

Article 3

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Improving access to information in Cyprus in public institutions: recent initiatives and developments



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The aim of this article is to outline the approach of the Republic of Cyprus regarding one of the main fundamental rights of a modern society: the right of access to information. In a democratic country such as Cyprus, people should be able to access a wide range of information in order to participate in a real and effective way in the matters that affect them. A general principle behind the right of access to information is that public bodies are – or should be – acting as "servants of the people", therefore we all have the right of access to the information held by public bodies on our behalf.

Introduction

As a result of campaigns to promote the right of access to information, 98 countries have currently adopted access to information laws. In addition, the right of access to information has been recognised as a fundamental human right by the highest international human rights courts.

There are two main obligations of governments regarding the right of access to information, namely: (i) it is their obligation to publish and disseminate to the public all information which is not restricted by the exceptions stated in the paragraph below; such exceptions include information that if disclosed would be a threat to national security; and (ii) a reactive obligation to receive from the public requests for information and to respond accordingly, subject again to the aforementioned exceptions.

Obviously, there are certain exceptions set out by the laws of the respective countries by virtue of which there are limitations to the right to access to information which may be overturned by applying the right to appeal. Any legitimate exceptions to the principle of publicity should be fully stated in the country's access to information law.

To justify withholding information, public bodies should demonstrate that the harm caused to a predefined interest is greater than the public interest in releasing the information. This means that public bodies should apply a public interest test before refusing to release any document. Furthermore, if there is a request for documents that provide evidence of a violation of human rights, public bodies cannot refuse access on any legitimate grounds.

Position of Cyprus in the area of the access to information: Where are we?

There are a number of non-governmental associations which help, assist and comment on the subject of access to information; we believe that their analysis is critical, based not only on comparison of the legal provisions of the other European countries. These NGOs are in fact the "active voice" leading to improvements in this area of law. They are as follows:

- Cyprus EU Association (KAB), founded by a group of civil society volunteers in 2006 with the aim of ensuring a smooth and accurate information flow between the Turkish Cypriots and the international community.
- Socio-Political Studies Institute (IKME), registered in 2002 in Cyprus as an NGO aiming to contribute to the prevalence of freedom, democracy, socialism and European values.
- Access Info Europe, an international human rights organisation based in Madrid, which works to promote a strong and functioning legal framework for right of access to information in Europe and globally.

At present, Cyprus is the only country in the European Union not to have adopted the Council of Europe Convention on Access to Official Documents, 2009 (the Access Convention)¹ which enshrines the right of access to official documents held by public bodies.

The legal situation in Cyprus is rather complex as there are some provisions which relate to the right to information, including some provisions that can be exercised by journalists and by those wishing to re-use public sector information.

This article refers to and incorporates the findings of research on the right of access to information in Cyprus conducted in 2010 by Access Info Europe, KAB and IKME (the NGOs) as part of the Access Info Cyprus Project² (the Report)² which is a two-year bi-communal civil society initiative to promote improvements in government transparency and accountability and to increase public participation in decision-making in Cyprus.

The legal analysis of the Report is based on a comparison of the current legal norms in Cyprus with the *10 Principles for an Open Cyprus* which the NGOs developed in consultation with international experts and which are drawn from international standards, comparative analysis of European access to information laws and from the Access Convention, as shown in Table 1 below.

10 Principles for an open Cyprus

Table 1	
Open Cyprus Principles	Access Convention
1 Everyone has the right, without discrimination, to access information held by public bodies	Article 2.1
2 Filing requests should be simple and free of charge	Article 4.4
3	Article 4.1

	There is no need to justify why information is needed nor what will be done with it	
4	Public officials are obliged to help requesters prepare the request and identify the public body to send it to	Articles 5.1 and 5.2
5	Responses should be fast, within a maximum 15 working day timeframe	Article 5.4/EU average response time
6	Information can be accessed in paper copy or electronically and originals can be viewed	Article 6.1
7	Viewing originals is always free of charge. The only charges may be for photocopying or copying material onto a CD or DVD or other format	Article 7
8	In principle, all information is accessible, subject to limited exceptions. Refusals should be justified according to the exceptions	Article 2.2.b; 3.1; 3.2; 5.5 Principle of Publicity in Preamble
9	Everyone has the right of appeal against refusals or against administrative silence to an independent body and to the court	Article 8
10	Public bodies should make available automatically the main information about their structure, functions, budget and activities	Article 10

Source: [10 Principles for an Open Cyprus](#).

[Access info Europe](#).³

Review of relevant legal provisions

The Report based its findings on the following legal Acts of Cyprus:

Table 2

Republic of Cyprus – Relevant laws	
Full name and reference	Short name
N.0/1960: Constitution of the Republic of Cyprus	Constitution
N.138(I)/2001: Act Regarding Personal Data Processing	Data Protection Law
N.132(I)/2006: Act Establishing Rules Governing the Re-use of Existing Information Held by Public Sector Bodies (Re-use of Public Sector Information Act 2006)	Re-use PSI Law
N.145(I)/1989: Press Law: Act amending and unifying the Acts regarding taking measures for the protection of press, freedom, the recommendation of Press Board and Press Authority, the publication, circulation and sale of newspapers and other printed matters, the registration of books, the possession of printing press, the establishment of printing and other relevant matters	Press Law
N.119(I)/2004: Act regarding the access of the public to information relevant to the environment	Environmental Information Law
N.208(I)/1991: Act providing for the establishment and operation of State Archive and for relevant matters	State Archives Law
N.216(I)/2002: Act regarding regulations for security of classified information, documents and material and related matters	State Secrets Law
N.1(I)/1990: Public Service Law	Public Service Law
N.1(I)/2006: Act regarding the coordination of procedures for procurement of works, supplies and services in the water, energy, transport and postal services and related matters	Public Procurement Law
N.30(I)/2001: Act regarding the control of public aid	Public Aid Law
N.158(I)/1999: Act regarding the general principles of administrative law	Administrative Principles Law
Charter of Citizen’s Rights (non-binding declaration aimed at promoting efficient administration)	Citizen’s Charter

The constitutional provisions in Cyprus, along with the ratification of the European Convention on Human Rights therefore, should grant to everyone in Cyprus the right of access to information held by public bodies. This implies a right that is enjoyed by all persons, wherever they are resident, on non-discriminatory grounds. As will be seen throughout this article, the current legal framework in Cyprus does not at present deliver a full and absolute right of access to information.

Cyprus does not have an access-to-information law, however, some access to information held by public bodies is granted by specific sectoral laws. The legal framework grants journalists, under the Press Freedom Law in Article 7.1, a general right of access to all information held by public bodies. This applies also to foreign journalists. All journalists, Cypriot or otherwise, have the right not to reveal their source

of information and can refuse to give testimony without being liable to prosecution. The only exception is in instances where a journalist has published information regarding a criminal offence. He may be obliged by the court examining the case or the coroner to reveal his source.

Persons, organisations or public institutions that are named or indirectly referred to in a report or article have the right to reply if they consider the information concerning themselves to be untrue or misleading. Their reply must be published, free of charge, within three days of its receipt, giving it the same prominence as the initial report.

It is common for there to be confusion between a general right to information and the right of access to personal data. These are, however, two distinct rights. The right of an individual to access their personal data is protected in the Republic of Cyprus in the Data Protection Law, which makes clear that this data can be accessed by the affected person(s) (Article 12.1). This is in line with European Union standards.

The Access Convention states that the right to information also applies to information held in archives. In Cyprus, however, the State Archives Law does not grant the general public access before the expiry of a 30-year period except in some limited cases determined by the responsible Minister (Article 8.1). The only exceptions to this are if the public records had already been accessible before their transfer to the State Archive (Article 8.1) or if special Ministerial level permission is granted (Article 8.4). In practice, the State Archives website has a form for the application for inspection of archives where those making the request must state the reasons for their research. It is also noted that the law does not define “general public” and thus it is unclear whether or not foreigners can access public records either during or after the quarantine period.

The Re-use of Public Sector Information Law 2006 derives from the EU Directive on Re-use (EC/98/2003)⁴ which is designed to ensure that when a government authority grants one user permission to make use of a large volume of information (such as a statistical database, meteorological or geographical information), it must grant other users access on the same terms. So if a database is made available free to one user it must be free to other users as well. The goal is to create a level playing field for re-use of information, particularly commercial re-use.

As regards the companies law directory: information regarding (*inter alia*) companies' structure, payment of annual levy, filing of the annual return together with the corresponding financial statements, and whether a company is active or dissolved, can be accessible online on the official web page of the Department of Registrar of Companies and Official Receiver (the ROC)⁵, which falls under the Ministry of Commerce, Industry and Tourism of the Republic of Cyprus. Anyone interested may, either by requesting it online (provided an account has been opened with the ROC), or by filing a request in paper format following payment of a relevant fee, receive copies of documents issued by the ROC. The public may acquire a credit account with the ROC

so that each time a service is required the account is debited accordingly. It is also possible to file an application for the approval of a name/business name through the internet provided that the applicant is an account holder with the ROC. Any person may, however, verify through the internet as to whether there is a particular company registered in the ROC's records even though he/she is not an account holder with the Department. This simple search is free of charge.

On the other hand, in terms of the Department of Lands and Surveys (the Land Registry)* of the Ministry of the Interior, applications for documents such as an incumbency search, a title deed of a deposited contract or a governmental survey plan (the plot plan) is done in paper format either by a legal owner of the property and/or an authorised/legal representative (if so, the signature of the legal owner will need to be certified by a Cyprus certifying officer). Once a purchase agreement has been deposited with the Land Registry, a purchaser may also request copies of the documents relating to the property he will acquire. Fees of the relevant Land Registries for the same documents/service vary due to a lack of unified charges throughout the Land Registry system.

The EU Directive therefore states in Article 11.1 that “the re-use of documents shall be open to all potential actors in the market”. There is, however, one important exception to the right to access information for re-use: it does not apply when the nature of the information is such that a requester would have to express a legitimate interest before being granted access. In principle, final decisions of Cyprus's district courts and final decisions of the Supreme Court are accessible online free of charge at www.cylaw.org. The search results are in Greek. Generally, this would apply only to narrow classes of information, such as information that contains personal data which would otherwise be withheld from the public domain. Other information which can be obtained under an access to information law should be accessible.

The complication in Cyprus is that while the EU Re-use Directive assumes the pre-existence of an access to information law, none actually exists at present. Furthermore the transposition of the EU Re-use Directive to the Republic of Cyprus omits a definition of who may apply for the information. As a result, it is not clear if foreigners can apply for re-use of public sector information in Cyprus.

The only law in the Republic of Cyprus which clearly grants access to information on a universal basis is the Environmental Information Law which in Article 2.1 grants all natural and legal persons, including foreigners, a right of access to environmental information.

In addition, there is the Charter of Citizen's Rights which is non-binding (that is, it is merely a declaration, not a law) but which does make a commitment to providing citizens with information, including the commitment to answer letters promptly and to provide clear information on the services of the public administration. It is not clear whether or not this charter applies to everyone or only to “citizens” in the narrow definition of the term

Recent initiatives and developments: what is the future?

In 2011 Access Info Europe published its report on the state of transparency in Cyprus which highlighted the urgent need for the Republic to adopt an access to information law and to significantly improve levels of transparency in practice.

On 7 May 2014, a draft bill on access to information was published by Cyprus (ref. KA 12.06.002/12.06.007) (the Draft Law), however, in recommendations submitted as part of a public consultation, Access Info Europe has called on Cyprus to significantly improve the proposed draft law in order to come into line with international standards.

The Draft Law does not recognise access to information as a fundamental right, it excludes many public institutions and branches of government, there is no appeal mechanism through an information commissioner to challenge denials for disclosure, and requesters will be required to produce identification to make a request.

Following review of the text, Access Info highlighted a number of shortcomings in the draft law and subsequently submitted to the Minister for Justice and Public Order of the Republic of Cyprus, Mr Ionas Nikolaou, the following 10 recommendations:

- recognise access to information as a fundamental right
- recognise that all the information held in any format by all institutions, is public by nature
- the law on access to information must include all public institutions and bodies, including the executive, legislation, judiciary and private bodies carrying out public functions or funded with public funds
- remove the requirement to present identification in order to make a request for access to information
- ensure that the process for requesting information is free for the public
- reduce the number of working days to answer an access to information request to the European average of 15 working days, or fewer
- completely revise and reduce the exceptions of the draft law in order to bring it in line with international standards
- any Information Commissioner should be independently appointed,
- second, the Information Commissioner should be empowered to overrule the decisions of public bodies who decide to refuse access to information, and for these decisions to be binding
- the appeals system should include a mechanism for requesters to appeal for free to the Information Commissioner, in addition to eventual recourse to the courts.

It appears that significant changes to the Draft Law should be considered for it to comply with international standards and the widely accepted scope of applicability.

The “Right of Access to Information in Cyprus” project is an EU-funded initiative that aims to advance the right to know in both the northern and southern parts of the island.

The project responds to a generalised lack of information and political/media/public debate, as such, in Cyprus about the latest European and global developments on the right of access to information. It aims to stimulate civic action to improve government transparency and foster citizen participation. This approach is embodied in the bi-communal coalition that has been launched as part of the project. The Open Cyprus Coalition, founded by the main project partners, the NGOs, now includes several other civil society organisations across the island, who actively advocate for a full and functioning right of access to information in Cyprus that complies with the highest international standards.

Project activities include the provision of workshops and seminars with civil society organisations to develop a common understanding of the importance of the right of access to information.

Have there been any developments?

Despite the Constitutional guarantees of freedom of expression and freedom of information, significant legal reforms are needed, including the adoption of a full access to information law, and amendments to other relevant laws island-wide that currently limit or only provide partial access. These reforms will be essential in order to sign and ratify the Access Convention.

This analysis against the said 10 Principles of the Access Info Cyprus Project (see Table 1) demonstrates that the current legal framework is currently non-compliant with these Principles.

Other laws in the Republic of Cyprus that grant access to some classes of information, such as environmental information or archives, require amendment to provide full right of access to information. The full access to information law which needs to be adopted should comply with the standards set by the Access Convention concerning proper administrative procedures to manage information requests (timeframes, fees, assistance, and so on). It should also establish a “principle of publicity” presumption that all information is in the public domain save that which can be withheld in accordance with the very specific and narrow exceptions permitted by the Convention. Any refusals to release information should be subject to both harm and public interest tests.

Moreover, there is a need to comply with the proactive disclosure obligations typically imposed by the right to information and to ensure that all public authorities publish at least core classes of information on an *ex officio* basis.

Footnotes

¹ <http://www.accessinfocyprus.ikme.eu/> (last accessed 6 August 2015).

² <http://www.access-info.org/wp-content>

/uploads/Open_Cyprus_Report_and_Recommendations.pdf

(last accessed 6 August 2015).

³ <http://accessinfocyprus.ikme.eu>

</en/principles-for-an-open-cyprus.html> (last accessed 6 August 2015).

⁴ <http://eur-lex.europa.eu/LexUriServ>

</LexUriServ.do?uri=CELEX:32003L0098:EN:HTML> (last accessed 6 August 2015).

⁵ <http://www.mcit.gov.cy/mcit/drcor/drcor.nsf>

/index_en/index_en (last accessed 6 August 2015).

⁷ <http://www.moi.gov.cy/moi/DLS/dls.nsf>

/dmlindex_en/dmlindex_en (last accessed 6 August 2015).