be published without the consent of the person concerned if the publication of the information does not cause the person any damage or if the information helps to disclose violations of law or a crime, also if the information has been submitted at an open court hearing. In this context it should be noted that the Civil Code of the Republic of Lithuania provides for the right to privacy and secrecy, the protection of honour and dignity and the right to an image.

In addition it should be mentioned that information concerning the private life of a public figure (state political figure, civil servant, leader and head of a political party or public organization as well as any other person participating in public or political activities) may be made public without the person's consent if this information discloses certain circumstances in the person's private life or his personal traits which have public significance.

There are also several restrictions concerning the protection of minors. Publication of information which can negatively affect the minors' physical, intellectual and moral development is also limited to certain time or requires special safeguards.

As it is provided in the article 25 of the Constitution of the Republic of Lithuania freedom to express convictions and to impart information is incompatible with criminal actions – incitement of national, racial, religious, or social hatred, violence and discrimination, with slander and disinformation.

The Law on the Provision of Information to the Public prohibits the publication of information which incites to change the constitutional order of the Republic of Lithuania through the use of force; instigates attempts against the sovereignty and territorial integrity of the Republic of Lithuania; instigates war, ethnic, racial, religious and gender hatred; disseminates, propagates or advertises pornography, sexual services, sexual perversion; propagates and/or advertises narcotic or psychotropic substances as well as dissemination of disinformation and information of slanderous and insulting nature, degrading the honour and dignity of a person as well as information violating the presumption of innocence or information which may obstruct the impartiality of judiciary institutions.

The right to receive information and the accessibility of information is limited by other laws such as the Law on the Rights of Patients and Compensation of the Damage to their Health, the Law on Mental Health Care, and the Law on Ethics of Biomedical Research.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

See the answer to the 3rd question.

5. Are there other specific constitutional limits on access and dissemination of information?

See the answer to the 3rd question.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

The right of individuals to access or demand any information from government bodies is embedded in the Law on Provision of Information to the Public (adopted in 1996) and the Law on the Right to Receive Information from State and Municipal Institutions.

Article 6 of the Law on Provision of Information to the Public states:

“Article 6. Right to Receive Information from State and Municipal Institutions and Agencies”

1. Every person shall have the right to receive from state and municipal institutions and agencies as well as other budgetary institutions public information relating to their activities, their official documents (copies) as well as information held by the aforementioned institutions about the requesting person.
2. State and municipal institutions and agencies must inform the public of their activities.
3. State and municipal institutions and agencies must, in accordance with the procedure established by the Law on the Right to Receive Information from State and Municipal Institutions and other laws, provide public information as well as private information available to the said institutions, except for cases specified in the laws where private information is not to be divulged.
4. Information for the preparation whereof no additional data is required shall be provided to the producers and/or disseminators of public information, journalists within one working day, while information for the preparation whereof additional data has to be collected shall be provided within a week.
5. State and municipal institutions and agencies as well as other budgetary institutions which have refused to provide public information to a producer of public information must not later than on the next working day inform the producer in writing about the reasons for refusal to provide information.
6. Public information of state and municipal institutions and agencies shall be free of charge. These institutions may accept payment only for the services involving information retrieval and the multiplication (copying) of information or documents. This payment may not exceed the actual costs of providing information.
7. Other institutions and enterprises as well as political parties, political organizations, trade unions, associations and other organisations shall provide the producers of public information and other persons with public information relating to their activity in accordance with the procedure established in the articles of association (regulations) of these institutions, enterprises or organisations.

The Law on the Right to Receive Information from State and Municipal Institutions (adopted in 2000) endorses the right of persons to receive information from state and municipal institutions and sets out the order for implementation of this right. (Text of the law is available at http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=266443).

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

Paragraph 6 of Article 2 of the Law on the Right to Receive Information from State and Municipal Institutions defines the group of persons who have the right to apply in order to receive information, i.e. a citizen of the Republic of Lithuania, a citizen of the state, cosignatory of the Agreement on the European Economic Area, an alien in possession of a residence permit in the Republic of Lithuania, or a group of these persons, a legal person of the Republic of Lithuania, legal persons or other organizations, registered in the state, cosignatory of the Agreement on the European Economic Area, or their representative offices and branches, established in the Republic of Lithuania.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

The law sets down shorter terms for provision of information to journalists. Information for the preparation whereof no additional data is required must be provided to journalists within one working day, while information for the preparation whereof additional data has to be collected must be provided within a week (Paragraph 4 of Article 6 of the Law on Provision of Information to the Public). In regard to other applicants a general term of 20 days is applied (Article 14 of the Law on the Right to Receive Information from State and Municipal Institutions).

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

No information is available in this regard.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

Lithuania has no other specific legislation, providing journalists with any additional rights of access to information, than the above mentioned Law on Provision of Information to the Public.

11. Are there any limits in this law on access to, and publication of, information?

See the answer to the 10th question.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

See the answer to the 10th question.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- **Different categories in terms of level of confidentiality?**
- **The period of classification and declassification?**

The Law on State Secrets and Official Secrets of the Republic of Lithuania (adopted in 1999) regulates classifying, keeping, using, declassifying, co-ordination and control of information which comprises State or official secrets (text of the law is available only in Lithuanian at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=238376&p_query=&p_tr2=).

As it is provided in Article 5 of this law classified information can be divided into Top Secret information, Secret information, Confidential information and Restricted information according to importance, possible damage that could be incurred by the State, its institutions or individuals, should this information be lost or disclosed to unauthorised persons, and by level of protection necessary for keeping of such information.

Security classification of “Top Secret” is to be applied to information comprising a State secret loss or unauthorised disclosure whereof may cause threat to the sovereignty or territorial integrity of the Republic of Lithuania, have particularly serious consequences to the interests of the State or cause danger to the life of a human being.

Security classification “Secret” is to be applied to information comprising a State secret loss or unauthorised disclosure whereof may impair defensive capacity of the state or cause damage to the interests of the State.

Security classification “Confidential” is to be applied to information comprising a State secret loss or unauthorised disclosure whereof may harm the interests of the State or cause damage to activities of state institutions or establish prerequisites for unauthorised disclosure of information comprising an official secret.

Security classification “Restricted” is to be applied to information comprising an official secret loss or unauthorised disclosure whereof may harm the interests of state institutions.

Article 8 of the Law on State Secrets and Official Secrets determines general periods of classification. Information considered as a State secret, is classified for the following periods:

- 1) information marked as “top secret” - for a period of 30 years; information related to covert participants of operative activities, dossier data of witnesses and victims, classified during a criminal procedure - for a period of 75 years;
- 2) information marked as “secret” - for a period of 15 years;
- 3) information marked as “confidential” - for a period of 10 years;
- 4) information marked as “restricted” - for a period of 5 years.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

Articles 124-126 of the Criminal Code of the Republic of Lithuania (entered into force on 1 May 2003) provide for criminal liability for illegal disposal, disclosure and loss of a state secret. There are no specific clauses regarding state secrets related to national security:

“Article 124. Illegal disposal of information comprising a State secret

Any person who illegally obtains or transfers information, comprising a state secret of the Republic of Lithuania, or unlawfully has in his possession things the contents of which or the information about which constitutes a state secret of the Republic of Lithuania, if there is no evidence of espionage, shall be punished by fine or arrest, or imprisonment up to 3 years.

Article 125. Disclosure of a State secret

1. Any person who discloses information, comprising a state secret of the Republic of Lithuania, if he/she is entrusted with this information or learns about it through his/her position, work or public functions, but there is no evidence of espionage, shall be punished by deprivation of the right to work in a certain job or engage in a certain activity or fine or restriction of liberty, or imprisonment up to 3 years.
2. The act specified in paragraph 1 of this Article shall also be considered to constitute a crime in cases when it is committed through negligence.

Article 126. Loss of a State Secret

1. Any person who destroys, damages or loses a document, object or other item entrusted to him through his position, work or public functions, the content of which or the information about which constitutes a state secret of the Republic of Lithuania, shall be punished by deprivation of the right to work in a certain job or be engaged in a certain activity, or fine, or restriction of liberty, or imprisonment for a term of up to 2 years.
2. The act specified in paragraph 1 of this Article shall also be considered to constitute a crime in cases when it is committed through negligence.”

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

Prohibitions, embedded in Article 124 (*Illegal disposal of a State secret*) and Article 126 (*Disclosure of a State secret*) of the Criminal Code apply to any person disregarding his/her position, work and public functions. Prohibition, laid down in Article 125 (*Disclosure of a State secret*) applies only to persons who are entrusted with information comprising a State secret or learn about it through their position, work or public functions.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this?

The laws of the Republic of Lithuania do not draw a distinction between national security related information and non-national security related information.

See the answer to the 14th question.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

See the answer to the 15th question.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

The Law on State Secrets and Official Secrets does not itself contain provisions providing for penalties for unauthorised disclosure, possession or publication of classified information. Article 46 of this law states that “a person shall bear responsibility for illegal disposal, loss, seizure or other illegal acquisition of classified information and other violations of the requirements for security of classified information according to the laws.”

Criminal liability for illegal disposal, disclosure and loss of a state secret is foreseen in Articles 124-126 of the Criminal Code of the Republic of Lithuania (*see the answer to the 14th question*).

Legal acts also provide for a possibility of compensation for damage resulting from a crime. According to Article 6.263 of the Civil Code of the Republic of Lithuania, damage caused to a person or property and, in the cases provided by law, non-pecuniary damage must be fully compensated by the responsible person, i.e. the principle of full compensation is set forth.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

See the answer to the 15th question.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

In 2006 a criminal case was brought against the editor and publisher of *Laisvas laikraštis* on suspicion of possessing secret state information. According to the information provided by the State Security Department he had possibly illegally obtained, kept and disseminated information to the persons who were not authorised to handle or familiarise with classified information.

The pre-trial investigation regarding this incident is still going on.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

No information is available in this regard.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

No information is available in this regard.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

Provisions, providing journalist with the right to maintain the confidentiality of the source of information are contained in Article 8 of the Law on the Provision of Information to the Public:

“Article 8. Confidentiality of the source of information

The producer and the disseminator of public information, the sharer of the producer and/or the disseminator of public information and the journalist shall have the right to maintain the confidentiality of the source of information and not to disclose it, except the cases when it is required to disclose the source of information by a court decision for vitally important or otherwise significant public reasons, also in order to ensure that the constitutional rights and freedoms of a person are protected and that justice is served.”

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

There are no sub-national divisions in Lithuania.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

As Lithuania belongs to the continental law system, the law is considered to be the main source of law.

However, the courts also play a major role in interpreting and making law. As an example see the Constitutional Court ruling of 23 October 2002 on the Protection of the Private Life of a Public Person and the Right of the Journalist not to Disclose the Source of Information (<http://www.lrkt.lt/dokumentai/2002/r021023.htm>).

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

No information is available in this regard.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

According to Article 8 of the Law on the Provision of Information to the Public a court by its decision may order to disclose the source of information for vitally important or otherwise significant public reasons, also in order to ensure that the constitutional rights and freedoms of a person are protected and that justice is served.

28. What are the penalties for refusing to reveal sources of information?

The laws of the Republic of Lithuania do not foresee any sanctions for refusing to reveal sources of information.

29. Are the journalists prohibited from revealing their source without the permission of the source?

This specific requirement is not laid down in the laws of Lithuania.

However, the Lithuanian Journalists and Publishers Code of Ethics, approved in the general meeting of the representatives of the organizations of journalists and publishers on 15 of April 2005, sets down rules concerning the relations between journalists and their sources. Article 15 of the Code prescribes that the journalist and the producer of public information has no right to disclose the source of information if the latter wants his/her name to be kept in secrecy. In that case the journalist and/or the producer of public information bear legal and ethical responsibility for the published information.

30. In the media, who is protected from disclosure of sources:

- **The journalist? The editor? The publisher?**
- **Freelance journalists or commentators?**

According to Article 8 of the Law on the Provision of Information to the Public the producer and the disseminator of public information, the sharer of the producer and/or the disseminator of public information and the journalist are protected from disclosure of sources.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

According to the definition of *disseminator of public information*, provided for in Article 2 of the Law on the Provision of Information to the Public, protection from disclosure of sources is also applied to those working for broadcasting media.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

According to the definitions of *disseminator of public information* and *producer of public information*, provided for in Article 2 of the Law on the Provision of Information to the Public, protection from disclosure of sources is also applied to different types of Internet-based media.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

Searches of property belonging to the media or the journalists may be carried out only on the grounds and according to the procedures established by law.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

According to Article 8 of the Law on the Provision of Information to the Public the producer and the disseminator of public information, the sharer of the producer and/or the disseminator of public information and the journalist are protected from disclosure of sources of information.

Luxembourg

Prepared by the Government of Luxembourg

RIGHTS OF ACCESS TO INFORMATION

Constitutional Rights

1. In the country, is there a constitutional right of public access to information or to documents held by government bodies?

No.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

Not required (cf. 1).

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

Not required (cf. 1).

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

Not required (cf. 1).

5. Are there other specific constitutional limits on access and dissemination of information?

No.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

A freedom of information law creating a general access to information from government bodies is in preparation. For the moment, access to information is regulated on a sectional approach. Access is notably granted in the field of environmental information (Access to information in environmental matters law from the 25th of June 2005).

Web link:

<http://www.legilux.public.lu/leg/a/archives/2005/2041912/2041912.pdf>

(no English translation available)

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

Not applicable.

8. Does the FOI law give journalists or media organizations a greater right of access to information than citizens?

Not applicable.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organisations.

Not applicable.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and web link, if available.

Yes, the freedom of expression law from the 8th of June 2004. In accordance with this law the journalist's freedom of expression includes the right to research all kind of information, to communicate and to comment this information.

Web link:

<http://www.legilux.public.lu/leg/a/archives/2004/0850806/0850806.pdf>

(no English translation available)

11. Are there any limits in this law on access to, and publication of, information?

There are no limits in the law.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organisations.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

The law from the 15th of June 2004 concerning the classification of pieces and the personnel security clearance ensures the protection of classified information. The law creates four levels of confidentiality that are:

- Restricted;
- Confidential;
- Secret;
- Top secret;

Information can only be classified by the following entities:

- Members of the Government and civil servants delegated by them;
- The chief of the Army and officers delegated by him;
- The director of the secret service and civil servants delegated by him;

Classified information can only be declassified with the approval of the authority that decided the classification. The law does not indicate a minimum or maximum period of classification or declassification. The holder of a classified document can destroy the document if it presents no more an interest for him.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

The criminal law prohibits the disclosure of state secrets with the purpose to cause knowingly damage to national or external security.

Access to classified information is only allowed to those individuals whose official duties require such access (need to know principle) and who have been appropriately security cleared.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

It is a general prohibition applicable to everybody.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this?

No.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

Not applicable.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorized disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found another law, such as the Criminal or Penal Code?

The disclosure of classified information, if the disclosure is not done with the purpose to cause knowingly damage to national or external security, is not penalized.

19. Do these penalties apply to the media for unauthorized disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

Please refer to question 18.

20. Have there any cases been brought in the five years against:

- Officials in charge of the leaked classified information?
- Members of the public?
- Journalists or media organisations?

Please describe the outcomes, including the date of the case, the defendants and the charges.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In case of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

The law does not foresee this scenario.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorized release of information that was of legitimate public interest?

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

Yes.²²

²² OSCE/RFOM's note: Article 7 and 8 Loi sur la liberté d'expression dans les medias, Memorial A- nr. 85, 1201.
<http://www.legilux.public.lu/leg/a/archives/2004/0850806/0850806.pdf>.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

Yes.

25. If there is non-national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

A journalist can be obliged to reveal a source if he is involved in an investigation concerning the prevention, the pursuit and the repression of a criminal act against a person, the drug trafficking, the laundering of money, a terrorist act and an attack against the national security.

28. What are the penalties for refusing to reveal sources of information?

There are no penalties written down in the law.

29. Are the journalists prohibited from revealing their source without the permission of the source?

No.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

The law protects the journalists, the editors as well as all the individuals that are informed of a source in the context of their professional relationship with the journalist.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programs)?

The protection concerns all the journalists and editors regardless of the media support.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

The protection concerns all the journalists and editors regardless of the media support.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

In principle these places are prohibited from being searched by law, except in presence of the breaches stated under question 27.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists? Communications with sources, or from interception of them?

The former Yugoslav Republic of Macedonia

Jointly prepared by the OSCE Spillover Monitor Mission to Skopje and PRO MEDIA (NGO)

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Yes.

Constitution of Republic of Macedonia

(OGRM²³ No: 52/91) There are later Constitutional Amendments but Article 16 is not amended.

Article 16

- (1) The freedom of personal conviction, conscience, thought and public expression of thought is guaranteed.
- (2) The freedom of speech, public address, public information and the establishment of institutions for public information is guaranteed.
- (3) Free access to information and the freedom of reception and transmission of information are guaranteed.
- (4) The right of reply via the mass media is guaranteed.
- (5) The right to a correction in the mass media is guaranteed.
- (6) The right to protect a source of information in the mass media is guaranteed.
- (7) Censorship is prohibited.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

No.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

There are no limits in the Constitution.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

5. Are there other specific constitutional limits on access and dissemination of information?

No.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

Law on Free Access to Information of Public Character (OGRM No:16/2006)

<http://www.freedominfo.org/documents/Macedonia%20FOI%20Law%20ENG%20Official%20Gazette%2013-2006.doc>

²³ “Official Gazette of the Republic of Macedonia”

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

No.

The Law on Free Access to Information says that the FAI right for foreigners may be regulated by a separate law. At time of writing there is no such law.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

No

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

The implementation of the Law began on 1st of September 2006. There is no information or statistics on the use of the law.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

There is no such law.

11. Are there any limits in this law on access to, and publication of, information?

In the Broadcasting law there are limits to publish information that will provoke ethnical intolerance.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

There is no such right.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- Different categories in terms of level of confidentiality?

Law on Classified Information (OGRM No.9/2004)

Article 8

Information classified with level “STATE SECRET” shall be information whose unauthorized disclosure would jeopardize and cause irreparable damage to the vital interests of the Republic of Macedonia.

Information classified with level “HIGHLY CONFIDENTIAL” shall be information created by the state organs, organs of the units of the local government, and other institutions which is of importance to the public security, defense, internal affairs and security and intelligence activities of the organs of the state government of the Republic of Macedonia whose unauthorized disclosure would cause extremely serious damage to the vital interests of the Republic of Macedonia.

Information classified with level “CONFIDENTIAL” shall be information created by the state organs, organs of the units of the local government, and other institutions which is of importance to the public security, defense, internal affairs and security and intelligence activities of the organs of the state government of the Republic of Macedonia whose unauthorized disclosure would cause serious damage to the important interests of the Republic of Macedonia.

Information classified with level “INTERNAL” shall be information whose unauthorized disclosure would cause damage to activities of the state organs, organs of the units of the local government, and other institutions which are of importance to the public security, defense, internal affairs and security and intelligence activities of the organs of the state government of the Republic of Macedonia

Article 10

Information which is not for public use and whose disclosure would reduce the efficiency of the activities of the state organs shall be assigned “FOR LIMITED USE ONLY”.

- **The period of classification and declassification?**

Law on Classified Information (OGRM No.9/2004)

Article 18

The creator of the information specifies a time period or event until which the information reclassified or declassified.

The time period or the event, until which the information can not be reclassified or declassified exceed the period of 10 years, unless the information needs longer protection determined with this or other law.

Article 19

Classified information with level “STATE SECRET” is examined by the creator in a period of time not longer than ten years in order to assess the need of further keeping of the classification.

Classified information with level “HIGHLY CONFIDENTIAL” is examined in a period of time not longer than five years in order to assess the need of further keeping of the classification.

Classified information with level “CONFIDENTIAL” is examined in a period of time not longer than three years in order to assess the need of further keeping of the classification.

Classified information with level “INTERNAL” is examined in a period of time not longer than two years in order to assess the need of further keeping of the classification.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

Yes, Criminal Code (Article 317) prohibits the unauthorized disclosure, possession or publication of all state secrets, not only related to national security. Article 349 prohibits disclosure of military secret.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

These prohibitions apply to everyone.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

Yes, Criminal Code (Article 317) prohibits the unauthorized disclosure, possession or publication of official secrets.

Also the Law on Civil Servants has a provision related to keeping secrets.

Law on Civil Servants

(OGRM No: 59/00, 112/00, 34/01, 103/01, 43/02, 98/02, 17/03, 40/0385/03 and Constitutional Court Decision 30/01)

Article 20

- (1) The civil servant shall be obliged to keep a state secret and an official secret in a manner and under conditions stipulated by law and other regulation.
(2) The obligation for keeping an official secret shall be valid for a period of three years after the termination of the service.

Article 21

The civil servant shall, in accordance with law, be obliged to provide information upon request of the citizens required for exercise of their rights and interests, except the information referred to in Article 20 of this Law.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

Criminal Code prohibitions apply to everyone.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

The Criminal Code punishes such offences with 6 months to 10 years with imprisonment.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

Yes, penalties apply to the media. There are no additional or higher penalties for mass publication of information.

- 20. Have there any cases been brought in the last five years against:**
- **Officials in charge of the leaked classified information?**
 - **Members of the public?**
 - **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

No, we are not aware of such cases.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

The only provision that allows public interest to override is Article 6 paragraph 3 of FAI Law:

"Under exception to paragraph (1) hereunder, information holders shall allow access to information should, in case such information is published, consequences to the interest being protected be smaller than the public interest to be maintained with the publishing of such information."

The Law obliged not only the judiciary but also the Commission on the protection on free access to use the public interest test, when considering the appeal or legal suit. Also, any public body can use the public interest test when considering the request for some classified information.

There is still no sufficient practice available but we plan to submit few strategic requests for information that will challenge this part of the Law.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

There is no practice, still.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

There is no such law.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

No, we are not aware of any such cases.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

28. What are the penalties for refusing to reveal sources of information?

29. Are the journalists prohibited from revealing their source without the permission of the source?

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

Malta

No data have been received

Moldova

Prepared by the Government of Moldova (unofficial translation)

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

In the Republic of Moldova the Constitution guarantees, through the provisions of art. 32, the freedom of thought, opinion and expression. Thus, any citizen is guaranteed the freedom of thought, opinion, as well the freedom of public expression through words, images or other possible means.

The freedom of expression may not prejudice the honour, dignity or the right of any individual to his/her own views.

The law prohibits and punishes the contestation and defamation of the state and its people, incitement to war of aggression, ethnic, racial and religious hatred, incitement to discrimination, territorial separatism, public violence, as well as other manifestations which make an attempt on the constitutional order.

Moreover, through the provisions of art. 34, the Constitution raises the Right to information to the degree of basic rights. On basis of these provisions, the right of an individual to have access to any information which presents public interest cannot be restricted.

The public authorities, in accordance with their competences, are obliged to assure the provision of correct information to citizens about the public affairs and about problems of personal interest.

The right to information must not prejudice/harm the measures aimed at the protection of citizens or the national security.

The public information outlets, state or private, are obliged to assure the correct information (awareness-raising) of the public opinion.

The public information outlets are not subject to censorship.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

In accordance with art. 135 par. (1) letter b) of the Constitution, the interpretation of the Constitution is the exclusive prerogative of the Constitutional Court. This norm is also stipulated in art. 4 of Law No. 317-XIII of 13 December 1994 concerning the Constitutional Court.

Through the Decision of the Constitutional Court No. 25 of 8 June 2000, concerning the control of the constitutionality of art. 7 and art. 71 of the Civil Code of the Republic of Moldova (the Civil Code of 1964) regarding the norms related to the defense of honor and dignity, in cases where certain information which infringes the honor and dignity of an individual was disseminated through a mass-media outlet, the Court has ruled that through these norms the constitutional desideratum stipulated in art. 32 par. (2) of the Constitution has been confirmed; according to this article the freedom of expression may not prejudice the honor, dignity and right of another individual to hold his/her own view.

At the same time, through the Decision of the Plenary Session of the Supreme Court of Justice, No. 11 of 27 March 1997, concerning the application of the legislation about the defense of the honor, dignity, professional reputation of citizens and organizations, the Court has ruled that the right to the freedom of expression covers the freedom of opinion or the freedom to receive or communicate information or ideas without the interference of public authorities.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

The right of access to information is limited by the fact that certain information has a restricted accessibility nature.

Thus, further to art. 7 of Law No. 982-XIV of 11 May 2000, concerning the access to information, the exercise of the right of access to information may be subject to restrictions only in cases stipulated by organic law and which meet the following necessities:

- a) observance of the rights and reputation of other individuals;
- b) protection of national security, public order, protection of health/well-being or protection of society's morals.

According to the paragraph (1) of the abovementioned article, the access to official information may not be restricted, with the exception of:

- a) information that represents state secret, stipulated by organic law and qualified as information protected by the state, in the military, economic, technical-scientific, foreign policy, reconnaissance, counterintelligence and operative-investigative fields, the dissemination, disclosure, loss, misappropriation of which may endanger state security;
- b) confidential information from the field of business, presented to state institutions with the title of confidentiality, regulated by the legislation regarding commercial, industrial, administration, financial secret, as well other activities of the economic field, the disclosure (transfer and leak) of which may affect the interests of the entrepreneurs;
- c) information of a personal nature, the disclosure of which is considered an interference into the private life of an individual; this right being protected by the legislation.
- d) information related to the operative and investigative activities of the relevant bodies, but only in cases in which the disclosure of this information may prejudice/harm the investigation process, interfere in the organization of a judicial process, deprive the individual of the right to a fair and impartial court trial, or may endanger the life or physical security of any individual.
- e) information which reflects the final or intermediary results of certain scientific and technical research and the disclosure of which may deprive the authors of the research of the publishing priority or may serve as a negative influence in the exercise of other rights protected by law.

In this context, the priority legislative norms in the field which regulates the spectrum of legal subtleties regarding the information of restricted access, which establishes the legal bases for the protection of the commercial/trade secret on the territory of the Republic of Moldova, the responsibility of the natural persons and legal entities for disclosure of this secret is regulated through Law No. 982-XIV of 11 May 2000, regarding the access to information. The aim of the law is to protect the commercial/trade sector and prevent unfair competition during the performance of the economic activity. Law No. 106-XIII of 17 May 1994 regarding state secret also has relevance to the material analyzed above.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

The restrictions on the access to information are regulated directly through art. 7 of the Law regarding the access to information, which was previously quoted.

5. Are there other specific constitutional limits on access and dissemination of information?

Another restriction may emerge from the fact that art. 34 of the Constitution stipulate that the right to information may not prejudice/harm the measures of protection of citizens or national security.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

The national legal framework includes the Law No. 982-XIV of 11 May 2000, regarding the access to information, which regulates the following:

- a) the relations between the information provider and the natural person and/or legal entity in the process of assurance and implementation of the constitutional right of access to information;
- b) the principles, conditions, means of fulfillment of the access to official information, which is in the possession of the information provider;
- c) the aspects of accessibility to information of a private/personal nature and the protection of the latter in the framework of settlement of access problems;
- d) the right of the applicants for information, including the information of a private/personal nature;
- e) the obligations of the information provider in the process of assuring the access to official information.
- f) the means of protecting the right of access to information.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc.)?

The above mentioned law does not limit the access to information on the criterion of citizenship, thus, anyone, within the conditions of the present law, has the right to seek, receive or make public the official information.

The exercise of the rights foreseen in this law may be subject to certain restrictions for specific reasons, which meet the principles of the international law, including for the reason aimed at the protection of national security or the private life of an individual.

The exercise of the rights stipulated in the abovementioned Law shall not involve in any event any discrimination based on race, ethnicity, language, religion, gender, opinion, political affiliation, property or social origin (see art. 4 of the Law regarding the access to information).

8. Does the FOI law give journalists or media organizations a greater right of access to information than citizens?

The journalists or mass-media outlets in these cases shall be regarded as subjects of the guaranteed relations/interaction in the framework of the access to information, thus, as a consequence, they shall also be regarded as subjects/actors of the abovementioned law, entitled "information providers".

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

We do not have at our disposal any statistics on the use of the law by the journalists and the mass-media organizations; however, it is certain that these persons and entities participate in the above mentioned relations as "information providers".

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

In this context, there is also the Law No. 243-XIII of 26 October 1994 on the press, which establishes in detail the relations regarding the provision of information by the editorial offices of the periodical publications and pressagencies.

11. Are there any limits in this law on access to, and publication of, information?

Further to art. 3 of the above mentioned Law, the officials of the public authorities shall present in the timely manner the materials and the information requested by the periodical publications and press agencies, except the materials and information listed in art. 4 and those qualified as state secret.

Art. 4 of the abovementioned law stipulates that within the structures of periodical publications and public press-agencies, any form of data/material and information, (according to own evaluations), and taking into consideration the fact that the exercise of these freedoms foresees liabilities and responsibilities, shall be subject to certain formalities, conditions, limitations and certain sanctions foreseen by law, which constitute necessary measures, in a democratic society, for national security, territorial integrity or public safety, protection of law and order and prevention of crime,

healthcare, protection of morality, protection of the reputation or protection of the rights of others, in order to impede the disclosure of certain confidential information or in order to guarantee the authority and impartiality of the judicial power.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

Taking into consideration the limits of competence, we don't have at our disposal such data; the legal right to have access to information is regulated by the above-mentioned documents.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- **Different categories in terms of level of confidentiality?**
- **The period of classification and declassification?**

Further to the Law No. 64-XIII of 17 May 1994 regarding state secrets, the notion of a "state secret" is defined as: information that constitutes a state secret is the information protected by the state, in the military, economic, technical-scientific, foreign policy, reconnaissance, counterintelligence and operative-investigative fields, the dissemination, disclosure, loss, misappropriation or destruction of which may endanger the security of the Republic of Moldova;

In the framework of art. 5 of the abovementioned act, the following information may be attributed to the notion of state secret:

(1) from the military field concerning:

- a) the content of the strategic and operative plans aimed at assuring the security of the Republic of Moldova;
- b) the directions of development and elaboration of new armament and military equipment, as well as the types, reserves and place of storage of the latter;
- c) tactical-technical features and the possibilities of applying, in combat conditions, the models of armament and military equipment, as well as the properties, composition or the technologies for production of the explosive substances with combat destination;
- d) the deployment, destination, degree of protection of sites with a special regime of protection and of special importance, as well as the engineering design and construction of these;
- e) deployment, organizational structure, equipment with armament and the numerical strength/personnel of the Armed Forces;

(2) from the field of the economy, science and technology concerning:

- a) the content of preparation/build up plans of the Republic of Moldova for eventual military actions, the mobilization potential of the industry producing arms and military equipment, the volume of supplies and raw-material and strategic materials reserves, the location and the volume of material reserves of the state;
- b) the volume and the production plans (expressed as value-estimations or natural estimations) of the arms, military equipment and other defence-related production, the existent capacity for producing them and the capacity to increase the volume of production, the relations of cooperation between enterprises, the authors or manufacturers of arms, military equipment and other defence-related production;
- c) the scientific research, experimental construction and design works, technologies of significant importance for the defence sector or for the economy of the state which determine the assurance of its security;
- d) the forces and means of civil defence, deployment, destination and degree of protection of administrative buildings/sites, assurance of the security of the population;

(3) from the field of foreign policy and economy concerning:

The foreign policy activity, foreign economic relations (trade, crediting and currency related) of the Republic of Moldova, the premature disclosure of which may endanger the interests of the country;

(4) from the reconnaissance, counterintelligence and operative-investigative fields concerning:

- a) the forces, means, sources, methods, plans and the results of the activities of reconnaissance, counterintelligence and operative investigations, as well as the data on the financing of these activities, which may result in the disclosure of the information listed above;
- b) the persons who cooperate or have cooperated confidentially with the bodies which perform reconnaissance, counterintelligence and operative-investigative activities;
- c) The system of governmental communications and other types of special liaison/communications, state cipher codes, the methods and means of analyzing them;
- d) The methods and means of protecting secret/classified information;
- e) State programs and actions in the field of protection of state secrets.

Rules on Limitations

14. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

Further to art. 26 of the respective Law, the persons found guilty of violating the legislation regarding state secrets shall bear responsibility in accordance with the legislation.

Not just any law may foresee the prohibition of the unauthorized dissemination of state secrets, the respective law is rather a special one in this field; it establishes exactly what information shall be qualified as state secret, and the subjects that have the obligation to preserve it as such, as well as the bodies entrusted with protecting state secrets.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

Art. 18 of the above mentioned Law establishes the access of official persons who hold functions of responsibility and other citizens to state secrets, as follows:

(1) the access of official persons that hold functions of responsibility and other citizens to state secret is fulfilled on a voluntary basis and foresees:

- a) assuming the obligation towards the state not to disseminate the information which represents state secret, that was entrusted to them;
- b) consent to the partial and temporary limitation of their rights.
- c) written consent to the organization of measures of control regarding them by the relevant bodies;
- d) determining the types, degree and modalities for granting the facilities/advantageous conditions foreseen by the present law;
- e) familiarization with the legal framework regarding state secret which foresees sanctions for violating these norms;
- f) adoption of a decision by the head of the body of state administration, enterprise, institution or organization regarding the access of employed persons to information which constitutes state secret.

(2) The measures of control are undertaken according to the legislation on the scale that is conditioned by the degree of secrecy/confidentiality of the information to which the employed person shall have access to.

The mutual obligations of the administration and the employed staff are indicated in the employment contract.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

The respective law prohibits the unauthorized dissemination of information which constitutes state secret by the persons who have the obligation of preserving it; in this case the responsibility (sanctions) foreseen by the legislation shall be applied.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

These restrictions/limitations are aimed at the officials who, further to art. 16 of the respective Law, have the obligation to protect the information in accordance with the stipulations provided in the contract. Art. 18 of the same law stipulates that the mutual obligations of the administration and the employee are foreseen in the contract of employment. The conclusion of the contract of employment before the finalization of the control procedure by the relevant bodies shall not be allowed.

At the same time, art. 7, par. (5) of the Law regarding the access to information stipulates that no individual should be sanctioned for making public certain information of limited accessibility, if the disclosure of this information does not harm and cannot harm any legitimate interest related to national security or if the public interest in knowing the information exceeds the harm which may result as consequence of disclosing the respective information.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorized disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

Art. 22 of the law concerning state secrets stipulates that the parliamentary control over the observance of the legislation concerning state secrets and the expenditures of the financial means allocated towards this aim are performed by the respective permanent commissions of the Parliament. The state administration bodies entrusted with the protection of state secrets are obliged to put at the disposal of the abovementioned commissions the necessary information.

19. Do these penalties apply to the media for unauthorized disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

The interdepartmental control over the assurance of the protection of state secret in the state administration bodies, enterprises, institutions and organizations is performed by the Information and Security Service of the Republic of Moldova.

According to art. 177 of the Penal Code, the illegal accumulation or purposeful/knowledgeable dissemination of the information, protected by law, about the private/personal life which constitutes personal or family-related secret of another person without his/her prior consent is punishable with a fine in the amount of up to 300 conventional units or unremunerated community works ranging from 180 to 240 hours.

(2) The dissemination of the information listed in par. (1):

a) in a public discourse, through mass-media outlets;

b) by intentional use of the work-related situation, is punishable with a fine in the amount ranging between 200 to 500 conventional units or with arrest/detention of up to 6 months.

Moreover, according to art. 337 of the Penal Code, the action of disclosure of a state secret is part of the objective side of the crime of treason, which is punished with prison ranging from 16 to 25 years or life imprisonment.

At the same time, art. 344 of the same Code, stipulates that the disclosure of information which constitutes state secret by an individual who was entrusted with this information or who became aware of it in the line of his/her work or duty, if this disclosure does not constitute treason or espionage, is punished with a fine ranging from 200 to 600 conventional units or with prison from 2 to 5 years, in both cases depriving this individual of the right to hold certain functions or to exercise certain activities for a term of up to 5 years.

(2) The same action but which results in grave consequences is punished with imprisonment from 5 to 10 years, while depriving the individual of the right to hold certain functions or to exercise certain activities for a term ranging from 2 to 5 years.

The subsequent article, 345, foresees sanctions that are applied in the event of loss of documents which contain a state secret. Thus:

(1) The loss of documents which contain a state secret, as well as objects the data of which constitutes a state secret, by a person who was entrusted with these documents or objects, if the loss was a result of the violation of the established rules and regulations concerning the safekeeping of the above-mentioned documents or objects, is punished with a fine in the amount ranging from 150 to 400 conventional units or with imprisonment from 1 to 3 years, in both cases the individual being deprived of the right to hold certain functions or to exercise certain activities for a term of up to 5 years.

(2) The same action which resulted in severe consequences is punished with imprisonment from 3 to 10 years while depriving the respective individual of the right to hold certain functions or to exercise certain activities for a term ranging from 2 to 5 years.

The Civil Code, through art. 16, stipulates that the person deprived of his/her rights and interests, protected by law by means of a mass-media outlet has the right to publish his/her retort/reply in the respective mass-media outlet at the expense of the latter.

More than that, paragraph (8) of the abovementioned article stipulates that any person about whom information was disseminated which harmed his/her honor, dignity and professional reputation has the right, apart from enjoying the right to a retort, to demand reparations for the material and moral damages caused.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organizations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

Yes, the abovementioned articles refer to any subject/actor that has committed the respective actions, including the mass-media outlets.

The editorial offices of periodical publications and the press-agencies are legal entities and conduct their activity according to the current legislation and according to their legal statute (art. 2 Law on the press), as consequence, they are distinct subjects/actors who bear responsibility further to the legislation in force.

Nevertheless, the founders, editors, journalists are not responsible for publication/broadcasting the information, if the latter:

- a) is covered in the official documents and communiqués of the public authorities;
- b) reproduces the texts of public speeches/statements or their adequate summaries (see art. 27 of the Law on press).

The provision of such information is not one of the tasks/responsibilities of the Ministry of Justice, however, it is the responsibility of the bodies delegated with this task.

PROTECTION OF PUBLIC INTEREST PUBLICATIONS

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

In the event that the mass-media discloses information that could be qualified as state secret the liability shall be incurred according to the legislation.

The founders, editors, journalists shall not bear responsibility for the disclosure of information, if the latter:

- a) is covered in the official documents and communiqués of the public authorities;
- b) reproduce the texts of public speeches/statements or their adequate summaries (see art. 27 of the Law on press).

The classifying and declassifying procedure of the information is regulated by the present law.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorized release of information that was of legitimate public interest?

The right of the public to information is guaranteed by the abovementioned provisions. The restriction/limitation of this right is performed solely through organic law and only in accordance with the requirements stipulated in art. 7 of the Law regarding the access to information.

The sanctions applied to journalists, in the event of a violation of the legal provisions, are established through art. 16 of the Civil Code, according to which the culprits/offenders are obliged to make reparations for the material and moral damages caused.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

The legal framework which regulates the profession of journalist consists of the Law on the press No. 243-XIII of 26 October 1994, which stipulates in art. 19 the fact that a journalist is a person who is engaged in literary work and journalism in the framework of mass-media outlets, hired/employed by them on basis of contract or another modality, in accordance with the current legislation.

According to art. 26 of the abovementioned Law, the public officials are liable to incur sanctions in the event that:

- a) they have obstructed the professional legitimate activity of a journalist with a groundless refusal of accreditation or by an unjustified retraction of the accreditation, or by using other means;
- b) have applied on the journalist means of constraint with the aim of publication or non-publication of certain information;
- c) have disclosed the source of information or the pseudonym of the author without the prior consent of the latter.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

Further to the Constitution, the Republic of Moldova is a unitary state, applying its legislation on the entire territory of the country.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

According to the art. 4(2) of the Supreme Law, ("Wherever disagreements appear between conventions and treaties signed by the Republic of Moldova and its own national laws, priority shall be given to international regulations") thus, the RM is obliged to observe the international norms. The European Convention for the Protection of Human Rights and Fundamental Freedoms stipulates through art. 10 the freedom of expression, which means that this right includes the freedom to opinion and the liberty of receiving or communicating information or ideas without the interference of public authorities and regardless of frontiers.

At the same time, the national legislation is based on these provisions/stipulations.

26. How many times in the last five years has a journalist or media organization been required by a court or official to disclose their sources of information under this law or any other law?

The provision of such information is not one of the tasks/responsibilities of the Ministry of Justice; however, it is the responsibility of the bodies delegated with this task.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

The protection of state secrets or other information of limited/restricted accessibility is an obligation derived from the previously mentioned legal provisions.

The publication of the press is performed by the founder (cofounders) on basis of a contract, concluded with natural persons or legal entities.

State publishing houses (printing offices) are obliged to send copies of periodicals/publications to libraries and other institutions; the list containing these entities is established by the Government. The costs resulted from this activity shall be sustained/exempted from taxes/duties levied (art. 15 of the Law on the press).

Further to the same law, the editorial offices of periodical publications and press-agencies are considered legal entities and conduct their activity according to the legislation in force and their statute. Thus, imposing the disclosure of certain information at the order of certain public authorities is considered unjustified.

28. What are the penalties for refusing to reveal sources of information?

The legal framework does not foresee any sanctions in the event of refusal to disclose the information sources. Moreover, on basis of art. 18 of the mentioned Law the periodical publications and press agencies do not have the right to disclose the source of information or the pseudonym of the author, without the prior agreement of the latter. The information source or the pseudonym of the author may be disclosed solely in the event when the broadcast/publicized material contains constitutive elements of an offence, and only following the decision of a court of law.

29. Are the journalists prohibited from revealing their source without the permission of the source?

Yes, art. 18 of the Law on the press stipulates that the periodical publications and press agencies do not have the right to disclose the information source or the pseudonym of the author without their prior consent. The information source or the pseudonym of the author may be disclosed only in the event when the broadcasted/published material contains constitutive elements of an offence.

30. In the media, who is protected from disclosure of sources:

- **The journalist? The editor? The publisher?**
- **Freelance journalists or commentators?**

Art. 27 of the Law on the press stipulates that the founders, editors, journalists shall not bear responsibility for the disclosure of information, if the latter:

- a) is covered in the official documents and communiqués of the public authorities;
- b) reproduces the texts of public speeches/statements or their adequate summaries.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

The state guarantees the exercise of the profession of journalist. Article 26 of the Law on the press establishes that the officials/functionaries of the public authorities are liable to incur sanctions in the event when:

- a) they have obstructed the professional legitimate activity of a journalist with a groundless refusal of accreditation or by an unjustified retraction of the accreditation, or by using other means;
- b) have applied on the journalist means of constraint with the aim of publication or non-publication of the certain information;
- c) have disclosed the source of information or the pseudonym of the author without the prior consent of the latter.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

The protection is permeated/propagated through all the means of information.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

The provision of such information is not one of the tasks/responsibilities of the Ministry of Justice, however, it is the responsibility of the bodies delegated with this task.

34. Are third parties who act for journalists or media organizations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them.

The Department for nongovernmental Organizations and political parties, which conducts the registration of the latter, performs its activity within the Ministry of Justice. Recently, the number of an NGO-info telephone hotline was placed on the official site of the Ministry of Justice; its aim is providing free of charge information and telephone consultations regarding the creation, registration and functioning of NGO's in the Republic of Moldova.

Moldova

Jointly prepared by the OSCE Mission to Moldova and ACCESS INFO (NGO)

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

The right to information is envisaged by **Article 34 of the Constitution of the Republic of Moldova** (passed by the Parliament of the Republic of Moldova on 29 July 1994, enacted on 27 August 1994, published in the Monitorul Oficial al Republicii Moldova (hereinafter referred to as the M.O.) No. 001 of 12 August 1994):

- “(1) A person’s right of access to any information concerning public affairs cannot be restricted.
- (2) The authorities, in accordance with their terms of reference, are required to ensure provision of reliable information to citizens about public affairs and issues of a personal nature.
- (3) The right to information shall not be detrimental to measures orientated on protection of citizens or national security.
- (4) Mass media, both state-run and private, shall provide reliable information to the public.
- (5) Mass media shall not be subject to censorship”.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

The Constitutional Court of the Republic of Moldova has interpreted the right to access to information in only a single case. The essence and results of the given case are included in Resolution of the Constitutional Court of the Republic of Moldova No. 21, dated 2 September 2004, on Checking the Constitutionality of Resolution of the Republic of Moldova Government No. 782-37, dated 8 July 2004, on Regulation of the Situation in the Sphere of the Telecommunications Networks of Moldova; the given resolution of the Constitutional Court was published in the M.O. No. 168-170/23, dated 10 September 2004.

Essentially, the Constitutional Court recognized as unconstitutional the passing by the Republic of Moldova Government of a secret resolution in the sphere of entrepreneurship (licensing in the sphere of telecommunications services), and the court ruling indicates that the given resolution contravenes the right of citizens to access to information and also goes against fair competition.

In general, during the period from 2001 to 2006, the courts of the Republic of Moldova heard approximately 50 cases about access to information. In 90% of the cases, the rulings of courts of the first instance were disputed by the parties in courts of a higher instance (the Appeals Chamber and the Supreme Judicial Chamber). In the majority of cases, the courts required the public authorities to provide the claimants with the information they requested.

The Supreme Judicial Chamber of the Republic of Moldova has studied the law-enforcement practice of the courts and has drawn up a Draft Resolution of the Plenum of the Supreme Judicial Chamber of the Republic of Moldova on the Enforcement of the Legislation during Consideration of Cases Deriving from the Right of Access to Information. Although, from the point of view of the legislation, resolutions of this type are only recommendatory in nature, in practice courts use them as instructions on applying the laws.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

Law of the Republic of Moldova on Access to Information No. 982, passed on 11 May 2000, published in the M.O. No. 088 of 28 July 2000, hereinafter referred to as the Law, allows for restrictions on access to information on two main categories of grounds – Part (1), Article 7 of the Law:

- “(1) Exercise of the right of access to information may be subject only to restrictions regulated by the fundamental law and corresponding to the requirements of:
- (a) Observance of rights and prevention of offences against the reputation of another person;
 - (b) Protection of national security, public order, the health or morals of society”.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

The Law contains the concept of “*official information with restricted access*” – Article 7 of the Law.

Official information with restricted access includes:

- a state secret (information from the sphere of military, economic, scientific and technical, foreign policy, intelligence, counter-intelligence and operational-and-investigatory activities, distribution, disclosure, loss and theft of which might jeopardize state security);
- confidential business information, submitted to public agencies as confidential and regulated by law on commercial secrets and dealing with production, technologies, management, finances and other business activities, disclosure (transfer, leakage) of which might affect the interests of entrepreneurs;
- information of a personal nature, disclosure of which is considered as interference in an individual’s personal life which is protected by law;
- information concerning operations and criminal investigation conducted by relevant bodies, but only in cases when disclosure of such information might be detrimental to the criminal investigation, hamper the course of court proceedings, deprive a person of the right to a fair and unbiased hearing or jeopardize the life and physical safety of a person;
- information containing the final or interim results of scientific and technical research, disclosure of which would deprive the authors of such research data of their preemptive right to publish them or would exert a negative impact on the exercise of other rights protected by law.

The Law does not absolutely exclude the possibility of access to the given categories of information, but envisages assessment of the advisability and legality of providing the requested information from the point of view of the so-called “triple test”, thus Part (4), Article 7 of the Law envisages: “Access to information may be restricted only in the event when the supplier of the information can prove that the restriction is regulated by the fundamental law and is necessary in a democratic society for protecting the rights and lawful interests of the individual or national security and that the damage inflicted to the lawful rights and interests overrides the public interest in being acquainted with the information”.

5. Are there other specific constitutional limits on access and dissemination of information?

The Constitution of the Republic of Moldova indirectly allows for certain restrictions to be imposed on access to information, thus Part 3, Article 34 of the Constitution envisages:

- “(3) The right to information shall not be detrimental to measures aimed to protect citizens or national security”.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

There exists Law of the Republic of Moldova on Access to Information, No. 982, passed on 11 May 2000, published in the M.O. No. 088, dated 28 July 2000, hereinafter referred to as the Law.

The above law, in Russian, can be found on the Internet at:
http://justice.md/lex/document_rus.php?id=BAF1EC43:54D21C58

The English-language version may be downloaded from: http://www.ijc.md/en/mlu/docs/access_info_law.shtml

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc.)?

The answer to the given question is contained in Article 4 of the Law:

- “(1) Any person shall, in accordance with this law, have the right to seek, receive and get acquainted with official information.
- (2) Exercise of the rights envisaged by Part (1) of this article may be subject to restrictions for specific reasons complying with the principles of international law, including protection of national security or the private life of an individual person.
- (3) Exercise of the rights envisaged by Part (1) of this article in no way presumes discrimination by race, nationality, ethnic origin, language, religion, sex, opinions, political affiliation, property status or social origin”.

8. Does the FOI law give journalists or media organizations a greater right of access to information than citizens?

No, the Law does not contain any special provisions regarding the mass media or journalists.

All persons requesting information enjoy equal rights.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

No data available.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

There exists Law of the Republic of Moldova on the Press, No. 243, dated 26 October 1994, published in the M.O. No. 2, dated 12 January 1995. The Law contains certain general provisions about the rights enjoyed by journalists of access to information – Articles 3, 4, 21.

In particular, Article 3 of the Law on the Press envisages: “Public officials shall promptly provide materials and information demanded by periodical publications and press agencies, with the exception of the materials and information listed in Article 4 or those constituting a state secret”, while Article 21 envisages the right of periodical publications and press agencies to accredit journalists with public bodies, while there are no corresponding obligations on the part of the public authorities to accredit the same journalists.

The Law on the Press in English may be downloaded from: http://www.ijc.md/en/mlu/docs/press_law.shtml

11. Are there any limits in this law on access to, and publication of, information?

Yes, the Law on the Press indirectly introduces certain restrictions on the right of access to information and publication of information, thus Article 4 runs:

“Periodical publications and press agencies may publish, at their own discretion, any materials and information in consideration that exercise of these freedoms, imposing obligations and responsibility, is fraught with formalities, conditions, restrictions and fines envisaged by law and necessary in a democratic society in the interests of national security, territorial integrity and public peace, for the purpose of protecting public order and preventing crime, protecting health, morality, the reputation or rights of other persons, preventing disclosure of confidential information and ensuring the authority and impartiality of justice (in the edition of Laws No. 688-XIII, dated 15 December 1995; No. 42-XIV, dated 4 June 1998 and No. 564-XIV, dated 29 July 1999)”.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

No data available.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- **Different categories in terms of level of confidentiality?**
- **The period of classification and declassification?**

In the Republic of Moldova, there exists Law on State Secrets No. 106, dated 17 May 1994, published in the M.O. No. 002, dated 25 August 1994, hereinafter referred to as the LSS.

Article 2 of the LSS defines a state secret as information protected by the state in the sphere of its military, economic, scientific and technical, foreign policy, intelligence, counter-intelligence and operational-and-investigatory activities, distribution, disclosure, loss, theft or destruction of which might jeopardize the security of the Republic of Moldova.

Article 5 of the LSS indicates specifically which information may be defined as a state secret:

“(1) in the military sphere:

- (a) on the contents of strategic and operational plans for guaranteeing the security of the Republic of Moldova;
- (b) on directions of development and new developments in arms and military technology, their types, stock and storage locations;
- (c) on tactical and technical characteristics and possible military uses of weaponry types and military technology, the parameters, ingredients or production technologies for new types of explosive substances for military purposes;
- (d) on deployment, designation and degree of protection of secure facilities and facilities of special importance, about their design and construction;
- (e) on the deployment, organizational structure, armaments and numerical strength of the Armed Forces;

(2) in the sphere of the economy, science and technology:

- (a) on the contents of plans for preparing the Republic of Moldova for possible military actions, the mobilization capacities of industry for manufacturing armaments and military equipment, on volumes of supplies and stocks of strategic types of raw and other materials, on the location and size of state material reserves;
- (b) on volumes, plans for manufacturing (in monetary or physical terms) armaments, military equipment and other defence industry output, on the existence and build-up of capabilities for their manufacturing, on co-operation links between enterprises, developers or manufacturers of the given armaments, military equipment and other defence industry output;
- (c) on scientific research, design and experimental/design work and technology of defence or economic significance impacting on guarantees of the security of the Republic of Moldova;

- (d) on forces and means for civil defence, deployment, the purpose and degree of protection of administrative facilities, on guarantees of safety for the population;
- (3) in the sphere of foreign policy and the economy:
 - on foreign policy and foreign economic (trade, credit and currency) activities of the Republic of Moldova, premature dissemination of which might be detrimental to its interests;
- (4) in the sphere of intelligence, counter-intelligence and operational-and-investigatory activities:
 - (a) on forces, means, resources, methods, plans and results of intelligence, counter-intelligence and operational-and-investigatory activities, as well as data about the financing of said activities, revealing the listed information;
 - (b) on persons co-operating and having co-operated on a confidential basis with bodies engaged in intelligence, counter-intelligence and operational-and-investigatory activities;
 - (c) on the system of official and other forms of special communications, on state ciphers, means and methods for analyzing them;
 - (d) on means and methods for protecting secret information;
 - (e) on state programmes and measures in the sphere of the protection of state secrets”.

Article 7 of the LSS establishes levels of confidentiality:

- “(1) The level of confidentiality of information constituting a state secret must correspond to the gravity of the damage that might be inflicted on the security of the Republic of Moldova in the event of its dissemination.
- (2) Three levels of confidentiality are established for information constituting a state secret and secrecy classification codes corresponding to these levels for visitors to the given information: “Vitaly important”, “Top secret” and “Secret”. Use of the listed classification codes for classification of information that does not constitute a state secret shall be prohibited”.

Article 11 of LSS stipulates the time periods during which information remains secret:

- “(1) For information classified as “Vitaly important” and “Top secret”, a classification period of up to 25 years is set and for information classified as “Secret” – up to 10 years.
- (2) In relation to information the content of which concerns an especially important state secret, by resolution of the inter-departmental commission on protection of state secrets, the Government may set longer classification periods.
- (3) State administrative authorities, the heads of which are empowered to classify information as a state secret, shall periodically, at least once every five years, review the content of departmental lists of information for classification”.

Rules on Limitations

14. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

There are several articles in the Criminal Code of the Republic of Moldova No. 985, passed on 18 April 2002, published in the M.O. No. 128, dated 13 September 2002, hereinafter referred to as the “Criminal Code”:

Article 337. High treason

- (1) High treason, that is, an act deliberately committed by a citizen of the Republic of Moldova to the detriment of its sovereignty, territorial integrity or the state security and defensive capability of the Republic of Moldova by

going over to the side of the enemy, spying, divulging state secrets to a foreign state, foreign organization or representatives thereof, as well as rendering assistance to a foreign state in conducting hostile activities against the Republic of Moldova, shall be punishable by imprisonment for a term of 16 to 25 years or a custodial life sentence.

Article 338. Espionage

The transfer as well as theft or gathering of information constituting a state secret for the purpose of transferring to a foreign state, foreign organization or their agents, as well as transfer or gathering of other information on assignment by a foreign intelligence service to be used to the detriment of the interests of the Republic of Moldova, if the espionage is conducted by a foreign citizen or stateless person, shall be punishable by imprisonment for a term of 16 to 25 years.

Article 344. Disclosure of state secrets

- (1) Disclosure of information constituting a state secret by a person to whom this information was entrusted or to whom it became known in connection with service or work, in the absence of indications of high treason or espionage, shall be punishable by a fine in the amount of 200 to 600 conventional units or by imprisonment for a term of 2 to 5 years, accompanied in both cases by deprivation of the right to hold certain offices or engage in certain activities for a period of up to 5 years.
- (2) The same action entailing grave consequences shall be punishable by imprisonment for a term of 5 to 10 years, accompanied by deprivation of the right to hold certain offices or engage in certain activities for a period of 2 to 5 years.

Article 345. Loss of documents containing state secrets

- (1) Loss of documents containing state secrets, as well as items, information about which constitutes a state secret, by a person to whom these documents or items were entrusted, if the loss was a result of violation of the established rules for handling the given documents or items, shall be punishable by a fine in the amount of 150 to 400 conventional units or by imprisonment for a term of up to 3 years, accompanied by deprivation of the right to hold certain offices or engage in certain activities for a period of up to 5 years.

[Article 345 Part(1) penalty changed ZR84-XVI, dated 29 June 2006, MO126-130/11 August 2006, Art. 599]

- (2) The same action entailing grave consequences shall be punishable by imprisonment for a period of 3 to 10 years, accompanied by deprivation of the right to hold certain offices or engage in certain activities for a period of up to 5 years.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

State criminals are defined:

- in Article 337 as “a citizen of the Republic of Moldova”;
- in Article 338 as “a foreign national or stateless person”;
- in Article 344 as “a person to whom this information was entrusted or to whom it became known in connection with service or work”;
- in Article 345 as “a person to whom these documents or items were entrusted”.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

Categories of information:

- (1) information concerning operations and criminal investigation conducted by relevant bodies, but only in cases when disclosure of such information might be detrimental to the criminal investigation, hamper the course of court proceedings, deprive a person of the right to a fair and unbiased hearing or jeopardize the life and physical safety of a person;
- (2) information of a personal nature, disclosure of which is considered as interference in an individual's personal life and is protected by law;
- (3) information containing the final or interim results of scientific and technical research, disclosure of which would deprive the authors of such research data of their preemptive right to publish them or would exert a negative impact on the exercise of other rights protected by law;
- (4) confidential business information, submitted to public agencies as confidential and regulated by law on commercial secrets and dealing with production, technologies, management, finances and other business activities, disclosure (transfer, leakage) of which might affect the interests of entrepreneurs;
- (5) computerized information contained in public information systems and resources.

Rules of law:

Criminal Code of the Republic of Moldova

Article 315. Disclosure of information on criminal prosecution

- (1) Disclosure of information on criminal prosecution in contravention of a prohibition imposed by those conducting criminal prosecution shall be punishable by a fine in the amount of up to 300 conventional units or unpaid community service for a term of 180 to 240 hours.

[Article 345 Part(1) penalty changed ZR84-XVI, dated 29 June 2006, MO126-130/11 August 2006, Art. 599]

- (2) Deliberate disclosure of information on criminal prosecution by a person charged with criminal prosecution or a person authorized to exercise control over criminal prosecution, if this action inflicts moral or material damage to a witness, victim or their representatives or helped the guilty party evade the responsibility shall be punishable by a fine in the amount of 500 to 1,000 conventional units, accompanied by deprivation of the right to hold certain offices or engage in certain activities for a period of up to 3 years.

Article 316. Disclosure of information about security measures taken in relation to judges and participants in criminal proceedings

- (1) Disclosure of information about security measures taken in relation to judges, court bailiffs, victims, witnesses, other participants in criminal proceedings, as well as in relation to their close relatives, if this action was committed by a person to whom such information was entrusted by virtue of their official position, shall be punishable by a fine in the amount of 200 to 400 conventional units, or by imprisonment for a term of up to 2 years.

[Article 316 Part(1) penalty changed ZR84-XVI, dated 29 June 2006, MO126-130/11 August 2006, Art. 599]

- (2) The same action entailing grave consequences shall be punishable by a fine in the amount of 300 to 600 conventional units or by imprisonment for a period of 2 to 5 years.

Article 259. Unauthorized access to computer information

- (1) Unauthorized access to computer information, that is, to information stored on computers, on machine-readable media, in computer systems or networks, involving destruction, damage, modification, blocking or copying of

information, and disruption of the work of computers, computer systems or networks, shall be punishable by a fine in the amount of 200 to 500 conventional units, or unpaid community service for a term of 150 to 200 hours, or by imprisonment for a period of up to 2 years, while a legal entity shall be punished by a fine in the amount of 1,000 to 3,000 conventional units, accompanied by deprivation of the right to engage in certain activities.

- (2) The same action committed:
- (a) repeatedly;
 - (b) by two or more persons;
 - (c) involving violation of security systems;
 - (d) by connecting to communications channels;
 - (e) using special technical means,

shall be punishable by a fine in the amount of 500 to 1,000 conventional units, or unpaid community service for a term of 180 to 240 hours, or by imprisonment for a period of up to 5 years, while a legal entity shall be punished by a fine in the amount of 3,000 to 6,000 conventional units, accompanied by deprivation of the right to engage in certain activities or liquidation of the company.

[Article 259 amended ZP184-XVI, dated 29 June 2006, \xd0126-130/11 August 2006, Art. 599]

[Article 259 amended ZP211/29 May 2003, MO116/13 June 2003, Art. 470]

Article 260. Introduction or dissemination of malicious software

- (1) Deliberate introduction of virus modifications to software or dissemination of software or information causing failure of machine-readable information media or technical means for data processing or disrupting security systems shall be punishable by a fine in the amount of 300 to 800 conventional units, or unpaid community service for a period of 180 to 240 hours, or by imprisonment for a term of up to 5 years, while a legal entity shall be punished by a fine in the amount of 1,000 to 3,000 conventional units, accompanied by deprivation of the right to engage in certain activities.

[Article 260 Part(1) penalty amended ZR84-XVI, dated 29 June 2006, MO126-130/11 August 2006, Art. 599]

- (2) Dissemination of virus computer programs entailing grave consequences shall be punishable by imprisonment for a term of 4 to 8 years, while a legal entity shall be punished by a fine in the amount of 3,000 to 6,000 conventional units, accompanied by deprivation of the right to engage in certain activities or liquidation of the company.

[Article 260 amended ZP211/29 May 2003, MO116/13 June 2003, Art. 470]

Article 261. Breach of the security rules of information systems

Breach of the rules for collecting, processing, storing, distributing and disseminating information or of the security rules for information systems envisaged in accordance with the type of information or the degree of its protection, if this action facilitated the theft, distortion or destruction of information or entailed other grave consequences, shall be punishable by a fine in the amount of up to 400 conventional units, or unpaid community service for a period of 200 to 240 hours, or by imprisonment for a term of up to 2 years, accompanied or not accompanied by deprivation in all cases of the right to hold certain offices or engage in certain activities for a period of 2 to 5 years, while a legal entity shall be punished by a fine in the amount of 1,000 to 3,000 conventional units, accompanied by deprivation of the right to engage in certain activities.

[Article 261 amended ZP211/29 May 2003, MO116/13 June 2003, Art. 470]

Article 204. Disclosure of the secret of adoption

- (1) Disclosure of the secret of adoption against the will of the adoptive parent shall be punishable by a fine in the amount of 150 to 300 conventional units or unpaid community service for a term of 100 to 240 hours.
- (2) The same action:
 - (a) committed by a person obliged to keep secret the fact of adoption as a professional or official secret;
 - (b) entailing grave consequences,

shall be punishable by a fine in the amount of 200 to 500 conventional units, or unpaid community service for a period of 180 to 240 hours, or by imprisonment for a period of up to 3 years.

[Article 204 Part(2) penalty amended ZR84-XVI, dated 29 June 2006, MO126-130/11 August 2006, Art. 599]

Code of the Republic of Moldova on Administrative Offences

Article 174/21. Disclosure of commercial or tax secrets

Disclosure of information constituting a commercial or tax secret, by a person to whom this information was entrusted or became known in connection with official position or activity, shall entail imposition of a fine on citizens in the amount of 50 to 75 conventional units and on officials – 75 to 150 conventional units.

[Article 174/21 amended ZP204-XVI, dated 28 July 2005, MO107-109/12 August 2005, Art. 573]

[Article 174/21 amended ZP1163 27 June 2002/MO100 11 July 2002]

[Article 174/20 enacted ZP340 6 July 2001/MO97 17 August 2001]

Article 174²⁵. Violation of the procedure for storage and use of information

contained in declarations of the income and assets of government officials, judges, prosecutors, civil servants and certain other top executives.

Violation of the procedure for storage and use of information contained in declarations of income and assets by persons to whom this information became known through performance of their duties or exercise of control shall entail imposition of a fine in the amount of 50 to 100 conventional units.

Article 175/7. Damage of documents of the Archive Fund

Damage of documents of the Archive Fund committed by means of deletion of text or an image from a document or introduction of amendments or supplements into the text or image shall entail imposition of a fine in the amount of up to 10 conventional units.

Law of the Republic of Moldova on Access to Information, No. 982,
passed on 11 May 2000, published in the M.O. No. 088, dated 28 July 2000

Article 8. Access to information of a personal nature

- (1) Information of a personal nature is information relating to a private individual, the identity of whom may or may not be established, disclosure of which may disrupt the private life of the individual and which belongs to the category of confidential information about the individual. For the purposes of this law, information concerning exclusively establishment of identity (information contained in identity documents) shall not be recognized as confidential information.
- (2) Suppliers of information possessing information of a personal nature shall maintain the confidentiality of the individual's private life.

- (3) Protection of the private life of an individual shall include:
- (a) the right of the individual to give consent in the event that his/her interests are affected in the process of disclosure of information of a personal nature;
 - (b) the right of the individual to participate as an equal party in the decision-making procedure;
 - (c) the right of the individual to maintain anonymity when providing information of a personal nature provided confidentiality is observed;
 - (d) the right to control and correct inadequate, incorrect, incomplete, outdated and inappropriate data;
 - (e) the right to non-automatic disclosure of identity in the event of decision-making on dissemination of information;
 - (f) the right to appeal to the courts.
- (4) Information of a personal nature:
- (a) shall be received, gathered and processed, shall be stored and used correctly, for strictly determined lawful purposes;
 - (b) shall be accurate, suitable, appropriate and not exaggerated in relation to the purposes for which it was received;
 - (c) shall be stored in a form making it possible to establish the identity of the person to whom it relates within a period no less than that required for performance of the purposes for which the information was received.
- (5) Any person shall be ensured access to information of a personal nature about himself/herself and shall have the right:
- (a) to acquaint himself/herself with this information personally or in the presence of another person;
 - (b) to specify this information for the purpose of ensuring its completeness and accuracy;
 - (c) to secure, if necessary, amendments to certain information or its deletion, if it may be interpreted incorrectly;
 - (d) to find out by whom and for what purposes this information was used, is being used or is intended to be used;
 - (e) to make copies of documents and information about himself/herself and parts thereof.
- (6) Suppliers of information shall take the necessary measures to protect the information against destruction or loss, against unauthorized access, introduction of amendments or unauthorized dissemination; at the same time, such measures may not restrict access to official information in accordance with this law.
- (7) Suppliers of information may disclose any information of a personal nature as required in accordance with this law, provided that:
- (a) the person to whom it relates consents to its disclosure;
 - (b) the requested information has been made public (published in accordance with law) in full before the date of the request.
- (8) If the person to whom the information of a personal nature relates does not consent to its disclosure, access to such information may be permitted only by a court ruling establishing that disclosure of this information

complies with the interests of society, that is, concerns protection of the public health, public security and protection of the environment.

Law of the Republic of Moldova on Informatization and State Information Resources No. 467-XV, dated 21 November 2003, M.O. No. 6-12, dated 1 January 2004

Article 9. Personal data

- (1) The list of personal data included in state information resources and the procedure for collecting, storing and using them shall be established by the Government.
- (2) Sources of personal data are official documents containing information relating to the subject of the personal data.
- (3) Collection, processing, storage and use of personal data shall be organized and provided for by state authorities within the scope of their terms of reference.
- (4) Personal data may not be used for the purpose of inflicting material or moral harm on individuals or for the purpose of infringing on human rights and liberties.
- (5) Individuals and legal entities possessing information constituting personal data shall receive and use it in accordance with their powers and shall bear responsibility under law for violation of the regime for protection, processing and use of the said information.

Law of the Republic of Moldova on Informatics No. 1069-XIV, dated 22 June 2000, M.O. No. 73-74, dated 5 July 2001

Article 28.

- (1) Persons engaged in activities within the framework of information systems and networks shall ensure protection and confidentiality of the data. Data defined as public shall constitute an exception.
- (2) For the purpose of ensuring protection of data and preventing offences in the informatics field, the following shall be prohibited:
 - (a) development and introduction into information networks of software products capable of changing, harming or destroying data, software or hardware;
 - (b) unauthorized penetration of public and private information systems and networks for the purpose of obtaining, saving, processing or distributing data and programs or for the purpose of changing, damaging or destroying data, software or hardware;
 - (c) theft of data, interference in software, falsification of correspondence, transmission of erroneous data for the purpose of disrupting the data flow or creating an atmosphere of mistrust between participants in the information flow;
 - (d) deliberate unauthorized penetration of public or private information systems, even if not accompanied by listening to or registration of data, or their use for personal interests and the interests of other persons, as well as for gaining other benefits.

Regulation on Access to Information Available in AGEPI approved by Order No. 184 of the AGEPI General Director, dated 28 December 2001, amended and supplemented by Order No. 107 of the AGEPI General Director, dated 9 July 2004

In accordance with clause 6 of the Regulation, access is prohibited to information concerning inventions, commercial prototypes, plant species, topography of integrated circuits, trade marks and appellations of origin provided to the Agency on a confidential basis until published in the BOPI (Official Bulletin of Industrial Property) or in other media, and also before their inclusion in the library.

Note: There are several laws using the concepts of “official secret” and “military secret” that fail to give a specific definition of the content of said concepts:

Law No. 618 on State Security, passed on 31 October 1995, published in the M.O. No. 010, dated 13 February 1997

Article 8. The right of citizens to receive information about the activities of state security services and on issues affecting their personal interests

- (1) The public shall be informed about the activities of state security services in compliance with law via the mass media and in other forms.
- (2) National security services shall, in accordance with their terms of reference, ensure provision of information to individuals, at their request, on all issues concerning their personal interests. However, it shall not be permitted to divulge information constituting a state, military, official or commercial secret, or information of a confidential nature, disclosure of which might cause damage to state security, the honour and dignity of the individual or infringe on its rights and freedoms.

Law No. 619 on National Security Agencies, dated 31 October 1995, published in the M.O. No. 010 dated 13 February 1997

Article 6. The right of citizens to information about the activities of national security agencies

- (1) The public shall be informed about the activities of national security agencies in the manner provided for by law via the mass media or otherwise.
- (2) Information about the rights and obligations, and the main areas of activity of national security agencies shall be provided in full.
- (3) It shall be prohibited to disclose information constituting a state, military, official and commercial secret, or information of a confidential nature, disclosure of which might cause damage to national security, the honour and dignity of the individual or infringe on the rights and freedoms of the individual, with the exception of the cases provided for by law in the interests of justice.

Law No. 753 on the Information and Security Service of the Republic of Moldova, dated 23 December 1999, published in the M.O. No. 156, dated 31 December 1999

Article 5. The right of the public to information about the Service's activities

- (1) The public shall be informed about the activities of the Service in the manner provided for by law via the mass media or otherwise.
- (2) Information about the rights and obligations and the main areas of activity of the Service shall be provided in full.
- (3) It shall be prohibited to disclose information constituting a state, military, official or commercial secret, or information of a confidential nature, disclosure of which might cause damage to national security, the honour and dignity of the individual or infringe on the rights and freedoms of the individual, with the exception of the cases provided for by law in the interests of justice.

Article 6. Protection of information about the activities of the Service

- (1) Individuals accepted for military service (work) with the Service, as well as those allowed access to information about the activities of the Service, shall undergo a clearance to gain access to information constituting a state secret, unless some other procedure is provided for by law.
- (2) Individuals allowed access in the manner provided for by law to information about the activities of the Service constituting a state secret shall be held liable under law for its disclosure.

- (3) Documents and materials containing information about the Service personnel, persons assisting or having assisted them on a covert basis, as well as about the organization, tactics, means and methods by which the Service carries out criminal investigations shall constitute state secrets and shall be stored in the Service archives. The materials of the Service archives that are of historical and scientific value shall be declassified and handed over for storage in the National Archives of the Republic of Moldova in the manner provided for by law.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

As can be seen from the texts of the above-mentioned laws, the prohibitions apply mainly to officials.

Law No. 982 of the Republic of Moldova on Access to Information, passed on 11 May 2000, published in the M.O. No. 088, dated 28 July 2000

Article 7. Restricted access official information

- (5) No one may be punished for providing the public with certain restricted access information if disclosure thereof does not and cannot affect lawful interests connected with national security, or if the public interest in knowing the information is greater than the damage that might be caused by disclosure of said information.

Rules on Sanctions

17. What are the civil or criminal penalties for unauthorized disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

Unauthorized disclosure of information constituting a state secret mainly envisages criminal law sanctions in the form of imprisonment, a fine, prohibition on holding certain offices or engaging in certain types of activity – Articles 337, 338, 344 and 345 – the full texts may be found in the answers to clause 14.

Levying of damages for harm inflicted by the given offences is possible in accordance with the usual procedure, within the framework of criminal proceedings, on the grounds of Articles 61, 387 and 388 of the Criminal Procedure Code of the Republic of Moldova, No. 205, dated 29 May 2003, published in the M.O. No. 104-110, dated 7 June 2003 and Chapter XXXIV of the Civil Code of the Republic of Moldova, No. 726, dated 14 June 2002, or within the framework of a particular civil dispute.

19. Do these penalties apply to the media for unauthorized disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

The Criminal Code does not contain any specific provisions with regard to the mass media but, in principle, liability may be imposed on journalists for the crimes envisaged by Articles 337 and 338 of the Criminal Code, depending on whether they are citizens of the Republic of Moldova, foreign citizens or stateless persons.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organizations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

No data available.

PROTECTION OF PUBLIC INTEREST PUBLICATIONS

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

Law of the Republic of Moldova on Access to Information

Article 7. Restricted access official information

- (4) Access to information may be restricted only in the event that the supplier of information can prove that the restriction is regulated by the fundamental law and is necessary in a democratic society for protection of the rights and lawful interests of the individual or protection of national security and that the harm caused to lawful rights and interests overrides the public interest in knowing such information.

Law of the Republic of Moldova on State Secrets

Article 14. Fulfilment of requests from individuals, enterprises, institutions, organizations and executive government agencies for declassification of information

- (4) The grounds for classifying information as a state secret may be appealed in a court of law. If the court recognizes the classification of information as being ungrounded, such information shall be subject to declassification in the manner provided for hereunder.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorized release of information that was of legitimate public interest?

In certain administrative law disputes, the judiciary has required public authorities to declassify and provide information, arguing that provision of such information to the public was of greater importance than the interests protected by classification of this information.

No criminal case law is available on this issue.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

There is no such law, only separate provisions in a variety of laws:

Law No. 243 of the Republic of Moldova on the Press, dated 26 October 1994, published in the M.O. No. 2, dated 12 January 1995

Article 18. Non-disclosure of a source of information

Periodical publications and press agencies shall not have the right to disclose a source of information or the pseudonym of an author without their consent. A source of information or the pseudonym of an author may be revealed only in the event that the material disseminated bears indications of corpus delicti and only in accordance with a court ruling.

The Code of Television and Radio Broadcasting of the Republic of Moldova, No. 260, adopted on 27 July 2006, published in the M.O. No. 131, dated 18 August 2006

Article 14. Guarantees of confidentiality of sources of information

- (1) The confidentiality of information sources used in preparing and broadcasting news, programmes and other elements of programme systems shall be guaranteed by law.

- (2) A journalist or programme creator shall have the right not to provide information that might reveal the source of information received in line of his/her professional duties.
- (3) Data that might reveal a source of information shall be:
 - (a) the surname, telephone number, address and other personal data, as well as the voice or face of the source;
 - (b) the specific circumstances under which the journalist received information;
 - (c) part of the information provided to the journalist by the source but not made public;
 - (d) personal data about the journalist or the broadcasting company associated with activities to obtain the information that is made public.
- (4) Persons who become aware of information that might reveal a source of information in the process of gathering, editing or broadcasting information by virtue of their professional relationship with journalists shall enjoy the same protection as journalists themselves.
- (5) A source of information may be revealed subject to a court order only if this is necessary to protect national security or public order, as well as for the purpose of resolving a court case, on the conditions that:
 - (a) alternative means for attaining the purpose at hand are absent or have been exhausted;
 - (b) there are more judicial arguments in favour of revealing the source than there are judicial arguments in favour of not revealing it.

Article 15. Protection of journalists

- (1) Relevant public authorities shall ensure:
 - (a) protection of journalists in cases when pressure is brought to bear on them or they receive threats in an attempt to hamper or substantially restrict their freedom to carry out their professional activities;
 - (b) security of offices and premises of broadcasting companies in cases when they receive threats in an attempt to hamper or substantially restrict their freedom to carry out their professional activities.
- (2) Protection of journalists and security of offices and premises of broadcasting companies in accordance with part (1) may not serve as a pretext for infringing on the right of a journalist to express his/her opinion, for hampering or restricting the freedom of journalists to perform their professional activities or exercise their fundamental rights.
- (3) Physical (mental) coercion and exerting of pressure by means of intimidation of television and radio journalists for the purpose of compelling them to violate the code of journalist ethics shall be punishable by law.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

The Gagauz-Yeri Autonomous Territorial Unit follows the national law as far as access to information is concerned. The breakaway Transdnestrian region in eastern Moldova is, however, outside the central authorities' control and does not abide by Moldovan legislation.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

No data available on relevant case law.

Regulation – see clause 23.

Other rules

The Code of Journalist Ethics of the Republic of Moldova (adopted by the Union of Journalists of Moldova in May 1999):

“... a journalist shall observe professional secrecy with respect to a source of information received on a confidential basis. No one shall have the right to oblige him/her to reveal the said source. The right of the source to remain anonymous may be violated only in extraordinary cases, when the source is suspected of deliberately distorting the truth, as well as when disclosure of the name of the source is the only way to avoid grave and inevitable harm to the population. The journalist shall not, if so requested by interviewed persons, officially divulge their names”.

26. How many times in the last five years has a journalist or media organization been required by a court or official to disclose their sources of information under this law or any other law?

No data available.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

The protection is not absolute; legislation envisages grounds that may be interpreted and applied differently by the courts to judicially compel the journalist to reveal his/her source of confidential information.

Law No. 243 of the Republic of Moldova on the Press, dated 26 October 1994, published in the M.O. No. 2, dated 12 January 1995

Article 18. Non-disclosure of a source of information

A source of information or the pseudonym of an author may be disclosed only in the event that the material disseminated bears indications of corpus delicti and only in accordance with a court ruling.

The Code of Television and Radio Broadcasting of the Republic of Moldova, No. 260, passed on 27 July 2006, published in the M.O. No. 131, dated 18 August 2006

Article 14. Guarantees of confidentiality of sources of information

- (5) A source of information may be revealed subject to a court order only if this is necessary to protect national security or public order, as well as for the purpose of resolving a court case, on the conditions that:
 - (a) alternative means for attaining the purpose at hand are absent or have been exhausted;
 - (b) there are more judicial arguments in favour of revealing the source than there are judicial arguments in favour of not revealing it.

28. What are the penalties for refusing to reveal sources of information?

The legislation of the Republic of Moldova does not envisage any criminal or administrative law sanctions for refusal to reveal a source of information as a separate component of a crime/offence, but, in the event of failure to fulfil a ruling of an administrative or civil court that has come into effect with respect to a specific case, criminal and administrative sanctions may be applied to the guilty party (depending on the gravity of the deed) for failure to fulfil the court ruling.

Criminal Code of the Republic of Moldova

Article 320. Deliberate non-performance of a court ruling

- (1) Deliberate non-fulfilment and, equally, avoidance of fulfilment of a court ruling shall be punishable by a fine in the amount of up to 300 conventional units, or unpaid community service for a term of 150 to 200 hours, or by imprisonment for a term of up to 2 years.
- (2) Deliberate non-fulfilment by an official of a court ruling and, equally, obstruction of fulfilment thereof shall be punishable by a fine in the amount of up to 500 conventional units, or unpaid community service for a term of

180 to 240 hours, or by imprisonment for a term of up to 3 years, accompanied or not accompanied by deprivation in all cases of the right to hold certain offices or engage in certain activities for a period of 2 to 5 years.

[Article 320 amended ZP184-XVI, dated 29 June 2006, \xdO126-130/11 August 2006, Art. 599]

Code of the Republic of Moldova on Administrative Offences

Article 200/11. Non-fulfilment of a court ruling

Non-fulfilment, within the set period, of a ruling, sentence, resolution or determination of a court that has come into legal effect or obstruction of performance thereof shall entail imposition of a fine for citizens in the amount of up to fifty conventional units and for officials, of up to three hundred conventional units.

[Article 200/11 amended ZP1196 04 July 2002/MO106 25 July 2002, Art. 813]

[Article 200/11 enacted by Law No. 51-XIII, dated 14 April 1994]

29. Are the journalists prohibited from revealing their source without the permission of the source?

Law No. 243 of the Republic of Moldova on the Press, dated 26 October 1994, published in the M.O. No. 2, dated 12 January 1995

Article 18. Non-disclosure of a source of information

Periodical publications and press agencies shall not have the right to disclose a source of information or the pseudonym of an author without their consent. An source of information or the pseudonym of an author may be revealed only in the event that the material disseminated bears indications of corpus delicti and only in accordance with a court ruling.

30. In the media, who is protected from disclosure of sources:

- **The journalist? The editor? The publisher?**
- **Freelance journalists or commentators?**

The Code of Television and Radio Broadcasting of the Republic of Moldova, No. 260, passed on 27 July 2006, published in M.O. No. 131, dated 18 August 2006

Article 14. Guarantees of confidentiality of sources of information

- (2) A journalist or programme creator shall have the right not to provide information that might reveal the source of information received in line of his/her professional duties.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

Yes, it is extended – see clauses 23, 27 and 30.

The legislation of the Republic of Moldova draws no distinction between staff and freelance media personnel.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

The legislation of the Republic of Moldova does not regulate these issues separately in relation to Internet publications and Internet journalists.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

No, they are not prohibited.

34. Are third parties who act for journalists or media organizations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them.

No, they are not protected.

Monaco

Prepared by the Government of Monaco

RIGHT OF ACCESS TO INFORMATION

I. CONSTITUTIONAL RIGHT

Freedom of access to information is not a constitutional right in the Principality.

II. FUNDAMENTAL RIGHTS AND FREEDOMS

The right to freedom of expression is established in the Principality by Law No. 1.299 of 25 July 2005. However, it is subject to *the obligation to discretion by public officials and certain provisions of the Criminal Code*.

A. Right to withhold information about journalistic sources

According to article 38 of Law No. 1.299 of 25 July 2005, a journalist may refuse to divulge his sources of information. This article states that he is not required to communicate information, recordings or documents, regardless of the medium, relating to the identity of an informant, the author of a text or audiovisual production, or the nature, origins or contents of information. No journalist may be prosecuted for exercising this right.

This right to withhold information about journalistic sources is nevertheless subject to certain limitations. In accordance with article 90 et seq. of the Code of Criminal Procedure relating to investigations, the sources of information must be disclosed if the journalist is ordered to do so by a judge:

- 1) To prevent the perpetration of certain particularly serious offences: wilful attack on life, wilful attack on physical integrity and sexual assault, theft, extortion and wilful destruction, degradation and deterioration hazardous to persons, acts of terrorism or condoning of such acts;
- 2) To arrest *the perpetrator of such an offence if the required information cannot be obtained in any other way*.

B. Regulations concerning the prohibition of the divulgence of certain information

The regulations concerning the prohibition of the divulgence of certain information are set forth in articles 29 to 34 of Law No. 1.299 of 25 July 2005, which define the lower and upper limits of the right to information, coercive at the most and protective at the least.

Coercive limits – This threshold limiting the right to information relates to the ban on recording or collecting information in certain defined cases. In this regard:

- From the opening of a hearing, the use of any appliance with the exception of stenographic equipment for recording, capturing or transmitting words or images is prohibited under pain of seizure;
- The publication or diffusion of a file relating to an investigation, criminal or correctional procedure before it has been discussed in a hearing is prohibited;
- Reporting on libel cases when evidence of the libellous facts has not been sanctioned is prohibited;
- The publication or disclosure of any information that could jeopardize public safety is also prohibited.

Protective limits – These consist of limitations in certain cases on the right to initiate proceedings for libel, insult, abuse or invasion of privacy. Thus:

- The words or reports spoken in the National Council or Municipal Council may not give rise to the commencement of proceedings;
- The speeches and arguments, written documents produced in court, and the report written in good faith of the legal arguments may not give rise to proceedings for libel, insult, abuse or invasion of privacy.

Finally, it may be noted that the persons deemed responsible for *litigious* articles are those specified in articles 35 to 40 of the above-mentioned law, namely the directors of publications, editors, authors, printers, sellers, distributors or billstickers.

C. *The right to information with account of the obligation to discretion by public officials*

Article 10 et seq. of Law No. 975 of 12 July 1975 on the status of public officials contains provisions regarding the obligation to discretion by public officials.

- By virtue of article 10 of the above-mentioned law, notwithstanding the provisions of the Criminal Code relating to professional secrecy, public officials are bound by the obligation to professional discretion with respect to facts and information of which they become aware in the exercise or on the occasion of the exercise of their duties.

Moreover, *“the diversion or communication to third parties of official items or documents in violation of the regulations is formally prohibited”*.

Finally, *“a public servant may not be released from this obligation to discretion or from the prohibition in the paragraph above except by authorization of the head of the department concerned”*.

- Under article 11 of this law, *“all public servants, whatever their position, shall refrain from any procedure, activity or manifestation, be it on their own account or on the account of another individual or legal entity, incompatible with the discretion and reserve warranted by their functions”*.

D. *Additional provisions of the Criminal Code*

Under article 72 of the Criminal Code, any public official or government agent who orders or commits an unjustified act or an assault on personal liberty or the laws and institutions of the Principality shall be disqualified from holding office.

Montenegro

Prepared by the OSCE mission to Montenegro

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

The process of adopting the new Constitution for the Republic of Montenegro is still ongoing, following the results of the referendum on state status (held in May 2006) and proclamation of independence of Montenegro. The outgoing Constitution from 1992 (still valid until not repealed by the new one) did not contain general provisions on public access to information. However, it did include specific provisions on access to information in the field of protection of environment and personal data.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

See answer to the question 1.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

See answer to question 1.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

See answer to question 1.

5. Are there other specific constitutional limits on access and dissemination of information?

See answer to question 1.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

Law on Free Access to Information.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

Article 1 of the Law on FAI states:

Any national or foreign legal and natural entity shall be entitled to access the information filed with government agencies.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

See answer to question 7

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

There were two non governmental organizations conducting the survey of enforcement of the Law, within the scope of implementation of FAI principles into the Montenegrin practice. MANS (www.mans.cg.yu) and Association of Young

Journalists (www.amnecg.com). Their websites contain extensive data bases on the number of submitted requests for information to the state bodies, their responses, judicial proceedings, etc. However, databases were classified in accordance with the state bodies or area of interest (economy, culture, privatization, police, etc.), since those NGO's were only one submitting the requests for the information.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

Not applicable

11. Are there any limits in this law on access to, and publication of, information?

Yes, Law prescribed in the Article 9 restrictions to the access to information.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

Although the Media Law prescribed in Article 2 that "The Republic of Montenegro shall guarantee the right of free founding and undisturbed work of media based on: (...) free access to all sources of information", the Law on Free Access to Information is the main legal basis for access to information.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

No.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

Law on Free Access to Information, in its Article 25 states:

No employee who, while performing assigned duties scrupulously, discloses information of misuse of or irregularities in performing any official duty, and who also informs the head of a government agency concerned or the relevant authority for combating forbidden activities, may be held accountable.

On the other side, Criminal Code of Republic of Montenegro regulates that area, by sanctioning the unauthorized disclosure of secret.

Article 171

(1) A lawyer, a physician or other person who discloses without permission a secret that has come to his/her knowledge during performance of his/her professional duties, shall be sentenced to a fine or imprisonment not exceeding one year.

(2) No one who discloses a secret in a public or in other person's interest, that being of larger significance than the interest of keeping secrets, shall be punished for the act referred to in Paragraph 1 of this Article.

Disclosure of official secrets**Article 425**

(1) An official who without authorization communicates, conveys or makes available in some other way to another information constituting an official secret, or who obtains such information with the intention of conveying it to an unauthorized person, shall be liable to imprisonment for a term of three months to five years.

(2) If an offence referred to in Paragraph 1 of this Article has been committed out of greed in respect of particularly confidential information or for the purpose of its disclosure or use abroad, the offender shall be liable to imprisonment for a term of one to eight years.

(3) If an offence referred to in Paragraph 1 of this Article has been committed by negligence, the offender shall be liable to imprisonment for a term not exceeding three years.

(4) An official secret shall be understood to mean information or documents that, under law, other regulation or a decision of a competent authority passed in conformity with law, have been consequences to the office.

(5) Provisions referred to in Paragraphs 1 to 4 of this Article shall also be applied to a person who has disclosed an official secret after his position of an official ceased.

Disclosure of military secrets**Article 471**

(1) Anyone who, without authorization communicates, conveys or in some other way makes available to another information that constitutes a military secret or anyone who obtains such information with intention to convey it to unauthorized person, shall be punished by imprisonment for a term of three months to five years.

(2) If the offence referred to in Paragraph 1 of this Article has been committed for gain, or in relation to particularly confidential information, or with the purpose of their publication or use of such information abroad, the offender shall be liable to imprisonment for a term of one year to eight years.

(3) If the offence referred to in Paragraph 1 of this Article has been committed by negligence, the offender shall be liable to imprisonment for a term not exceeding three years.

(4) A military secret shall be understood to mean information that under law, other regulation or a decision of a competent authority passed in conformity with law has been proclaimed a military secret and whose disclosure would or may cause detrimental consequences for the Army of Serbia and Montenegro or the defence and security of the country.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

See answer to question 14.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

See answer to Question 14.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

See answer to the Question 14. No additional/higher penalties for mass publication of information were anticipated to our knowledge.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

There was only the case (in 2003) against the Dusko Jovanovic, Editor in Chief of daily DAN, for disclosing the identity of protected witness in the case before the ICTY in The Hague. Following the Indictment by the ICTY (for more information see: <http://www.un.org/icty/pressreal/2003/p744-e.htm>) Montenegrin judiciary initiated the case, which resulted with Dusko Jovanovic's recognition of guilt and acceptance of fine by the court.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

Law on Free Access to Information:

Article 1:

Access to the information filed with government agencies shall be free, whereas it shall be exercised in the manner prescribed by this Law.

Article 3:

Publishing the information filed with government agencies shall be in the public interest.

Article 9:

Access to information shall be restricted if their disclosure would significantly endanger: (...list of situations where the restrictions might be applied...)

The interests (...) shall be considered significantly endangered if disclosing such information would cause them damages considerably bigger than the public interest in publishing such information is.

Article 10:

Any government agency shall be in obligation to enable access to the information or to a part thereof, referred to in paragraph 1 of Article 9 of this Law, if such information contains data that obviously imply: disrespect to substantive regulations; unauthorized use of public resources; misuse of powers; unscrupulous performance of public duties; the existence of reasonable suspicions a criminal offence was committed; or the existence of the grounds for attacking a court judgment, regardless of the seriousness of damages caused to the interests referred to in paragraph 1 of Article 9 of this Law.

Article 24:

Any applicant presenting a request for access to the information or any other person interested therein shall be entitled to the court protection during any administrative dispute procedure. The procedure upon a suit instituted in relation to access to the information shall be urgent.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

Administrative Court on several occasions, and on the basis of overriding public's interest to know, ruled out that certain decisions by the Government/Public bodies to classify certain information as secret, i.e. to refuse the access to information were not in accordance with the Law on Free Access to Information.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

Separate national law on the protection of journalists does not exist. However, existing Media Law provides certain protection of journalists in this regards, since in the Article 21 of the Law it is stated:

“...A journalist and other persons who, in the course of gathering, editing or publicising programme contents, obtain information that could indicate the identity of the source, shall not be obliged to disclose to the legislative, judiciary or executive authority or any other natural or legal person the source of information that wants to remain unknown.”

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

Not applicable due to the territorial organization of Montenegro.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

For the first part of the question, see answer to Q 23. Regarding the judicial and any other relevant practice, even if there were such cases/processes even if there, they could be hardly classified as influential for the general practice.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

See answer to Question 25.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

Principally, Article 21 of the Media Law specifically states that “journalist (...) shall not be obliged to disclose to the legislative, judiciary or executive authority or any other natural or legal person the source of information that wants to remain unknown”.

28. What are the penalties for refusing to reveal sources of information?

Not applicable.

29. Are the journalists prohibited from revealing their source without the permission of the source?

Apart of the formulation “shall not disclose (...) the source of information that wants to remain unknown” from Article 21, there are no specific legislative prohibitions in this regards.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

Article 21:

“A journalist and other persons who, in the course of gathering, editing or publicising programme contents, obtain information that could indicate the identity of the source...”

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

See answer to Question 30.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

See answer to Question 30.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

No.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

Article 21 of the Media Law, quoted above, is the only piece of legislation which clearly regulates this area. Thereby, it would be very difficult to assume that this Article could stand as the sufficient and appropriate legal framework for protection of subjects mentioned in the question.

Netherlands

No data have been received

Norway

Prepared by the Government of Norway

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

The right of public access to documents held by government bodies was included in the Constitution in 2004, as part of the revision of the section relating to freedom of expression. Section 100 paragraph five reads as follows: "Everyone has the right to access to documents held by government and municipal bodies and to attend hearings in courts and elected bodies. Limitations to this right may be set down in law in order to protect privacy and other weighty interests."

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

The new section 100 paragraph five of the Constitution was adopted in October 2004, and the Supreme Court has not yet had the opportunity to pronounce itself on or interpret the right to access to official documents.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

In accordance with section 100 paragraph five of the Constitution, limitations on the right to access to official documents may be set down in law, in order to protect "privacy and other weighty interests". There are no limitations on the right to access in the Constitution itself, and the limitations are mainly found in the Freedom of Information Act (see below).

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

Both the current FOI Act 1970 and the new FOI Act 2006 (see question 6 below) contain limitations designed to protect privacy and other private interests, such as business secrets, and public interests, such as national security, defence and international relations, public safety, prevention and investigation of criminal offences, economic interests and confidentiality of deliberation within public bodies. As an example, the exception relating to national defence and security, section 21 of the FOI Act 2006 is set out in the following manner: "Access to information may be refused when it is required for reasons relating to national security or the defence of the state."

5. Are there other specific constitutional limits on access and dissemination of information?

No.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

Access to official documents is regulated by the Freedom of Information Act 19 June 1970 no. 69. A new Freedom of Information Act was adopted by the Parliament in May 2006, Act 19 May 2006 no. 19, which will enter into force on 1 January 2008. According to both the current and the new legislation, the basic principle is that everyone has access to documents held by government or municipal bodies.

An English version of the FOI Act 1970 may be found on the following link:
<http://www.ub.uio.no/ujur/ulovdata/lov-19700619-069-en.pdf>

The FOI Act 2006 is not yet available in English translation, but the act in Norwegian may be found at the following website:

<http://www.lovdata.no/all/hl-20060519-016.html>

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

Both the 1970 and the 2006 FOI Acts guarantees the right to access for everyone, Norwegian nationals and foreigners, private individuals, companies, organisations, public bodies etc.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

Journalists and media **organisations** enjoy the same right as other citizens to access to information. There are no specific rules in the FOI Act regarding journalists or the media.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

The statistics include detailed information regarding the number of requests received by the Ministry of Justice in 2005 and 2006, number of request denied and reasons for the refusal, and number of days between request and decision.²⁴

The statistics regarding the Electronic Post Registry (EPJ) show the number of requests received by the agencies using the Electronic Post Registry, a trial project where newspapers and media organisations may subscribe to the electronic registries and request documents electronically. Please note that not all administrative agencies subject to the FOI Act are using the Electronic Post Registry.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

In Norway there is no media or press law that gives journalists any additional rights of access to information.

11. Are there any limits in this law on access to and publication of information?

All the general limitations on access to information are contained in the FOI Act, see question 4 above.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

Not applicable.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- **Different categories in terms of level of confidentiality**
- **The period of classification and declassification?**

The Security Act 20 March 1998 no. 10 allows for the classification of information for security reasons. According to section 11 of the Act information may be classified if it could harm the security of Norway or its allies, its relations with foreign powers or other vital national security interests if the information were to be known to unauthorized persons. There are four different levels of confidentiality; *top secret*, *secret*, *confidential* and *restricted*. Security classification shall not be carried out to a greater extent than strictly necessary, and not for a longer period of time than necessary. The classification will cease to apply at the latest after 30 years, see section 11 paragraphs 2 and 3. Information classified in accordance with the Security Act may never be given out under the FOI Act, unless it is declassified by the same body that classified it originally.

An English translation of the Security Act 1998 may be found at the following link:

²⁴ The statistics are available from the Office of the OSCE Representative on Freedom of the Media upon request.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession, or publication of state secrets *related specifically to national security*?

The Security Act 1998 section 12 confers upon anyone who has access to classified information in the course of his or her work a duty to prevent unauthorized persons from gaining knowledge of the information.

Breaches of the duty of secrecy are punishable under the Penal Code 1902 section 121:

"Any person who wilfully or through gross negligence violates a duty of secrecy which in accordance with any statutory provision or valid directive is a consequence of his service or work for any state or municipal body shall be liable to fines or imprisonment for a term not exceeding six months.
If he commits such breach of duty for the purpose of acquiring for himself or another person an unlawful gain or if for such a purpose he in any other way uses information that is subject to a duty of secrecy, he shall be liable to imprisonment for a term not exceeding three years. The same applies when there are other especially aggravating circumstances.
This provision also applies to any breach of the duty of secrecy committed after the person concerned has concluded his service of work."

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

The duty of secrecy under the Security Act section 12, as well as the Penal Code section 121, applies to any person who gains access to classified or confidential information in the course of his or her work for any administrative agency, or as a supplier of goods and services to an administrative agency in connection with a classified procurement, cf. section 3 no. 6 and section 2 paragraph two. The duty of secrecy does not apply to members of the public in general.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non -national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this?

The Public Administration Act 10 February 1967 section 13 confers upon anyone working for an administrative agency a duty of secrecy in relation to personal information or business secrets. Similar provisions are found in the sector legislation on various areas of administrative law.

The Public Administration Act 1967 section 13:
It is the duty of any person rendering services to, or working for, an administrative agency, to prevent others from gaining access to, or obtaining knowledge of, any matter disclosed to him in the course of his duties concerning
1) An individual's personal affairs, or
2) Technical devices and procedures, as well as operational or business matters which for competition reasons it is important to keep secret in the interests of the person whom the information concerns."
The term "personal affairs" shall not include place of birth, date of birth, national registration number, nationality, marital status, occupation or place of residence or employment, unless such information discloses a client relationship or other matters that must be considered personal. [...]
The duty of secrecy shall continue to apply after the person concerned has terminated his service or work. Nor may he exploit such information as is mentioned in this section in his own business activities or in service or work for others."

Violations of the duty of secrecy are punishable under the Penal Code section 121, see question 15 above.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

The duty of secrecy under the Public Administrations Act section 13 applies to any person rendering services to or working for an administrative agency, and in relation to all information that he or she has gained access to in the course of his or her work for the agency. The duty of secrecy under section 13 does not apply to the public in general.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

Unauthorised disclosure or publication of classified information is sanctioned by the Penal Code section 121, see question 15 and 16 above.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

The Penal Code section 121 does not apply to the media, see question 15 above.

20. Have there any cases been brought in the last five years against:

- Officials in charge of the leaked classified information?
- Members of the public?
- Journalists or media organisations?

Please, describe the outcomes, including the date of the case, the defendants and the charges.

We are not aware of any cases as mentioned above.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

The duty of secrecy according to Norwegian law lies with the source. Media, therefore, do not commit a breach of secrecy when they publish materials which have come to their possession by a breach of secrecy committed by the source. The question is therefore not relevant.

22. In practice, does the judiciary consider the public's rights to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

Not relevant. See answer to question no 21.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

According to The Criminal Procedure Act section 125 and The Dispute Act section 209a the editor of a printed publication has the right to refuse to disclose to the police or the court their sources of information. The Criminal Procedure Act section 125 reads:

§ 125. The editor of a printed publication may refuse to answer questions concerning who is the author of an article or report in the publication or the source of any information contained in it. The same applies to questions concerning who is the source of other information that has been confided to the editor for use in his work.

Other persons who have acquired knowledge of the author or the source through their work for the publishers, editors, press agency or printers in question have the same right as the editor.

The court may nevertheless order the witness to give evidence when it finds it particularly important that such evidence be given. The court shall balance the conflicting interests and in doing so shall, inter alia, attach importance to the nature of the case and the significance of the evidence for the clarification of the case. The provisions of section 124, second paragraph, second sentence, shall apply correspondingly. Such evidence may be required to be given when the article or report in question contains information that must be assumed to have been given in criminal breach of the duty of secrecy, or when the witness is reluctant to give as complete information about the matter as he can obtain from the author or source without revealing who it is.

These provisions apply correspondingly to any director or employee of any broadcasting agency.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

The national law applies to all Norwegian counties and municipalities.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

Not applicable.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

To our knowledge there are only two cases from the Supreme Court the last five years that deal with this question. Unfortunately we are not able to provide statistic on the number of cases from the lower courts.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

On conditions set out in The Criminal Procedure Act section 125 and The Dispute Act section 209a the court may order a journalist to reveal his sources. See question 23 above.

28. What are the penalties for refusing to reveal sources of information?

Failure to comply with the courts order to disclose the sources of information according to the provisions mentioned in question 23 above, is sanctioned with fine, cf. The Act relating to the courts of justice section 206. In criminal cases the court may also by a new order decide that the person shall be kept in custody until he fulfils his obligation, cf. The Criminal Procedure Act section 137.

29. Are the journalists prohibited from revealing their source without the permission of the source?

No.

30. In the media, who is protected from disclosure of sources?

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

See the provisions referred in answer to question 23 above.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

Yes, see the provisions referred in answer to question 23 above.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

The scope of the provisions mentioned in question 23 is according to the wording limited to printed publications. It is however unclear as to whether, and in case to what extent, the provisions also apply to electronic publications.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

No.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

Yes, see the answer to question 23 above.

Poland

Prepared by the Government of Poland

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Yes, there is the *Constitution of the Republic of Poland* in its Article 61 provides every citizen with the right to receive information on activities of public authorities, public officials, as well as on activities of municipal authorities. The right encompasses access to documents and right to participate in assemblies of public bodies.

The right can only be restricted by law in order to protect legally secured rights and freedoms of individuals or entities, and in order to preserve public order, public safety or vital economic interest of the State.

Full text of the *Constitution of the Republic of Poland* is available on the website: www.poland.gov.pl.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

Yes, the above mentioned courts have all interpreted that right. The jurisprudence abounds with that issue.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

As it was mentioned in the answer to the question 1, the right to access to public information can be restricted only by law. *The Law on access to public information* regulates that issue and among others it defines the notion of public information and circumstances under which it is allowed to be acquired.

Classified information is protected under *the Law on protection of classified information*. That sort of information is allowed to be given only under the provisions of this Law.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

See answer the questions 1 and 3.

5. Are there other specific constitutional limits on access and dissemination of information?

There are limits related to personal data of citizens (article 51 of the Constitution).

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies?

Yes, there is. *The Law on access to public information* regulates the issues connected with the rights to demand information from government bodies.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

There are no limits in terms of who has the right to demand information, but there are restrictions related to what sort of information the requesting person wishes to obtain.

Article 5 of the above-mentioned Law states that the right to public information is subject to restrictions in the scope of and on the basis of provisions on the protection of classified information and other secrets protected by law. Moreover, this right is subject to restrictions due to the privacy of natural persons or entrepreneur secrets.

Restrictions do not apply to information on persons performing public functions, connected with holding such functions, including information on conditions of entrusting and performing the function, and in cases where natural persons or entrepreneurs waive this right.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

No, according to *the Law on access to public information* journalists and other media representatives enjoy the same rights to seek for information as other individuals.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

Such statistics are not gathered.

10. Is there a media or press law that gives journalists any additional rights of access to information?

Media representatives, as well as journalists, are not extraordinarily privileged under the law when it comes to gathering information. They are specially protected under *the Press Law*, but in terms of access to any sort of information they are subject to the same regulations as other citizens.

11. Are there any limits in this law on access to, and publication of, information?

See answer 7.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

Such statistics are not collected.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

Yes, there is. *The Law on the protection of classified information* diversifies categories of information in terms of the level of confidentiality. The first category constitutes a state secret encompassing top secret and secret information. The second category - public service secret - includes confidential and restricted information.

The above-mentioned law also provides for periods of classification and declassification of information.

The period of classification of the first category of information, according to the law, lasts 50 years. However, personal data of state agents of special services and data of other members of the intelligence service as well as data of their informants shall never be subject to disclosure.

The period of protection of the second category of information is 5 years for confidential information and 2 years for restricted information.

Moreover, under the Polish Penal Code, the information about ongoing investigations or prosecutions is also subject to protection by law. Disclosure of such information from ongoing investigations constitutes a criminal offence (article 241 of the Penal Code). Such sort of information shall be protected as the trial begins, unless the judge decides to hear the case at a closed sitting.

Rules on Limitations

14. Does any law, administrative, criminal, or other law prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

Yes it does. The Polish Penal Code (Chapter XXXIII entitled *offences against protection of information* regards such conducts as criminal offences.

According to Article 265 § 1 of the Penal Code, anybody who uses, against the law, state secret information shall be subject to the penalty of deprivation of liberty for a period between 3 months and 5 years. If such information was revealed to a foreign entity, the perpetrator shall be subject to the penalty of deprivation of liberty between 6 months and 8 years (§ 2). If the perpetrator revealed such information unintentionally, he/she shall be subject to a fine, the penalty of restriction of liberty or deprivation of liberty for up to one year (§3).

Article 266 constitutes the offence of disclosure of public service information either by a public official or by a person who acquired that information in connection with his/her job.

Moreover, anybody being unauthorised who acquires information not destined for him, by opening a sealed letter, or connecting to a wire that transmits information or by breaching electronic, magnetic or other special protection for that information, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years. (§ 1) The same punishment shall be imposed on anyone, who, in order to acquire information to which he is not authorised to access, installs or uses tapping, visual detection or other special equipment, or who imparts to another person the information obtained in the manner specified above, or discloses it to another person (§ 2 and 3). Prosecution of the offence specified above shall occur on a motion of the injured person.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

Conducts penalised under article 241, 265 § 1 and § 2 of the Penal Code constitute common offences, which means that any person can commit them.

The offence referring to public service information can be committed only by the person who has been obliged to protect such information under the law or under the security arrangement.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this?

See answers above (14 and 15).

According to the *Law on protection of classified information* (article 23 section 1) public service information has been defined as (1) classified information which in the case of unauthorised disclosure would entail damage to the state's interests, public interest or legally protected interests of citizens and as (2) restricted information which in the case of unauthorised disclosure would generate damage to legally protected interests of citizens or organisational units.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

Provisions of the Penal Code concerning disclosure of public service information are only applied to persons having obligation to keep public service information in secret either under the law or according to a security agreement.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

See answers 14 and 15.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

No, it doesn't apply to media representatives except provisions of Article 241 and 265 of the Penal Code relating to state secret information and constituting a common offence in the case of revealing.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

- Generally, within the last five years, **52 criminal proceedings were launched** against public officials charged with disclosure of classified information. 31 of them were connected with revealing information to unauthorised persons, including several cases referred to bribery. Three of them referred to disclosure of state secret information. One case was connected with disclosure of medical secrecy and the remaining cases referred to disclosure of banking secrecy.

37 of these proceedings were concluded before the court: verdicts were rendered in 18 of them: one person was found not guilty, one case was decided on conditional discontinuation, 3 persons were sentenced for deprivation of liberty between one up to three years with suspension of its execution.

Six were decided on discontinuation. **Nine of these proceedings** are still under way²⁵.

- In the last five years, **five criminal proceedings** were conducted against journalists charged with disclosure of classified information: **three cases** were connected with disclosure of information from ongoing investigation (art. 241 of the PC). **Two** of them referred to the offence of abetting in revealing of state secret information (art. 265 of the PC) and public service information by the public official (art. 266 of the PC).

Two cases were decided by prosecutors on discontinuation. Three cases were tried before the court – in one case, the defendant was found not guilty and in the remaining three cases the court decided on discontinuation of the trial.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

Such a situation has not been tested in practice yet.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

Such a situation has not been tested in practice yet.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

The Press law protects journalists from disclosure of their informants (art. 12 and 15). Nobody, even court is authorised to force a journalist to reveal the information on data of the informant.

²⁵ The data was good for 2 August 2006, when the Office of RFOM received this response.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

Not applicable.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

Not applicable.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

See answer 23.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

According to *the Press law*, it is possible to disclose the source of a journalist's information only if the person who is the source of this information allows revealing his or her identity.

28. What are the penalties for refusing to reveal sources of information?

Not applicable. Since there is no obligation to reveal the source of information there is no sanction for refusing to do this.

29. Are the journalists prohibited from revealing their source without the permission of the source?

See answer 27.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

All the above-mentioned media representatives are protected from disclosure of sources under the Press law.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

Yes, it is.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

Yes, it is.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

According to the Code of Criminal Procedure, it is admissible to make a search of every chamber (under particular circumstances) by the authorised bodies in order to find evidence of a crime. It is illicit, however, to make a search in order to go beyond the journalist secrecy.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

Yes, they are.

Portugal

Prepared by the Government of Portugal

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

The Constitution of the Portuguese Republic assures:

- a) A general right of access to archives and administrative records – extra-procedural access (article 268, no. 2); and
- b) The citizens' right to be informed about the development of proceedings in which they have direct interest, as well as the right to know the final resolution taken in these proceedings – procedural access (article 269, no.1).

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

The Constitutional Court has, in effect, been interpreting and enforcing this general right of access, provided for in no.2 of article 268 of the Constitution.

It can be added that in a number of judgments the Constitutional Court decided that certain legal norms which limited that right were unconstitutional.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

This general right of access is not unlimited. The actual Constitution, in no. 2 of article 268, sets limits relating to national and external security, criminal enquiry and privacy.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

National and external security

Free access to any information that, if disclosed, can put (national or external) security at risk, is withdrawn by classifying the documents in which it is contained. The State Secrecy Law defines the various aspects (material which can be classified, authorities with jurisdiction to classify, etc.) of the document classification process.

Criminal Enquiry

Article 86 of the Code of Criminal Procedure explicitly states that the criminal procedure is only public as of the order of enquiry or, if this does not take place, from the moment that this can no longer be required.

Individual Privacy

Personal data (i.e. information about an identified or identifiable natural person which contains appraisals, value judgments or that can be covered by the provision for individual privacy) is only communicated to the person whom it concerns, to third parties with written authorisation from that person or third parties who prove direct, personal and legitimate interest.

5. Are there other specific constitutional limits on access and dissemination of information?

In addition, article 35 of the Constitution of the Portuguese Republic determines another specific limitation on access to and dissemination of administrative information, when it concerns personal data.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

There is a national law in Portugal which permits access to archives and administrative records. It is the law on Access to Administrative Documents (Law no. 65/93, Of 26 August, with alterations introduced by Law no. 8/95, of 29 March, by Law no. 94/99, of 16 July and by Law no. 19/2006, of 12 June); this is available – also in English - at www.cada.pt. The access of media and journalists to information from government bodies is also specifically mentioned on the Press Act and on the Statute of the Journalists.

Below are the links to the English versions of both texts:

a) the Press Act:

<http://www.ics.pt/index.php?op=cont&lang=en&Pid=79&area=349>

b) the Statute of the Journalists:

<http://www.ics.pt/index.php?op=cont&lang=en&Pid=79&area=337>

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

No. The law permits any natural or legal person to have access to administrative information.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

Please refer to reply no. 10.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

To our knowledge there are no statistics available on these subjects.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

Article 22 of the PRESS ACT (Law no. 2/99, of 13 January 1999) reads as follows:

Article 22 Rights of journalists

Journalists shall have the following fundamental rights, with the content and extent defined in the Constitution and in the Statute of Journalists:

- a) Freedom of expression and creation;
- b) Freedom of access to the sources of information, including the right of access to public places and respective protection;
- c) The right to professional secrecy;
- d) The guarantee of independence and the conscience clause;
- e) The right to take part in the orientation of the respective news publication.

The right of journalists to access official sources of information is further detailed in Article 8 of the statute of the journalists (Law no. 1/99, of 13 January 1999).

Article 8
Right of access to official sources of information

1 - The right to access to sources of information is guaranteed to journalists:

a) By the Public Administrative Authorities listed in paragraph 2 of article 2 of the Code of Administrative Procedure;

b) By state-owned companies or companies in majority state ownership, by companies controlled by the state, by concessionaire companies for public services or for private use or exploitation of the public domain, and also by any private organizations which exercise public powers or which pursue the public interest, when the access sought relates to activities regulated by administrative law.

2 - The interest of journalists in access to the sources of information shall be deemed legitimate at all times for the purposes of exercise of the right regulated by articles 61 to 63 of the Code of Administrative Procedure.

3 - The right of access to sources of information shall not cover proceedings subject to judicial secrecy, classified documents or documents protected under specific legislation, personal data which are not public from nominative documents relating to third parties, documents which disclose commercial or industrial secrets, or secrets relating to literary, artistic or scientific ownership, together with documents which serve as support for the preparations for legislative decisions or instruments of a contractual nature.

4 - The bodies or organizations referred to in paragraph 1 which deny access to sources of information shall provide grounds under the terms of article 125 of the Code of Administrative Procedure, and such decision may be challenged using the relevant administrative or judicial procedures.

5 - Appeals brought by journalists to the Access to Administrative Documents Board ("Comissão de Acesso aos Documentos Administrativos") against administrative decisions refusing access to public documents under the terms of Law no. 65/93, of 26 August, shall enjoy priority treatment.

11. Are there any limits in this law on access to, and publication of, information?

The limits on access and publication of information are established in other laws, such as the Criminal Code and the State Secrets Law. The PRESS ACT specifies that only judicial courts may decide whether, in a specific case, the publication of information constitutes an offence against legal protected values.

Article 30
Crimes committed through the press

1 - The publication through the press of texts or images which offend against legal values protected by criminal law shall be punished under the general terms of the law, without prejudice to the provisions of this law, such publication being considered by the judicial courts.

2 - Whenever the law does not define other forms of aggravation, on the basis of the means through which it is committed, crimes committed through the press shall be punished by the penalties established in the respective provisions of criminal law, the upper and lower limits being raised by one third.

Article 31 Offenders and accomplices

1 - Without prejudice to the provisions of criminal law, liability for crimes committed through the press shall lie with the person who has created the text or image whose publication constitutes an offence against the legal values protected by the provisions of criminal law.

2 - In cases of publication without consent, criminal liability shall rest with the person who has arranged for publication.

3 - The director, assistant director, sub-director or any person who effectively substitutes the same, such as the publisher, in the case of non-periodical publications, who fails to oppose, through appropriate action, the committing of the crime through the press, when able to do so, shall be punished by the penalties established in the relevant provisions of criminal law, the limits being reduced by one third.

4 - In the case of declarations correctly reproduced, made by duly identified persons, only these persons may be held liable, unless their content constitutes instigation to commit a crime.

5 - The rule established in the preceding paragraph shall likewise apply to opinion articles, provided that the author is clearly identified.

6 - All persons who, in the exercise of their profession, are involved at a merely technical, subordinate or routine level in the process of drafting or disseminating the publication containing the disputed text or image, shall be exempted from any criminal liability.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

To our knowledge there are no statistics available on these subjects.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- **Different categories in terms of level of confidentiality?**
- **The period of classification and declassification?**

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

In the last five years, at least two cases were brought to court against journalists for not disclosing their sources of information. In both cases, the final decision of the court considered that, in those specific situations, the right of the journalists to protect their sources should prevail against the legal protected values affected by the non disclosure of information.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

Article 11 of the statute of the journalists may be considered a "shield law":

Article 11
Professional secrecy

1 - Without prejudice to the provisions of the law on criminal procedure, journalists are not required to reveal their sources of information, and may not be directly or indirectly penalized for keeping silent.

2 - Neither the news directors, the directors or managers of their respective proprietor organizations, nor any person employed by the same shall disclose, save with the written consent of the journalist concerned, the sources of information of such journalist, including the journalistic archives of text, sound and images belonging to the companies or any other documents which might reveal such sources.

3 - Journalists may not be required to surrender the material used or to display the information gathered in the exercise of their trade, save when required by judicial warrant and in the other cases provided for in law.

4 - The provisions of the preceding paragraph shall likewise apply to companies which have the materials, documents or information referred to therein.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

The two autonomous regions in Portugal follow the national law on these matters.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

Please refer to reply no. 23.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

Please refer to reply no. 20.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

Only a judicial court may decide that, given very specific situations, other fundamental rights or legal protected values should prevail against the right to protect the sources of information.

28. What are the penalties for refusing to reveal sources of information?

Please refer to reply no. 23.

29. Are the journalists prohibited from revealing their source without the permission of the source?

The law does not prohibit journalists from revealing their sources, but article 6 of the Deontological Code of the Portuguese Journalists (a self regulation code) clearly states that journalists should never reveal their sources of information, not even in court.

30. In the media, who is protected from disclosure of sources:

- **The journalist? The editor? The publisher?**
- **Freelance journalists or commentators?**

Article 11 of the statute of the journalists clearly states that journalists (no distinction being made between freelancers and other journalists) are protected from disclosure of sources. Moreover, neither the news directors, the directors or managers of their respective proprietor organizations, nor any person employed by the same is allowed to disclose the sources of information, save with the written consent of the journalist concerned.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

The Statute of the Journalists makes no distinction between the press and the other media.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

Please refer to the previous reply.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

These searches are not allowed by the criminal law except in certain circumstances. Given a specific situation, only the court may decide which of the conflicting rights (the right not to disclose the sources of information or other fundamental rights affected by the non disclosure of information) shall prevail.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

What was said about searches of property apply to private communications. In principle they are protected by law, although in certain circumstances the court may allow their disclosure.

Romania

Prepared by the Government of Romania

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Yes, art. 31 of the Constitution and the Law no 544/2001 regarding the Free Access to the Information of Public Interest.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

The Courts does intervene in the case of litigation.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

This right is limited in order to protect certain rights or types of information (art. 12 of the Law)

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

See Law no 544/2001, Art. 12. – The following information makes an exception relative to the free access of the citizens, stipulated within Art. No. 1:

- a) the information regarding national defence, public security and order, if this type of information belongs to the categories of the classified information, according to the law;
- b) the information regarding the authorities' debates, as well as the information regarding Romania's economic and political interests, if this type of information belongs to the categories of classified information, according to the law;
- c) the information regarding economic or financial activities, if their publicity jeopardizes the principle of honest competition, according to the law;
- d) the information regarding personal data, according to the law;
- e) the information regarding the procedure in a penal or disciplinary investigation, if the result of the investigation is jeopardized, if confidential sources are disclosed, if the life, the physical integrity or health of a person are jeopardized in the course of or as a result of the investigation;
- f) the information with respect to the judiciary procedures if their publicity jeopardizes the insurance of a fair trial or the legitimate interest of any of the parts involved in the trial;
- g) the information whose publishing affects the youth protection measures.

5. Are there other specific constitutional limits on access and dissemination of information?

No.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies?

Yes.

<http://www.publicinfo.ro/pagini/lege-nr-544-din-12-octombrie-2001-.php>

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

No.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

Yes, Section No. 2 of the Law no 544/2001 - Special Provisions Regarding the Access of Mass Media to the Information of Public Interest.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

No statistics regarding the use by journalists, but there are annual reports concerning the appliance of the Law no 544/2001 at national level.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

There is no specific "press" law.

11. Are there any limits in this law on access to, and publication of, information?

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

Yes, the Law no. 182/2002 on protection of classified information.

Art. 8 of the Law no. 182/2002 classify information on 3 levels of secrecy: strictly secret of special importance; strictly secret; secret.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

The Law no. 182/2002 on protection of classified information.
The Criminal code, art. 157, 169, 252.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

Answers to questions 14 and 15:

Criminal code

Art. 157. - Transmission of state secrets to a foreign power or organization, or to foreign agents, as well as obtaining documents or information which constitutes state secrets, or possession of such documents by persons who are not entitled to know such documents, in order to transfer them to a foreign authority or organization, or their agents, which is performed by a Romanian citizen or by a person without citizenship but with residence on the Romanian state's territory, is punished with life sentence or imprisonment between 15 and 25 years and interdiction of certain rights.

The same actions, if related to other documents or information which through their character make the perpetrated action endanger the state's security, are punished with imprisonment between 5 and 20 years and interdiction of certain rights.

Art. 169. – „**Disclosure** of certain documents or data which are state secrets or of other documents or data, **by a person who knows these data and documents due to his duties**, if the action has the character of endangering the state's security, is punished with imprisonment between 7 and 15 years and interdiction of certain rights.

Possession outside the work duties of a document which is state's secret, if the action has the character of endangering the state's security, is punished with imprisonment between 5 and 10 years.

The penalty provided in paragraph 2 applies to the **possession outside the work duties** of other documents **meant to disclosure**, if the action has the character of endangering the state's security.

If **any other person** perpetrates the actions mentioned in the preceding paragraphs, the penalty is imprisonment between 1 and 7 years.”

Art. 252. - Negligence that leads to destruction, alteration, loss or take away of a document that represents state secret and negligence that leads to another person finding out such a secret, if harmful to the state interests, are punished by 3 months-3 years jail.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

Answer to questions 16, 17

According to Law no.182/2002 secrecy classes are: state secret and restricted information:

“Art. 15 - In the meaning of this Law, the terms below are defined as follows:

- information - any documents, data, objects and activities, irrespective of their frame, form, way of expression and issue;
- classified information - any information, data, documents of interest for the national security, which must be protected because of their degree of importance and the consequences that might arise due to their unauthorized disclosure or dissemination
- secrecy classes are: state secret information and **restricted information**;
- state secret information - any information related to the national security whose disclosure could be detrimental to the national security and state defence;
- restricted information - any information whose disclosure could be detrimental to a public or private legal entity;
- **restricted information** - any information whose disclosure could be detrimental to a public or private legal entity;

(.....)”

“Art. 31. - (1) Restricted information shall be established by the head of the legal person based on the standards provided by Government Decision.

(2) The information provided under paragraph (1) shall bear on each page the marking "personal", when directed to certain persons.

(3) The provisions of Article 28 shall apply appropriately in the field of restricted information.

(4) Negligence in handling restricted information results in criminal liability, according to the law.

Art. 32. - Managers of public authorities and institutions, of economic units with integral or partial state share capital and of other private or public legal persons shall designate the information which are restricted and the rules to protect it, shall coordinate the activity and control the measures for the protection of restricted information, according to their competences and in compliance with the provisions established under Government Decision.

Art. 33. - Classification as restricted of the information which, by its nature or content, is designated to ensure public awareness on certain issues of public or private interest, in order to facilitate or cover law evasion or obstruct the justice shall be forbidden.”

Criminal code:

“Art. 196 Disclosure of professional secret

The disclosure, with no right, of certain data **by the person to whom this data was handled, or who knew this data due to the profession or position**, if the action can bring prejudice to a person, is punished with imprisonment between 3 months and 2 years or with a fine.

The criminal action is intuited upon the prior complaint made by the injured person.

The parties’ reconciliation removes the criminal responsibility.”

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorized disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

The criminal penalties for unauthorized disclosure, possession or publication of classified information are provided by Criminal code, art. 157, 169.

“Art. 157. - Transmission of state secrets to a foreign power or organization, or to foreign agents, as well as obtaining documents or information which constitutes state secrets, or possession of such documents by persons who are not entitled to know such documents, in order to transfer them to a foreign authority or organization, or their agents, which is performed by a Romanian citizen or by a person without citizenship but with residence on the Romanian state’s territory, is punished with life sentence or imprisonment between 15 and 25 years and interdiction of certain rights.

The same actions, if related to other documents or information which through their character make the perpetrated action endanger the state’s security, are punished with imprisonment between 5 and 20 years and interdiction of certain rights.

Art. 252. - Negligence that leads to destruction, alteration, loss or take away of a document that represents state secret and negligence that leads to another person finding out such a secret, if harmful to the state interests, are punished by 3 months-3 years jail.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

These penalties apply to any person who has the obligation to respect the Romanian laws.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

A case is recorded in which both officials of the Ministry of Defence and two journalists were placed on inquiry for disclosing classified information (Focşani, February-March 2006). The case was brought to the attention of the OSCE Representative for the Freedom of the Media by the Romanian NGOs “Centre for Independent Journalism” and “Media Monitoring Agency”. An update on this case will be soon provided by the Public Ministry.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society’s right to know about issues of public interest might override the government’s classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government’s classification concerns?

The Law no. 182/2002: “Art. 20. - Any Romanian natural or legal person may dispute the classification of the information, its period of classification and the way in which the secrecy level was assigned to it, with the authorities that classified such information. The dispute shall be settled under the legal terms of the contentious administrative courts.”

22. In practice, does the judiciary consider the public’s right to know as being overriding or equal to the government’s classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

Answer to questions 21 and 22:

As long as information is classified no person can disclose it on the ground of his or her belief that it may be in the public interest to do so. Though, there is a procedure by which any person can attack/contest the classification made by the authorities.

Journalists are held liable for the breach of law in the same way as any other Romanian citizen.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

The Law no. 504/2002, the audio-visual law.
Art No.7 of this law provides:

“Art. 7 - (1) The confidential nature of the information sources used in conceiving or issuing news, shows or other elements of programme services is warranted by this Law.

(2) Any journalist or programme creator is free not to disclose the information that could identify the source of information obtained in direct connection to his professional activity;

(3) Information able to identify a source is deemed the following:

- a) the personal name and data, as well as the voice or image of a source;
- b) the concrete circumstances in which a journalist obtains information;
- c) the unpublished part of the information supplied by the journalist's source;
- d) the personal data of the journalist or radio-broadcasters related to their activity of obtaining the broadcast information.

(4) The confidential nature of the information sources obliges in return to assume the liability for the reality of the supplied data.

(5) Persons who take knowledge of information that could identify a source by gathering, editorial treating or publishing such information by virtue of their professional relations with journalists will benefit of the same protection as journalists do.

(6) The disclosure of an information source may be ordered by law courts insofar it is necessary in order to protect national safety or public order and insofar such disclosure is necessary to solve a case judged at a law court when:

- a) measures of similar effect, alternative to the disclosure do not exist or have been exhausted;
- b) the legitimate interest in the disclosure exceeds the legitimate interest of the non-disclosure.”

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

All the sub-national divisions follow the national law. In Romania the same laws are applied on the whole territory of the country.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

It is not the case

26. How many times in the last five years has a journalist or media organization been required by a court or official to disclose their sources of information under this law or any other law?

The abovementioned case in Focșani (see answer to Question 20) is recorded to date.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

According to Article 7 par. 6 of Law no. 504/2002, the protection is not absolute and there are certain cases when a journalist can be ordered to reveal sources.

Art. 7(6): “The disclosure of an information source may be ordered by law courts insofar it is necessary in order to protect national safety or public order and insofar such disclosure is necessary to solve a case judged at a law court when:

- a) measures of similar effect, alternative to the disclosure do not exist or have been exhausted;
- b) the legitimate interest in the disclosure exceeds the legitimate interest of the non-disclosure.

28. What are the penalties for refusing to reveal sources of information?

29. Are the journalists prohibited from revealing their source without the permission of the source?

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

Answer to questions 30, 31 and 32:

The protection provided by art. 7 of Law no 504/2002 refers to journalists and programme creators.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

No, Romanian law does not prohibit searches of property belonging to media or journalists.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

According to Article 7 of law no. 405/2002, persons who take knowledge of information that could identify a source by gathering, editorial treating or publishing such information by virtue of their professional relations with journalists will benefit of the same protection as journalists do.

In what regards interception, there are special providing in the criminal procedure code, interception of communications can only be disposed during the criminal proceedings by the judge, if there are substantial clues regarding the preparation or commitment of a crime that is investigated ex officio, and the interception is useful for revealing the truth.

The authorisation for interception can only be given in matters regarding certain types of serious crimes, provided by the criminal procedure rules.

Russian Federation

Prepared by the Government of the Russian Federation (unofficial translation from Russian by OSCE/RFOM)

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

The right of access to information is enforced in the 1993 Constitution of the Russian Federation.

Part 4 of Article 29 of the Constitution of the Russian Federation envisages the right of each person to freely seek, acquire, transfer, produce, and disseminate information by any legal method. The list of information that constitutes a state secret is defined by federal law.

Regulations relating to access to information are also set forth in Article 24 of the Constitution of the Russian Federation, in accordance with which the gathering, possession and dissemination of information about the private life of a person without his/her consent is prohibited. Citizen rights to the inviolability of their private life, personal and family privacy, and confidence of correspondence, telephone conversations, postal, telegraph, and other messages are also enforced in the Constitution (Article 23).

Clause 2 of Article 24 of the Russian Federation Constitution sets forth the obligation of government power bodies and local self-government bodies as well as their officials to ensure everyone the possibility of acquainting themselves with documents and information directly affecting their rights and freedoms.

Article 71 of the Russian Federation Constitution envisages the competence of the Russian Federation in resolving issues regarding federal information and communication and stipulates federal ownership of the most important information resources and information infrastructure facilities.

The Constitution of the Russian Federation enforces the obligation of the state to officially publish laws and other regulatory legal acts affecting the rights, freedoms, and obligations of every person and citizen (Part 3 of Article 15). It calls to account those who reveal information about facts and circumstances creating a threat to human life and health (Part 3 of Article 41).

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

In accordance with Article 3 of the Federal Constitutional Law on the Constitutional Court of the Russian Federation, for the purpose of protecting the foundations of the constitutional system and the basic human and citizen rights and freedoms as well as ensuring the supremacy and direct application of the Russian Federation Constitution throughout the Russian Federation, the Constitutional Court of the Russian Federation gives its construction of the Russian Federation Constitution. Such construction is official and binding for all representative, executive, and judicial government power bodies, local self-government bodies, enterprises, institutions, organizations, officials, citizens, and their associations.

In compliance with Article 19 of the Federal Constitutional Law on the Judiciary of the Russian Federation, the Supreme Court of the Russian Federation provides an explanation of issues relating to judicial practice.

According to Article 12 of the Federal Law on Information, Informatization, and Information Protection, users – citizens, government power bodies, local self-government bodies, organizations, and public associations – have equal rights of access to government information resources and are not obliged to justify the need for receiving the information they request to the owners of these resources.

The access of physical and legal entities to government information resources is the basis for carrying out public control over the activity of government power bodies, local self-government bodies, public, political, and other organizations, as well as over the state of the economy, environment, and other spheres of public life.

Article 13 of the Federal Law envisages the guarantees of information provision. Government power bodies and local self-government bodies should create information resources generally available on the activity of these bodies and the organizations subordinate to them, as well as carry out mass information provision within the limits of their competence for users on issues relating to the rights, freedoms, and obligations of citizens, their security, and other issues of public interest.

In compliance with Russian Federation Government Resolution No. 98 of 12 February 2003 on Ensuring Access to Information on the Activity of the Russian Federation Government and Federal Executive Power Bodies, federal executive power bodies should distribute federal laws, Russian Federation presidential decrees, and other regulatory legal acts constituting the legal basis of the activity of the aforementioned bodies.

In accordance with Part 2 of Article 13 of Federal Law on Information, Informatization, and Information Protection, refusal to permit access to information resources on issues relating to the activity of government power bodies and organizations subordinated to them may be appealed in court.

The court of primary jurisdiction, the Red Guards District Court of St. Petersburg, on the basis of a private complaint by Yuri Skobin, a lawyer of the Institute of Information Freedom Development, contested the nonfeasance of six federal power bodies and, on the basis of its decision of 31 March 2005, left the case without action. One of the reasons for leaving the case without action was that the judge did not understand what right had been violated and what the violation constituted.

The decision to leave the case without action was appealed in a cassation proceeding at the St. Petersburg City Court. The private complaint was satisfied by a decision of the judicial board for civil cases of 17 May 2005, and the statement contesting nonfeasance was sent to the court of primary jurisdiction for review on merits. In so doing, the cassation court indicated the following: "The contested nonfeasance consisted of the fact that the indicated power bodies failed to place information on their activity on the Internet. In this way, the right of access to information on the activity of the said bodies envisaged by Art. 29 of the RF Constitution and Arts. 12, 13 of the Federal Law on Information, Informatization, and Information Protection was violated. There are no references in the statement to any circumstances requiring documental confirmation on the part of the applicant."

In so doing, the superior court acknowledged that absence of an official site of the federal executive power body was sufficient grounds not to demand any additional proof from the citizen for his appeal to court.

On 18 October 2005, the Dzerzhinsky Federal Court of the Central District of St. Petersburg satisfied the aforementioned complaint by Yuri Vdovin, a representative of the Institute of Information Freedom Development, that of nonfeasance of the second group – the other seven federal executive power bodies, which, at the time the complaint was submitted, had not fulfilled their obligation to open their official sites on the Internet. The Russian Federation Federal Guard Service was obliged to create its official site by 1 January 2006 and fill it with content according to the List approved by RF Government Resolution No. 98 of 12 February 2003. The court obliged the other defendants – power bodies that hurried to open their nonentity sites by the day the decision was issued – to bring their contents into harmony with the above List by the same deadline.

Along with defending the information rights of citizens aimed at a quantitative increase in the number of official sites of federal executive power bodies, courts receive applications by citizens dissatisfied with the quality of the contents of the available sites of such bodies and their filling with specific public-interest information.

For example, in September, a complaint was sent to the Red Guards District Court of St. Petersburg regarding the nonfeasance of the Federal Agency for Technical Regulation and Metrology, consisting of the Agency's failure to comply with RF Government Resolution No. 594 of 25 September 2003 on Publication of National Standards and National Russian Classifiers of Technical-and-Economic and Social Information, in particular regarding the failure of this Agency to place information resources – the texts of national standards and national Russian classifiers – on its official website.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

In compliance with Article 14 of the Federal Law on Information, Informatization, and Information Protection, citizens and organizations have the right of access to documented information about themselves, the right to clarify this information in order to ensure its completeness and authenticity, and the right to know who uses or has used this information and for what purposes. Limited access of citizens and organizations to information about themselves is only permissible for reasons stipulated by federal laws. In so doing, the owner of documented information on citizens is obliged to provide such information free of charge at the request of the persons it concerns. Refusal of the owner of information resources to grant the person in question access to information on him/herself may be appealed in court.

Any documented information, the illegitimate treatment of which could be detrimental to its owner, possessor, user, or other person, is protected in accordance with this Federal Law. The following conditions for protecting information are set forth:

- by authorized bodies on the basis of Russian Federation Law on State Secrets, with respect to information classified as a state secret;
- by the owner of information resources or an authorized person on the basis of the indicated Federal Law, with respect to confidential documented information;
- by federal law, with respect to personal data.

In compliance with Article 10 of the abovementioned Federal Law, government information resources of the Russian Federation are open and generally available, with the exception of information classified by the law as being of limited access.

This Federal Law prohibits the following to be classified as information of limited access:

- legislative and other regulatory acts establishing the legal status of government power bodies, local self-government bodies, organizations, public associations, as well as the rights, freedoms, and obligations of citizens, and the procedure for their execution;
- documents containing information on emergency situations, environmental, meteorological, demographic, sanitary-and-epidemic, and other information necessary for ensuring the safe functioning of population settlements, production facilities, and the safety of citizens and the population as a whole;
- documents containing information about the activity of state power bodies and local self-government bodies on the use of budget resources and other state and local resources, as well as on the state of the economy and requirements of the population, with the exception of information constituting a state secret;
- documents accumulated in open library funds and archives, as well as in the information systems of government power bodies, local self-government bodies, public associations, and organizations that is of public interest or required for executing the rights, freedoms, and obligations of citizens.

The Russian Federation Law on State Secrets, along with legal information conditions and procedure for limiting access to information, envisages a list of information which may not be of limited access.

For example, in compliance with Article 7 of the Law, the following information may not be considered a state secret and classified:

- on emergencies and disasters threatening the safety and health of citizens, and their consequences, as well as information on natural disasters, their official forecasts and consequences;
- on the state of the environment, public health, sanitation, demography, education, culture, agriculture, as well as the state of crime;
- on privileges, compensations, and benefits granted to citizens, officials, enterprises, institutions, and organizations by the state;

- on instances of the violation of human and citizen rights and freedoms;
- on the size of the gold reserves and government currency reserves of the Russian Federation;
- on the state of health of the highest officials of the Russian Federation;
- on instances of violation of the law by government power bodies and their officials.

It should be kept in mind that at present a new draft of the Federal Law on Information, Informatization, and Information Protection has been adopted in the second reading.

4. If so, what are the limits and how are they regulated by law (for example, the common exceptions due to considerations of national security)?

In compliance with the Federal Law on Information, Informatization, and Information Protection, all documented information is divided into open, available to all subjects of law, and information of limited access. In compliance with Article 10 of the said federal law, information of limited access is subdivided in keeping with its legal regime into information constituting a state secret and confidential information.

5. Are there other specific constitutional limits on access or dissemination of information?

Part 2 of Article 23 of the RF Constitution envisages that restriction imposed on the right to the confidence of correspondence, telephone conversations, postal, telegraph, and other messages is only permissible on the basis of a court decision.

Part 2 of Article 24 of the RF Constitution envisages the right of people to access to documented information about themselves, which corresponding government law bodies and local self-government bodies possessing such information are obliged to provide to such persons, unless otherwise stipulated by the law.

In compliance with Part 4 of Article 29 of the RF Constitution, the list of information constituting a state secret is set forth by federal law.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

There is no such federal law, but, as noted above, corresponding regulations are contained in the Federal Law on Information, Informatization, and Information Protection. What is more, in compliance with Article 39 of the Russian Federation Law on the Mass Media, “a media organization shall have the right to ask for information about the activity of government bodies, organizations, public associations, and their officials. The directors of the said bodies, organizations, and associations, their deputies, press service employees, or other authorized persons are obliged to provide the requested information within the limits of their competence.”

In order to ensure the execution of the rights of citizens and organizations to access to information on the activity of the Russian Federation Government and federal executive power bodies, RF Government Resolution No. 98 of 12 February 2003 on Providing Access to Information on the Activity of the Russian Federation Government and Federal Executive Power Bodies was issued. This resolution approved the List of Information on the Activity of the Russian Federation Government and Federal Executive Power Bodies for Obligatory Placement in Public Domain Information Systems.

Since 2003, the Russian Ministry of Economic Development, in cooperation with interested federal executive power bodies, has been drawing up a draft of Federal Law on Providing Access to Information on the Activity of Government Bodies and Local Self-Government Bodies, as well as several amendments to current federal legislation. The main goals of the draft law are to ensure the openness of the activity of government bodies and local self-government bodies, the active use of information technology, and objective notification of citizens and civil society structures of the activity of government bodies and local self-government bodies. The principle of openness of information on the activity of government bodies and local self-government bodies means the presumption of

openness of information on the activity of government bodies and local self-government bodies, apart from information of limited access, which applies to information classified by the law as a state secret or as confidential information.

The draft law stipulates a single procedure for government bodies and local self-government bodies with respect to providing information on their activity. The main principles for executing the rights of citizens and organizations to access to information on the activity of government bodies and local self-government bodies is the openness and general availability of information, the authenticity of information, the observance of the rights and interests of third persons when providing information, and the liability of government bodies and local self-government bodies for violating the rights of information users (consumers) to access to information.

For example, an amendment to the Russian Federation Code on Administrative Violations proposes introducing administrative penalties for violating regulations on the access of citizens and organizations to information on the activity of government bodies and local self-government bodies, for violating the procedure and deadlines for the placement of information on the activity of government bodies and local self-government bodies mandatory for placement in public domain information systems; as well as for illegal or unjustified classification of information on the activity of government bodies and local self-government bodies as being of limited access.

The draft law sets forth ways to providing access to information on the activity of government bodies and local self-government bodies. According to the authors of the draft, adoption of this draft law will make it possible to ensure execution of the constitutional right of citizens to obtain information on the activity of government bodies and local self-government bodies as well as on decisions affecting their rights, freedoms, and legal interests, information openness of government bodies, notification of society about decisions ready for adoption and monitoring public opinion, and the draft will promote public control over the decisions of government bodies. In this way, implementation of the draft law, according to the Russian Ministry of Economic Development, should resolve the problem of informational openness of government bodies.

In this respect, the Russian Ministry of Economic Development is completing its work on the said draft law, and the formulation of the List of Information on the Activity of Government Bodies and Local Self-Government Bodies Subject to Placement in Public Domain Information Systems is being specified.

7. Are there limits with regard to who can use this law (for reasons of citizenship, legal status, etc)?

No.

8. Does the FOI law give journalists or media organizations a greater right of access to information than citizens?

No.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

As already mentioned, there is no such law in the Russian Federation, which makes it impossible to provide corresponding statistics.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

In compliance with Article 39 of the Russian Federation Law on the Mass Media, a media organization has the right to ask for information on the activity of government bodies, organizations, public associations, and their officials. The directors of the said bodies, organizations, and associations, their deputies, press service employees, or other authorized persons are obliged to provide the requested information within the limits of their competence.

11. Are there any limits in this law on access to, and publication of, information?

In compliance with Articles 3 and 4 of the Russian Federation Law on the Mass Media, censorship of mass information is not permitted, and besides that, the use of the mass media for illegal purposes is prohibited.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

There are no such statistics available.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- **Different categories in terms of level of confidentiality?**
- **The period of classification and declassification?**

Criteria for classifying information as open, a state secret, or confidential are currently set forth in the Federal Law on Information, Informatization, and Information Protection. It should be noted that this federal law applies only to documented information and information resources, while several other laws apply to other information (the Russian Federation Law on State Secrets, the Federal Law on Commercial Secrets).

The Russian Federation Law on State Secrets regulates relations arising with respect to classifying information as a state secret, its classification or declassification and protection in the interests of ensuring the security of the Russian Federation.

The Russian Federation Law on State Secrets, along with the legal regime of information and procedure for limiting access to information, envisages the list of information that may not be of limited access.

Thus, in compliance with Article 7 of the Law, the following information may not be rated as a state secret and classified:

- on emergencies and accidents threatening the safety and health of citizens, and their consequences, as well as natural disasters, their official forecasts and consequences;
- on the state of the environment, public healthcare system, sanitation, demography, education, culture, agriculture, as well as the state of crime;
- on privileges, compensations, and benefits granted to citizens, officials, enterprises, institutions, and organizations by the state;
- on instances of the violation of human and citizen rights and freedoms;
- on the size of the gold reserves and government currency reserves of the Russian Federation;
- on the state of health of the highest officials of the Russian Federation;
- on instances of violation of the law by government power bodies and their officials.

The law defines the degree of classification of the information and the classification codes of the carriers of such information (Art. 8), sets forth the procedure for classifying information as a state secret (Art. 9), the procedure for classifying information and its carriers (Art. 11), and the declassification of information and its carriers (section IV).

The Federal Law on Commercial Secrets regulates relations arising in relation to the classification of information as a commercial secret, the transfer of such information, the protection of its confidentiality in order to ensure a balance of interests between the possessors of information constituting a commercial secret and other participants in the relations being regulated, including the state, on the market of participants in the relations being regulated,

including the state, on the market of goods, works, services, and in order to prevent unfair competition, as well as defines information that may not constitute a commercial secret.

The general procedure for treating documents and other material information carriers constituting official information of limited access in federal executive power bodies, as well as at enterprises, institutions, and organizations subordinate to them is set forth by Russian Government Resolution No. 1233 of 3 November 1994 on Approving the Provisions on the Procedure for Handling Official Information of Limit Access in Federal Executive Power Bodies.

Rules on Limitations

14. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

The Russian Federation Criminal Code envisages penalties for such crimes as the illegal acquisition and disclosure of information constituting a commercial, tax, or banking secret (Article 183), illegal export of scientific and technical information (Article 189), espionage (Article 276), the disclosure of a state secret (Article 283), and other crimes in this sphere.

The Civil Code of the Russian Federation envisages liability for unsanctioned disclosure and possession of official and commercial secrets (Art. 139), banking secrets (Art. 857), insurance secrets (Art. 946).

Violation of Federal Law No. 98-FZ of 29 July 2004 on Commercial Secrets entails disciplinary, civil law, administrative, or criminal liability in accordance with Russian Federation legislation.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

Prohibitions apply to officials and citizens whose duty it is to protect secret information.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

The Russian Federation Code on Administrative Violations envisages administrative sanctions for violating the procedure for the participation of the mass media in information support of elections and referendums (Art. 5.5) with respect to the procedure for publicizing information relating to the preparation and holding of elections and referendums.

Government mass media are obliged to publish the reports and information of the federal state power bodies as set forth by Federal Law No. 7-FZ of 13 January 1995.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

Prohibitions apply to officials and citizens whose duty it is to protect secret information.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorized disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

Article 275 of the Russian Federation Criminal Code envisages criminal penalties for high treason, i.e., espionage, disclosure of a state secret, or other assistance rendered to a foreign state, foreign organizations, or their representatives to carry out hostile activity to the detriment of the security of the Russian Federation.

Criminal liability for disclosing information constituting a state secret by a person to which this information was entrusted or became known in their line of service or work, if such information became the property of other persons, in the absence of signs of high treason, is envisaged in Article 283 of the Russian Federation Criminal Code. The offender in this criminal case is only the person to whom a state secret was entrusted or became known in the line of service or work.

The Russian Federation Law on State Secrets envisages criminal, administrative, civil law or disciplinary penalties for officials and citizens guilty of violating Russian Federation laws on state secrets in keeping with the current legislation.

Violation of the Federal Law on Commercial Secrets entails disciplinary, civil law, administrative, or criminal liability in keeping with Russian Federation legislation.

Use of the mass media for the purpose of disclosing information constituting a state or other secrets socially protected by the law is prohibited in compliance with Article 4 of the Russian Federation Law on the Mass Media.

19. Do these penalties apply to the media for unauthorized disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

Yes. Criminal penalties for disclosing information constituting a state secret by the person to whom it was entrusted or became known in the line of service or work, if such information became the property of other persons, in the absence of signs of high treason, are envisaged in Article 283 of the Russian Federation Criminal Code. The offender in this case is only the person to whom a state secret was entrusted or became known in the line of service or work.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organizations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

There is no such information available.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

No.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorized release of information that was of legitimate public interest?

There is no such information available.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

In compliance with Article 41 of the Russian Federation Law on the Mass Media, a media organization is obliged to keep a source of information confidential and does not have the right to name the person who provided information

on the condition that such person wishes to remain anonymous, except for cases when a court makes such a request in connection with a case being reviewed.

A media organization does not have the right to disclose in distributed reports and documents information that directly or indirectly points to the identity of a minor who has committed a crime or is suspected of committing one, or, equally, who has committed an administrative violation or anti-social act, without the consent of the minor him/herself and his/her legal representative.

A media organization does not have the right to disclose in distributed reports and documents information that directly or indirectly points to the identity of a minor acknowledged as a victim without the consent of the minor him/herself and his/her legal representative.

Article 49 stipulates the demand, among other obligations of a journalist, “to keep information and/or its source confidential.”

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

The Russian Federation Constitution and federal laws have supremacy throughout the entire territory of the Russian Federation (Part 2 of Article 4 of the Russian Federation Constitution).

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

In compliance with the Russian Federation Law on the Mass Media, a media organization may reveal a confidential source of information in the event that a corresponding request is made by a court in connection with a case it is reviewing (Art. 41).

Russian Federation Law on State Secrets regulates relations arising in relation to the classification of information as a state secret, its classification or declassification and protection in the interests of ensuring the security of the Russian Federation.

26. How many times in the last five years has a journalist or media organization been required by a court or official to disclose their sources of information under this law or any other law?

No such information is available.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

In compliance with Article 144 of the Russian Federation Criminal Procedural Code, “upon report of a crime disseminated in the mass media an investigation is made by an investigation body or an investigator on the instructions of a public prosecutor. The media organization or editor-in-chief of the media organization in question is obliged to transfer, at the request of a public prosecutor, investigator, or investigation body, the documents and information at the disposal of the media organization confirming the report on the crime, as well as information on the person who provided this information, apart from cases when such person had asked to remain anonymous.”

Since 1996, Russia has been a member of the Council of Europe, and in 1998 signed the European Convention on Human Rights. Recommendation No. R(2000)7 of the Council of Europe regarding the right of journalists not to reveal their sources of information also relates to the journalists’ right not to reveal their sources.

What is more, in the Code of Professional Ethics of the Russian Journalist adopted at the Russian Congress of Journalists in 1994, the regulation on revealing sources of information is formulated as follows: “A journalist shall keep a professional secret with respect to a source of information obtained confidentially. No one may force him/her to reveal this source.”

28. What are the penalties for refusing to reveal sources of information?

Questions relating to penalties imposed on journalists for refusing to reveal sources of information are not regulated in Russian Federation legislation.

29. Are the journalists prohibited from revealing their source without the permission of the source?

In compliance with Article 41 of the Russian Federation Law on the Mass Media, a media organization is obliged to keep a source of information confidential and does not have the right to name the person who provided information on the condition that such person wishes to remain anonymous, except for cases when a court makes such a request in connection with a case being reviewed.

30. In the media, who is protected from disclosure of sources:

- **The journalist? The editor? The publisher?**
- **Freelance journalists or commentators?**

In accordance with Article 2 of the Russian Federation Law on the Mass Media, mass media is understood as periodical printed publications, radio, television, and video programs, documentary programs, and other forms of periodical dissemination of mass information.

Their activity is regulated by the Russian Federation Law on the Mass Media (Art. 41).

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

As already noted, the Russian Federation Law on the Mass Media regulates the activity of employees of such mass media as periodical printed publications, radio, television, and video programs, documentary programs, and other forms of periodical dissemination of mass information (Article 2).

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

Questions of the placement of the mass media on the Internet are not regulated by Russian Federation legislation. In compliance with Article 57 of the Federal Law on Communications, services for transferring data and providing access to the Internet using public domain access are classified as universal communication services.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

In accordance with Article 182 of the Russian Federation Criminal Procedural Code, grounds for carrying out a search are the availability of sufficient information to believe that instruments of a crime, items, documents, or valuables that may be of significance for a criminal case may be found in a particular place or in the possession of a particular person.

In accordance with Article 12 of the Russian Federation Criminal Procedural Code, search of an apartment may be carried out on the basis of a court decision.

In exceptional cases, if searching an apartment cannot be delayed, the said investigation action may be carried out on the basis of a investigator's resolution without a court decision.

34. Are third parties who act for journalists or media organizations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

Questions regarding journalists' communications with sources are regulated by Article 41 of the Russian Federation Law on the Mass Media: a media organization is obliged to keep a source of information confidential and does not have the right to name the person who provided information on the condition that such person wishes to remain anonymous, except for cases when a court makes such a request in connection with a case being reviewed.

San Marino

No data have been received

Serbia

Prepared by the Government of Serbia (unofficial translation by the OSCE Mission to Serbia)

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Yes, and that right is regulated by the Constitution of Republic of Serbia, in the principle on human and minority rights, article 51, that states the following:

“Everyone shall have the right to be informed accurately, fully and timely about issues of public importance. The media shall have the obligation to respect this right. Everyone shall have the right to access information kept by state bodies and organizations with delegated public powers, in accordance with the law.”

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

No.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

It is limited by the Law on Free Access to Information of Public Importance, article 8, which states the following:

“The rights in this Law may be exceptionally subjected to limitations prescribed by this Law if that is necessary in a democratic society in order to prevent a serious violation of an overriding interest based on the Constitution or law.

No provision of this Law may be interpreted in a manner that could lead to the revocation of a right conferred by this Law or its limitation to a greater degree than the one prescribed in Para 1 of this Article.”

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

Exclusion and limitation of the law on free access to information, Law on Free Access to Information of Public Importance is defined by article 9:

“A public authority shall not allow the applicant to exercise the right to access information of public importance, if it would thereby:

- 1) Expose to risk the life, health, safety or another vital interest of a person;
- 2) Imperil, obstruct or impede the prevention or detection of criminal offence, indictment for criminal offence, pretrial proceedings, trial, execution of a sentence or enforcement of punishment, any other legal proceeding, or unbiased treatment and a fair trial;
- 3) Seriously imperil national defence, national and public safety, or international relations;
- 4) Substantially undermine the government's ability to manage the national economic processes or significantly impede the fulfilment of justified economic interests;
- 5) Make available information or a document qualified by regulations or an official document based on the law, to be kept as a state, official, business or other secret, i.e. if such a document is accessible only to a specific group of persons and its disclosure could seriously legally or otherwise prejudice the interests that are protected by the law and outweigh the access to information interest.”

5. Are there other specific constitutional limits on access and dissemination of information?

No.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

There is a Law on Free Access to Information of Public Importance www.parlament.sr.gov.yu

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

There are no limits. In the article 5 of the Law, the following is stated:

“Everyone shall have the right to be informed whether a public authority holds specific information of public importance, i.e. whether it is otherwise accessible.

Everyone shall have the right to access information of public importance by being allowed insight in a document containing information of public importance, the right to a copy of that document, and the right to receive a copy of the document upon request, by mail, fax, electronic mail, or in another way.”

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

No, it does not, except for the fact that journalists have the possibility to be excluded from paying for the document containing requested information, when they seek for the copy that is necessary for performing their job.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

The Ministry of Culture does not have data about that, but relevant information on implementation of the Law can be found on the site of the Commissioner for information of public importance: www.poverenik.org.yu

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

There is no such law.

11. Are there any limits in this law on access to, and publication of, information?

The Law, in the article 9, excludes and limits access to information of public importance, if by revealing it, life, health, safety, judicial system, national defence, national and public safety, economic interest and secret could be exposed to risk.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

Ministry of Culture does not have any statistic evidence on that.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

This is regulated by regulations that the Ministry is not in charge of.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

- Law on Free Access to Information of Public Importance, article 9.
- Criminal code of the Republic of Serbia, article 316.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

The Law regulates right to free access to information of public importance possessed by public authority bodies.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

The Law on Free Access to Information of Public Importance excludes and limits access to information of public importance, if life, health, safety, judicial system, national defence, national and public safety, economic interest and secret could be exposed to risk (article 9).

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

Prohibitions apply to authority bodies. Article 9 of the Law on Free Access to Information defines in which cases authority body will not allow releasing right to access to information of public importance.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

Regulations defining that issue are contained in the Criminal Code of Republic of Serbia, article 316 (www.parlament.sr.gov.yu).

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

No, the law does not contain such penal provisions.

20. Have there any cases been brought in the last five years against:

- a. Officials in charge of the leaked classified information?**
- b. Members of the public?**
- c. Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

Ministry of Culture does not possess officially such data.

However, the Ministry is, as supervising organ in the implementation of the Law on Free Access to Information of Public Importance, has, during 2006, submitted 30 requests for initiation of misdemeanour procedure against responsible persons within state authorities' bodies as a result of not conducting according to the Law.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

Yes, in the Law on Free Access to Information, article 4, the following is stated:

"It shall be deemed that there is always a justified public interest to know information held by the public authority, in terms of Article 2 of this Law, regarding a threat to, i.e. protection of public health and the environment, while with regard to other information the public authority holds, it shall be deemed that there is a justified interest of the public to know, in terms of Article 2 of this Law, unless proven otherwise by the public authority."

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

Ministry of Culture does not have the access to all court decisions in order to make a statement on that.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

Law on Public Information, article 3, does not oblige journalists to reveal the source of their information, except for the cases foreseen in the article 32 of the Law, which states the following:

"A journalist is not obliged to reveal data related to his/her source of information, unless such data refer to an act of crime or a perpetrator of a crime punishable by a minimum five-year term of imprisonment."

Nevertheless, Law in the article 3 also foresees the following:

"Prior to the publication of information containing data on an event, phenomenon or personality, the journalist and the responsible editor shall be obliged to verify its origin, accuracy and completeness with due diligence. The journalist and the responsible editor of a media outlet shall be obliged to convey and publicize other people's information, ideas and opinions accurately and thoroughly, and, in the event that information was taken from another media outlet, that media outlet shall be quoted as the originator of information."

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

The national law is applied.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

There is a national law.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

The Ministry of Culture does not have the information about that.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

In the article 32 of Law on Public Information, it is précised that "a journalist is not obliged to reveal data related to his/her source of information, unless such data refer to an act of crime or a perpetrator of a crime punishable by a minimum five-year term of imprisonment."

28. What are the penalties for refusing to reveal sources of information?

The Law on Public Information does not have penalty provisions on that.

29. Are the journalists prohibited from revealing their source without the permission of the source?

No.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

The journalist, as, according to the article 32 of the Law on Public Information, he 'is not obliged to reveal data related to his/her source of information, unless such data refer to an act of crime or a perpetrator of a crime punishable by a minimum five-year term of imprisonment.'

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

Yes.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

Yes.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

This is not regulated by the Law on Free Access to Information of Public Importance.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

The Ministry is not in charge of that.

Serbia

Prepared by the OSCE Mission to Serbia

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

No. According to the Constitution of Serbia of 1990, there is no provision foreseeing the right to free access to information as one of the fundamental human rights. There is a right to "publicly criticise work of state institution and to, among other things, have a right to submit requests, petitions and proposals, and *receive an answer to submitted requests*. (Article 48). However, this is not a right to freedom of information, nor it has ever been regarded as such.

Additionally, the Charter on human and minority rights and civil liberties (2003) contained a provision on freedom of information. However, being an act of the State Union, when the State Union ceased to exist, so did the Charter.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

The Constitutional Court does not interpret the right of freedom of information.

In accordance with the Law on Free Access to Information, the Supreme Court is an appellate court authority in case of negative decision (i.e. confirming the refusal to provide information by a state institution) of the Commissioner for Information.

For six highest state institutions - President of the Republic, National Assembly, Government, Supreme Court, Constitutional Court and Republican Public Prosecution Office, the Supreme Court act as a first instance authority. In these cases, there is no right to complain to the Commissioner.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

5. Are there other specific constitutional limits on access and dissemination of information?

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

Yes. The Law on Free Access to Information of Public Importance (Republic of Serbia Official Gazette No. 120/04) http://www.poverenik.org.yu/dokumentacija_eng.asp?ID=2

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

No. The right belongs to everybody: natural and legal persons, citizens and non-citizens.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

Yes. A journalist, while seeking information for his/her work, is exempted from the fees (for photocopying, post service etc.)

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

According to the Commissioner Office, the Office does not maintain such data as the Law does not envisage an obligation of state institutions to provide the Commissioner's Office with such data - only the overall number of requests is prescribed as a part of annual reports.

According to complaints against decisions and/or tacit answers filed by journalists/media outlets/journalists' associations to the Commissioner Office, in 2005 there were 13 complaints, while during year 2006 (until September 2006) there have been 81.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

No. The Law on Free Access to Information defines access to information, as a human right, and more importantly, procedure for exercise of this right.

Other laws that might be of use for journalists while gathering information are various. The law regulating mainly print media and relationship between media and others is the Law on Public Information, however, it is not about free access to information as defined under the adopted standards.

11. Are there any limits in this law on access to, and publication of, information?

No (in the law on Public Information)

Yes (in the Law on Free Access to Information)

II Exemption and Limitation of Free Access to Information of Public Importance

Life, Health, Security, Judiciary, National Defense, National and Public Safety,
National Economic Welfare and Classified Information

Article 9

A public authority shall not allow the applicant to exercise the right to access information of public importance, if it would thereby:

- 1) Expose to risk the life, health, safety or another vital interest of a person;
- 2) Imperil, obstruct or impede the prevention or detection of criminal offence, indictment for criminal offence, pre-trial proceedings, trial, execution of a sentence or enforcement of punishment, any other legal proceeding, or unbiased treatment and a fair trial;
- 3) Seriously imperil national defense, national and public safety, or international relations;
- 4) Substantially undermine the government's ability to manage the national economic processes or significantly impede the fulfillment of justified economic interests;
- 5) Make available information or a document qualified by regulations or an official document based on the law, to be kept as a state, official, business or other secret, i.e. if such a document is accessible only to a specific group of persons and its disclosure could seriously legally or otherwise prejudice the interests that are protected by the law and outweigh the access to information interest.

Information of Public Importance Held by a Public Authority and Already Accessible to the Public

Article 10

A public authority need not allow the applicant the right to access information of public importance, if the information has already been published and made accessible in the country or on the Internet.

In the event set out in Para 1 of this Article, a public authority shall in its response notify the applicant on the information medium (number of the official medium, name of the publication, et al), where and when the sought information was published, unless these data are common knowledge.

Denial of Published Information by a Public Authority

Article 11

If a public authority disputes the accuracy or completeness of information of public importance that has been published, it shall make public the accurate and complete information, i.e. shall enable insight into the document containing accurate and complete information, except in cases specified in Articles 9 and 14 of this Law.

Extraction of Information

Article 12

If the requested information of public importance can be extracted from other information contained in the document a public authority is not obliged to allow the applicant insight in, the public authority shall allow the applicant insight in the part of the document containing only the extracted information.

Abuse of Free Access to Information of Public Importance

Article 13

A public authority shall not allow the applicant to exercise the right to access information of public importance if the applicant is abusing the rights to access information of public importance, especially if the request is irrational, frequent, when the same or already obtained information is being requested again, or when too much information is requested.

Privacy and Other Personal Rights

Article 14

A public authority shall not fulfil the applicant's right to access information of public importance if it would thereby violate the right to privacy, the right to reputation or any other right of a person that is the subject of information, except if:

- 1) The person has agreed;
- 2) Such information regards a personality, phenomenon or event of public interest, especially a holder of a state or political post, and is relevant with regard to the duties that person is performing;
- 3) A person has given rise to a request for information about him/her by his/her behaviour, especially regarding his/her private life.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

Apart from the Law on Free Access to Information no law prescribes the procedure.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- **Different categories in terms of level of confidentiality?**
- **The period of classification and declassification?**

No. There is no single law but numerous regulations addressing this matter.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

Yes. Different laws, bylaws and various regulations. According to the Republic of Serbia Criminal Code (in force from 1 January 2006)

Disclosure of official secrets ***Article 369***

- (1) An official who without authorization communicates, conveys or makes available in some other way to another information constituting an official secret, or who obtains such information with the intention of conveying it to an unauthorized person, shall be sentenced to three months to five years of imprisonment.
- (2) If an offense referred to in Paragraph 1 of this Article has been committed out of greed, or in respect of particularly confidential information, or for the purpose of its publication or use abroad, the perpetrator shall be sentenced to one to eight years of imprisonment.
- (3) If an offense referred to in Paragraph 1 of this Article has been committed by negligence, the perpetrator shall be sentenced to imprisonment not exceeding three years.
- (4) An official secret shall be understood to mean information or documents that, under the law, other regulation or a decision of a competent authority enacted in conformity with the law, have been proclaimed an official secret the disclosure of which would result or could result in detrimental consequences to the office.
- (5) Provisions referred to in Paragraphs 1 to 4 of this Article shall also be applied to a person who has disclosed an official secret after his capacity of an official ceased.

....

Disclosure of Military secrets

Article 415

1. Anyone who, without authorization communicates, conveys or in some other way makes available to another information that constitutes a military secret or obtains such information with the intention to convey it to unauthorized person, shall be sentenced to three months to five years of imprisonment.
2. If the offence referred to in Paragraph 1 of this Article has been committed for gain, or in relation to particularly confidential information, or with the purpose of their publication or use of such information abroad, the perpetrator shall be sentenced to one to eight years of imprisonment.
3. If the offence referred to in Paragraph 1 of this Article has been committed out of negligence, the perpetrator shall be sentenced to imprisonment not exceeding three years.
4. A military secret shall be understood to mean information that under law, other regulation or a decision of a competent authority passed in conformity with the law has been proclaimed a military secret and whose disclosure would or may cause detrimental consequences for the Army of Serbia and Montenegro or the defence and security of the country.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

They apply to anyone who gives, receives, uses, and distributes, etc, such information.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

There is no closed list of such data.

According to the Law on Free Access to Information, the list is limited (see Question 11, article 9), however, in practice the list is longer.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

Protection of such data applies to everybody.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

There are different levels of liability.

According to the Criminal Code, the punishment can be even 8 years of imprisonment (see answer 14). However, that does not mean a person, if not being liable by the Criminal Code, will not be subjected to, for instance, decrease in salary or other administrative measures.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

Yes, they do apply.

The same provision for disclosure of military and official secrets in the Criminal Code: (see answer 14)

If an offence referred to in Paragraph 1 of this Article has been committed out of greed, or in respect of particularly confidential information, **or for the purpose of its publication** or use abroad, the perpetrator shall be sentenced to one to eight years of imprisonment.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

Yes. All of these cases are still pending, however, no exact data on this.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

Yes. According to Article 4 of the Law on Free Access to Information of Public Importance:

Legal Presumptions of Justified Interest

Article 4

It shall be deemed that there is always a justified public interest to know information held by the public authority, in terms of Article 2 of this Law, regarding a threat to, i.e. protection of public health and the environment, while with regard to other information the public authority holds, it shall be deemed that there is a justified interest of the public to know, in terms of Article 2 of this Law, unless proven otherwise by the public authority.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

The judiciary rarely apply the principles but legal provisions.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

Yes. See answer to Question 17.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

These laws are on the national level.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

No information is available.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

The same provisions of protection of source are in the Public Information Law and the Criminal Code:

A person (journalist, editor, publisher) shall not have a duty to reveal the author of the information or the sources thereof unless the criminal offense committed is the one punishable by law with a sentence of imprisonment of five years or more, or in order to prevent such criminal offense. (Art 41 Criminal Code)

28. What are the penalties for refusing to reveal sources of information?

A journalist, as anyone else, may be called as a witness, as one knowing his/her source and able to (which would usually be the case). If s/he refuses to testify and if other criteria are not met (see answer 27), he/she may be fined with up to SCD 150,000 (app. EUR 1,800). If s/he refuses to testify, next measure is a fine (up to approx. EUR 3,600) and final is imprisonment.

(Criminal Procedure Law, Art 115, to enter into force on 1 June 2007. The current Law is similar: lower fines and no imprisonment).

We have no data that any journalist has ever been subjected to such punishments.

29. Are the journalists prohibited from revealing their source without the permission of the source?

Yes, by ethical standards.

30. In the media, who is protected from disclosure of sources:

- **The journalist? The editor? The publisher?**
- **Freelance journalists or commentators?**

All the listed categories are protected.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

Yes, it is general

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

Yes. However, it is not quite clear in the Law, and there have not been judicial interpretation of the Public Information Law and Art. 11.

According to the Law on Public Information:

**Definition of a Media Outlet
Article 11**

Media outlets shall comprise newspapers, radio programs, television programs, news agency services, **Internet and other electronic editions of the above-mentioned media outlets** and other public information media that use words, images and sound to publish ideas, information and opinions intended for public dissemination and an unspecified number of users.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

No, if that is necessary for gathering evidence and with a warrant.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

There is a procedure: telephone companies may provide such data only if the procedure is followed.

Kosovo (Republic of Serbia)

Prepared by the OSCE Mission in Kosovo

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

There is no constitutional right. However, the present Constitution (the Constitutional Framework, drafted by the International Community) will be replaced by a new one after the status of Kosovo has been determined.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

Not applicable.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

Not applicable.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

Not applicable.

5. Are there other specific constitutional limits on access and dissemination of information?

Not applicable.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

In November 2003 the Law on Access to Official Documents was promulgated.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

Yes. Only residents, be they natural or legal persons, can use the law. Non-residents may also request documents under the law, but as opposed to residents they are not entitled to get them.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

No.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

There are no such statistics. Although the law was promulgated nearly three years ago, the administrative instruction for the institutions was only published in 2006.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

There is no such law.

11. Are there any limits in this law on access to, and publication of, information?

Not applicable.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

Not applicable.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

There is no such law, but the Provisional Criminal Code touches upon the issue. It simply defines an 'official secret' as information proclaimed to be officially secret. It does not distinguish between different levels of confidentiality and does not mention any period after which the information becomes declassified.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

No.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

Not applicable.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

Yes. The Provisional Criminal Code stipulates that officials are not allowed to communicate official secrets (article 347).

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

It only applies to officials and former officials.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

Officials who impart secret information are punished with three years' imprisonment (and up to five years' imprisonment in case the offence was committed for personal gain).

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

No, the offence can only be committed by officials or former officials.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**

No.

- **Members of the public?**

Not applicable.

- **Journalists or media organisations?**

Not applicable.

Please describe the outcomes, including the date of the case, the defendants and the charges.

Not applicable.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

Only (former) officials can break the law, not the media. For these officials there exists no public interest defence.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

Not applicable.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

There is no such law, but both the civil Law against Defamation and Insult and the Provisional Criminal Code deal with the issue.

The civil law (article 18) stipulates that in defamation or insult cases defendants cannot be required to reveal a confidential source of information.

In principle the criminal code (article 29) excludes the media from liability for refusing to disclose sources.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

There are no such divisions.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

There are Kosovo-wide provisions.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

Not applicable.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

No, the protection is not absolute. The media can be ordered to disclose their sources in order to prevent someone from being killed, or wounded or from a criminal offence being committed. If they do not comply, they are criminally liable (article 29 of the provisional code).

The civil defamation law does not extend that power to the courts. However, it must be noted that under this law the onus of proof will in many cases be on the defendant, and journalists might not be able to prove the truth of their articles without revealing their sources. Therefore, they might find themselves in the awkward position of having to choose between losing their case or revealing the identity of their source.

28. What are the penalties for refusing to reveal sources of information?

The criminal code does not specify the penalties.

29. Are the journalists prohibited from revealing their source without the permission of the source?

No.

30. In the media, who is protected from disclosure of sources:

- **The journalist? The editor? The publisher?**
- **Freelance journalists or commentators?**

The defamation law states simply: 'the defendant' (article 18.1). In cases involving the media, this means the author, editor, publisher or someone who otherwise exercised control over the content (article 5.2).

The criminal code does not specify who is protected from disclosure; it says 'a person who takes part as a professional in the publication of information or as a member of an editorial board and his or her assistant (article 29). However, it lists more precisely who can be held liable for refusing to disclose sources in cases referred to in the answer to question 27: the journalist, the editor, the publisher, the printer (article 28).

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

Yes; neither the defamation law, nor the criminal code distinguish between the written and spoken word.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

Yes; neither law distinguishes between written words that are printed and that are published online.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

No. The Provisional Criminal Procedure Code allows a pre-trial judge to order such a search, but only if he suspects that the journalist has committed a criminal offence and believes that the search will result in the arrest of the journalist or in the discovery of evidence for the criminal proceedings (article 240). However, there is evidence that pre-trial judges sometimes ignore this provision in the law. In March 2004 they issued a search warrant for TV Men, a local television station, enabling the police to confiscate videotapes that might identify the perpetrators of a riot.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

The law does not mention them.

Slovakia

Prepared by the Government of Slovakia

RIGHT OF ACCESS TO INFORMATION

Legal rights

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

The Act No. 211/2000, on Free Access to Public Information, in force since 1 January 2001, regulates the conditions, the procedure and scope of the access to information. Except for information protected by law as secret or as personal data, all public information is available to the public and the public authorities are obliged to provide it on request, regardless of the requesting person. Act No. 81/1966 on periodical publications and other mass information media (press law) includes obligatory interactivity of public authorities (Art. 13 – 15). The Ministry of Culture of the Slovak Republic is preparing the new Act on the rights and obligations of persons obtaining, processing and publishing information and publicly distributing it via the media, and is expected it to enter into force in the 3rd quarter of 2007.

The old press law is in the English translation not available.

11. Are there any limits in this law on access to, and publication of, information?

No, the limits are in the Act on Free Access to Public Information.

12. If there is a legal right in a media or press law to Access information, please provide the statistics on the use of that law by journalist and media organizations.

The Ministry of Culture of the Slovak Republic does not possess or expect to obtain any statistics on the use of the press law by journalists or media organizations.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards of state and official secrets, such as:

- **Different categories in terms of level of confidentiality?**
- **The period of classification and declassification?**

Act No. 241/2004 Coll. On Protection of Classified Information and on Amending and Supplementing Certain Acts in the Wording of Latter Amendments

Rules on limitations and sanctions are contained in following sections of Act No. 300/2005 Coll. Criminal Code:

Section 196-198 Breaching the secrecy of delivered communications;
Section 264 Endangering trade, bank, post, telecommunication and tax secrecy;
Section 266 Abuse of information in commercial transactions;
Section 318 Espionage;
Section 319-320 Endangering classified information;
Section 319-320 Endangering confidential and reserved information;
Section 340 Failure to report a criminal offence;
Section 375-376 Breaching the rights of others.

It categorises them into four security classification levels: TOP SECRET (*PRÍSNE TAJNÉ* or *PT*), SECRET (*TAJNÉ* or *T*), CONFIDENTIAL (*DÔVERNÉ* or *D*) and RESTRICTED (*VYHRADENÉ* or *V*) depending on the significance of the interest to protect and the severity of harm that would be caused by disclosure of information.

It is up to the originator of classified information to decide both on the level and period of classification of such information. Neither the Law itself nor respective decrees of the National Security Authority stipulate precise periods of classification or declassification²⁶.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure possession or publication of state secrets *related specifically to national security*?

Yes, administrative law and criminal law do:

- Act. No. 241/2004 Coll. On Protection of classified Information and on Amending and Supplementing of certain Acts in the Wording of latter Amendments
- Relevant provisions of Act. No. 300/2005 Coll. Criminal Code, in its Articles 318 (Espionage), 319, 320 (Endangering classified information) and 353 (Endangering confidential and restricted information).

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

These prohibitions apply to both authorised and unauthorised natural persons²⁷. Officials are bound by the Article 38 of the Act No. 211/2000 Coll. Their breach may result in transgression in the field of the protection of classified information as defined in the Article 78(1).

People who have not signed declarations of secrecy, i.e. unauthorised persons, are according to the Article 39 of the Act on the Protection of Classified Information obliged to maintain confidentiality of classified information as well. Otherwise they may be alleged of transgression in the field of the protection of classified information as defined in the Article 78(2).

Rules on Sanctions

16. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of states secrets of *non-national security related information held by government bodies or those conduction public business*? Please list what types of information are covered by this?

Yes, the criminal law does:

Act No. 300/2005 Coll. Criminal Code;
Section 318 (Espionage) of Act. No. 300/2005 Coll. Criminal Code;
Section 319-320 (Endangering classified information) of Act. No. 300/2005 Coll. Criminal Code.

There are several categories of information (non-national security related) whose unauthorized disclosure, possession or publication are prohibited or limited:

- a. Trade secrets as defined by the Commercial Code (Act No. 513/1991 Coll. as amended);
- b. Personal data of natural persons (according to Act No. 428/2002 Coll. on Protection of Personal Data as amended);
- c. Intellectual property rights;
- d. Information that concern the decision-making power of the courts;

²⁶ Article 7(1) of the respective Act states:

If the need to protect information or an object containing classified information in a certain security classification level has lapsed, the originator of the classified information shall decide on a change or extinction of the security classification level. If the stipulated period for the security classification of information or an object containing classified information has elapsed, the originator of the classified information shall decide on a change or extinction of the security classification level.

²⁷ I.e. common people including the media.

- e. Information obtained from a third party not required by law to provide information that instructed the obligee not to disclose it;
- f. Information regarding the place of habitat of endangered species of plants and animals, minerals and fossils.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

The above prohibitions/limitations are applied universally.

18. What are the civil or criminal penalties for unauthorized disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the criminal or Penal Code?

Less serious breaches (i.e. transgressions and administrative infractions) are dealt with the Articles 78(3) and 79(2) of the Act on the Protection of Classified Information:

- For transgression a fine up to SKK 50.000 may be imposed on natural persons or the prohibition to conduct activities.
- For administrative infractions a fine up to SKK 1.000.000 can be imposed on corporate entities.²⁸

More serious breaches (i.e. criminal acts) are defined in the Act. No. 300/2005 Coll. Criminal Code

- Section 318 (Espionage) of Act. No. 300/2005 Coll. Criminal Code
- Section 319-320 (Endangering classified information) of Act. No. 300/2005 Coll. Criminal Code

Criminal penalties:

Section 318: imprisonment sentence from four years to ten years;

Section 319 (intentionally): imprisonment sentence from six months to three years;

Section 320 (by negligence): imprisonment sentence not exceeding three years.

19. Do these penalties apply to the media for unauthorized disclosure, possession or publication of classified information? Are there additional or higher penalties of mass publication of information?

No, these penalties apply only to physical persons because there is no criminal liability for legal persons in the Slovak Republic until now.

20. Have there any cases been brought in the last five years against:

- **officials in charge of the leaked classified information?**
- **Members of the public**
- **Journalists or media organizations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

In the last five years there were several cases brought against both officials and members of the public responsible for the so-called unauthorised handling of classified information²⁹. The National Security Authority is not a law enforcement agency; therefore it does not conduct investigation in criminal matters, including criminal acts defined in the Articles 318, 319, 320 and 353 of the Penal Code.

The outcomes, as well as the dates of the cases, cannot thus be further specified, except for their short description:

Year 2002

One charge of unauthorised classified information handling, which resulted in detriment according to the Article 78 of the Protection of Classified Information Act. The offence was committed by an official.

Year 2003

²⁸ For a detailed overview of sanction regimes see the Articles 78 and 79 of the Act No. 211/2000 Coll. (Protection of Classified Information Act) and the Articles 318, 319, 320 and 353 of the Act No. 300/2005 Coll. (The Penal Code).

²⁹ Unauthorised handling is defined in the Article 2(a) of the Act No. 211/2000 Coll. (Protection of Classified Information Act) as disclosure, damage, unauthorised duplication, destruction, loss or theft of classified information.

One charge of unauthorised classified information handling, which resulted in criminal prosecution (publishing of classified information on the Internet). No further details are available.

Year 2004

One charge of unauthorised classified information handling, which resulted in criminal prosecution. No further details are available.

Year 2005

Three charges of unauthorised classified information handling, which resulted in criminal prosecution. In one case classified information was published in the media (investigation ongoing), another two offences were committed by officials. In one case the official was sentenced. No further details are available.

Year 2006

Two charges of unauthorised classified information handling, which resulted in criminal prosecution. One offence was committed by an official, the other one concerns publishing classified information in the media. The case is still under investigation.³⁰ No further details are available.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public – interest test to evaluate the government's classification concerns?

Both the Act on the Protection of Classified Information and the Penal Code are applied universally.

PROTECTION OF SOURCES

32. Is protection extended to different types of Internet-based media, internet journalists and commentators?

Protection of sources of information and protection of journalists from sanctions for refusing to disclose their sources of information will be amended in the newly prepared press law.

³⁰ This was at the time of submission of the Government's response on 12 October 2006.

Slovenia

Prepared by the Government of Slovenia

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

The right to access information of public nature is guaranteed in the Constitution of the Republic of Slovenia, Article 39, paragraph 2: "Except in such cases as are provided by law, everyone has the right to obtain information of public nature in which he has a well founded legal interest under law." It should be noted, however, that this right was further expanded by the Slovene law providing for the exercise of this right; no legal interest is necessary under this law and the right to access information of public nature is granted to "anyone". Accordingly, all legal and natural persons have access to information of public nature, including legal persons based in Slovenia or in any other country, as well as citizens of Slovenia and aliens.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

The appeal body in Slovenia is the Commissioner for Access to Public Information, who decides on appeals against dismissal or refusal of an application to access information of public nature. An administrative dispute can then be instigated against the decision of the Commissioner; the administrative court has decided on such matters on several occasions.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

The Constitution of the Republic of Slovenia defines the right to access information of public nature very broadly; the specific definition is provided by law.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

The Slovene law governing the access to information of public nature defines only one case where information is not considered information of public nature even though all relevant conditions stipulated by law are met: the archival material stored in the competent archives of the relevant public agency in accordance with law governing archives.

Any other information meeting the conditions laid down by law for information of public nature is deemed information of public nature freely accessible to public, except in the case of the enumerated exceptions (11) (classified information, trade secret, personal data, etc.). Even in some of these cases, however, it is possible or necessary to carry out a harm test or a public interest test. The public interest test allows for access to such information that could be considered an exception to free access pursuant to the law but for which a free access is allowed since the public interest in disclosing such information prevails over the interest protected by the exception.

The law further provides for a possibility of applying for the declassifying of information where it is considered that information was classified contrary to the law regulating classified information.

5. Are there other specific constitutional limits on access and dissemination of information?

No.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

As stated in the preceding replies, the right to access information of public nature as guaranteed by the Constitution is specifically regulated by a special act governing access to public information. The act was adopted in 2003, and then considerably amended in 2005 (introduction of the public interest test, etc.) and 2006. Link: <http://www.ip-rs.si/index.php?id=520>

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

The act introduces the principle of free access, granting free access to public information to all legal and natural persons. Access to public information is granted to citizens and legal persons based in Slovenia as well as aliens and legal persons based abroad. The interested person does not need to state the reason for which he/she wants to obtain certain information. Furthermore, in compliance with the prevailing viewpoint in the Republic of Slovenia, the right to access public information can also be exercised by minors over 15 years of age who have contractual capacity. A minor does not need parents' consent to apply for the access to information of public nature.

8. Does the FOI law give journalists or media organizations a greater right of access to information than citizens?

No. Special rights of journalists and the media (for instance, shorter period for obtaining information) are provided for in the Mass Media Act.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

There are no such statistics.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

The right to access information granted to the media is defined by Article 45 of the Mass Media Act (Ur. l. RS no. 60/06), which reads as follows:

- (1) Information for the media under this Act is information provided by an authority at its own initiative to the media and information given by an authority to the media as a reply to a question and concerning the working domain of the relevant authority. Information must be authentic and comprehensive.
- (2) The media can require information from all authorities defined as liable by the law regulating the access to information of public nature.
- (3) Authorities overseeing the provision of information to the media shall appoint the person in charge of the implementation of the provisions of this Act and publish his/her name and official phone number and e-mail. The authorities shall provide information about the person in charge to the competent ministry.
- (4) After the receipt of a written question the reply to which will be partially or wholly rejected by an authority, this authority must inform the media accordingly by the end of the working day following the receipt of the question.
- (5) An authority may partially or wholly reject the reply to a question of the media if no free access is granted to the required information under the law governing the access to information of public nature.
- (6) Authorities must provide the media with a reply to a question within seven working days from the receipt of the written question at the latest.
- (7) The written notification under paragraph 4 or the reply under paragraph 6 hereof shall contain the name of the media that posed the question, the wording of the question and the decision on the partial or whole rejection of the reply to the question. The media can require additional clarifications within three days from the receipt of the reply. The authority must provide such clarifications without delay and no later than three days from the receipt of the request for additional clarifications.
- (8) The whole or partial rejection of a reply under paragraphs 4 and 5 shall be considered a decision of refusal.
- (9) Appeal against the decision of refusal under the preceding paragraph shall only be permissible if the partial or whole rejection of the reply to a question derives from a document, matter, file, register, records or other documentary material.
- (10) The appeal against the decision under paragraph 8 must be filed in writing; the decision on the appeal shall be taken by the authority competent for deciding on the appeal under provisions of the law governing the access to information of public nature. The relevant authority must abide by the decision issued on the basis of an appeal without delay or within five days after it was served the decision.
- (11) If press information is published in the media in whole and literally, the author of the contribution and the editor shall not be held liable for damages or criminally liable for accurately publishing the contents of public information. The authority providing such information shall be responsible for its authenticity and accuracy.
- (12) The control over the implementation of this Article shall be a responsibility of the authority authorised for deciding on the appeal under provisions of the law governing the access to information of public nature.

11. Are there any limits in this law on access to, and publication of, information?

There are no limits relating to the media's access to information; only an appeal to an authority's rejection of a reply is subject to certain restrictions. An appeal is only possible if the rejection of reply is based on a document, matter, file, register, records or other documentary material.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

The law regulating access to information by the media entered into force on 24 June 2006; therefore, no statistical data are yet available.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- **Different categories in terms of level of confidentiality?**
- **The period of classification and declassification?**

The above is regulated by the Classified Information Act (Ur. l. RS, no. 50/2006 – official consolidated text).

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

The above is regulated by the Classified Information Act (Ur. l. RS, no. 50/2006 – official consolidated text) and the Decree on the Protection of Classified Information (Ur. l. RS, no. 74/2005).

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

These regulations (published in the Official Gazette (Uradni list)) must be observed by anybody having access to classified information.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

Classified information of other countries and international organisations is also protected on the basis of the Classified Information Act and Decree on the Protection of Classified Information, in accordance with international treaties and assumed international obligations.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

The regulations (published in the Official Gazette (Uradni list)) must be observed by anybody having access to classified information.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

Penalties are laid down in Articles 44, 44a and 45 of the Classified Information Act.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

Penalties apply to anybody that violated the Classified Information Act. The Act makes no special mention of the media.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

No such cases have been recorded in the recent years.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

The prevailing public interest concerning classified information is defined in Article 21 of the Classified Information Act.

The Commissioner for Access to Public Information can request the consideration of the justification of prevailing public interest in disclosing certain classified information.

After obtaining the opinion of the Commission (commission in charge of the consideration of justification of the prevailing public interest in disclosing classified information) the Government of the Republic of Slovenia or a national authority that is not directly responsible to the Government (such as the National Assembly) may instruct the authority which classified information to declassify it.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

It is hard to state whether the judiciary of the Republic of Slovenia considers the public's right to know as being overriding or equal to the government's (or public sector's) classification concerns. Case law in this respect is not developed yet. Other areas of case law of judiciary of the Republic of Slovenia on "conflicts" between the public's right to know and other protected interests (especially data privacy protection of personal data) are more developed and are stated here for information purposes, for showing possible future trends in case law also in other areas.

In the years of 2004 to 2006 the courts have mostly quashed rulings of the (former) Commissioner for Access to Information of Public Character (since 31 December 2005 the Information Commissioner) when that independent body decided that some personal data from filing systems processed by the public sector should be accessible by the public. However, the decisions of the courts were focused on formal reasons. The former Act on Access to Information of Public Character of the Republic of Slovenia of 2003 (Official Gazette of the RS, No. 24/2003) did not have an explicit exception for personal data to be disclosed in the case of overriding public interest (public interest test). In July 2005, the Act on Access to Information of Public Character of the Republic of Slovenia was substantially amended (Official Gazette of the RS, No. 61/2005); it now includes the application of public interest tests for personal data, secret data and other categories in Article 6, paras. 2 and 3.

In 2006 there were at least two cases when the Information Commissioner instituted proceedings against media for disclosing personal data on payments of management and journalists from another private media company and also on publication of autopsy photos and other data in another media. The Information Commissioner in the course of the procedure also in at least one case asked the media to reveal the legal basis of their sources of information, but media chose not to disclose them, following Article 21, para. 2 of the Media Act, in accordance with which editors, journalists and other authors in media are not under duty to disclose their sources of information, unless the general criminal legislation provides otherwise. There is no case law yet on those cases, which are mentioned here only to demonstrate the state of affairs in Slovenia.

There was one case in 2000, when the Constitutional Court of the Republic of Slovenia came "sort of close" to this issue of secrecy interest on the one hand and public's interest to know on the other hand (but more in the context of individual's freedom of expression):

The Constitutional Court of the Republic of Slovenia decided in 2000 (Decision of the Constitutional Court of the Republic of Slovenia, No. Up 50/99, 14.12.2000; published in Official Gazette of the RS. No. 1/2001) that the prohibition on dissemination of a book on association of freemasons in Slovenia is contrary to freedom of expression, since the person who was identified in the book with his full name and surname, was a former Chairman of the Bar Association and president of another important association; and the description of his work in the context of his associational activity did not breach his right to privacy.

The Constitutional Court decided in 2005 (Decision of the Constitutional Court of the Republic of Slovenia, No. Up-422/02, 10.3.2005; published in: Official Gazette of the RS. No. 29/2005) in the case of a novelist that the judgments of lower courts concerning compensation to be paid are unconstitutional, since the rights to artistic creation and the right to protection of honour and good name are in conflict and lower courts did not adequately resolve the conflict between these two rights. The book in question concerned described in an artistic manner the actions of a former policeman in a municipality; and that person could be identified by the use of an applied nickname in the book. The case is still pending before lower courts of general jurisdiction, the outcome is not known yet.

Therefore, there can be no definite answer on the issue of whether milder or no sanctions are imposed on journalists and the media for unauthorised release of information that was of legitimate public interest, since there is no case law of courts of the Republic of Slovenia to support any such interpretation in any direct way. The decisions of courts, if they may be predicted in an academic, non-binding manner, would either go purely formally: for example, why was the protected (secret) information requested according to the provisions of the Act on Access to Information of Public Character of the Republic of Slovenia (which explicitly applies to media by virtue of new Article 45, paragraph 5 of the Media Act; see Act on Amendment and Changes to the Media Act, Official Gazette of the RS, No. 60/2006)? If the information was not requested in such a manner, they could punish journalists (and/or media) for their publication and maybe they would take into account the principled motives of media for such publication (important public issue: freedom of information) and punish them more leniently. Or maybe they would take into account Article 10 of the European Convention on Human Rights and interpret it in such a radical manner that there would be no conviction and punishment. Also, it has to be noted that in some special cases the law also provides for impunity of journalists and other "publicists". For example, Article 266 (Disclosure of Official Secret), paragraph 5 of the Criminal Code states: "Irrespective of the provisions of the second paragraph of this Article, whoever conveys for publishing or publishes an official secret the content of which is in conflict with the constitutional order of the Republic of Slovenia, with the intention of publicly disclosing irregularities in the organisation, operations and administration of the office, shall not be punished, provided that publication has no harmful effects on the state." Similar provision (excuse) also exists in Article 282 (Disclosure of Military Secret), paragraph 5 of the Criminal Code.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

No, Slovenia does not have a special law providing for the right of journalists not to disclose their sources of information.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

There is no law at the national level, and neither is this right exercised at the local level.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

The Mass Media Act stipulates in Article 21 that editors, journalists or authors of contributions are not obliged to disclose their sources of information, except when this is required by criminal legislation.

Criminal Procedure Act (Ur. l. RS, No. 8/2006) stipulates in Article 235 that attorneys, medical doctors, social workers and psychologists or *other persons* are exempt from the duty to testify *regarding facts divulged to them*

during the course of the practise of their profession. This group includes journalists obtaining information in the course of practicing their profession.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

The Ministry of Culture does not have this information.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

A specific right is provided for in the Mass Media Act, and is only restricted by provisions of the criminal legislation. These are cases of criminal procedures relating to sexual integrity, neglect of minors or trafficking in human beings.

28. What are the penalties for refusing to reveal sources of information?

There is no special law regulating the protection of sources of information, and consequently there are also no prescribed sanctions or fines for the rejection to disclose sources of information.

29. Are the journalists prohibited from revealing their source without the permission of the source?

This possibility is not provided for in the media legislation.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

Editors, journalists and authors of contributions are not obliged to disclose their sources of information pursuant to the Mass Media Act.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

The Mass Media Act also applies to radio and television journalists, as well as to all journalists working for the media entered in the media register; consequently, they all have this right.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

Journalists working for the media entered in the media register are not obliged to disclose their sources of information; these media include Internet-based media.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

Yes, the inviolability of dwellings is guaranteed by the Constitution of the Republic of Slovenia and other laws; journalists, as well as all other citizens, have this right.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

The Mass Media Act guarantees this right to all editors, journalists and authors of contributions. An individual can be exempt from the duty to testify pursuant to the Criminal Procedure Act if he/she has obtained certain information during the course of the practise of his/her profession.

Spain

Prepared by the Government of Spain

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Yes. Article 105.b) of the Spanish Constitution stipulates that the law shall regulate public access to files and records held by the administration, providing such access does not affect national security and defence. Possible restrictions on access to information in the interests of national security, territorial integrity or public safety are justified also under article 10.2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Art.105 b):

http://www.constitucion.es/constitucion/castellano/titulo_4.html

The exercise of said rights may not be restricted by prior censorship of any form. However, the boundaries of these freedoms are set at the respect for other constitutional rights, particularly the right to honour, privacy, to one's image and the right to protection of youth and childhood.

In addition, investigation and information-gathering by journalists may also be protected by article 20.1 d) of the Spanish Constitution.

http://www.constitucion.es/constitucion/castellano/titulo_1.html#1b

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

Yes. The Constitutional Court, which is the ultimate guarantee of the constitutional rights referred to in the previous answer, has examined and established case law on the constitutional right to freely receive information.

http://www.congreso.es/constitucion/ficheros/sentencias/stc_021_2000.pdf

http://www.congreso.es/constitucion/ficheros/sentencias/stc_006_1981.pdf

http://www.congreso.es/constitucion/ficheros/sentencias/stc_241_1999.pdf

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

The right is not an absolute one: according to various rulings by the Constitutional Court, restrictions may be imposed on the exercise of the freedom of expression in a democratic society in the interests of national security, territorial integrity or public safety. Consequently, public access to information is limited in nature, since our legal system does not grant a general right of publicity governing all actions by the authorities (government, for example).

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

As mentioned above, articles 23.1 and 105 b) of the Constitution establish the principle that information is needed to ensure responsible public participation in public affairs, with exceptions warranted only to protect national security and defence, the investigation of crimes and personal privacy.

5. Are there other specific constitutional limits on access and dissemination of information?

Yes. Article 20.1 d) of the Constitution recognises and protects the right to freely disseminate or receive true information via all means, as well as the right to invoke the conscience clause and professional secrecy in exercising these freedoms. However, freedom of information is not the same right as freedom of expression and international human rights treaties tend to view freedom of information as a sub-category of freedom of expression.

Art. 20.1 d):

http://www.constitucion.es/constitucion/castellano/titulo_1.html#1b

Legal regulation of the journalist's conscience clause:

http://noticias.juridicas.com/index.php?doc=http%3A//noticias.juridicas.com/base_datos/Admin/lo2-1997.html

Legal Rights

6. Is there a national law allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation and a web link, if available.

Spain has no Freedom of Information Law at present.

However, over and above the access to information laid down in the Constitution, the Law on the Legal Regime of Public Administrations and the Common Administrative Procedure (which regulates, among other matters, relations between the Administration and the public) allows individuals access to files and documents held by the Administration (administrative files and records).

Specifically, article 35 stipulates that, in their dealings with the public administrations, citizens have -among other rights- the right of access to files and records held by the authorities, in accordance with the terms provided for in law.

Art. 35 H):

http://noticias.juridicas.com/base_datos/Admin/l30-1992.t4.html#a35

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc.)?

Yes. The right of access is not total or absolute: the Constitution allows the Administration which holds the file or record to refuse access in certain cases, for reasons based on constitutional principles -national security and defence, investigation of crimes and individual privacy- which are deemed to take precedence over the values pursued by the exercise of the right of access.

As a general rule, access is only granted to persons who have or hold a legitimate interest. To that effect, Art. 37.5 of Law 30/1992 states that the right of access may not be exercised with respect to files containing information on the actions undertaken by the national government or regional governments in performance of constitutional powers which are not subject to administrative law. The same is true of documents containing information relating to national security or defence. Access is not possible either in the case of documents compiled for the investigation of crimes, if such access might compromise the protection of the rights and freedoms of third parties or the ongoing investigation.

The aforementioned law prohibits public right of access to documents and information relating to matters protected by industrial or trade secrecy, as well as to actions of the Administration pertaining to monetary policy.

Art. 37. Right of access to Files and Records.

http://noticias.juridicas.com/base_datos/Admin/l30-1992.t4.html#a35

Article 4 of Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, states as follows:

1. The institutions shall refuse access to a document where disclosure would undermine the protection of:

(a) the public interest as regards:

- public security,
- defence and military matters,

- international relations,
- the financial, monetary or economic policy of the Community or a Member State;
- (b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.
- 2. The institutions shall refuse access to a document where disclosure would undermine the protection of:
 - commercial interests of a natural or legal person, including intellectual property,
 - court proceedings and legal advice,
 - the purpose of inspections, investigations and audits,
 unless there is an overriding public interest in disclosure.

http://www.csi.map.es/csi/pdf/i_14520010531es00430048.pdf

8. Does the FOI (Freedom Of Information) law give journalist or media organisations a greater right of access to information than citizens?

As mentioned above, Spain does not have a law specifically setting out and regulating the right of access to information for journalists or media organisations.

On several occasions the Constitutional Court has indicated that the purpose of the right to information is to ensure the dissemination/receipt of newsworthy events and the right is held by all individuals, not just journalists and reporters.

The right to receive true information does not imply that the State must facilitate all available information or that everyone can access the information. However, the Constitutional Court acknowledges that, given their occupation, journalists have a preferential right of access to information compared to other citizens.

9. If there is a FOI law, please provide the statistics on the use of the law by journalist and media organizations.

For the reasons already outlined above, no statistics are available.

10. Is there media or press law that gives journalist any additional rights of access to information?

There is no such legal provision. No additional rights exist for the media, except -as a result of case law - for preferential access to certain types of information.

11. Are there any limits in this law on access to, and publication of, information?

The limits are as outlined above for certain types of information. Journalists and media organisations do not have an absolute right of access to information.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalist and media organizations.

For the reasons already outlined, there are no statistics available.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation that sets standards for state and official secrets, such as different categories in terms of level of confidentiality? The period of classification and declassification?

Yes.

http://noticias.juridicas.com/base_datos/Admin/l9-1968.html

Article 1 of Spain's Official Secrets Law (Law 9/1968 of 5 April, amended in 1978) stipulates that State bodies are subject to the principle of publicity of their actions, in accordance with the relevant provisions governing such actions, except where -due to its nature - a matter has been expressly declared as being classified and secrecy or restricted knowledge thereof are thus protected by law.

All matters specifically declared as being secret by law are deemed to be such and do not require specific prior classification.

Under the above Law the power to classify a matter as secret and confidential rests exclusively with the Council of Ministers and the Ministry of Defence (via the Joint Chiefs of Staff), acting "*within the scope of their competences*".

Classification as 'confidential' applies to issues, actions, documents, data and objects which are not considered secret due to their lesser importance, even though dissemination may affect fundamental interests. The Law does not set out time periods (maximum or minimum) for classification or declassification of documents.

Rules on Limitations

14. Does any law, administrative, criminal or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

Yes. The aforementioned Official Secrets Law 9/1968, of 5 April, amended in 1978.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

The scope of the Law is comprehensive and includes the media. The sole exception is Parliament, which is granted access to any information it requests. This information is provided in the manner provided for in the regulations giving effect to the Law and, where appropriate, is given in camera.

16. Does any law, administrative, criminal or other prohibit the unauthorized disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business? Please list what types of information are covered by this?

It is not known if such provisions exist in Spanish law.

17. Do these prohibitions only apply to officials, or do they apply to persons who have not signed security agreements, such as members of the public, including the media?

It is not known if such provisions exist in Spanish law.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

Article 598 of the Penal Code states that

"Anyone who, without intending to benefit a foreign power, acquires, discloses, falsifies or renders information classified by the law as being secret or confidential and which relates to national security or to technical methods or systems used by the Armed Forces or by industries of military interest shall receive a term of imprisonment of between one and four years".

http://noticias.juridicas.com/base_datos/Penal/lo10-1995.12t23.html#c3

For their part, article 197 and subsequent articles of the Penal Code set out the penalties applicable to the discovery and disclosure of secrets.

http://noticias.juridicas.com/base_datos/Penal/lo10-1995.12t10.html#c1

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

The penalties referred to in the previous answer make no distinction between the persons committing the offence. Consequently, the measures apply to the media also (specifically, to those identified as being responsible for the commission of the offence in the corresponding criminal procedure).

Professional secrecy for journalists has not yet been regulated by law and doubts therefore remain as to its scope. This has led, for example, the Constitutional Court to rule that information published by a newspaper had not been fully verified as being accurate in a case where the journalist refused to disclose the information source (Ruling 21/2000, 31 January).

20. Have there any cases been brought in the last five years against: officials in charge of the leaked classified information? Members of the public? Journalist or media organisations? Please describe the outcomes, including the date of the case the defendants and the charges.

It is not known whether cases have been brought for disclosure of secrets.

It is worth reiterating here that journalists habitually exercise freedom of information, which would imply that they enjoy specific guarantees such as the conscience clause and the right to professional secrecy (Constitutional Court Ruling 6/1981, 16 March).

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

As mentioned in various parts of the answers to the present questionnaire, in matters classified as official secrets freedom of information is not deemed to be an overriding interest.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

As recognised by the Constitution, the principle of publicity governs various spheres (government, judiciary, legislation) and national secrecy constitutes an exception to this principle.

The courts enforce existing legislation. Thus, journalists who disclose classified information or official secrets render themselves liable to the appropriate legal action.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists from sanctions for refusing to disclose their sources of information?

We are unaware of the existence of a law on this matter (professional secrecy). The Professional Journalists Statute has not been regulated as yet.³¹

³¹ OSCE RFOM's note: There is a constitutional protection. Article 20 [Specific Freedoms, Restrictions]

(1) The following rights are recognized and protected:

d) To communicate or receive freely truthful information through any means of dissemination. The law shall regulate the right to the protection of the clause on conscience and professional secrecy in the exercise of these freedoms.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

We are unaware of any legal provisions at regional level governing this matter.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

Various courts in Spain have ruled in favour of professional secrecy, notwithstanding the fact that the relevant legislation has not yet been enacted.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

By way of example, mention can be made of the summons issued by the National Criminal Court to the 'El Mundo' daily newspaper in connection with the proceedings concerning the Madrid bomb attacks on 11 March 2004. The Judge ordered the paper to disclose its sources for information it published regarding the court's investigations into the attacks.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

Apparently not, except if state secrets and national security are affected, as will be explained in greater detail in the next answer.

In other words, a journalist or reporter can refuse to disclose his/her sources to a judge, provided that refusal does not entail the commission of an offence against the life, safety, health, freedom or sexual freedom of other individuals, as explained in the next answer.

28. What are the penalties for refusing to reveal sources of information?

The offence of disclosure of confidential sources is addressed in the Professional Journalists Statute, currently under discussion in Parliament. In the opposite case, i.e. where journalists or editors do not refuse to disclose information but rather do so when they should not, they may incur a penalty under Article 199.2 of the Penal Code (breach of professional secrecy):

"Any professional who breaches their obligation to silence or confidentiality and reveals the secrets of another person shall receive a term of imprisonment of between one and four years, a fine of between twelve and twenty-four months and shall be disqualified from professional practice for a period of between two and six years".

http://noticias.juridicas.com/base_datos/Penal/lo10-1995.l2t10.html#c1

A journalist must reveal the identity of his source if the information is required to prevent a crime being committed against the life, safety, health, freedom or sexual freedom of other individuals. Anyone who refuses to disclose confidential sources is liable to punishment under article 450 of the penal code.

"450.1: Any person who, through direct intervention without risk to himself or others, is in a position to prevent a crime affecting the life, safety, health, freedom or sexual freedom of other persons, but fails to do so shall receive a term of imprisonment of six months to two years if the crime was against life or –in the other cases- a fine of between six and twenty-four months, except where the punishment for the crime itself is lower, in which case the lower penalty shall be imposed. A similar penalty will be imposed on any person who is in a position to notify the authorities or officers to enable them to prevent the commission of one of the above offences and of which he has knowledge but fails to do so".

http://noticias.juridicas.com/base_datos/Penal/lo10-1995.l2t20.html#c2

29. Are journalists prohibited from revealing their source without the permission of the source?

Journalists are obliged to keep secret the identities of sources who have provided them with information in confidence, explicitly or tacitly. They are bound by this duty even if asked to reveal the source by their employer or by the authorities, including the judicial authorities, and may not be punished or suffer disadvantage if they fail to do so.

The duty of secrecy required by law refers to the identity of sources.

30. In the media, who is protected from disclosure of sources: the journalist, the editor, the publisher, freelance journalist or commentators?

The Code of Ethics of the Federation of Spanish Media Associations states that "Professional secrecy is a right held by journalists, while also constituting a duty guaranteeing the confidentiality of information sources.

Consequently, journalists shall guarantee the right of their sources to remain anonymous, if so requested. However, exceptionally this professional duty may yield where it is known for a fact that the source has deliberately provided false information or where disclosure of the source is the sole means of preventing serious and imminent danger to others".

<http://www.consejodeontologico.com/Codigo/Codigo.htm>

It would appear, then, that the only persons with the right not to reveal their sources are journalists, irrespective of their professional position in the media organisation.

31. Is protection extended to those working for broadcasting media?

The right is held solely by practising journalists, regardless of the type of media organisation for which they work.

32. Is protection extended to different types of Internet-based media, Internet journalist and commentators?

Yes, with the above-mentioned restrictions.

33. Are searches of property belonging to the media or the journalist, such as newsrooms or apartments, prohibited by law?

No.

34. Are third parties who act for journalists or media organisations, or provide services to them also protected from disclosure of data on journalist communications with sources, or from interception of them?

Criminal liability is established in each individual case by the competent judicial authority. Current legislation does not provide for exceptions applicable to third parties directly related to the disclosure of data or classified information.

Sweden

Prepared by the Government of Sweden

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Yes. According to Chapter 2 article 1 of The Freedom of the Press Act every Swedish citizen shall be entitled to have free access to official documents, in order to encourage the free exchange of opinion and the availability of comprehensive information. Foreign nationals are equated with Swedish citizens.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

Yes. The Supreme Administrative Court continuously tries cases where the right of public access to information and documents is upheld.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

The right applies to all information but it is possible to limit access by law to protect certain interests. The Freedom of Press Act lists the interests that may be protected by keeping official documents secret:

1. the security of the Realm national security or Sweden's relations with a foreign state or an international organisation;
2. the central financial policy, the monetary policy, or the national foreign exchange policy of Sweden Realm state;
3. the inspection, control or other supervisory activities of a public authority;
4. the interest of preventing or prosecuting crime;
5. the public economic interest;
6. the protection of the personal integrity or economic circumstances of private subjects; or
7. the preservation of animal or plant species.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

See the answer to question 3.

5. Are there other specific constitutional limits on access and dissemination of information?

No.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies?

The access to information and documents from government bodies is regulated in the Freedom of the Press Act (1949:105) and the Secrecy Act (1980:100).

The Freedom of the Press Act in English and the Secrecy Act in Swedish can be found at [\(Riksdagen - The Freedom of the Press Act, SFS Författningstexter\)](#).

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

No, it is applicable to all Swedish nationals and foreign citizens alike.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

No, the freedom of information in the Freedom of the Press Act is a right of all persons regardless of whether they are journalists or not.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

There are no such statistics since requests to get information are not always registered by the authorities. A person has, for example, the right to just walk in and study the contents of public documents, unless it is restricted by rules of secrecy. The authorities are not allowed to ask for information on the requesting person.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

No, see answer to question 8.

11. Are there any limits in this law on access to, and publication of, information?

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

See the answer to question 9.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- **Different categories in terms of level of confidentiality?**
- **The period of classification and declassification?**

The Secrecy Act (1980:100) defines secret documents.

Some of the secrecy provisions do not lay down any special conditions for the applicability of secrecy to information mentioned in that context. The majority of secrecy provisions are however subject to prerequisites regarding their applicability, which require that certain special conditions are met. The condition is usually formulated as a so-called *requirement of damage*. Such a requirement means that secrecy applies provided that some stated risk of damage arises if the information is disclosed. There are two main types of requirement of damage: “straight” and “reverse”.

The form of *the straight requirement of damage* is indicated by the following examples: “Secrecy shall apply to matters concerning occupational injury insurance or partial pension insurance for information concerning an individual’s business or operational circumstances, *if it can be assumed that disclosure of the information would cause damage to the individual*”. The straight requirement of damage indicates the main rule to be that secrecy does not apply and that the information may be disclosed.

The reversed requirement of damage assumes secrecy to be the main rule. An example of this type of requirement of damage is as follows: “Secrecy applies within the social services to information concerning an individual’s personal circumstances, *unless it is manifestly evident that the information may be disclosed without the individual or a person closely related to him being harmed*”.

There are also rules concerning time limits. The secrecy period is usually formulated as a maximum period stating the longest period during which the information in an official document may be kept secret. As most secrecy provisions contain a requirement of damage, one may expect that the risk of damage has often ceased before the secrecy period expires.

The secrecy period varies from 2 to 70 years, depending on the interest to be protected. For the protection of an individual's personal affairs, the secrecy period is usually 50 or 70 years while, as regards public or private individuals' financial circumstances, it is often 20 years.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

The secrecy provisions of Chapter 2 in the Secrecy Act protect the national security of the Realm and Sweden's relationships with other states and international organizations.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

Besides public authorities, persons in public service or those undertaking public service duties (for example, compulsory military service) must observe secrecy. The Secrecy Act describes this category of persons as those who by reason of employment or an assignment with an authority, by reason of service obligations or other similar grounds participate or have participated, on behalf of the public, in the operations of the authority. Therefore, secrecy shall also be observed after the employment, assignment, etc. has ceased. A composite designation for such persons, which is often used, is '*public functionaries*'. A prerequisite for a public functionary to be bound to observe secrecy concerning something is that he or she has learned of it in his/her activities on behalf of the public. What functionaries may have learned in other quarters is consequently not subject to secrecy under the Secrecy Act.

There are duties of professional secrecy under other enactments than the Secrecy Act regarding persons who are not public officials (for example, attorneys and physicians in private practice).

There are no such professional secrecy duties that apply to journalists or other representatives of the media.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

Chapters 2-10 of the Secrecy Act contain the secrecy provisions, that is, the provisions prescribing what information shall be kept secret. The chapters are arranged in the same manner as the rules of the Freedom of Press Act concerning which interests may be protected by official documents being kept secret. The secrecy provisions of Chapter 2 protect, as mentioned above, the national security of the Realm and Sweden's relationships with other states and international organisations, Chapter 3, Sweden's central financial policy, monetary policy and foreign exchange policy, etc. The provisions that protect the personal and financial circumstances of individuals have been divided into three chapters. Chapter 7 protects the personal circumstances of the individual (for example, within health care and social welfare). Chapter 8 contains provisions to protect the financial circumstances of individuals (for example, in Government supervision of trade and industry. The circumstances of individuals of both a personal and financial nature (for example, within the tax system) are protected by Chapter 9.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

See the answer to question 15.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

There are different provisions in the Penal Code imposing penalties for offences against secrecy. Chapter 19 contains crimes against the security of the realm, for example high treason, instigating war and espionage. Under certain very

special circumstances, for example, disclosure of classified information can be considered as a crime against the security of the realm.

According to chapter 10 section 5 a person who, by reason of a position of trust abuses his position and thereby injures his principal can be sentenced for breach of faith committed by an agent against his principal to a fine or imprisonment for the maximum of two years.

In Chapter 20, Section 3 a person who discloses information, which he is duty-bound to keep secret, or if he unlawfully makes use of such secret, shall, if the act is not otherwise specially subject to punishment, be sentenced for breach of professional confidentiality to a fine or imprisonment for the maximum of one year.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

No, representatives of the media are not bound by rules of secrecy.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

There are no such statistics.

See question 15 and 19 about who is bound by rules of secrecy. See also question 23 about the possibility for public officials to, without liability; reveal secret information to the media.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

Representatives of the media are not bound by rules of secrecy.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

There are in principle no sanctions for representatives of the media for release of classified information. The only exceptions of this rule are listed in the Freedom of the Press Act as specified crimes against national security (e.g. high treason, espionage)

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

The Freedom of the Press Act is based on the principle of editorial responsibility. The name of the responsible publisher must be registered and each separate issue of a periodical must carry his name. He, who is the editor in chief, is responsible and liable for any offence committed. Others - journalists, technical staff, outside contributors and news sources – are absolved of legal responsibility.

The constitutional principle of exclusive responsibility makes it possible to protect news sources. This protection consists of rules granting exemption from punishment and damages - sometimes called "the freedom of informants" - for those who supply newspaper offices or news agencies with information. It also includes a right for authors and other contributors to printed statements to remain anonymous.

The freedom of informants means that even information privileged in terms of the Secrecy Act may to a considerable extent be passed on to news enterprises for publication. Those who, while serving with news agencies or other mass-media enterprises in a professional capacity, learn about the identity of author or informant are bound not to divulge that identity and authorities and other public agencies are prohibited from enquiring into the identity of author or informant.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

The municipalities are bound by national laws.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

There are no such statistics. The possibility for a court to require a journalist to reveal its source is very rarely used.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

The protection of sources comes in force through the provisions on duty of confidentiality in the Freedom of the Press Act (Chap. 3 Art. 3). This duty is however not without its exceptions. Four exceptions could be relevant e.g. for a journalist as a witness in court.

First of all it does not apply if the person concerned has given his consent to the disclosure of his identity. The second exception concerns specified crimes against national security. The third one concerns certain cases on breach of secrecy: where a secret document has been delivered or a breach of legally imposed secrecy according to the restricting provisions in chap. 16 of the Secrecy Act has occurred according to the prosecution. The fourth one concerns the duty to witness in other cases than cases under the fundamental laws of the media. The duty of confidentiality does not apply “insofar as a court of law, in any other case, finds, having regard to the public or private interest, that it is of particular importance for information as to identity to be given in testimony under oath”.

However for the third and fourth cases there is stipulated a limitation: The court shall scrupulously ensure that no questions are put which might encroach upon the duty of confidentiality beyond what is permissible in each particular case. Another prerequisite is that there seems to be no other possible evidence to demonstrate. In the preparatory works from 1976 the Minister of Justice stressed that the respect for confidentiality shall only give way to very strong reasons. As an example you could mention cases of very serious crimes where an editorial office of a newspaper has been used as a cover for the crime.

28. What are the penalties for refusing to reveal sources of information?

There are no penalties.

29. Are the journalists prohibited from revealing their source without the permission of the source?

See the answer to question 27.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

Any person who has engaged in the production or publication of a mass media or material intended for insertion therein, and a person who has been active in an enterprise for the publication or an enterprise that professionally purveys news are prohibited to disclose the identity of a source.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

The principles that govern the Freedom of the Press Act are extended to other media through another constitutional law, the Fundamental Law on Freedom of Expression.

It concerns statements made public through certain modes of expression, namely audio radio, television and certain similar transfers, films, videotapes, audio recordings and other technical recordings. ([Riksdagen - The Fundamental Law on Freedom of Expression](#)).

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

The Fundamental Law on Freedom of Expression also provides constitutional protection for databases run by ordinary mass-media enterprises. An opportunity for voluntary constitutional protection is possible for other actors upon application for a publishing license. One condition is that the recipients cannot alter the content.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

The principle of duty of confidentiality has been embodied in the Swedish Code of Judicial Procedure; see on seizure Chap. 27 Art. 2, on witnesses Chap. 36 Art. 5 on documentary evidence Chap. 38 Art. 2 and on views Chap. 39 Art. 5. Since the Constitution takes precedence over any other legislation, the police is prevented from conducting a search of property belonging to the media or the journalists, in order to look for material that is protected by the Freedom of the Press Act or the Fundamental Law of Freedom of Expression. Instead the prosecutor has to ask for the permission of the court to interrogate the witness in court.

It is only the Chancellor of Justice, not the police or an ordinary prosecutor that is invested with the competence to decide on searches of premises and seizures in such criminal cases that are freedom of the press matters.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

They are protected by the prohibition for authorities and other public body to inquire into the identity of a source.

Switzerland

Prepared by the Government of Switzerland

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country is there a constitutional right of public access to information or to documents held by government bodies?

The public in Switzerland has no constitutional right to information on government activities. Although article 16 of the Swiss Federal Constitution guarantees freedom of information, this right covers only generally accessible sources, of which government activities are not part.

The Federal Constitution can be found at <http://www.admin.ch/ch/f/rs/1/101.fr.pdf>

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

No.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

-

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

-

5. Are there other specific constitutional limits on access and dissemination of information?

Yes, article 26 of the Federal Constitution allows limits on the right to information under certain circumstances.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

Yes, the Federal Law on the Principle of Transparency in Government (there is no English translation), which entered into force on 1 July 2006, seeks to promote transparency in the aims, organisation and activities of the government. To this extent it helps to inform the public by guaranteeing access to official documents.

Internet link: <http://www.admin.ch/ch/f/rs/1/152.3.fr.pdf>

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

No. The right to access is granted to all persons (individuals or legal persons) regardless of whether they are Swiss or not or whether they are resident in Switzerland or not.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

No, journalists and the media do not have greater access.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

As the law on transparency only entered into force on 1 July 2006, it is too soon for any statistics to be available.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

No.

11. Are there any limits in this law on access to, and publication of, information?

-

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

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RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

There are two laws: the Federal Law on the Principle of Transparency in Government (LTrans) and the Swiss Criminal Code (CP). Moreover, article 4 LTrans makes explicit reference to special provisions in other federal laws.

Article 7 LTrans limits or prohibits access to certain official documents if access could compromise the internal or external security of Switzerland.

The Swiss Criminal Code contains a number of provisions prohibiting the distribution or publication of information relating to national security:

- Article 267 CP prohibits diplomatic treason.

1. Whoever intentionally discloses or makes available to a foreign state or one of its agents a secret that needed to be kept in the interests of the Confederation, whoever falsifies, destroys, causes to disappear or conceals deeds or evidence relating to the legal relations between the Confederation or a canton and a foreign state and in doing so intentionally compromises the interests of the Confederation or a canton, whoever, in his/her position as a representative of the Confederation intentionally conducts negotiations with a foreign government to the detriment of the Confederation shall be punished by confinement or imprisonment of one to five years.
2. Whoever intentionally discloses or makes accessible to the public a secret that needed to be kept in the interests of the Confederation shall be punished by confinement or imprisonment of five years or more.
3. The punishment shall be imprisonment or a fine if the defendant acts negligently.

- Article 272 CP prohibits political intelligence services.

1. Whoever, in the interests of a foreign state, or foreign party or other foreign organisation, to the detriment of Switzerland or its citizens, inhabitants or organizations, carries out or organizes political intelligence services, whoever recruits others for such a service or abets its activities shall be punished by imprisonment.

2. In serious cases, the judge may order confinement. In particular, the fact of having incited others to perform acts compromising the internal or external security of the Confederation or having given false information of this nature shall be considered serious cases.

- Article 274 CP prohibits military intelligence services.

1. Whoever collects or organizes military intelligence in the interests of another country and to the detriment of Switzerland, whoever recruits or abets others for this purpose shall be punished by imprisonment or a fine. In serious cases the judge may order confinement.

2. Correspondence and equipment shall be confiscated.

- Article 329 CP prohibits the disclosure of military secrets.

1. Whoever illegally enters an establishment or other premises to which access is forbidden by the military authorities or who collects information about military establishments or objects relevant to national defence or who reproduces or publishes such information shall be punished by detention or a fine.

2. The attempt and assistance are also punishable.

Internet link for the Swiss Criminal Code: <http://www.admin.ch/ch/f/rs/3/311.0.fr.pdf>

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

There are special laws applying to officials with access to information obtained through the performance of their duties.

The provisions of the CP are applicable regardless of the fact that the offender is a public official. The only exceptions are persons judged in accordance with military criminal law (cf. articles 3 to 8 CP).

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

Article 7 LTrans limits or prohibits the right of access to certain official documents if this access:

- could be prejudicial to the ability to form and make decisions by an authority subject to this law or other legislative or administrative body or judicial body;
- obstructs the implementation of specific measures taken by an authority in accordance with its mandate;
- could compromise the foreign policy interests of Switzerland or its international relations;
- could compromise the relations between the Confederation and the cantons or the relations between cantons;

- could compromise the economic or monetary policy interests of Switzerland;
- could disclose profession, business or manufacturing secrets;
- could result in the disclosure of information provided freely by a third party to an authority that has guaranteed its secrecy.

Moreover, chapter 14 article 4 LTrans explicitly reserves the right to apply special provisions of other federal laws, for example the provisions regarding public records of legal relations under private law (including the register of companies, land register and register of births, deaths and marriages), provisions regarding the secrecy of signatures collected in public initiatives, referendums or petitions, provisions regarding banking secrecy, business secrets, professional secrets, etc.).

Finally, article 320 of the Criminal Code prohibits violations of confidentiality by public officials.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

The provisions of the special laws apply to members of public authorities who have access to information in the performance of their duties.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

A violation of article 293 is punishable by detention or a fine.

A violation of article 320 is punishable by imprisonment or a fine.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

-

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

Yes, there is an overriding interest in providing information to the public.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

Yes.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

There is no specific law regarding testimony by journalists. Under article 27bis they are entitled to refuse to testify. This entitlement is nevertheless subject to a number of conditions, including an imminent threat to a person's life.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

Apart from the Swiss Criminal Code, a number of cantonal codes of procedure explicitly mention the right of journalists to refuse to testify.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

Not applicable in Switzerland.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

No information.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

It is not absolute and depends on the circumstances.

28. What are the penalties for refusing to reveal sources of information?

The future Swiss Code of Criminal Procedure (CPP) deals with the unjustified refusal to testify. It states :

Art. 173 CPP

1. Whoever, without the right to do so, refuses to testify may be punished by an administrative fine and ordered to pay the costs and compensation resulting from his/her refusal.
2. If the person obliged to testify continues to refuse to do so, he/she shall be requested to do so again with a reduction of the penalties provided for in article 292 CP. If the person still refuses to testify, criminal procedures shall be instigated.

Article 292 CP referred to in article 173 CPP states:

Refusal to submit to a decision by a public authority

Whoever fails to abide by a decision referring to him/her by a public authority or official subject to the warning that the penalty provided for in this article will be imposed shall be punished by detention or a fine.

29. Are the journalists prohibited from revealing their source without the permission of the source?

No.

30. In the media, who is protected from disclosure of sources:

- **The journalist? The editor? The publisher?**
- **Freelance journalists or commentators?**

All persons professionally involved in the publication of information in the editorial part of a periodic medium and their assistants (article 27bis CP).

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

Yes.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

In principle, yes.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

Possible, but the authorities must ensure that they do not violate the right to professional secrecy. The protection of journalistic secrecy for example is provided for in the Geneva Code of Civil Procedure (cf. article 47A CPPge) :

Art. 47A

Persons referred to in article 27 bis paragraph 1 of the Swiss Criminal Code (Protection of sources) may refuse to testify in accordance with the terms of this provision.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

Yes, since requests for information cannot be made under any desired conditions. Telecommunications providers are obliged to provide information (article 15 of the Federal Law on the Surveillance of Postal and Telecommunications Correspondence [LSCPT] (see annex) in the cases provided for in article 3 LSCPT (see annex)).

Internet link for LSCPT : <http://www.admin.ch/ch/f/rs/7/780.1.fr.pdf>

Tajikistan

Prepared by the OSCE Centre in Dushanbe

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

The right of access to information is an integral part of the right to freedom of speech. Each person shall be guaranteed freedom of speech and press, and the right to use the mass media.³²

The Constitution of the Republic of Tajikistan (RT) states that government bodies, public associations, political parties, and officials are obliged to provide each person with the opportunity to obtain and acquaint themselves with documents concerning their rights and interests, apart from cases envisaged by law.³³

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

There are no such cases in the practice of the Constitutional Court of the Republic of Tajikistan.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

Limited right to information (just like the limitation of other rights) is only permitted for the purpose of ensuring the rights and freedoms of other citizens and public order, and protecting the constitutional system and territorial integrity of the country.³⁴

Limits are possible in the following cases:

- classified information;
- confidential information;
- information on operative and investigative activities of investigation bodies and courts, when the disclosure of information is detrimental to operative measures, preliminary investigation or examination, violates a person's right to fair court proceedings, or endangers human life or health;
- information on citizens' private life;
- documents constituting interdepartmental official correspondence related to decision-making and preceding adoption of such decisions (official secrets);
- information of financial institutions which is prepared for conducting an audit of financial institutions (commercial secrets);
- information not subject to disclosure in compliance with regulatory legal acts;
- the private life of citizens, infringement on their honour and dignity.³⁵

³² Article 30 of the Constitution of the Republic of Tajikistan.

³³ Article 25 of the Constitution of the Republic of Tajikistan.

³⁴ Article 14, Part 3 of the Constitution of the Republic of Tajikistan.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

Neither the RT Constitution nor the Law on Information envisage such limits.

5. Are there other specific constitutional limits on access and dissemination of information?

No.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

There is the Law of the Republic of Tajikistan on Information of 10 May 2002. The text of the law in Russian is available on the site of the Human Rights and Law Adherence Bureau <http://www.hrjn.tj/>, as well as at NANSMIT (the National Association of Independent Mass Media of Tajikistan) <http://www.nansmit.tj/laws>.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

All citizens independent of ethnic origin, race, gender, language, confession, political convictions, education, social and property status have equal right of access to information.

8. Does the FOI law give journalists or media organizations a greater right of access to information than citizens?

This right is not directly envisaged either in the Law on the Mass Media or in the Law on Information, but in compliance with RT Presidential Decree of 5 March 2005, all government agencies are obliged to hold regular press conferences and provide journalists with information.

What is more, the law envisages the obligation of state, political, and public organizations, movements, and officials to provide the mass media with the necessary information.³⁶

The Law on the Mass Media envisages that a journalist has the right³⁷:

³⁵ Article 33 of the RT Law on Information.

³⁶ Article 5 of the RT Law on the Press and Other Mass Media.

³⁷ Article 31 of the Law on the Mass Media of the Republic of Tajikistan.

- (1) to seek, obtain, and disseminate information;
- (2) to be received by officials in connection with performing his/her professional journalistic duties;
- (3) to carry out any recording, including with the use of audiovisual techniques, filming and photographing, apart from cases envisaged by law;
- (4) to be present in natural disaster zones after presenting a journalist's identification card;
- (5) to address specialists when checking facts and circumstances related to obtained information;
- (6) to refuse to attest to information contradictory to his/her convictions;
- (7) to disown his/her signature attesting to information, should he/she believe such information to be distorted during editing;
- (8) to express keeping a secret of authorship.

When information is presented to mass media employees, preference may not be given depending on whether the journalist works for a government or independent media organization, as well as on whether the journalist is a staff employee or an independent journalist.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

There are no such statistics. Unfortunately, journalists do not appeal to judicial or other bodies for protection of their rights to information, although the violation of journalists' rights to information is the most widespread. This is clear from the monthly reports of the survey of violations of journalists' rights which NANSMIT (the National Association of Independent Mass Media of Tajikistan) carries out. More information about the survey is available at: <http://www.nansmit.tj/monitoring/>

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

The RT Law on the Press and Other Mass Media does not directly envisage a separate regulation on additional rights of journalists to access to information. Nevertheless, citizens have the right to the efficient obtaining of reliable information through the mass media about the activity of government bodies, public associations, and officials. The mass media have the right to obtain such information from government bodies, public associations, and officials.³⁸

11. Are there any limits in this law on access to, and publication of, information?

The Law on the Mass Media of the Republic of Tajikistan prohibits the abuse of freedom of speech. In particular, the following is prohibited:

- publishing information constituting a state secret or other secret protected by law;
- calls to carry out a forced overthrow or change in the constitutional system, abuse of the honour and dignity of the state and President;
- propaganda of war, violence, cruelty, terrorism in all its manifestations, racial, national, and religious exclusiveness or intolerance, pornography;
- calls to commit other criminally punishable acts are prohibited in the mass media;

³⁸ Article 27 of the Law on the Press and Other Mass Media.

- the use of the mass media for interfering in the private life of citizens, infringing on their honour and dignity is prohibited and persecuted by the Law (RT Law No. 632 of 22 April 1992).³⁹

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

There are no such statistics.

RECEIVING AND DISSEMINATION OF INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

There is a Law of the Republic of Tajikistan on State Secrets, as well as the Law on the List of Information Constituting a State Secret. Differentiation of the level of confidentiality is envisaged in the Law on State Secrets, where different classification codes are set forth for state secrets, and specific periods are indicated during which information remains classified depending on the level of confidentiality.⁴⁰

Rules on Limitations

14. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

The disclosure of information constituting a state secret by a person to whom it has been entrusted or became known in the line of his/her profession, if such information became the property of other persons, in the absence of signs of high treason, shall be punished by restriction of freedom for up to three years or detention for four to six months, or imprisonment for up to three years with deprivation of the right to hold certain offices or engage in certain activity for up to three years.

The same act entailing grave consequences shall be punished by imprisonment for five to ten years with deprivation of the right to hold certain offices or engage in certain activity for up to five years.⁴¹

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

Article 311 of the RT CC (Criminal Code of the Republic of Tajikistan) also envisages the liability of those persons to whom this secret was entrusted or became known in line of his/her professional activities, which implies not only those officials to whom this secret was entrusted, but also other citizens, including journalists.

³⁹ Article 6 of the Law on the Mass Media of the Republic of Tajikistan.

⁴⁰ Article 7 of the Law on State Secrets of the Republic of Tajikistan.

⁴¹ Article 311 of the Criminal Code of the Republic of Tajikistan.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

The dissemination of confidential information is prohibited, including medical secrets, official secrets, commercial secrets, and banking secrets.

Illegal disclosure or use of a commercial or banking secret without the consent of its owner by a person to which this secret is known in the line of his/her professional or official activity committed for mercenary or other personal motives and inflicting great damage on a commercial organization or individual businessman shall be punished by a fine in the amount of three hundred to five hundred minimum wages, or imprisonment for up to three years with deprivation of the right to hold certain offices or engage in certain activity for up to five years.

Note: Criminal prosecution for committing an act envisaged by this article is carried out on the basis of an application from the commercial organization or individual businessman on whom the damage was inflicted.⁴²

Article 145. Disclosure of a Medical Secret (RT CC)

- (1) The disclosure by a medical, pharmaceutical, or other employee without professional or official necessity of information on the illness or medical examination results of a patient shall be punished by deprivation of the right to hold certain offices or engage in certain activity for up to two years or by detention for up to four months.
- (2) The same acts consisting of reporting information about the fact that a person is HIV-infected shall be punished by imprisonment for up to two years with deprivation of the right to hold certain offices or engage in certain activity for the same term.
- (3) Acts envisaged in parts one and two of this article, if they entail grave consequences, shall be punished by imprisonment of two to five years with deprivation of the right to hold certain offices or engage in certain activity for the same term.

Article 144. Illegal Gathering and Dissemination of Information on Private Life (CC of the Republic of Tajikistan)

⁴² Article 278 of the RT CC.

- (1) Illegal gathering for the purpose of disseminating of information on a private life that constitutes the personal or family secret of another person, without his/her consent, or the dissemination of such information in a public statement, artistic work, or in the mass media, if such acts are committed for mercenary or other personal considerations and infringed on the rights and legal interests of citizens, shall be punished by a fine in the amount of two hundred to five hundred minimum wages, or correctional work for up to one year, or detention for up to four months.
- (2) The same acts committed by a person using his/her official position shall be punished by a fine in the amount of five hundred to eight hundred minimum wages, or correctional work for up to two years, or detention for up to six months with deprivation of the right to hold certain offices or engage in certain activity for up to five years.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

The text of the regulation indicated in the previous clause permits its broad interpretation, envisaging the liability of those persons to whom “this secret is known in the line of their professional or official activity.”

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorized disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Civil Code?

In the event of unauthorized disclosure of classified information certain sanctions are set forth in the Civil Code of the Republic of Tajikistan.⁴³

The Criminal Code of the Republic of Tajikistan also envisages penalties for the disclosure of classified information.⁴⁴

Article 311. Disclosure of a State Secret (Criminal Code of the Republic of Tajikistan)

- (1) The disclosure of information constituting a state secret by the person to whom it was entrusted or became known in the line of professional activities, if such information became the property of other persons, in the absence of signs of high treason, shall be punished by restriction of freedom for up to three years, or detention for four to six months, or imprisonment for up to three years with deprivation of the right to hold certain offices or engage in certain activity for up to three years.
- (2) The same act entailing grave consequences shall be punished by imprisonment for five to ten years with deprivation of the right to hold certain offices or engage in certain activity for up to five years.

⁴³ Article 174, 175 of the Civil Code of RT.

⁴⁴ Articles 145, 278, 311, 361, 394 of the Criminal Code of RT.

19. Do these penalties apply to the media for unauthorized disclosure, possession or publication of classified information?

In the indicated articles of the Criminal Code, these measures are applied to persons to whom “such secret became known in the line of professional activities,” separate penalties for journalists or other mass media employees are not envisaged.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organizations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

Such cases are not known.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society’s right to know about issues of public interest might override the government’s classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government’s classification concerns?

There are no such clauses either in the Law on Information or in the Law on the Mass Media. According to experts, there is no such judicial practice in Tajikistan.

22. In practice, does the judiciary consider the public’s right to know as being overriding or equal to the government’s classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorized release of information that was of legitimate public interest?

There is no such practice.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

The Law on the Mass Media indicates that the editorial board of a media organization or journalist does not have the right to:

- (1) name the person providing information if such person wishes to remain anonymous, apart from cases when such is required by the court;
- (2) disclose information relating to a preliminary investigation without written permission from the public prosecutor, investigator, or person carrying out the inquest; publicize any information that may lead to revealing the identity of a minor offender, without his/her consent and the consent of his/her legal representative.⁴⁵

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

n/a

⁴⁵ Article 29 of the Law on the Mass Media of RT.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

n/a

26. How many times in the last five years has a journalist or media organization been required by a court or official to disclose their sources of information under this law or any other law?

In the last five years, such court decisions have not been issued in the Republic of Tajikistan. However, in July 2004, after publication of an article in the *Odamu Olam* newspaper, the Ministry of Defence demanded that the source of information be disclosed. According to a survey by the National Association of Independent Mass Media of Tajikistan, the newspaper's editorial board was compelled to disclose its source of information.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

According to Article 29 of the Law on the Mass Media of RT indicated above, a journalist will be obliged to reveal his/her sources of information on a court order.

28. What are the penalties for refusing to reveal sources of information?

Neither the Criminal nor the Civil Code contains such sanctions. On the other hand, the Criminal Code envisages sanctions for failure to give evidence, which is punished by compulsory work for one hundred and twenty to one hundred and eighty hours or a fine in the amount of up to five hundred minimum wages.⁴⁶

29. Are the journalists prohibited from revealing their source without the permission of the source?

Such a prohibition is set forth in the Law on the Mass Media.⁴⁷

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

The Law on the Mass Media sets forth the difference between a journalist and editor, but it does not set forth differentiation in their protection from demands to disclose their sources of information.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

The Law on the Mass Media does not contain such clauses. At the same time, the RT Law on Television and Radio Broadcasting does not contain commentaries on this account.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

According to the information of *Internews Tajikistan*, there is no separate regulatory act in Tajikistan regulating mass media on the Internet. In this respect, it can be maintained that there is no such differentiation, and the activity of Internet journalists is also regulated by the Law on Mass Media.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

The Law on Mass Media does not contain such prohibitions, apart from the prohibition of removing from circulation, without a corresponding court order.⁴⁸

⁴⁶ Article 352 of the Criminal Code of the Republic of Tajikistan.

⁴⁷ Ibid.

34. Are third parties who act for journalists or media organizations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

The Law on Mass Media does not contain such a regulation.

⁴⁸ Article 22 of the Law on the Mass Media of the Republic of Tajikistan.

Turkey

Prepared by the Government of Turkey

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

There is no specific constitutional right of public access to information or documents held by government bodies.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

-

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

-

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

-

5. Are there other specific constitutional limits on access and dissemination of information?

-

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

The Law on Exercising the Right of Petition No. 307 (Dilekçe Hakkinin Kullanımına Dair Kanun) and The Law on Right of Information Acquirement No. 4982 (Bilgi Edinme Hakkı Kanunu). By the adoption of the Law on Right of Information Acquirement No. 4982 in 2003, a body was established under the roof of the Prime Ministry to deal with requests for information. Moreover, the regulations on the right of access to information stipulate that every public institution shall have a webpage. Consequently, most of the state bodies in central government and several local governments have their own web pages. The State Organisation Database provides information concerning the organisational structure and internet addresses of all ministries and other public agencies.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

According to the Art. 4 of the *Law on Right of Information Acquirement No. 4982 (Bilgi Edinme Hakkı Kanunu)*, natural and legal persons have the right to access to information provided that the requested information is relevant to them or their activities. Foreigners residing in Turkey can also enjoy this right in accordance with the principle of reciprocity.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

Public Information Act has no special provisions for journalists or media organisations. No discrimination is made between journalists, media organisations and other natural and legal persons.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

No statistics available.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

The Press Law No. 5187, adopted by Parliament on 9 June 2004 is a special law worded for the rights and the obligations of the press institutions and journalists. The Art. 3 of the said law formulated under the subtitle “The independence of the press” states that the press is independent. This includes, among others, the right to have access to information.

11. Are there any limits in this law on access to, and publication of, information?

Paragraph 2 of Art. 3 of the Press Law No. 5187 sets out the limitations. According to that, this right can be limited for:

- the protection of the rights and the reputation of others;
- the protection of public health and ethics;
- the protection of national security;
- the protection of public order;
- the protection of public security and the integrity of the territory;
- the prevention of disclosure of state secrets;
- the prevention of commitment of crimes;
- the provision of the power and independence of the judiciary.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

No statistics available. For more information, please see:

<http://www.tbmm.gov.tr/kanunlar/k4982.html>

<http://www.tbmm.gov.tr/kanunlar/k5187.html>

<http://www.byege.gov.tr/mevzuat/anayasa/anayasa-ing.htm>

<http://www.byege.gov.tr/byege/hakkında/basinkanunu-ing.htm>

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

Preparations as to the “State Secrets Law” are underway. The draft law was sent to the Prime Ministry on 24 November 2005 for the completion of legislative procedure. More information can be found through the internet page of the General Directorate of Legislation of the Ministry of Justice:

<http://www.kgm.adalet.gov.tr/basbakanliktabulunanlar.htm>

On the other hand, the Public Information Act. No. 4982 sets out the principles as to the state secrets. Art. 16 of the said law maintains that the secrets of the state whose disclosure can openly endanger national security, national defence and international relations, fall outside of the scope of the Public Information Act and therefore cannot be accessed on demand.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

Along with the above stated laws which have specific provisions as to the secrets of the state, the Turkish Penal Code has also criminalising provisions.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

These provisions apply both to officials and to persons who have not signed security agreements.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

The Banking Law, Turkish Commercial Law and Turkish Penal Code have some criminalizing provisions that prohibit the unauthorised disclosure, possession or publication of non-national security related information held by government bodies or those conducting public business.

Information like trade secrets, banking secrets and client secrets are covered by these provisions.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

These provisions apply both to officials and to persons who have not signed security agreements.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

The sanctions for unauthorised disclosure, possession or publication of classified information are penalties of imprisonment and are generally found in the Turkish Penal Code.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

The penalties can be applied to the media for unauthorised disclosure, possession or publication of classified information and in the Turkish Penal Code there are no additional or higher penalties for mass publication of information.

20. Have there any cases been brought in the last five years against:

- Officials in charge of the leaked classified information?
- Members of the public?
- Journalists or media organisations?

Please describe the outcomes, including the date of the case, the defendants and the charges.

No statistics available. For more information, please see:

<http://www.byegm.gov.tr/byegmhakkinda/basinkanunu-ing.htm>

http://www.rtuk.org.tr/sayfalar/IcerikGoster.aspx?icerik_id=b41eac9a-bc39-4213-91f3-0d39931c1f1d

<http://www.tbmm.gov.tr/kanunlar/k5237.html>

<http://www.ceza-bb.adalet.gov.tr/mevzuat/5271.htm>

http://www.rtuk.org.tr/sayfalar/IcerikGoster.aspx?icerik_id=645dfad0-8753-40d1-afa0-0f439b56118f

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

Protection of the broadcast for public interest is regulated in Art. 4 of the *Law on the Establishment of Radio and Television Enterprises and Their Broadcasts, Law No 3984* of 20 April 1994.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

Yes. For more information, please see:

http://www.rtuk.org.tr/sayfalar/IcerikGoster.aspx?icerik_id=b41eac9a-bc39-4213-91f3-0d39931c1f1d
http://www.rtuk.org.tr/sayfalar/IcerikGoster.aspx?icerik_id=645dfad0-8753-40d1-afa0-0f439b56118f

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

Art. 12 of the Press Law No. 5187, entitled "information resource", includes the clause "Publisher or a periodical, responsible editor and writer of an article cannot be forced to disclose all sources of information and documents and to be a witness on the matter."

Moreover, Art. 4/1 of the *Law on the Establishment of Radio and Television Enterprises and Their Broadcasts Law No. 3984* of 20 April 1994 stipulates that "Principles of neutrality, reality and accuracy should be preserved; developing an opinion freely should not be prevented; news sources should be kept secret other than those which aim at misleading the public." Within this framework, keeping of news sources secret other than those which aim at misleading public, has been accepted as a principle of publications.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

There are no sub-national divisions.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

There are legal regulations on the sources of information in Turkey.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

No statistics available.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

The protection is absolute.

28. What are the penalties for refusing to reveal sources of information?

There are no penalties for refusing to reveal sources of information.

29. Are the journalists prohibited from revealing their source without the permission of the source?

Journalists are not prohibited from revealing their source without the permission of the source.

30. In the media, who is protected from disclosure of sources:

- **The journalist? The editor? The publisher?**
- **Freelance journalists or commentators?**

Owner of the publication, editor and owner of the work are protected according to the Press Law.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

Yes, it is extended.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

Yes, it is extended.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

There is no provision that prohibits searches of property belonging to the media or the journalists.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

When it is related to the disclosure of journalist's sources of information, they are also protected. For more information, please see:

<http://www.byegm.gov.tr/byegmhakkinda/basinkanunu-ing.htm>

http://rtuk.gov.tr/sayfalar/IcerikGoster.aspx?icerik_id=b41eac9a-bc39-4213-91f3-0d39931c1f1d

http://www.rtuk.org.tr/sayfalar/IcerikGoster.aspx?icerik_id=645dfad0-8753-40d1-afa0-0f439b56118f

<http://www.ceza-bb.adalet.gov.tr/mevzuat/5271.htm>

<http://www.tbmm.gov.tr/kanunlar/k5237.html>

Turkmenistan

Prepared by the Government of Turkmenistan (unofficial translation from Russian by the Office of the OSCE Representative on Freedom of the Media)

RIGHT OF ACCESS TO INFORMATION

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

- Article 26 of the Constitution of Turkmenistan guarantees that citizens of Turkmenistan have the right to freedom of opinion and its free expression, as well as the right to receive information, unless it is classified as state, official or commercial secret.

- Article 1 of the Law of Turkmenistan "On the press and other mass media in Turkmenistan" says that the press and other mass media in Turkmenistan are free. Freedom of speech and freedom of the press that are guaranteed to citizens of Turkmenistan by the Constitution of Turkmenistan, imply the right to express opinions and beliefs, to search, select, receive and disseminate information and ideas in any forms, including the press and other mass media. Censorship of mass information is not allowed.

6. Is there a national law allowing individuals to access or demand any information from government bodies?

According to Article 24 of the Law of Turkmenistan "On the press and other mass media in Turkmenistan", citizens have the right to promptly receive through mass media reliable information about the activities of state bodies, public associations and officials.

Mass media have the right to receive such information from state bodies, public associations and officials. State bodies, public associations and officials furnish the media with the information in their possession, and allow them to familiarize themselves with documents.

Denied access to the requested data may be appealed against by a representative of the media to the superior body or official, and then to court in the order established by the Law for appealing against unlawful actions of state administration bodies and officials abusing the rights of citizens.

RECEIVING AND PUBLISHING INFORMATION

13. Is there a law or regulation that sets standards for state and official secrets?

The Law of Turkmenistan "On the protection of state secrets" of 24 November 1995.

Rules on limitations

Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related to national security?

Article 179 of the Criminal Code of Turkmenistan,

Disclosure of information, which constitutes state secrets, by a person who has access to state secrets, if this act has harmed the interests of the state, with a lack of indicia of treason, is punished with imprisonment for up to five years, with deprivation of the right to occupy certain posts or exercise certain activities for up to three years, or without such deprivation.

The same act, if it resulted in grave consequences, is punished with imprisonment for three to eight years with deprivation of the right to occupy certain posts or exercise certain activities for up to three years, or without such deprivation.

Article 180 of the Criminal Code of Turkmenistan,

Loss of documents containing state secrets, as well as objects, the information about which constitutes state secrets, by a person to whom they were entrusted in connection with his/her professional activities, if the loss is a result of a violation of the established rules of handling the specified documents or objects, is punished with correctional labour

for up to two years, or with imprisonment for up to two years, with deprivation of the right to occupy certain posts or exercise certain activities for up to three years, or without such deprivation.
The same act, if it resulted in grave circumstances, is punished with imprisonment for up to five years, with deprivation of the right to occupy certain posts and exercise certain activities for up to three years.

Turkmenistan

Prepared by the OSCE Centre in Ashgabad

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

The general principle on the right of public access to information is spelled out in Article 26 of the Constitution of Turkmenistan of 18 May 1992 last amended on 25 October 2005, which reads: "The citizens of Turkmenistan shall have the right [...] to receive information provided that it is not a state or any other secret protected by the law."

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

N/a

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

As the above quotation from the Constitution suggests information may not be disclosed if it is a state secret of another kind of secret, but the limitations on access to information shall be specified in the laws.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

Article 1 the Law of Turkmenistan "On Protection of State Secrets" of 24 November 1995 defines state secrets as information "affecting the defence, security, economic and political interests of Turkmenistan."

5. Are there other specific constitutional limits on access and dissemination of information?

N/a

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

N/a

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

N/a

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

N/a

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

N/a

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

In Article 1 of the Law of the Turkmen Soviet Socialist Republic "On Press and Other Mass Media in the Turkmen SSR" of 10 January 1991 it is stated that:

"Press and other mass media in the Turkmen SSR shall be free. The freedom of speech and freedom of press guaranteed to citizens of the Turkmen SSR by the Constitution of the Turkmen SSR shall mean the right to express opinions and convictions [and] search for, choose, receive and disseminate information and ideas in any form, including press and other mass media."

Article 24 of the Law on Press and Other Mass Media reaffirms the right to receive information via mass media. In particular, it reads:

"Citizens shall have the right to promptly receive via mass media trustworthy information about activities of the state authorities, public associations, [and] officials. Mass media shall have the right to receive such information from the state authorities, public associations and officials. The state authorities, public associations, [and] officials shall provide mass media with available information and [give mass media] the opportunity to get acquainted with documents. Refusal to provide with the information requested may be appealed by the mass media's representative to a higher level body or official and, then, to the court in accordance with the procedure established by the Law on appealing unlawful actions of the bodies of state administration and officials which violate the rights of citizens."

Article 30 of the Law on Press and Other Mass Media lists the rights of journalists, such as:

- to search for, receive and disseminate information;
- to meet with an official in the course of performing the journalist's professional duties;
- to make any records, including those made by means of audiovisual equipment, do filming and photographing, save instances stipulated by the law;
- to be present in areas struck with natural disasters, at meetings and demonstrations upon producing a journalist's ID;
- to approach experts for checking facts and circumstances related to the materials received."

11. Are there any limits in this law on access to, and publication of, information?

Article 5 of the Law on Press and other Mass Media prohibits the use of mass media for divulging the data that constitute a state or any other secret specially protected by the law.

Article 28 of the Law enumerates special cases when information may not be made public. According to it, mass media's editorial staff and journalists shall not:

- name a person who have given information under the stipulation that his/her name will not be made known, save instances when the court demands to make it known;
- disclose preliminary investigation findings without a written authorization by a prosecutor, investigator or a person making an inquiry;
- make public any information which may lead to identification of a juvenile offender without his/her consent or the consent of his/her legal representative;
- forejudge in their releases the outcome of court proceedings with respect to a particular case or in some other manner influence the court before the court decision comes into legal force.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

N/a

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

Section II, articles 6-12 of the Law on Protection of State Secrets lays down a general framework for levels of confidentiality and classification and declassification of the data that constitute state secrets. The Law establishes no specific categories and time periods; they should be set in subsequent by-laws adopted in the follow-up enactment process. Such by-laws are not available.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

Article 17 of the Law on Protection of State Secrets says that "disclosure of state secrets, i.e. communication, transfer, copying, publication, loss of secret documents or objects and communication of state secrets by any other means to persons who have no right to get acquainted with them, shall inflict responsibility envisaged by the legislation of Turkmenistan."

Disclosure of state secrets may be qualified as:

- high treason punishable by deprivation of liberty for the period up to 25 years under Article 171 of the Criminal Code of Turkmenistan if committed by the citizen of Turkmenistan;
- espionage punishable by deprivation of liberty for the period up to 25 years under Article 172 of the Criminal Code if committed by a foreign national or stateless person.

Disclosure of state secrets if it is not qualified as high treason may be punishable by deprivation of liberty for the period up to eight years under Article 179 of the Criminal Code.

The loss of the documents which contain state secrets may be punishable by deprivation of liberty for the period up to five years under Article 180 of the Criminal Code.

Disclosure of service secrets (one of categories of state and service secrets set by Article 2 of the Law on Protection of State Secrets) may be punishable by deprivation of liberty for the period up to seven years under Article 205 of the Criminal Code.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

The above mentioned articles 179, 180 and 205 of the Criminal Code are applicable only to those who have been granted access to state secrets. In case of espionage and high treason, the Criminal Code does not specify the target groups, meaning that articles 171 and 172 may be applied to anyone.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

Article 250 of the Criminal Code provides for punishment in the form of correctional work for the period of up to two years in case of unlawful receipt and disclosure of commercial and banking secrets which are defined and regulated by the Law of Turkmenistan "On Commercial Secrets" of 19 December 2000 and Article 20 of the Law of Turkmenistan "On Commercial Banks and Banking Activities" of 8 October 1993 as amended on 23 September 1994, respectively.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

Article 250 of the Criminal Code is applicable to anyone who has been involved in gathering the information constituting commercial or banking secrets by means of stealing documents, bribing or threatening persons who possess commercial or banking secrets or their relatives, intercepting via communication lines and by any other means with the purpose of disclosing or illegally using this information without the owner's consent.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

See the answers to questions 14-17 hereof.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

N/a

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

N/a

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

Article 10 of the Law on Protection of State Secrets sets certain limits on classification of information:

"Information concerning the rights, freedoms and legal interests of citizens and the way they [rights, freedoms and legal interests] are exercised, as well as information whose classification is threatening personal security and health of citizens shall not be subject to classification. Officials who have taken decision on classification of such information shall bear responsibility in accordance with the legislation of Turkmenistan depending on the damage caused to the society, State and citizens."

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

N/a

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

N/a⁴⁹

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

N/a

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

N/a

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

N/a

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

N/a

28. What are the penalties for refusing to reveal sources of information?

N/a

29. Are the journalists prohibited from revealing their source without the permission of the source?

N/a

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

N/a

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

N/a

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

N/a

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

N/a

⁴⁹ OSCE/RFOM's note: Law on the Press, Article 28. Special cases of confidentiality of data: "The editorial office, the journalist of mass media shall not have right to: name a person who has accorded data, subject to non-disclosure of his name, except for in cases where it is requested by order of the court; disclose pre-trial investigation data without written permission of a prosecutor, investigator or a person who conducted and inquest; give publicity to any information which may indicate a juvenile delinquent without his consent or consent of his legal representative; prejudice in their communications results of the judicial proceedings of a particular case or otherwise exert influence upon the court prior to coming into effect of court decision or sentence."

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

Communications may be disclosed but only upon an authorization of the prosecutor or decision of the court in accordance with the laws, including the Law of Turkmenistan "On Communication" of 20 December 1996.

Ukraine

Prepared by the Government of Ukraine (unofficial translation by the Office of the OSCE Representative on Freedom of the Media)

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Article 32 of the Constitution of Ukraine:

Every citizen has the right to examine information that is not a state secret or other secret protected by law about him/herself at the bodies of state power, bodies of local self-government, institutions, and organizations.

Article 34 of the Constitution of Ukraine:

Everyone has the right to freely collect, store, use and disseminate information verbally, in writing, or by another means of his/her choice.

Article 50 of the Constitution of Ukraine:

Everyone is guaranteed the right of free access to information about the environmental situation, the quality of food and consumer goods, and also the right to disseminate such information. No one shall make such information secret.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

Decision of the Constitutional Court of Ukraine in the case relating to official interpretation of Articles 3, 23, 31, 47, 48 of the Ukrainian Law on Information, and Article 12 of the Ukrainian Law on the Public Prosecutor's Office (the K.G. Ustimenko case) of 30 October 1997.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

Article 32 of the Constitution of Ukraine:

The collection, storage, use and dissemination of confidential information about a person without his or her consent shall not be permitted, except in cases determined by law, and only in the interests of national security, economic welfare, and human rights.

Article 34 of the Constitution of Ukraine:

The exercise of these rights may be restricted by law in the interests of national security, territorial integrity or public order with the purpose of preventing disturbances or crimes, protecting the health of the population, the reputation or rights of other persons, preventing the disclosure of information obtained confidentially, and maintaining the authority and impartiality of justice.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

Article 32 of the Constitution of Ukraine:

The collection, storage, use and dissemination of confidential information about a person without his consent shall not be permitted, except in cases determined by law, and only in the interests of national security, economic welfare, and human rights.

Article 34 of the Constitution of Ukraine:

The exercise of these rights may be restricted by law in the interests of national security, territorial integrity or public order with the purpose of preventing disturbances or crimes, protecting the health of the population, the reputation or rights of other persons, preventing the disclosure of information obtained confidentially, and maintaining the authority and impartiality of justice.

5. Are there other specific constitutional limits on access and dissemination of information?

Article 31 of the Constitution of Ukraine:

Everyone is guaranteed privacy of mail, telephone conversations, telegraph and other correspondence. Exceptions may only be established by the court in cases envisaged by law, with the purpose of preventing a crime or ascertaining the truth in the course of the investigation of a criminal case, if other ways of obtaining information are impossible.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

Ukrainian Law on Information No. 2657-XII of 2 October 1992 enforces the right of Ukrainian citizens to information and sets forth the legal foundations of media operation.

Article 21 of the Ukrainian Law on Information:

Information of government agencies and local and regional self-government bodies shall be understood as official documented information produced in the course of the current operation of the legislative, executive, and judicial power bodies, and local and regional self-government bodies.

The main sources of such information shall be: legislative acts of Ukraine, other acts adopted by the Verkhovna Rada [Parliament] and its bodies, decrees of the President of Ukraine, subordinate legislation, non regulatory acts of government agencies, acts of local and regional self-government bodies.

Information of government agencies and local and regional self-government bodies shall be brought to the attention of interested persons by way of:

- publication in official printed media or distribution by information services of the relevant government agencies and organizations;
- publication in printed mass media or public announcement by audio and audiovisual mass media;
- direct communication with the interested persons (verbally, in writing or otherwise);
- provision of access to archive documents;
- announcements during the public statements of officials.

Sources and the procedure for obtaining, using, disseminating, and storing official information of government agencies and local and regional self-government bodies shall be determined by legislative acts on such bodies

Sources and the procedure for obtaining, using, disseminating, and storing official information of government agencies and local and regional self-government bodies shall be determined by legislative acts on such bodies.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

Article 3 of the Ukrainian Law on Information

This law shall apply to information relations that arise in all spheres of the life and activity of society and the state when obtaining, using, disseminating, and storing information.

Article 7 of the Law on Information

The following shall be agents of information relations:

citizens of Ukraine;
legal entities;
the state.

Under this Law, the agents of information relations may also be other states, their citizens and legal entities, international organizations, and stateless persons.

8. Does the FOI law give journalists or media organizations a greater right of access to information than citizens?

Article 26 of the Ukrainian Law on Printed Mass Media (the Press) in Ukraine:

In carrying out his/her activity on the basis of professional independence, the journalist shall use the rights and fulfil the obligations envisaged in the Ukrainian Law on Information and in this Law.

The journalist shall be entitled to:

- (1) freely obtain, use, disseminate (publish) and store public access information;
- (2) visit government agencies, local and regional self-government bodies, as well as enterprises, institutions, and organizations, and be received by their officials;
- (3) openly make recordings, including with the use of any technical means, except as envisaged by law;
- (4) freely access statistical data, archive, library, and museum funds; limits to this access shall be predetermined only by the specifics of the valuables and special conditions of their storage as defined by current Ukrainian legislation;
- (5) priority obtaining of public access information;
- (6) free satisfaction of requests relating to access to official documents;
- (7) on presentation of the journalist's identification card or other document certifying employment by a printed media organization, to stay in a natural calamity or disaster zone, at accident sites, places of mass unrest, meetings and demonstrations, and in emergency areas.

Article 56 of the Ukrainian Law on Television and Radio Broadcasting:

Television and radio companies and their employees shall have the right to obtain from government agencies, enterprises, institutions, and organizations, regardless of their form of ownership, information necessary for carrying out their authorized activities in the manner envisaged by Ukrainian legislation.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

Article 26 of the Ukrainian Law on Printed Mass Media (the Press) in Ukraine:

In carrying out his/her activity on the basis of professional independence, the journalist shall use the rights

and fulfil the obligations envisaged in the Ukrainian Law on Information and in this Law.

The journalist shall be entitled to:

- (1) freely obtain, use, disseminate (publish) and store public access information;
- (2) visit government agencies, local and regional self-government bodies, as well as enterprises, institutions, and organizations, and be received by their officials;
- (3) openly make recordings, including with the use of any technical means, except as envisaged by law;
- (4) freely access statistical data, archive, library, and museum funds; limits to this access shall be predetermined only by the specifics of the valuables and special conditions of their storage as defined by current Ukrainian legislation;
- (5) priority obtaining of public access information;
- (6) free satisfaction of requests relating to access to official documents;
- (7) on presentation of the journalist's identification card or other document certifying employment by a printed media organization, to stay in a natural calamity or disaster zone, at accident sites, places of mass unrest, meetings and demonstrations, and in emergency areas.

Article 56 of the Ukrainian Law on Television and Radio Broadcasting:

Television and radio companies and their employees shall have the right to obtain from government agencies, enterprises, institutions, and organizations, regardless of their form of ownership, information necessary for carrying out their authorized activities in the manner envisaged by Ukrainian legislation.

11. Are there any limits in this law on access to, and publication of, information?

Article 30 of the Ukrainian Law on Information:

Restricted access information shall be categorized, in terms of its legal status, as confidential and classified.

Confidential information shall mean information possessed, used, or held by individuals or legal entities, and disseminated at their own discretion, subject to conditions established by same.

Access to information possessed or used by government agencies, local self-government bodies, enterprises, institutions, and organizations of all forms of ownership may be duly restricted for the purpose of its security, that is, such information may be given confidential status. The procedure for accounting for, storing, and using documents and other information carriers that contain such information is determined by the Cabinet of Ministers of Ukraine.

The following information, which constitutes government property and is used by government agencies, local self-government bodies, enterprises, institutions, and organizations of all forms of ownership, may not be classified as confidential:

- data on the state of the environment, the quality of foodstuffs and consumer goods;
- data on accidents, disasters, dangerous natural phenomena, and other emergencies that have occurred or may occur and threaten human safety;
- data on the state of public health, the standard of living, including nutrition, clothing, housing, medical services, and social security, as well as data on the sociodemographic situation, law and order, education, and culture of the population;
- data on the status of human and civil rights and freedoms, as well as instances of their violation;
- data on abuse of office by government agencies, local self-government bodies, and their officials;
- other information, access to which may not be restricted under the laws of Ukraine and international agreements, the binding nature of which is granted by the Verkhovna Rada of Ukraine.

Citizens and legal entities who possess professional, business, manufacturing, banking, commercial, and other information obtained at their own expense, or information that constitutes their professional, business, manufacturing, banking, commercial and other interests and does not violate the confidentiality rules envisaged by law, independently determine its access mode, including its classification category, and establish a system (means) of its protection.

An exception is commercial and banking information, as well as information, the legal status of which is determined by the Verkhovna Rada of Ukraine at the request of the Ukrainian Cabinet of Ministers (in respect of statistics, ecology, banking operations, taxes, and so on), and information, the concealment of which poses a threat to human life and health.

Information containing state or other secrets protected by law, the disclosure of which will damage the individual, society, or the state, constitutes classified information.

The classification of information as state secrets, and public access thereto are governed by the law on this information.

The procedure for classified information exchange and protection is set by the relevant government agencies, subject to the requirements of this Law.

The procedure and timelines for classified information disclosure are defined by the relevant law.

Restricted access information may be disseminated without the consent of its owner, provided information is of public significance, that is, if it is in public interest and if the public's right to know information overrides the right of its owner to its protection.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

OBTAINING AND DISSEMINATING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- **Different categories in terms of level of confidentiality?**
- **The period of classification and declassification?**

The Law of Ukraine on State Secrets regulates public relations related to classification of information as state secret, classification and declassification of its carriers, and protection of state secrets with the purpose of protecting the national security of Ukraine.

Rules on Limitations

14. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

Article 328 of the Criminal Code of Ukraine:

1.The disclosure of information constituting a state secret by a person to whom this information has been entrusted or became known in line of official duty, in the absence of signs of high treason or espionage, shall be punished by imprisonment for two to five years with deprivation of the right to hold certain offices or engage in certain activities for up to three years, or without same.

2.The same action entailing grave consequences shall be punished by imprisonment for five to eight years.

Article 212-2 of the Code of Ukraine on Administrative Violations:

Violations of legislation on state secrets, in particular:

(1) failure to observe the legislatively mandated procedure for transfer of a state secret to another state or an international organization;

(2) classification of information:

on the state of the environment, the quality of foodstuffs and consumer goods;

on accidents, disasters, dangerous natural phenomena, and other emergencies that have occurred or may occur and threaten human safety;

on the state of public health, the standard of living, including nutrition, clothing, housing, medical services, and social security, as well as on the sociodemographic situation, law and order, education, and culture of the population;

on instances of violation of human and civil rights and freedoms;

on abuse of office by government agencies, local self-government bodies, and their officials;

other information, access to which may not be restricted under the laws of Ukraine and international agreements, the binding nature of which is granted by the Verkhovna Rada of Ukraine;

(3) unjustified classification of information;

(4) assigning a classification code to the carriers of confidential or other secret information that does not constitute a state secret, or not assigning a classification code to information carriers that constitute a state secret, as well as unjustified cancellation or lowering of the classification code of the carries of secret information;

(5) violation of the legislatively mandated procedure for granting security clearance and access to state secrets;

(6) failure to ensure the protection of state secrets and failure to ensure control over the protection of state secrets;

- (7) carrying out activities related to state secrets without receiving special permission as duly envisaged for carrying out such activities, as well as placing government work orders and completing mobilization assignments relating to state secrets in government agencies, local self-government bodies, enterprises, institutions, and organizations that have not been granted special permission to carry out activities relating to state secrets;
- (8) failure to comply with legislative requirements on protecting state secrets in the course of international cooperation, during the reception of and work with foreign delegations, groups, foreign individuals, and stateless persons;
- (9) failure to implement regulations and requirements of cryptographic and technical protection of classified information, leading to a real threat of violation of the integrity of this information or its leaking via technical channels;

shall be punished by a fine of one to three personal exemption amounts imposed on citizens and a fine of three to ten personal exemption amounts imposed on officials.

Repetition within one year of any of the violations set forth in part 1 hereof for which a person was already disciplined administratively, shall be punished by a fine of three to eight personal exemption amounts imposed on citizens, and by a fine of five to 15 personal exemption amounts imposed on officials.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

Article 330 of the Criminal Code of Ukraine:

1. The transfer or collection for the purpose of passing to foreign enterprises, institutions, organizations, or their representatives of economic, scientific and technical or other data constituting confidential information that is the property of the state by a person to whom these data were entrusted or became known in line of official duty, in the absence of signs of high treason or espionage, shall be punished by imprisonment for up to three years, or imprisonment for two to five years with deprivation of the right to hold certain offices or engage in certain activities for up to three years, or without same.
2. The same actions committed for selfish purposes, or those which entailed grave consequences for the interests of the state, or committed repeatedly, or by previous concert by a group of persons, shall be punished by imprisonment for four to eight years with deprivation of the right to hold certain offices or engage in certain activities for up to three years.

Article 209-1 of the Criminal Code of Ukraine:

Illegal disclosure in any form of information given to a specially authorized executive agency on questions of financial monitoring by a person to whom such information became known in line of his/her professional or official duty, shall be punished by a fine of 2,000 to 3,000 personal exemption amounts, or imprisonment for up to three years, or imprisonment for the same term, with deprivation of the right to hold certain offices or engage in certain activities for up to three years.

Article 164-3 of the Code of Administrative Violations of Ukraine.

The acquisition, use, or disclosure of a commercial secret, as well as of confidential information, for the purpose of inflicting harm on the business reputation or property of another businessman, shall be punished by a fine of nine to 18 personal exemption amounts.

Article 166-9 of the Code of Administrative Violations of Ukraine:

The disclosure of information given to a specially authorized executive agency on questions of financial monitoring, or the instance of giving such information, shall be punished by a fine of 100 to 300 personal exemption amounts.

Article 185-11 of the Code of Administrative Violations of Ukraine:

The disclosure of information on security measures applied to a person taken under protection shall be punished by a fine of up to five personal exemption amounts.

Article 212-5 of the Code of Administrative Violations of Ukraine:

Violation of the procedure for registering, storing, and using documents and other information carriers containing confidential information that is the property of the state, which led to disclosure of such information, shall be punished by a fine of one to two personal exemption amounts imposed on citizens, and a fine of three to eight personal exemption amounts imposed on officials.

Repetition within one year of any of the violations set forth in part 1 hereof for which a person was already disciplined administratively, shall be punished by a fine of two to seven personal exemption amounts imposed on citizens, and a fine of eight to 13 personal exemption amounts imposed on officials.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorized disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Civil Code?

Article 328 of the Criminal Code of Ukraine:

1.The disclosure of information constituting a state secret by a person to whom this information has been entrusted or became known in line of official duty, in the absence of signs of high treason or espionage, shall be punished by imprisonment for two to five years with deprivation of the right to hold certain offices or engage in certain activities for up to three years, or without same.

2.The same action entailing grave consequences shall be punished by imprisonment for five to eight years.

Article 212-2 of the Code of Administrative Violations of Ukraine:

Violations of legislation on state secrets, in particular:

(1) failure to observe the legislatively mandated procedure for transfer of a state secret to another state or an international organization;

(2) classification of information:

on the state of the environment, the quality of foodstuffs and consumer goods;

on accidents, disasters, dangerous natural phenomena, and other emergencies that have occurred or may occur and threaten human safety;

on the state of public health, the standard of living, including nutrition, clothing, housing, medical services, and social security, as well as on the sociodemographic situation, law and order, education, and culture of the population;

on instances of violation of human and civil rights and freedoms;

on abuse of office by government agencies, local self-government bodies, and their officials;

other information, access to which may not be restricted under the laws of Ukraine and international agreements, the binding nature of which is granted by the Verkhovna Rada of Ukraine;

(3) unjustified classification of information;

(4) assigning a classification code to the carriers of confidential or other secret information that does not constitute a state secret, or not assigning a classification code to information carriers that constitute a state secret, as well as unjustified cancellation or lowering of the classification code of the carries of secret information;

- (5) violation of the legislatively mandated procedure for granting security clearance and access to state secrets;
- (6) failure to ensure the protection of state secrets and failure to ensure control over the protection of state secrets;
- (7) carrying out activities related to state secrets without receiving special permission as duly envisaged for carrying out such activities, as well as placing government work orders and completing mobilization assignments relating to state secrets in government agencies, local self-government bodies, enterprises, institutions, and organizations that have not been granted special permission to carry out activities relating to state secrets;
- (8) failure to comply with legislative requirements on protecting state secrets in the course of international cooperation, during the reception of and work with foreign delegations, groups, foreign individuals, and stateless persons;
- (9) failure to implement regulations and requirements of cryptographic and technical protection of classified information, leading to a real threat of violation of the integrity of this information or its leaking via technical channels;

shall be punished by a fine of one to three personal exemption amounts imposed on citizens and a fine of three to ten personal exemption amounts imposed on officials.

Repetition within one year of any of the violations set forth in part 1 hereof for which a person was already disciplined administratively, shall be punished by a fine of three to eight personal exemption amounts imposed on citizens and by a fine of five to 15 personal exemption amounts imposed on officials.

19. Do these penalties apply to the media for unauthorized disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

Article 47-1 of the Ukrainian Law on Information:

A person shall be released from liability for disclosing restricted access information if the court establishes that this information is of public interest.

Article 42 of the Ukrainian Law on Printed Mass Media (the Press) in Ukraine:

The editorial board or journalist shall not be liable for the publication of information that is untrue, insults the honour and dignity of citizens and organizations, violates the rights and legitimate interests of citizens, or constitutes abuse of printed media freedom and journalist rights, if:

- (1) such information was obtained from news agencies or from the founder (co-founders);

- (2) such information is contained in the response to a request for access to official documents, or a request for written or oral information provided in accordance with the requirements of the Ukrainian Law on Information;
- (3) such information is the verbatim reproduction of official statements by the officials of government agencies, organizations, or civil associations;
- (4) such information is the verbatim reproduction of documents published by another printed media organization and contains a reference thereto;
- (5) such information discloses a secret that is specially protected by law, but the journalist did not obtain such information illegally.

20. Have there any cases been brought in the last five years against:

- a. **Officials in charge of the leaked classified information?**
- b. **Members of the public?**
- c. **Journalists or media organizations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

PROTECTION OF PUBLIC INTEREST PUBLICATIONS

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

Article 30 of the Ukrainian Law on Information:

Restricted access information may be disseminated without the consent of its owner, provided such information is of public significance, that is, if it is in public interest and if the public's right to know this information overrides the right of its owner to its protection.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorized release of information that was of legitimate public interest?

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

Clause 11, Part 2, Article 26 of the Ukrainian Law on Printed Mass Media (the Press) in Ukraine:

The journalist has the right to keep the confidentiality of authorship and sources of information, except as ordered by the court.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

-

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

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26. How many times in the last five years has a journalist or media organization been required by a court or official to disclose their sources of information under this law or any other law?

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27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

Clause 11, Part 2, Article 26 of the Ukrainian Law on Printed Mass Media (the Press) in Ukraine:

The journalist has the right to keep the confidentiality of authorship and sources of information, except as ordered by the court.

28. What are the penalties for refusing to reveal sources of information?

29. Are the journalists prohibited from revealing their source without the permission of the source?

Clause 3, Part 3, Article 26 of the Ukrainian Law on Printed Mass Media (the Press) in Ukraine:

The journalist shall comply with the requests of persons who provide information regarding their authorship or confidentiality thereof.

Clause g), Part 1, Article 59 of the Ukrainian Law on Television and Radio Broadcasting:

The television or radio broadcasting organization shall, based on a documented confirmation, keep secret information about the person who provided information or other material on the condition of anonymity.

Article 1 of the Ukrainian Law on Government Support for the Mass Media and Social Protection of Journalists contains a definition of the profession of journalist.

The journalist is a creative worker who professionally collects, obtains, creates, and engages in preparing information for the mass media, fulfils official duties in the mass media organization (either as a staff employee or on a freelance basis) in keeping with the professional job (office) titles (work) of journalists contained in the national trades classifier of Ukraine.

30. In the media, who is protected from disclosure of sources:

- **The journalist? The editor? The publisher?**
- **Freelance journalists or commentators?**

Clause 3, Part 3, Article 26 of the Ukrainian Law on Printed Mass Media (the Press) in Ukraine:

The journalist shall comply with the requests of persons who provide information regarding their authorship or confidentiality thereof.

Clause g), Part 1, Article 59 of the Ukrainian Law on Television and Radio Broadcasting:

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31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

Clause 3, Part 3, Article 26 of the Ukrainian Law on Printed Mass Media (the Press) in Ukraine:

The journalist shall comply with the requests of persons who provide information regarding their authorship or confidentiality thereof.

Clause g), Part 1, Article 59 of the Ukrainian Law on Television and Radio Broadcasting:

The television or radio broadcasting organization shall, based on a documented confirmation, keep secret information about the person who provided information or other material on the condition of anonymity.

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32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

-

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

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34. Are third parties who act for journalists or media organizations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

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Ukraine

Prepared by the Legal Defense and Education Program, IREX U-Media

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

Art. 34 of the Constitution of Ukraine says:

“Everyone is guaranteed the right to freedom of thought and speech, free expression of their views and beliefs.

Everyone has the right to freely collect, process, use and disseminate information orally, in writing or any other way of their choice.

The realization of these rights may be limited by law in the interests of national security, territorial integrity or public order, with the aim of preventing disorders or crimes, protecting public health, protecting of reputation or rights of other people, preventing the dissemination of information received in confidence, or supporting the authority and impartiality of justice”.

Therefore, the Constitution envisages the right to receive information. Special laws define this right more concretely and guarantee its observance.

Thus, the Ukrainian Law “On Information” contains the following provisions.

Article 9. The Right to Information

All citizens of Ukraine, legal persons and state bodies have the right to information which envisages the possibility to freely receive, utilize, disseminate and preserve the data necessary for them to realize their rights, freedoms and legitimate interests, and to perform their tasks and duties.

The realization of the right to information by citizens, legal entities and the state must not violate civil, political, economic, social, spiritual, ecological and other rights, freedoms and legitimate interests of other citizens, and rights and interests of legal entities.

Every citizen is guaranteed free access to information pertaining to their personality, except the cases envisaged by the Ukrainian legislation.

Article 10. The guarantee of the right to information

The right to information is ensured by:

- the duties of government bodies, as well as local and regional self-government bodies, to provide information on their activities and adopted decisions;
- the establishment of special information services or systems within government bodies, which provide access to information in the legally-established way;
- free access by subjects of information relations to statistical data, archive, library and museum funds; limits of this access are only defined by the specificity of valuables and the special storage conditions established by law;
- establishing the mechanism of realization of the right to information;
- state control of observance of the legislation on information;
- establishing liability for violations of the legislation on information”.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

The right of access to information has been addressed by the Constitutional Court of Ukraine. The Constitutional Court decision in the case of official interpretation of Art. 3, 23, 31, 47, 48 of the Ukrainian “Law on Information” (the Ustimenko case) related to aspects of access by a citizen to information that was collected about himself. The Court found that any citizen has the right to know at any time what kind of information is collected about himself and who collects it.

There are also decisions of the national Ukrainian courts providing protection of the right of access to information: <http://mediapravo.org.ua/article.php?story=20051128204437389> .

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

Art. 34 part 3 of the Constitution of Ukraine says:

“The realisation of these rights (the right to freely collect, keep, utilize and disseminate information) may be limited by law in the interests of national security, territorial integrity or public order, with the aim of preventing disorders or crimes, protecting public health, protecting reputation or rights of other people, preventing dissemination of information received in confidence, or supporting the authority and impartiality of justice”.

In accordance with Art. 28 of the Ukrainian Law “On Information” in terms of the order of access, information is divided into the information with open access and information with limited access.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

Art. 30 of the Ukrainian Law “On information” establishes that:

Information with the limited access, depending on the legal regime, is divided into confidential and secret.

Confidential information is the data which are in the possession, usage and dissemination of separate physical persons and legal entities, which are distributed at their consent and according to conditions that they specify.

Secret information is the data that constitute state and other legally defined secrets, the dissemination of which harms the person, society or the state.

The classification of information as secret and access to such information by citizens is performed according to the law about this information.

Confidential information is the information about, *inter alia*, the private and family life of citizens, as well as professional, business, commercial and bank secrets.

5. Are there other specific constitutional limits on access and dissemination of information?

Article 32 of the Constitution of Ukraine:

“Nobody’s private and family life can be interfered, except in cases envisaged by the Constitution of Ukraine.

Collection, storage, utilization and dissemination of confidential information about a person without their consent is forbidden, except in cases established by law, and only in the interests of national security, economic well being and human rights”.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

The Law of Ukraine “On information” secures the right of Ukrainian citizens to information and lays grounds for information activities, including the definition of forms of international co-operation in the sphere of information. This Law establishes both the right of citizens to request any information with the open access regime, and the duty of public bodies to provide information on their activities and decisions.

The Law of Ukraine “On the media coverage of activities of government bodies and local self-administration bodies”.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

The Ukrainian Constitution stipulates that the Ukrainian laws apply to all citizens of Ukraine, persons staying in Ukraine and legal persons.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

Article 29 of the Law of Ukraine “On information” stipulates that the citizens who need information to perform their professional duties have the right of priority to access that information. Certainly, journalists belong to that category based on the law “On press media”, “On television and radio broadcasting”, “On the state support of media and social security of journalists”.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

Statistics on this subject are not maintained. This law is routinely applied by journalists and the media.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

Ukraine has adopted special laws which regulate the work of different types of media and establishing the rights of journalists: the Law “On the Print Media” (Article 26), “On Television and Radio Broadcasting” (Article 56), as well as generic laws “On the State Support of Media and Social Security of Journalists” (Article 15), “On the Media Coverage of Activities of Government Bodies and Local Self-Administration Bodies” (Article 3).

11. Are there any limits in this law on access to, and publication of, information?

Article 30 of the Law of Ukraine “On information” stipulates that:

Information with the limited access, depending on the legal regime, is divided into confidential and secret.

Confidential information is the data which are in the possession, usage and dissemination of separate physical persons and legal entities, which are distributed at their consent and according to conditions that they specify.

Secret information is the data that constitute state and other legally defined secrets, the dissemination of which harms the person, society or the state.

The classification of information as secret and access to such information by citizens is performed according to the law about this information.

Limitations on the publication of information are established by Articles 46, 47 of the Law “On Information”, by Laws “On the Print Media”, “On Television and Radio Broadcasting”, and by the Civil Code of Ukraine.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

Statistical data on this subject are not maintained. The law is routinely applied by journalists and media.
<http://mediapravo.org.ua/index.php?topic=20050422132741475>

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as:

- Different categories in terms of level of confidentiality?
- The period of classification and declassification?

Ukraine enacted the Law “On State Secrets” in 1994.

The law provides for several levels of classification. Depending on the level of secrecy, a state expert assigns the following levels of classification to information: “especially important”, “top secret” and “secret”.

According to part 1 of Art. 13 of the Law of Ukraine “On State Secrets”, the period of classification of information as a state secret may not exceed 30 years for information classified as “especially important”, ten years for “top secret” information, and five years for “secret” information.

After the expiration of the term the expert on secrecy decides on the cancellation of the decision on classification of information as state secret, or decides to extend the period of classification within the limits of the above-mentioned periods (part 2 of Art. 13).

The President of Ukraine, on his own initiative, or based on proposals of state experts on secrecy, or based on applications by public bodies, bodies of local self-administration, enterprises, offices, organisations of citizens, may establish longer periods of validity of decisions on the classification of information as state secrets than the periods established by part 1 of Art. 1 of the Law.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets related specifically to national security?

Criminal Code of Ukraine:

Article 328 Disclosure of State Secrets

1. Disclosure of information which constitutes state secrets by a person to whom this information was entrusted or became known in connection with their service, without indicia of treason or espionage, - is punished with imprisonment of two to five years, with the deprivation of the right to occupy certain positions or exercise a certain type of activities for the period of up to three years, or without such deprivation.
 2. The same act, if it resulted in grave consequences, - is punished with imprisonment of five to eight years.
-
1. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

15. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

The prohibition applies only to the officials whose duty is to protect secret information.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

Article 330 of the Criminal Code of Ukraine. Transmission or gathering of data which constitute confidential information owned by the state.

1. Transmission or gathering with the purpose of handing over to foreign enterprises, offices, organisations or their representatives of economic, scientific and technical or other information which constitutes confidential information owned by the state, by a person to whom this information was entrusted or became known in connection with the exercise of their duties, without indicia of treason or espionage, - is punished with imprisonment for up to three years, or imprisonment for two to five years, with the deprivation of the right to occupy certain positions or exercise certain activities for up to three years, or without such deprivation.
2. The same acts committed out of lucrative impulses, or acts that caused grave consequences for the interests of the state, or acts committed repeatedly, or in conspiracy by a group of persons, - are punished with imprisonment for four to eight years with the deprivation of the right to occupy certain positions or exercise certain activities for the period for up to three years.

The Law of Ukraine “On information” defines two types of information: information with the limited access and open information. Information with the limited access, in its turn, is divided into confidential and secret information (Art. 30 of the Law). Confidential information is the data which is owned, used and managed by individual physical persons or legal entities and is disseminated upon their wish in accordance with the conditions that they specify.

Concerning the information owned by the state and managed by public bodies or local self-administration bodies, enterprises, offices or organisations of all types of ownership, limited access may be established to such information for its protection. It may be assigned a confidential status, according to the Law.

The status of secret information must be defined by respective laws such as the laws “On Members of the Bar”, “On Banks and Bank Activities”, provisions concerning commercial secrets (Civil Code of Ukraine), medical secrets and the secrecy on confession.

Persons may also be liable under civil provisions for dissemination of information with limited access on common grounds and cases where harm is done.

Liability under the provisions of the Administrative Code of Ukraine in cases of administrative violations (Article 212-5 – Violation of recording, keeping and utilization of documents and other information bearers, which contain confidential information owned by the state; part 3 of Article 164-3 – receiving, utilizing and disclosing commercial secrets, as well as confidential information with the purpose of damaging the business reputation or property of another entrepreneur).

For the dissemination of such information the Criminal Code of Ukraine envisages the following sanctions: Art. 168: disclosure of the secret of adoption, Art. 159: violation of secrecy of voting. The Criminal Code of Ukraine also establishes liability for violation of privacy (Art. 182) and for illegal gathering with the purpose of utilization, or utilization of information which constitutes a state secret.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

According to Art. 159 of the Criminal Code – violation of secrecy of voting – the special subject of the crime is only a member of the electoral committee or another official who breaks the secrecy of voting with the use of their authority and position. They may be liable under criminal law.

According to Art. 168 of the Criminal Code of Ukraine (disclosing the secrecy of adoption), the general subject of this crime is a physical person who is criminally sane and has reached the age of 16. This person is liable regardless of the sources from which the subsequently disseminated information was initially received.

According to Art. 182 of the Criminal Code of Ukraine – violation of privacy – the generic subject of the crime is a physical person who is criminally sane and has reached the age of 16.

According to Art. 231 of the Criminal Code of Ukraine – disclosure of commercial secrets – the generic subject of this crime is a physical person who is criminally sane and has reached the age of 16.

The subject of criminal liability, according to *corpus delicti* defined by Article 330 of the Criminal Code of Ukraine is a physical person who is criminally sane and has reached 16 years of age. However, the subject has some peculiar features, because the disposition is constructed in such a way that liability occurs only for transmission of “confidential information which is owned by the state”, and according to Art. 30 of the Law of Ukraine “On Information” there must exist rules for classification of information as “confidential” approved by legal acts and the rules of access to this information by respective officials must also be defined. And official access (i.e. it may be “entrusted” or “become known”) to this “confidential” information, unlike to “state secrets”, may be given not only to the officials whose duty is to guard it. From the moment of such “access” the person who received this kind of information, including journalists (who “received [information] in connection with their duties”) may be held liable for its transmission or gathering with the purpose of transmission.

Administrative liability: according to Art. 212-5 of the Code of Ukraine of Administrative Offences – “violation of the order of recording, storage and utilization of documents and other information bearers containing confidential information owned by the state”. The subject of this crime is only the official whose duty was to ensure proper recording, storage and utilization.

Part 3 Art. 164-3 of the Code of Ukraine of Administrative Offences establishes liability for receiving, utilization and disclosure of commercial secrets, as well as of confidential information, with the purpose of damaging another entrepreneur’s business reputation or property. The subject of this offence is general: a physical person, criminally sane, who has achieved the age of 16.

According to the general provisions of the Civil Code of Ukraine and the provisions regulating compensations of the damage done as a result of the development of non-contractual relations (delict), any person who violated the rights, freedoms and interests of physical persons or legal entities may be liable under civil law. This includes the liability for violations of the right to non-interference with a person’s private life (Art. 301), the right to inviolability of residence, and the right to inviolability of honour, dignity and business reputation (Art. 270).

Thus, Article 1 of the Civil Code of Ukraine clearly establishes that the civil legislation regulates private, non-property and property relations, **based on legal equality**, free expression of the will and property autonomy of parties.

Art. 15 of the Civil Code of Ukraine notes that **each person** has the right to defend their civil right if it is violated, not recognized or contested.

Art. 1166 of the Civil Code of Ukraine establishes that the material damage inflicted by unlawful decisions, acts or inactivity to personal non-property rights of a physical person or legal entity, as well as the damage of the property of a physical person or legal entity, must be fully compensated by the person who has done the damage.

Art. 1167 of the Civil Code of Ukraine notes that moral damage done to a physical person or legal entity by unlawful decisions, acts or inactivity is compensated by the person who has done it, if that person is guilty.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

The Criminal Code of Ukraine uses the following terms related to secret data:

- state secret;
- data on medical examination detecting the HIV infection or another incurable infectious disease;
- medical secret;
- secrecy of the ballot;
- secrecy of correspondence, telephone conversations; telegraph or other correspondence transmitted by means of telecommunications or a computer;
- secrecy of adoption;
- commercial secret;
- bank secret;
- confidential information owned by the state;
- data on a pre-trial investigation or interrogation;
- professional secret;
- military data which constitute state secrets.

The Criminal Code envisages liability for disclosure of the above-mentioned secrets. *Corpus delicti* related to secrets and liabilities for them are defined in articles 111, 114, 132, 145, 159, 163, 231, 232, 328, 329, 330, 397, 422 of the Criminal Code of Ukraine.

Thus the subject of the crimes established by Art. 111 (treason), Art. 112 (espionage), Art. 328 (disclosure of state secrets), Art. 329 (loss of documents constituting state secrets), Art. 422 (disclosure of military data constituting state secrets, or loss of documents or materials containing such data) is a state secret. These articles provide for sanctions of imprisonment.

According to Art. 1 of the Law of Ukraine “On State Secrets”, a state secret (secret information) is a type of secret information which includes the data in the sphere of defence, economy, science and technology, external relations, state security and protection of public order, whose disclosure may harm national security of Ukraine, which have been recognized by the procedure established by this law as a state secret and are subject to protection by the state.

Classification of information is performed by a grounded decision of a state expert on secrets at his/her own initiative, at the request of heads of relevant government administrative bodies, bodies of local self-administration, enterprises, offices, organizations and citizens. Information is considered as a state secret from the moment of its publication in the Register of Data Constituting State Secrets, or in amendments to this Register as stipulated by law (Art. 10 of the Law of Ukraine “On State Secrets”). At present the Register of Data Constituting State Secrets approved by the injunction of the Security Service of Ukraine of 12 August 2005 No. 440 is in force. The Register was registered by the Ministry of Justice of Ukraine on 17 August 2005 under No. 902/11182.

Information which may be classified as state secret is listed in Art. 8 of the Law of Ukraine “On State Secrets”. Additionally this article stipulates that concrete data may be classified as state secret in accordance with levels of secrecy “especially important”, “top secret”, and “secret” only under the condition that they belong to the categories listed in part 1 of this article, and their disclosure may harm the interests of the national security of Ukraine.

Classification of any data is prohibited, if it would narrow down the contents and the volume of the constitutional rights and freedoms of a person and a citizen, and if it would harm public health and security.

The following types of information does not constitute state secrets:

- on the state of the environment, the quality of food and household items;
- on accidents, catastrophes, dangerous natural phenomena and other extreme situations, which have occurred or may occur and threaten the security of citizens;
- on the state of health of the population, its living standards, including nutrition, clothing, lodging, healthcare and social security, as well as on socio-demographic indexes, the state of law enforcement, education and culture of the population;
- on facts of violations of rights and freedoms of a person and a citizen;
- on illegal activities of public bodies, bodies of local self-administration and their employees;
- other information which cannot be classified in accordance with laws and international treaties that the Supreme Council of Ukraine approved as mandatory.

Art. 145 of the Criminal Code of Ukraine envisages criminal liability for deliberate disclosure of medical secrets by the person to whom it became known in connection with the execution of professional duties or service, if this act has resulted in grave consequences. The article specifies sanctions of a fine of up to 50 non-taxable minimum wages, or public labour for the term of up to 240 hours, or deprivation of the right to occupy certain positions or exercise certain activities for up to three years, or corrective labour for up to two years.

A medical secret – information of a disease, medical examination or check, and their results, intimate and family aspects of a citizen's right (Art. 40 of the Basic law on healthcare) – is also an object of a crime.

Illegal dissemination of data on a medical examination with the purpose of identifying the HIV infection or another infectious disease is punishable only by Art. 132 of the Criminal Code of Ukraine.

The objective aspect of *corpus delicti* provided for in Art. 145 of the Criminal Code of Ukraine envisages grave consequences such as suicide, self-inflicted injury, serious acute condition of a chronic disease etc.

The subjective aspect of this crime is characterised by the mixed form of guilt: a malicious intention of the act and carelessness towards its consequences.

Art. 159 of the Criminal Code of Ukraine envisages liability for deliberate violation of secrecy of the ballot during elections or a referendum expressed by disclosure of the contents of the will of a citizen who took part in elections or a referendum.

Art. 163 of the Criminal Code of Ukraine envisages liability for disclosure of the secret of correspondence, telephone conversations, telegraph and other correspondence transmitted by communication means or a computer.

The object of this crime is the data with the following compulsory features: 1). the data must of a personal secret of a citizen; 2). there must be special means of communicating the said data: via communication means or a computer. Telecommunications (electronic communications) is transmission, radiation and/or reception of signs, signals, written text, images and sounds, or messages of any kind through radio, cable, optic or other electromagnetic systems (Art. 1 of the Law of Ukraine "On Telecommunications System").

The violation of this article takes place when acts are committed in order to illegally learn about the data and messages of private individuals transmitted by communication means or a computer, if the citizen does not agree that the lawful method of accessing such data or messages has been applied.

The subject of this crime is general. The subjective aspect is a malicious intent.

Art. 231 of the Criminal Code of Ukraine envisages criminal liability for intentional activities to obtain data constituting commercial or bank secret, with the purpose of disclosure or other utilization of these data, as well as with the purpose of illegal utilization of these data, if that inflicted grave harm to an economic subject.

According to Art. 36 of the Economic Code of Ukraine, data related to the production, technology, management, financial or other activities of an economic subject, which do not constitute state secret, whose disclosure may harm the interests of the economic subject, may be found a commercial secret of the subject. The content and volume of

data constituting commercial secret and the method of their protection are defined by the economic subject according to law.

According to Art. 60 of the Law of Ukraine “On Banks and Bank Activities”, information about the business and financial situation of a client that became known [to the bank] in the process of serving the client and the relations with the client, or became known to third parties because of the bank’s services, if this information may do a financial or moral harm to the client, is classified as bank secret.

Bank secrets encompass the following information:

- 1). data on account balances of clients, including balances of correspondent accounts of a bank at the National Bank of Ukraine;
- 2). transactions performed in the benefit of the client or at his/her order; deals done by the client;
- 3). financial and economic status of clients;
- 4). security systems of a bank and clients;
- 5). information about the organisational structure and legal structure of a legal entity (the client of a bank), its management and the main fields of activity;
- 6). information about the commercial activity of clients or commercial secrets, any project, inventions, samples of products or other commercial information;
- 7). information about the bank’s accounting, except the information which is subject to publication;
- 8). codes used by banks for the protection of information.

Information about banks and clients which assemble for bank supervision constitutes bank secret.

This article’s provision does not cover the accumulated data about banks which are subject to publication. The list of data mandatory for publication is established by the National Bank of Ukraine and additionally by the bank itself at its discretion.

A considerable harm as a compulsory part of the subjective side of the crime is a value term and it is established by court (investigator, prosecutor).

Art. 330 of the Criminal Code of Ukraine envisages a criminal liability for dissemination or gathering with the purpose of handing over to foreign companies, offices, organizations or their representatives of economic, scientific and technical and other data which constitute confidential information owned by the state, by a person to whom these data were entrusted or became known in connection with the execution of his/her duties, without the *corpus delicti* of treason or espionage.

Confidential information is the data owned, used or managed by individual physical persons or legal entities and disseminated in accordance with their wish and on the conditions they have envisaged. Regarding the information owned by the state and is used by public administration bodies or bodies of local self-administration, enterprises, offices and organizations of all types of ownership with the purpose of its protection, the law may assign a regime of limited access (a confidential status). The order of recording, keeping and utilization of documents and other information bearers containing the specified information is established by the Cabinet of Ministers of Ukraine (Art. 30 of the Law of Ukraine “On information”). The said Art. 30 of the Law defines the data that may not be classified as confidential information.

In the Annex No. 13 to the Instructions on the order of recording, keeping and utilization of documents, files, publications and other material information bearers which contain confidential information owned by the state (approved by the decree of the Cabinet of Ministers of Ukraine of 27 November 1998 No. 1893), tentative criteria are defined for classification of information as confidential. Information included in the list of data which contain confidential information owned by the state must fulfil the following requirements:

- 1). It must be created at the expense of the state budget and be in possession, utilization or administration of an organisation;
- 2). It must be utilized with the aim of ensuring the national interests of the state;
- 3). It must not be classified as state secret;
- 4). If as a result of disclosure of such information:
 - violations of the constitutional rights and freedoms of a person and a citizen may occur;
 - negative consequences are possible for the internal political, foreign political, economic, military, social, humanitarian, scientific and technological, ecological and information spheres, as well as for the sphere of state security and state border security;
 - obstacles will be created for the work of state bodies.

Civil liability for unauthorised disclosure of secret data is provided for in the Civil Code of Ukraine, the Law of Ukraine “On information” and other laws.

Art. 47 of the Law of Ukraine “On Information” stipulates that persons will be liable for such violations of the legislation on information as:

- Unmotivated refusal to provide the requested information;
- Providing information which does not correspond the reality;
- Untimely provision of information;
- Deliberate concealment of information;
- Coercion to dissemination or impeding the disclosure of some information, as well as censorship;
- Dissemination of information which does not correspond the reality, harm the honour and reputation of a person;
- Unmotivated refusal to disseminate information about the private life of a citizen without his/her consent by a person who is the owner of this information because of the nature of his/her duties;
- Disclosure of a state or other secret protected by law by a person who must protect this secret;
- Violation of the order of information keeping;
- Deliberate destruction of information;
- Groundless classification of certain types of data as information with limited access;
- Violation of the order of recording, keeping and utilization of documents and other information bearers containing confidential information owned by the state.

As a result of unauthorised dissemination, possession and obtaining of secret information a certain property or non-property right of a person may be violated. This is subject to a civil liability. A person whose right is violated may use one of the means of protection stipulated by Art. 16 of the Civil Code of Ukraine, including:

- 3). Termination of the act violating a right;
- 4). Restoration of the status that existed prior to the violation;
- 8). Compensation of losses and other means of compensating moral harm;
- 9). Compensation of moral (non-property) harm;
- 10). Recognizing as illegal the decisions, acts and inactivity of a public body, local self-administration body and their officials.

Court may protect a civil right or interest in another way stipulated by a contract or law.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

Journalists and the media are liable for unauthorised dissemination, possession and obtaining of secret information in the general order, except in cases or exemptions from liability defined by specialized laws: “On Print Media (Press) in Ukraine”, “On Television and Radio Broadcasting”, “On Information Agencies” and “On State Support of Media and Social Security of Journalists”.

Thus, according to Art. 42 of the Law of Ukraine “On Print Media (Press) in Ukraine” an editorial office and a journalists are not liable for publication of data which do not correspond the reality, degrade the honour and dignity of persons or organisations, violate rights and lawful interests of citizens and are abuses of the freedom of print media and the rights of journalists, if:

- 1). These data are received from news agencies or from the founder (co-founders);
- 2). They are contained in the response to an information request on access to official documents or to a request for written or oral information submitted in accordance with the requirements of the Law of Ukraine “On Information”;
- 3). They are verbatim reproduction of official speeches by state bodies’ officials, organizations and associations of citizens;
- 4). They are verbatim reproduction of materials published by another medium with a reference to that medium;
- 5). They disclose the secret specially protected by Law, however they were not obtained by a journalist in an illegal way.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

In the last five years only one case is known when a criminal case was launched against a security officer for disclosure of state secrets.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

Article 30 of the Law of Ukraine "On Information" stipulates that Information with limited access, depending on the legal regime, is divided into confidential and secret.

Confidential information is the data owned, utilized and disseminated by individual physical persons and legal entities, which are disseminated according to their wish and on their conditions.

Secret information is the data which contains facts constituting state secret or other secret defined by law, whose dissemination would harm a person, the society or the state.

Classification of information as secret and access to this information by citizens is performed according to the law about this information.

Confidential information includes, *inter alia*, information about the private and family life of citizens, as well as professional, business, commercial and bank secrets.

As stipulated in Art. 11 of the said article, "information with limited access may be disseminated without consent of its owner in case this information is important for the public, i.e. if it is a subject of public interest and if the right of society to know this information overrides the right of its owner to protect it".

There is an opinion that this provision also covers information whose dissemination depends on the will of the owner of this information.

Information the access to which is regulated by law (for example, Art. 40 of the Basis of the Legislation of Ukraine on Healthcare "Medical Secret", Art. 226 of the Family Code of Ukraine "The Right to the Secrecy of Adoption" is recognized as a state secret) is not covered by the authority of part 11 Art. 30 of the Law of Ukraine "On Information".

However, in the same Law the term "information important for the public" is used again in Art. 47-1, which stipulates that "a person is exempted from liability for disclosing information with limited access, if the court finds that this information important for the public".

Art. 47 of the Law of Ukraine "On information" provides for liability for violations of the legislation on information. Types of liability: disciplinary, administrative or criminal, according to the legislation of Ukraine.

Liability for violations of the information legislation is born by the persons guilty of offences such as:

- utilization or dissemination of information about the private life of a citizen without his consent committed by a person who is the owner of the respective information because of his duties;
- dissemination of state and other secret protected by law by a person whose duty is to protect this secret.

Apart from this, since a journalist is not the owner of information with limited access because of his duties, and not the person who must protect state and other secrets, there are no grounds for prosecuting him.

The court will establish whether the information is publicly important only in case of a dispute when the owner of information is against its dissemination, and in case the person who disseminated information is prosecuted.

It is noteworthy that the term "publicly important information" has been copied into the Ukrainian legislation from the decisions of the European Court of Human Rights. Therefore, there is reference in Ukraine both to the case-law of the ECtHR based on Art. 9 of the Constitution, and to the Law of Ukraine "On the Execution of Decisions and

Application of the Case-Law of the European Court of Human Rights”, as well as to special articles of the Law of Ukraine “On Information”.

22. In practice, does the judiciary consider the public’s right to know as being overriding or equal to the government’s classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

An overview of the judicial practice for this period was prepared only by the Economic Court of Ukraine:

Pt. 9.3 The explanatory note of the Supreme Economic Court of Ukraine of 29 February 1997 No. 02-5/95 “On some practical issues of settlement of disputes related to compensation of moral harm” stipulates that “a person is exempted from such liability (compensation of moral harm)... for disclosing information with the limited access, if it is found that this information is important for the public, i.e. it falls under the criteria set by part 9 of Art. 30 of the Law of Ukraine “On Information”.

In 2002, the Supreme Court of Ukraine adjudicated a criminal case filed by Victor Medvedchuk (the then member of the Supreme Soviet of Ukraine) against journalist and writer Dmitry Chobot (also an MP at that time). Medvedchuk accused Chobot of illegal interference with his private life and dissemination of confidential information about him. The Supreme Court rejected Medvedchuk’s application and closed the case referring to the fact that the information that was disseminated was of public importance.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

The Ukrainian legislation does not have a direct provision which would envisage an exemption of journalists or editors from liability for not disclosing their sources of information.

The Law of Ukraine “On Print Media (the Press) in Ukraine” in Art. 26 “Rights and Responsibilities of a Journalist” provides for the right of a journalist:

“11). To keep the secrecy of authorship and sources of information, except in cases when this secrecy is revealed at a court order”.

The same article envisages a responsibility of a journalist

“3) to satisfy requests from persons who provide information regarding their authorship and the preservation of the secrecy of authorship”.

Although the legislation does not directly refer to such a right of journalists, this right actually emerges from the established responsibilities of journalists.

The Law of Ukraine “On Television and Radio Broadcasting” in its Art. 59 envisages the following responsibility of a broadcaster:

“Television and radio broadcasters must:

g). keep in secret, based on a certificate, the data about a person who handed over information or other materials on the condition of anonymity”.

Therefore, based on the obligation to protect sources of information, it may be concluded that this right exists.

Besides, according to the Constitution of Ukraine and the Law of Ukraine “On Implementation of Decisions and Application of the Practice of the European Court of Human Rights”, all the decisions of the European Court are part of the national legislation of Ukraine. Therefore, Ukraine applies the judgement of the ECtHR on the case of Goodwin v. UK, as well as the Recommendation No. R(2000) 7 of the Committee of Ministers of the Council of Europe.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

Ukraine is a unitary state; the only legislative body is the Supreme Council of Ukraine, and the Supreme Court must ensure uniform implementation of laws by courts all over Ukraine.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

Although there is no direct law in Ukraine about the protection of sources, on 30 March 2006 the Law “On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights” entered into force. Art. 17 of this law envisages that the Ukrainian courts while adjudicating cases must apply the Convention on the Protection of Human Rights and Basic Freedoms and the jurisdiction of the European Court of Human Rights as sources of law. Thus, during the adjudication of cases on the issue of requests on demands to disclose sources of information, or when making a decision to oblige a journalist to disclose his/her confidential sources, the Ukrainian courts must apply the European Convention on Human Rights (Art. 10), in particular, the judgement on the case of Goodwin v. United Kingdom (1996), as well as the recommendation of the Committee of Ministers of the Council of Europe No. R (2000) 7 “On the Right of Journalists not to Disclose Their Sources of Information”.

At present this Recommendation is the only source of the right on protection of sources for Ukrainian courts. This ensures quite a wide definition of journalists’ rights.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

We do not know of any decision that obliged journalists to reveal their sources of information. In 2003-2004 prosecutors tried to subpoena journalists who covered materials of the criminal investigation into Gongadze case as witnesses. In such a case Art. 385 of the Criminal Code of Ukraine (“refusal of a witness to testify or refusal of an expert or an interpreter to exercise their duties”) would have been applied to them. This article sanctions the refusal with a fine of 850 hrivnas to 5100 hrivnas (150 to 1000 US dollars). At the prosecutor’s offices the journalists were referring to their right to protect sources of information, as well as to article 26 of the Law “On Print Media (the Press)”. The prosecutor’s office also said journalists could have been prosecuted under art. 387 of the Criminal Code of Ukraine “Disclosure of Data of Investigation and Interrogation”. The mentioned article envisages a special subject of criminal liability: these may be either the participants of the trial (a witness, victim, civil plaintiff, lawyer, expert etc.), or other persons who were present during the investigatory actions, who sign mandatory agreements of non-disclosure of the secret of investigation. Journalists are not special subjects of this *corpus delicti*, therefore the statements of the prosecutor’s office may only be seen as attempts to intimidate journalists for the sake of preventing publications about criminal cases as such, as well as about the Gongadze case in particular. Journalists defended their right to publish any information about this case and nobody was held liable.

In the civil jurisprudence in cases of the protection of honour, dignity and business reputations there have also been attempts to oblige journalists by a court decision to reveal sources of information, however no such decisions have been made. In such cases, journalists referred to Art. 26 of the Law “On Print Media (the Press)” which establishes the right not to disclose sources of information and the obligation of journalists to keep their sources secret. In some cases, however, courts have obliged journalists to reveal their sources, but journalists refused to do that. The maximum punishment applied to journalists for this was a fine for contempt of court of 51 hrivnas, however in the majority of (a small number) of cases, the court ceased to demand the disclose referring to the refusals by journalists.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

The protection of sources provided for in the Ukrainian legislation at present is not absolute. However, journalists have always managed to defend this right, mainly by referring to the judgement of Goodwin v. UK and the provision of the Law “On the Press”.

28. What are the penalties for refusing to reveal sources of information?

Civil Code: if a journalist refuses to comply with the court order to disclose his/her sources of information, the judge may apply Art. 185-3 “Contempt of Court”:

“Contempt of court which is expressed by a malicious avoidance of reporting to court by the witness, the victim, the plaintiff, the defendant, or by non-compliance of the specified persons or other citizens with the decision of the Chair, or by violating the order during a court sitting, as well as by committing any acts demonstrating obvious contempt of court or of the rules established in courts”.

This offence is punished with a fine of 102 to 204 hrivnas (20 to 40 US dollars), or with an administrative arrest for the period of up to 15 days.

Criminal sanctions for journalist’s refusal to disclose confidential sources of information or contempt of court have not been established.

29. Are the journalists prohibited from revealing their source without the permission of the source?

According to part 2 of Art. 26 of the Law “On Print Media (the Press)”, a journalist has the right to:

“11). keep the secrecy of authorship and sources of information, except in cases when this secrecy is revealed at a court order”.

Part 3 of Art. 26:

“3) to satisfy requests from persons who provide information regarding their authorship and the preservation of the secrecy of authorship”.

The Law of Ukraine “On Television and Radio Broadcasting” in its Art. 59 envisages the following responsibility of a broadcaster:

“Television and radio broadcasters must:

g). keep in secret, based on a certificate, the data about a person who handed over information or other materials on the condition of anonymity”.

Therefore, a journalist may not disclose the identify of his/her source without permission of the source.

30. In the media, who is protected from disclosure of sources:

- **The journalist? The editor? The publisher?**
- **Freelance journalists or commentators?**

Taking into account the absence of concrete provisions in the national legislation on the protection of sources of information, categories of persons who are covered by the guarantees of protection from demands to reveal sources are not clearly defined. The Law of Ukraine “On the State Support of the Media and the Social Security of Journalists” in its Art. 1 stipulates that “a journalist is a creative worker who professionally collects, receives, creates and prepares information for media, completes editorial tasks and duties in a medium (as a staff member or a free-lancer).” Therefore, the guarantees of protection against demands to reveal sources of information are extended to all included into the definition, i.e. print media journalists, journalists of television and radio broadcasters, editors of all media (since editors are also creative workers), freelancers and commentators.

Publishers of media may be legal entities and private persons who are not journalists. Therefore, the protection of sources provisions does not cover media publishers.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

The protection of sources provisions established by the national legislation also cover broadcast media employees, regardless of the method of broadcasting. The main criterion for such protection is whether it is the journalists who disseminate information.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

According to the Ukrainian legislation, Internet publications are not recognized as media. However, some print publications, television and radio broadcasters and news agencies have Internet versions, i.e. they publish the version

of their publication on a web page. In such cases, protection is extended to those media too. Internet newspapers which are not media are not covered by the protection of sources provisions.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

Article 30 of the Constitution of Ukraine guarantees the inviolability of residence to each person:

“It is inadmissible to penetrate a home or other property of a person, examining or searching them except in compliance with a motivated court decision.

In emergency cases, related to saving lives of people or property, or with the direct chasing or persons who are suspected of having committed a crime, another way of penetrating a home or another property, examining and searching them, which is established by law, is possible.”

The legislation of Ukraine does not envisage a ban on searching properties belonging to media or journalists, or any special conditions for searching such properties.

We must note that searches of editorial premises have been applied by law enforcement agencies for identifying journalists’ confidential sources, as in the case of Internet newspaper *Obkom* (<http://www.obkom.net.ua/old/editorial.php>).

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists’ communications with sources, or from interception of them?

The national legislation does not envisage the protection of third parties who work for journalists or media against demands to reveal data about journalists’ contacts with sources or against interception of such contacts.

United Kingdom

Prepared by the Government of the United Kingdom

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

The UK does not have a written constitution.

In the UK there is a statutory right of access to recorded information held by the UK Government departments, Houses of Parliament, Northern Ireland Assembly, National Assembly for Wales, the armed forces, and also by other public authorities in England, Wales and Northern Ireland. This right is provided by the Freedom of Information Act 2000 (the Act). (The Scottish Parliament and public authorities in Scotland are covered by equivalent legislation: 'The Freedom of Information (Scotland) Act 2002' - Please see link to website: <http://www.itspublicknowledge.info/yourrights/index.htm>)

The 'public authorities' covered by the Freedom of Information Act 2000 (in addition to those listed above) include those that come under the headings of:

- local government;
- the national health service;
- maintained schools, colleges and universities;
- the police;
- numerous other non-departmental public bodies, committees and advisory bodies.

The legislation and comprehensive guidance about its coverage and provisions can be found on the website of the Department for Constitutional Affairs (DCA) at: <http://www.foi.gov.uk/index.htm>.

NB – Where information requested from a 'public authority' consists of personal data about the applicant, the Freedom of Information Act does not apply, since the statutory right of access is provided by the Data Protection Act 1998 (which implements into UK law EC Directive 95/46/EC). See link to DCA website: <http://www.dca.gov.uk/foi/datprot.htm>.

Environmental Information Regulations 2004 (EIRs)

The UK has EIRs which make specific provision for access to environmental information.

The current 2004 EIRs replace EIRs made in 1992.

The new Regulations in England, Wales and Northern Ireland (and similar regulations in Scotland) enable compliance with the UK's commitments under the Aarhus Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters, and with the new EU Directive 2003/4/EC on public access to environmental information.

Further information can be found on the website of the Department for Environment, Food and Rural Affairs (DEFRA), who have responsibility for the EIRs, at: <http://www.defra.gov.uk/corporate/opengov/eir/index.htm>.

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

Currently, there have been no rulings in the UK High Courts as to the interpretation of the Freedom of Information Act 2000.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

Under the Act, anyone can ask for any recorded information held by a 'public authority.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

The Act provides exemptions from the right of access. These exemptions cover:

- Information Accessible By Other Means;
- Information Intended For Future Publication;
- Information Supplied by, or Related to, Bodies Dealing with Security Matters;
- National Security;
- Defence;
- International Relations;
- Relations Within The United Kingdom;
- The Economy;
- Investigations And Proceedings Conducted By Public Authorities;
- Law Enforcement;
- Court Records;
- Audit Functions;
- Parliamentary Privilege;
- Formulation Of Government Policy;
- Prejudice to Effective Conduct of Public Affairs;
- Communications With Her Majesty, With Other Members Of The Royal Household, And The Conferring By The Crown Of Any Honour Or Dignity;
- Health And Safety;
- Environmental Information;
- Personal Information;
- Information Provided In Confidence;
- Legal Professional Privilege;
- Commercial Interests;
- Prohibitions On Disclosure.

Please see DCA website for detail: <http://www.foi.gov.uk/guidance/index.htm>.

5. Are there other specific constitutional limits on access and dissemination of information?

Disclosure of certain information is prohibited by various other enactments. See section 44 of the Act.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

Please see answer to Question 1 above.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

None.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

No.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

Under the Freedom of Information Act, applicants are not obliged to give their occupations or the reason they want information. Therefore, statistics on the use of the law by journalists and media organisations (or any other professional group) are not available, because they are not required. However the Information Commissioner's Office has published some research on different types of requestors:

(http://www.ico.gov.uk/about_us/research/freedom_of_information.aspx).

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

No.

11. Are there any limits in this law on access to, and publication of, information?

Please see answer to Question 4 above.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

Please see answer to Question 8 above.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- a. Different categories in terms of level of confidentiality?
- b. The period of classification and declassification?

The UK Official Secrets Act 1989

(www.opsi.gov.uk/acts/acts1989/Ukpga_19890006_en_1.htm) makes it an offence for a person who is or has been a Crown servant or a government contractor to disclose certain categories of information without authority. These categories relate to security and intelligence, defence, international relations, crime and special investigation powers.

The UK protective marking scheme was set out by the Prime Minister in a Parliamentary debate on 23 March 1994. The system, which came into effect on 4 April 1994, sets out criteria to determine the appropriate classification of assets (Non-Protectively Marked, Restricted, Confidential, Secret, Top Secret) depending on the sensitivity of the information and potential damage that could result from inappropriate disclosure. The detailed response can be found in the official Hansard record of House of Commons Debates found at: <http://www.publications.parliament.uk/pa/cm199394/cmhansrd/1994-03-23/Writtens-4.html> (columns 259 - 260).

Protective markings remain for the lifetime of an asset. However, the passage of time and other factors may reduce the sensitivity of particular information. In such cases, and with the originator / subject matter owner's consent, the classification applied to an asset may be downgraded.

Under the terms of the Public Records Act 1958, the Public Records Act 1967 and the Freedom of Information (FoI) Act 2000, official documents that are considered worthy of permanent preservation are released to the National Archives (separate national record offices exist for Scotland and Northern Ireland). This usually takes place 15-20 years after creation, though the Act allows records to be retained for up to thirty years after creation. Some records may still be 'retained' by government departments; for example documents containing information whose release could damage national security or international relations. Departments must request approval to retain records from the Lord Chancellor, and such approval normally lasts for five years, after which time a new request must be made. Cabinet Papers are generally released to the National Archives 30 years after they were created though sections may

be redacted if they are considered likely to cause "damage to the country's image, national security or foreign relations". Further information can be found at: <http://www.nationalarchives.gov.uk/policy/act/system.htm>.

Under the terms of the Freedom of Information Act 2000, (<http://www.opsi.gov.uk/acts/acts2000/200000036.htm>) individuals may request access to any official document produced by a UK Public Authority. This act is subject to a range of exemptions whereby a FoIA request may be refused (or sensitive information redacted) if the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

Yes, the Official Secrets Act 1989, see Question 13. The Act applies to Crown servants and Government contractors. But anyone who is entrusted with sensitive information has a duty of care for any information in their possession. There is also a duty, placed primarily on officials, under section 19 of the Regulation of Investigatory Powers Act 2000 to keep secret information about interceptions.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

Under the terms of section 5 of the Official Secrets Act 1989, it is an offence to disclose or publish information obtained in contravention of other sections of the Act (i.e. without proper authority). This section applies to everyone, regardless of whether they are a government employee, or whether they have signed the act.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

See answer to question 13. There are statutory bars on the release of information to do with national security in the Freedom of Information Act 2000.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

See answers to questions 13 and 15.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

The maximum penalty under any section other than sections 8 (1) (4) or (5) is two years' imprisonment or a fine or both. A person guilty of an offence under section 8(1), (4) or (5) above is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale or both.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

See above.

20. Have there any cases been brought in the last five years against:

- Officials in charge of the leaked classified information?
- Members of the public?
- Journalists or media organisations?

Please describe the outcomes, including the date of the case, the defendants and the charges.

No detailed overview is currently available.

PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

Under the terms of the Official Secrets Act 1989, there is no defence for disclosing information based on an individual's interpretation of the national or public interest. However, the Public Interest Disclosures Act 1998, (<http://www.legislation.hmso.gov.uk/acts/acts1998/19980023.htm>), popularly known as the 'whistleblowers act', provides employees, both in the public and private sector, with a framework of legal protection against victimisation and dismissal if they disclose information in certain circumstances. It allows individuals to make disclosures about crime, breaches of legal obligation, miscarriage of justice, danger to health and safety or the environment, and the cover up of any of these issues.

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

Not on the Official Secrets Act but reference might be made to the Freedom of Information Act.

PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

No.⁵⁰

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

There is no national law (see 23).

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

See 32.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

See 32.

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

See 32.

28. What are the penalties for refusing to reveal sources of information?

⁵⁰ OSCE/RFOM's note: Contempt of Court Act 1981: "10.- No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible, unless it be established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime."

See 32.

29. Are the journalists prohibited from revealing their source without the permission of the source?

See 32.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

See 32.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

See 32.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

The answer below covers responses to questions 25-32 and 34:

Powers to obtain written material or oral evidence, including that of journalists, is found in S2 Criminal Procedure (Attendance of Witnesses) Act 1965 (available from [Parliamentary Archives](http://www.parliamentary.uk/archives)) in the Crown Court and S97 of the Magistrates' Courts Act 1980. (http://www.swarb.co.uk/acts/1980Magistrates_CourtAct.shtml)

There is no exemption for journalists but if the defence or prosecution made an application for a summons for journalistic material and the journalist objected, he/she may challenge the application for a summons before it is issued under the 1965 Act. A person issued with a witness summons may also apply for it to be set aside but only on the grounds that he was not notified of the application for a summons and was not present or represented at the hearing of the application.

Anyone who fails to obey witness summons to attend court or produce material is punishable a contempt of court and may be punished summarily by that court as if his contempt had been committed in the face of the court (S3 1965 Act). The maximum penalty is 3 months imprisonment.

Failure to comply with a similar order under the Magistrates' courts provision is also punishable as contempt, with a maximum of one month in prison or a fine not exceeding £2,500 or both.

More generally anyone, including journalists, who refuse to reveal information to the court is subject to the Contempt of Court Act.

All this applies to both the journalists themselves and third parties who may hold that material.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

No. The various powers of entry, search and seizure under the Police and Criminal Evidence Act (PACE) 1984 (available from [Parliamentary Archives](http://www.parliamentary.uk/archives)) apply to any premises.

Powers to apply for and execute search warrants or production orders (sections 8 and 9 and Schedule 1 of PACE) do not allow police to search for and seize journalistic material that is held in confidence and is 'excluded material' as defined under s11 PACE. Other journalistic material (not held in confidence) can be searched for and seized under a court order or warrant.

Restrictions on searching for and seizing journalistic material, whether or not it is 'excluded material', do not apply when the police exercise their 'without warrant or court order' powers of:

- entry, search and seizure after arrest (under s18 and s32 PACE);
- seizure when the constable is lawfully on premises (s19 PACE).

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

See 32.

United States of America

Prepared by the Government of the United States of America

RIGHT OF ACCESS TO INFORMATION

Constitutional Rights

1. In your country, is there a constitutional right of public access to information or to documents held by government bodies?

The Constitution of the United States does not include a constitutional right of access to public information or to government documents and, apart from a limited right of access to certain judicial proceedings and related judicial documents, the U.S. Supreme Court has not construed the Constitution to support such a right.⁵¹

2. Has the Constitutional Court, the highest court or appellate court interpreted or enforced this right?

Not applicable; see response to No. 1 above.

3. Does this right apply to all information, or is it limited, in order to protect certain rights or types of information from disclosure?

Not applicable; see response to No. 1 above.

4. If so, what are the limits and how are they defined by law (for example, the common exceptions made for national security)?

Not applicable; see response to No. 1 above.

5. Are there other specific constitutional limits on access and dissemination of information?

Not applicable; see response to No. 1 above.

Legal Rights

6. Is there a national law (a Freedom of Information Act, or a Freedom of Information (FOI) Law) allowing individuals to access or demand any information from government bodies? Please name the law and provide an English translation, and a web link, if available.

The U.S. Freedom of Information Act, or FOIA (5 U.S.C. § 552), broadly requires U.S. federal agencies to disclose records to any individual upon receipt of a proper request, although the FOIA exempts various categories of information (including classified information) from disclosure.

In addition, several other U.S. laws permit individuals to access certain U.S. federal government records. Here are some of the more significant examples:

- The Privacy Act, 5 U.S.C. § 552a, the Government in the Sunshine Act, 5 U.S.C. § 552b, and the Federal Advisory Committee Act, 5 U.S.C. App., each require federal agencies to make accessible certain federal agency information or records to members of the public;
- Another federal law, 44 U.S.C. § 1505, requires federal agencies to publish certain records and information in the Federal Register, which is available to the general public;

⁵¹ Certain U.S. state constitutions may create a right of public access to state government records, but the responses to this questionnaire are limited to laws applicable to the federal government.

- Federal agencies are subject to scores of statutory Congressional reporting requirements, and information and records generated in response to these requirements is typically made public by the U.S. Congress;
- Records filed in federal court in the United States are typically available to the public unless they have been filed under seal pursuant to court order;
- Parties in litigation in the United States may request information or records from U.S. federal agencies pursuant to judicial discovery rules and/or agency regulation.

7. Are there limits on who can use this law (for reasons of citizenship, legal status, etc)?

We assume that this question is directed only at the FOIA. The FOIA generally provides that any person may obtain records under that statute. There are no express statutory restrictions on the categories of persons who are eligible to use the FOIA.

8. Does the FOI law give journalists or media organisations a greater right of access to information than citizens?

The FOIA reduces the amount of fees payable by members of the news media, and (in certain circumstances) permits news media requesters to seek expedited processing of their FOIA requests.

9. If there is a FOI law, please provide the statistics on the use of the law by journalists and media organizations.

These statistics are not maintained. It is common knowledge, however, that the FOIA is very widely used by both the media and the general public.

10. Is there a media or press law that gives journalists any additional rights of access to information? Please name the law and provide an English translation, and a web link, if available.

No.

11. Are there any limits in this law on access to, and publication of, information?

Not applicable; see response to No. 10 above.

12. If there is a legal right in a media or press law to access information, please provide the statistics on the use of that law by journalists and media organizations.

Not applicable; see response to No. 10 above.

Note: Unless otherwise noted, the U.S. Government Printing Office website, <http://www.gpoaccess.gov>, contains electronic versions of all of the references cited above, which can be accessed by typing in the citations above.

RECEIVING AND PUBLISHING INFORMATION

Rules on Classification

13. Is there a law or regulation (a State Secrets Act, Official Secrets Act or Protection of Classified Information Act) that sets standards for state and official secrets, such as :

- c. Different categories in terms of level of confidentiality?**
- d. The period of classification and declassification?**

Yes. The U.S. Constitution confers the executive branch of the U.S. government with the authority to protect state secrets and sensitive national security information, and various federal statutes provide additional authority for the classification of national security information and the regulation of access to such information. See, e.g., 50 U.S.C. § 426 (definition of classified information); 50 U.S.C. § 435 (statutory authority for Presidential orders and regulations governing access to classified information). For many years the executive branch has issued executive orders

governing classified national security information. The current relevant executive order is Executive Order 13292, Further Amendment to Executive Order 12958, as Amended, Classified National Security Information. See <http://www.archives.gov/isoo/policy-documents/eo-12958-amendment.pdf>.

Rules on Limitations

14. Does any law, administrative, criminal, or other prohibit the unauthorized disclosure, possession or publication of state secrets *related specifically to national security*?

Various federal statutes ban the unauthorized disclosure of classified information or certain information affecting national defense or national security, including 18 U.S.C. § 793, 18 U.S.C. § 794, 18 U.S.C. § 798, 50 U.S.C. § 421, and 50 U.S.C. § 783.

15. Do these prohibitions only apply to officials whose duty is to protect secret information, or do they also apply to persons who have not signed security agreements, such as members of the public, including the media?

Most of the prohibitions cited above apply to anyone who acts with the requisite criminal intent.

16. Does any law, administrative, criminal, or other, prohibit the unauthorized disclosure, possession or publication of *non-national security related* information held by government bodies or those conducting public business? Please list what types of information are covered by this?

Yes. A variety of statutes restrict the unauthorized disclosure of various categories of sensitive, unclassified information. For example, the Trade Secrets Act, 18 U.S.C. § 1905, prohibits the unauthorized disclosure of certain commercial or financial information. The Privacy Act, 5 U.S.C. § 552a, prohibits the unauthorized disclosure of certain personal information. Many of these statutes are discussed in the United States Department of Justice's analysis of the statutes that permit information to be withheld from FOIA requesters – this analysis is available at <http://www.usdoj.gov/oip/exemption3.htm>.

17. Do these prohibitions only apply to officials, or do they also apply to persons who have not signed security agreements, such as members of the public including the media?

Although the reach of the statutes referenced in response to No. 16 varies considerably, they typically apply only to federal government personnel.

Rules on Sanctions

18. What are the civil or criminal penalties for unauthorised disclosure, possession or publication of classified information? Is this part of the regulation on classification, or is it found in another law, such as the Criminal or Penal Code?

Sanctions for unauthorized use of classified information include reprimand and other disciplinary measures against federal government personnel, and criminal penalties for violation of the various statutory criminal prohibitions against disclosure described above.

19. Do these penalties apply to the media for unauthorised disclosure, possession or publication of classified information? Are there additional or higher penalties for mass publication of information?

See response to question number 15.

20. Have there any cases been brought in the last five years against:

- **Officials in charge of the leaked classified information?**
- **Members of the public?**
- **Journalists or media organisations?**

Please describe the outcomes, including the date of the case, the defendants and the charges.

We are unable to respond to this question as phrased.

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PROTECTION OF PUBLICATION IN THE PUBLIC INTEREST

21. In cases of breach of secrecy by the media, does the law acknowledge that society's right to know about issues of public interest might override the government's classification? Does the law oblige the judiciary to apply the public-interest test to evaluate the government's classification concerns?

As explained in response to question 13, U.S. law confers the executive branch of the federal government, rather than the judicial branch, with the authority to protect state secrets. The executive branch has incorporated a "balancing test" into the United States national security classification system. Executive Order 13292 states that in "some exceptional cases," information should be declassified because "the need to protect such information may be outweighed by the public interest in disclosure of the information."

22. In practice, does the judiciary consider the public's right to know as being overriding or equal to the government's classification concerns? Are there milder or no sanctions imposed on journalists and the media for unauthorised release of information that was of legitimate public interest?

We are unable to respond to this question as phrased.

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PROTECTION OF SOURCES

23. Is there a national law on the protection of journalists (also referred to as 'shield law') from sanctions for refusing to disclose their sources of information?

No.

24. If there are sub-national divisions, such as states or provinces, do they follow the national law or independently recognize the right?

Many states have enacted state laws respecting confidential media sources.

25. If there is no national law, are there court decisions, regulations or processes that recognize protection of sources and limit their disclosure?

Some federal courts have recognized a qualified reporter's privilege that protects confidential media source information in some circumstances. Additionally, the United States Department of Justice has issued guidelines, available at 28 C.F.R. § 50.10, limiting the circumstances in which federal prosecutors can seek to compel the disclosure of confidential source information.

26. How many times in the last five years has a journalist or media organisation been required by a court or official to disclose their sources of information under this law or any other law?

We are unable to respond to this question as phrased. We are not in possession of the information sought.⁵²

27. Is the protection absolute? Under what circumstances can an official or a court order a journalist to reveal sources?

No. See response to No. 25 above.

28. What are the penalties for refusing to reveal sources of information?

⁵² OSCE/RFOM's note: According to information obtained by the Reporters Committee under the Freedom of Information Act, there were 65 subpoenas for sources information by the federal government between 2001 and 2006. http://www.rcfp.org/shields_and_subpoenas.html.

If a subpoena or other court order were to require the disclosure of information regarding a journalist's confidential source, the potential penalties for refusing to comply with the order would include criminal contempt proceedings.

29. Are the journalists prohibited from revealing their source without the permission of the source?

Not applicable; see response to No. 23 above.

30. In the media, who is protected from disclosure of sources:

- The journalist? The editor? The publisher?
- Freelance journalists or commentators?

Not applicable; see response to No. 23 above.

31. Is protection extended to those working for broadcasting media (television, radio, including cable and satellite programmes)?

Not applicable; see response to No. 23 above.

32. Is protection extended to different types of Internet-based media, Internet journalists and commentators?

Not applicable; see response to No. 23 above.

33. Are searches of property belonging to the media or the journalists, such as newsrooms or apartments, prohibited by law?

The Constitution of the United State prohibits unreasonable government searches and seizures, including unreasonable searches of property belonging to journalists in which there is a legitimate expectation of privacy.

34. Are third parties who act for journalists or media organisations, or provide services to them (like telephone or internet providers) also protected from disclosure of data on journalists' communications with sources, or from interception of them?

Not applicable; see response to No. 23 above.

Note: Unless otherwise noted, the U.S. Government Printing Office website, <http://www.gpoaccess.gov>, contains electronic versions of all of the references cited above.

Uzbekistan

No data have been received