

ACCESS TO INFORMATION IN THE CONTEXT OF FREEDOM OF EXPRESSION

Division for Cooperation on Freedom of Expression

GROUP #1

Legal professionals
(judges, prosecutors, lawyers)

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ACCESS TO INFORMATION IN THE CONTEXT OF FREEDOM OF EXPRESSION

GUIDE FOR PARTICIPANTS: TRAINING ON EUROPEAN STANDARDS ON ACCESS TO INFORMATION AND FREEDOM OF EXPRESSION

→ Purpose of the Training

This training is designed for judges, prosecutors, and lawyers who play a pivotal role in interpreting, applying, and enforcing access to official information within the framework of freedom of expression and human rights law. The programme aims to enhance participants' understanding of European and international legal standards, provide practical insights into key case law, and develop a unified judicial approach to balancing transparency, privacy, and national security concerns. By participating in this training, legal professionals will gain the knowledge, skills, and legal reasoning needed to strengthen judicial oversight, enforce access to public information rights, and uphold democratic accountability. This guide provides an overview of the training structure, your responsibilities, and how to maximize your learning experience.

→ Key Learning Objectives

By the end of this course, you will be able to:

- ▶ enhance knowledge of international and European legal standards on access to information and freedom of expression,
- ▶ apply the Tromsø Convention and Aarhus Convention in the context of legal and judicial frameworks,
- ▶ examine key case law from the European Court of Human Rights on access to information under Article 10 of the European Convention on Human Rights,
- ▶ understand the limitations on access to official information, including the public interest test, harm test, and balancing privacy concerns,
- ▶ compare national legislation with international legal frameworks to ensure compliance and best practices,
- ▶ develop a unified approach to judicial interpretation and law enforcement in cases involving access to official information.

→ Course Structure

The training spans two days, with sessions structured to balance theoretical knowledge and practical applications:

Day 1:

- ▶ Exploration of international standards and case law, including the European Convention on Human Rights and Tromsø Convention.
- ▶ Comparative analysis and parallel implementation of international standards and national laws,
- ▶ Understanding limitations and public interest tests.

Day 2:

- ▶ Application of national legislation and practical exercises.

→ Training Methodology

The training employs a blended learning approach, including:

- ▶ briefings and presentations: structured knowledge of legal principles and frameworks,
- ▶ case studies: real-world examples illustrating access to information challenges and solutions,
- ▶ interactive exercises: brainstorming, problem-based facilitated discussions, collaborative learning, and discussions in small groups.

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→ Participant Responsibilities

To ensure a successful and impactful training experience, participants are expected to take an active role in the sessions. This training is designed to be highly interactive, and your engagement is critical for maximizing learning outcomes. Below are the key responsibilities for participants:

1. Active participation:

- ▶ engage in brainstorming exercises and group discussions,
- ▶ ask questions and share your experience,
- ▶ take notes and contribute to problem-solving activities.

2. Pre-training preparation:

- ▶ review domestic laws on access to official information and compare them with European and international standards, focusing on the legal obligations of public authorities to provide access to official documents,
- ▶ familiarize yourself with international conventions such as the European Convention on Human Rights (Article 10), the Council of Europe Tromsø Convention, and the Aarhus Convention.
- ▶ identify relevant court cases that illustrate how national courts interpret access to information laws.

3. During the training:

- ▶ consider case examples where access to official information was a key factor in judicial rulings,
- ▶ participate in case study discussions to apply theoretical knowledge to real-world scenarios.

4. Share your professional experiences:

- ▶ contribute to the sessions by sharing real-life legal examples from your professional experience, suggest landmark cases and apply their principles to hypothetical legal scenarios,
- ▶ share important judicial rulings from your experience where access to information was crucial in promoting transparency and accountability in cases of high public interest.

5. Apply critical thinking:

- ▶ approach the training materials with a critical mindset, questioning and reflecting on how legal principles and best practices can be applied,
- ▶ evaluate the practical tools and methodologies introduced during the sessions, considering how they align with your daily responsibilities.

6. Collaborate with other participants:

- ▶ exchange viewpoints on judicial rulings and best practices related to access to information,
- ▶ discuss challenges in implementing transparency laws in different legal systems,
- ▶ exchange contact details and establish a professional network for continued collaboration.

7. Engage with Trainers:

- ▶ ask questions and seek clarification during presentations and discussions,
- ▶ provide constructive feedback to trainers, helping them tailor the sessions to your specific needs and challenges.

→ Evaluation and Certification

The programme concludes with:

- ▶ A post-training test to assess your understanding and application of the material.
- ▶ Feedback collection to improve future training.
- ▶ Certificate awarding to recognise your participation and achievements.

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The post-training test will include multiple-choice questions and scenario-based assessments to measure your understanding of key concepts. Certificates will be awarded based on active participation and successful completion of the evaluation.

This training provides a valuable opportunity to deepen your legal expertise, enhance judicial interpretation of access to information laws, and foster collaboration among legal professionals. Your active engagement and commitment will contribute to strengthening transparency, upholding fundamental rights, and ensuring accountability in governance.

STRUCTURE OF THE COURSE: TRAINING PROGRAMME ON EUROPEAN STANDARDS ON ACCESS TO INFORMATION IN THE CONTEXT OF FREEDOM OF EXPRESSION

Group #1: Legal professionals (judges, prosecutors, lawyers)

The training programme focuses on European standards on access to official information in the context of freedom of expression, adhering to the European Convention on Human Rights (Article 10) and the Council of Europe Convention on Access to Official Information (Tromsø Convention) standards, with implications for the national legislation of the country of training. The curriculum covers international standards, principles of key conventions, case law, and domestic legislation and administrative practice. It emphasises interactive and participatory learning approaches to enhance participants' understanding and capacity to handle official information access and protection.

A unique characteristic of the programme for legal professionals is its emphasis on real court case studies. Participants will closely examine cases from both the European Court of Human Rights (ECtHR) and national courts, enabling a deep understanding of legal precedents. This focus aims to help legal professionals develop a unified approach to judicial and law enforcement practices regarding access to information and freedom of expression.

Duration

- 2 days

Course type

- In-person training course

Logistic requirements

- training room, laptop, projector, internet connection, flipchart, paper, and markers.

→ Day 1: International Standards and Legal Frameworks

Pre-Training Test/Survey (15 minutes)

Comments:

The Pre-Training Test/Survey serves as a crucial step in understanding participants' baseline knowledge, skills, and familiarity with the subject matter. This activity allows trainers to gauge the existing level of expertise within the group, identify knowledge gaps, and tailor the training content accordingly. Additionally, comparing pre-training results with post-training assessments can provide valuable insights into the learning outcomes and overall impact of the course.

Format: Online tool (Google Forms)

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Session 1: Access to official information – key instrument for transparency of government and freedom of expression (30 min)

Methodology: Ice-breaking interactive exercise, brainstorming, or group discussion on the importance of access to official information.

Comments:

The trainer begins the session by inviting participants to introduce themselves, including their names and professional roles, to foster a sense of familiarity and engagement. Participants are then asked to reflect on and answer the question: “Is the right to access official information important, and if so, why?”

As participants share their thoughts, the trainer records the most common ideas, conflicting viewpoints, and significant questions on a flip chart. These recorded points serve as a foundation for further discussion, helping to highlight key themes and areas of interest or contention. This exercise not only stimulates critical thinking but also provides a platform for diverse perspectives to emerge, setting the tone for an interactive and thought-provoking session.

Session 2: Evolution of international standards in access to official information as the component of freedom of expression (1 hour)

Methodology: Briefing session, PowerPoint presentation, and Q&A session.

Comments:

The trainer provides an in-depth overview of international standards related to access to official information, emphasising their pivotal role in fostering transparency within governments and public institutions. This sets the stage for understanding the broader framework within which access to information operates as a component of freedom of expression.

The session highlights the evolution of international standards, tracing key milestones and progress in recognising access to official information as a fundamental human right. The trainer underscores how this recognition has been enshrined in various legal instruments and international agreements.

The International Covenant on Civil and Political Rights (ICCPR), particularly Article 19, is presented as a foundational document. It recognises the right to freedom of expression, which includes the right to seek, receive, and impart information. This is contextualised as a critical aspect of transparency and accountability.

The trainer explains that while the European Convention on Human Rights (ECHR) does not explicitly guarantee access to official information, the European Court of Human Rights (ECtHR) has interpreted Article 10—protecting the right to freedom of expression—as encompassing the right to receive and impart information. This interpretation has significant implications for access to information in Europe.

The session also introduces key international agreements such as the Council of Europe Convention on Access to Official Documents (Tromsø Convention), which establishes legal standards for access to information. Additionally, the Aarhus Convention is discussed, focusing on access to information on environmental matters. This highlights the importance of individuals being able to obtain information necessary for exercising their rights and freedoms, particularly in the context of environmental protection.

Participants are encouraged to discuss the implications of these standards and share how they relate to their professional experiences. This group discussion enriches the session by incorporating diverse perspectives and exploring practical applications of international legal principles.

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Session 3: Access to official information – criteria in ECHR case law (1.5 hours)

Sub-session 3.1: Access to Information as the component of freedom of expression under the European Convention on Human Rights, Article 10 and the relevant case law.

Methodology: Briefing session, PowerPoint presentation, and group discussion.

Comments:

The trainer begins the session by providing a detailed briefing on the concept of access to official information as a component of the right to freedom of expression under Article 10 of the European Convention on Human Rights using the PowerPoint Presentation.

The trainer emphasises how the European Court of Human Rights has interpreted and expanded the scope of Article 10 to include the right to seek and receive information, particularly in cases where access to information is essential for public interest and democratic accountability.

A presentation of key European Court of Human Rights judgments focuses on landmark cases such as *Magyar Helsinki Bizottság v. Hungary*, *Sdruženi Jihočeské Matky v. the Czech Republic*, *Youth Initiative for Human Rights v. Serbia*, and *Társaság a Szabadságjogokért v. Hungary*. Each case is analysed to illustrate how the Court has established criteria for determining whether the denial of access to information violates Article 10.

The session concludes with a summary of the critical criteria from the European Court of Human Rights case law and a reflection on how participants can incorporate these principles into their work to enhance transparency and accountability. Participants are encouraged to raise any lingering questions, fostering a collaborative and enriching learning environment.

Sub-session 3.2: Case study – Magyar Helsinki Bizottság v. Hungary, the European Court of Human Rights criteria for protecting access to information as the component of freedom of expression.

Methodology: Case study and facilitated discussion.

Comments:

The trainer presents in detail the case of *Magyar Helsinki Bizottság v. Hungary*, providing participants with a brief overview of the facts, legal issues, and the European Court of Human Rights decision. There should be an emphasis that this landmark case illustrates the criteria established by the European Court of Human Rights for recognising access to information as a component of the right to freedom of expression under Article 10 of the European Convention on Human Rights.

The trainer highlights specific criteria derived from the decision, including:

- ▶ The nature of the information requested and whether it serves the public interest.
- ▶ The purpose for which the information is sought and its relevance to democratic oversight.
- ▶ The role of the individual or organisation requesting the information (e.g., journalists, NGOs, or public watchdogs).
- ▶ Whether the information was ready and available

During the facilitated discussion, the trainer guides participants through the reasoning of the European Court of Human Rights decision, emphasising how the Court balanced the right to access information against the state's justification for refusing the request.

The trainer encourages participants to share their interpretations and reflections, asking questions such as:

- ▶ “How does this case influence your understanding of the right to access information as part of freedom of expression?”
- ▶ “What parallels can you draw between the criteria established in this case and the challenges you face in your professional contexts?”

Key points and differing perspectives are recorded on a flip chart to capture the depth of the discussion and highlight areas for further exploration.

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The trainer synthesises the outcomes, connecting the case study to broader principles of international human rights law and encouraging participants to consider how the *Magyar Helsinki Bizottság* criteria can be applied in their work to advocate for or implement better access to information practices. This interactive exercise reinforces the practical relevance of the case and fosters a deeper understanding of its implications.

Session 4: Principles and Standards of Aarhus and Tromsø Conventions (1.5 hours)

Sub-session 4.1.: Key principles and standards of the Aarhus and Tromsø Conventions.

Methodology: Briefing session, PowerPoint presentation, and Q&A session.

Comments:

The trainer begins with a briefing session to introduce the core principles of the Aarhus Convention and the Tromsø Convention, focusing on their shared objective of promoting transparency and accountability. The Aarhus Convention is presented as a pioneering international framework for environmental governance, emphasising the public's right to access environmental information. The presentation highlights the three pillars of the convention: the right to access environmental information, the right to participate in environmental decision-making processes, and the right to access justice in environmental matters. Specific articles of the convention are discussed, illustrating how states are obligated to provide timely, accurate, and accessible environmental information to the public.

The trainer shifts to the Tromsø Convention, which establishes equal access to official documents. The trainer emphasises the convention's innovative aspects, such as recognising access to information as a fundamental right. Key provisions of the Tromsø Convention are presented, such as the obligation of public authorities to respond promptly to requests, provide reasons for refusals, and support applicants through clear procedures. Participants learn how the Tromsø Convention complements the Aarhus Convention by providing broader access to information, regardless of the subject matter.

A PowerPoint presentation provides visual support for the session, summarising the principles and standards of both conventions. The session concludes with a brief Q&A segment, allowing participants to clarify key concepts and share initial reflections.

Sub-session 4.2.: Implementation of Aarhus and Tromsø Conventions – equal access to information and support for applicants.

Methodology: Interactive exercises: problem-based facilitated discussion and collaborative learning.

Comments:

This sub-session focuses on the practical implementation of the Aarhus and Tromsø Conventions through interactive activities. The session begins with a facilitated discussion, where participants explore the key challenges and opportunities related to access to information in their respective jurisdictions. The trainer guides the discussion, encouraging participants to share experiences and analyse common issues such as:

- ▶ ensuring equal treatment of applicants regardless of background or purpose,
- ▶ processing requests,
- ▶ ensure that public authority helps the applicant identify the requested official document as much as reasonably possible.

The trainer uses targeted questions to deepen the discussion, such as:

- ▶ "What administrative practices could be improved to support applicants better?"
- ▶ "How can public authorities ensure compliance with the conventions' principles while managing practical constraints?"

Key insights and proposed solutions from the discussion are recorded on a flip chart to provide a foundation for the next exercise.

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Evaluation reports from the monitoring bodies of the Aarhus Convention and Tromsø Convention, as well as reports from NGOs on the conventions' implementation, are invaluable resources for assessing the implementation and effectiveness of access to information standards in a given jurisdiction. Trainers should incorporate the findings from these reports to provide participants with a clear understanding of the practical challenges, achievements, and areas for improvement in their national context. Trainers can use this data to frame discussions, enabling participants to critically examine their government's approach and compare it with international standards. By addressing these findings, trainers ensure that the session is grounded in real-world challenges and provides participants with actionable insights to enhance the implementation of the conventions in their professional and policy-making contexts.

Building on the facilitated discussion, participants engage in collaborative learning to analyse specific scenarios reflecting real-world applications of the conventions. Group discussion addresses challenges such as handling requests for environmental information under the Aarhus Convention or navigating administrative obligations under the Tromsø Convention.

The session concludes with the trainer synthesising the outcomes of both the facilitated discussion and collaborative learning activities. The trainer links these outcomes back to the Aarhus and Tromsø Conventions principles, emphasising their role in promoting transparency, accountability, and equal access to information. Participants reflect on how these principles can be integrated into their work to enhance governance and support for applicants. This structured approach ensures a productive and meaningful exploration of the conventions' implementation.

Session 5: Limitation of access to information (1.5 hours)

Sub-session 5.1.: Limitations of access to official documents under the European Convention on Human Rights (Article 10) and the Council of Europe Convention on Access to Official Documents (Article 3) – three-part test, harm test and public interest test.

Methodology: Briefing session, PowerPoint presentation, and Q&A session.

Comments:

This sub-session provides an in-depth exploration of the legal framework governing the limitations on access to official documents. The trainer introduces the session with a briefing that integrates the provisions of Article 10 of the European Convention on Human Rights (ECHR) and Article 3 of the Council of Europe Convention on Access to Official Documents (Tromsø Convention).

The presentation focuses on the following key tests used to determine the validity of limitations.

The session on limitations of access to official documents focuses on three key legal tests to evaluate when restrictions are justified under international standards. These include the Three-Part Test, the Harm Test, and the Public Interest Test, derived from the European Convention on Human Rights (ECHR, Article 10) and the Tromsø Convention (Article 3).

The Three-Part Test from Article 10 of the ECHR requires that:

- ▶ **Legality:** Any restriction must be prescribed by law with a clear and accessible legal basis.
- ▶ **Legitimate Aim:** The limitation must serve a recognised legitimate aim, such as protecting national security, public safety, or individual privacy.
- ▶ **Necessity and Proportionality:** The restriction must be necessary in a democratic society and proportional to the aim pursued. During the session, the trainer provides practical examples demonstrating how this balance is maintained in various contexts.

The Harm Test outlined in Article 3 of the Tromsø Convention emphasises that public authorities must assess whether disclosing the requested information would cause harm to a legitimate interest, such as national security, public safety, or personal privacy. The trainer clarifies that this test requires a clear and evidence-based demonstration of harm before restricting access.

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The Public Interest Test, also in Article 3 of the Tromsø Convention, requires weighing the harm of disclosure against the public interest in making the information available. The trainer explains that if the public interest outweighs the potential harm, access to information should generally be granted. Real-world examples are used to illustrate cases where the public interest test has influenced decisions to disclose information.

By examining these tests, participants gain a comprehensive understanding of how limitations on access to information are justified, ensuring they align with democratic principles and international human rights standards.

A PowerPoint presentation supports the session, illustrating how these tests are applied through examples from European Court of Human Rights case law and practical administrative decisions under the Tromsø Convention. Key cases such as *Magyar Helsinki Bizottság v. Hungary* and *Youth Initiative for Human Rights v. Serbia* are discussed to provide participants with practical insights into the judicial reasoning behind limitations on access to information.

The session transitions into a Q&A segment, where participants are encouraged to engage with the material by posing questions or discussing challenges from their professional contexts.

Sub-session 5.2.: Group activity on analysing legitimate interests for limitation of access to official information under the European Convention on Human Rights and the Council of Europe Convention on Access to Official Documents (Tromsø Convention).

Methodology: Interactive exercises: written group activity with a spokesperson (case study analysis).

Comments:

This sub-session focuses on the legitimate grounds for limiting access to official information as defined under the European Convention on Human Rights (Article 10) and the Council of Europe Convention on Access to Official Documents (Tromsø Convention, Article 3). The session employs interactive exercises to encourage participants to analyse and apply these principles in real-world scenarios.

The trainer introduces the session with a brief overview of the legitimate interests recognised by both conventions, including:

- ▶ National security, public safety, or the economic well-being of the country.
- ▶ The prevention of crime or disorder.
- ▶ The protection of privacy and other rights of individuals.
- ▶ Confidentiality of commercial and other sensitive information.
- ▶ Maintaining judicial independence and impartiality.

Participants then engage in problem-based facilitated discussions, where they are presented with practical scenarios involving requests for access to official documents that potentially conflict with these legitimate interests. For example, they might evaluate whether disclosing certain information would jeopardise national security or whether withholding information could undermine public trust. In this regard, the *Global Principles on National Security and the Right to Information (The Tshwane Principles)* and the *Johannesburg Principles on National Security, Freedom Of Expression, and Access To Information* should be mentioned as soft-law documents.

In the collaborative learning segment, participants made a written group activity with a spokesperson (case study analysis) in small groups to review real or hypothetical cases, analyse the justification for limitations, and propose solutions that align with the principles of both conventions. The trainer facilitates group work by offering clarifications, encouraging diverse perspectives, and ensuring that discussions remain focused. Key points and suggestions from the groups are recorded on a flip chart by each group, enabling participants to explore best practices and innovative approaches collectively. The trainer manages the written group activity in a following way:

- ▶ Divide participants into small groups, each assigned a case study related to access to information.
- ▶ Each group analyses the case, focusing on legal justifications, public interest, and potential rulings.
- ▶ One person from each group presents their conclusions to the full audience.

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The trainer facilitates discussion by comparing group responses to existing case law. The legal professionals analyse judgments of the European Court of Human Rights and compare them with national rulings. The trainer synthesises these outcomes, linking them to the conventions' overarching goal of balancing transparency with protecting legitimate interests. This interactive format ensures that participants leave with both a theoretical understanding and practical tools for addressing limitations on access to official information.

→ Day 2. Domestic Regulations and Implementation

Session 6: Compliance of national legislation with international standards (1.5 hours)

Sub-session 6.1.: Overview of national legislation on access to information.

Methodology: Briefing session, PowerPoint presentation, and Q&A session.

Comments:

This sub-session provides participants with an understanding of their national legislation on access to information, analysing its compliance with international standards in freedom of expression established under frameworks of the European Convention on Human Rights and the Tromsø Convention.

The trainer begins with a briefing session, offering an overview of key provisions in the national legal framework related to access to information. The presentation highlights the core principles, procedural requirements, and legal guarantees enshrined in the national laws. Special attention is given to how these laws address fundamental aspects such as:

- ▶ ensuring the right to access public information without discrimination,
- ▶ definitions for “document” and “information” in the domestic regulations,
- ▶ definition of “public authorities” in the domestic regulations,
- ▶ the timeframes for responding to requests,
- ▶ the legitimate grounds for refusing access and the corresponding appeals mechanisms.

A PowerPoint presentation is used to compare the national legislation with international standards, identifying areas of alignment and divergence. The trainer highlights best practices from other jurisdictions to illustrate how compliance with international standards can enhance transparency and accountability.

During the Q&A session, participants are encouraged to share their experiences with the national framework, including successes, challenges, and gaps in its implementation. This sub-session concludes with reflections on the importance of continuous legal and procedural reforms to meet evolving international standards. The trainer records key points and participant insights on a flip chart, which can later serve as a basis for further discussions on improving alignment between national laws and international standards.

Sub-session 6.2.: Group exercise in small groups to analyse a selection of typical domestic court cases.

Methodology: A case study in small groups and facilitated discussion.

Comments:

This sub-session engages participants in an interactive exercise designed to deepen their understanding of how national legislation on access to information is applied in practice. The session uses case studies to examine typical court cases, enabling participants to analyse the challenges, legal reasoning, and outcomes within the framework of their national laws.

The trainer introduces the session by providing an overview of selected cases, highlighting the key legal issues and the decisions made by the courts. Each case is chosen to illustrate common scenarios or contentious points in the implementation of access to information laws, such as:

- ▶ refusals to provide information based on confidentiality or national security,
- ▶ delays in responding to requests,

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- ▶ balancing the public interest with legitimate limitations.

Participants are divided into small groups, with each group assigned a specific case to analyse. The groups are tasked with:

- ▶ identifying the legal basis for the court's decision,
- ▶ discussing whether the decision aligns with national legislation and international standards, such as the European Convention on Human Rights or Tromsø Convention.

The trainer facilitates the exercise by circulating among the groups, answering questions, and providing guidance where needed. Participants are encouraged to critically evaluate the court's reasoning and to consider the broader implications of the freedom of expression standards and the right to access information.

After the group analysis, a facilitated discussion brings all participants together to share their findings. Each group presents its case, highlighting the legal principles involved. The trainer moderates the discussion, encouraging participants to engage with one another's analyses and draw connections between the cases.

Key points from the discussion are recorded on a flip chart, providing a visual summary of the session. The trainer concludes by synthesising the outcomes, linking them back to the principles of international standards and encouraging participants to reflect on how these cases inform their understanding of national and international access to information laws.

Session 7: Public interest test and limitations under the national legislation (1.5 hours)

Sub-session 7.1.: Public interest test and limitations on access to information under the national regulations.

Methodology: Briefing session, PowerPoint presentation, and Q&A session.

Comments:

This sub-session provides participants with a comprehensive understanding of how the public interest test and limitations on access to information are applied within their national regulatory framework. The trainer begins with a briefing session, outlining the public interest test's role in determining whether the disclosure of information serves a greater societal benefit, even when it may conflict with legitimate interests such as national security, privacy, or commercial confidentiality. The trainer also discusses the scope and justification of limitations under national laws, ensuring participants understand the legal and procedural framework.

Using a PowerPoint presentation, the trainer illustrates key concepts and includes examples from national case law to show how the public interest test has been applied in practice. The presentation highlights:

- ▶ The criteria for determining public interest, such as promoting accountability, enhancing democratic oversight, or addressing issues of public concern.
- ▶ Common challenges in applying the public interest test, such as defining "public interest" and balancing competing interests.
- ▶ Examples of legitimate limitations permitted by national regulations, including those aimed at protecting personal data, national security, or trade secrets.

During the Q&A session, participants are encouraged to reflect on the practical application of the public interest test in their work and raise questions or concerns related to the challenges they face. The trainer facilitates the discussion by posing reflective questions, such as:

- ▶ "How is the public interest test defined and applied in your jurisdiction?"
- ▶ "Can you share an example where public interest outweighed a limitation, or vice versa?"
- ▶ "What mechanisms ensure that decisions to restrict access are necessary and proportionate?"

The trainer records key points raised by participants on a flip chart, helping to structure the discussion and highlight areas for further exploration.

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The session concludes with a reflection on how the public interest test strengthens democratic governance and fosters public trust. Participants are encouraged to consider how they can effectively apply these principles to improve transparency and accountability in their professional contexts while adhering to the national legal framework. This segment bridges theoretical understanding and practical implementation, equipping participants with actionable insights for navigating the complexities of access to information laws.

Sub-session 7.2.: Group exercise on legal grounds for restricting access based on the relevant case law.

Methodology: Interactive exercises: Exercise in small or large groups and facilitated discussion.

Comments:

This sub-session engages participants in a practical exercise to deepen their understanding of the legal grounds for restricting access to information, using relevant national and international case law as a basis for analysis. The session is designed to foster critical thinking and collaborative problem-solving by examining how legal principles are applied in real-world scenarios.

The trainer begins by providing a brief overview of selected cases that illustrate common legal grounds for restricting access to information, such as protecting national security, safeguarding personal privacy, or ensuring the confidentiality of sensitive business information. Each case reflects typical challenges faced under the national legal framework and highlights how the public interest test, harm test, and other relevant principles are applied.

Depending on the session size, participants are then divided into small or large groups and tasked with analysing specific cases. Each group reviews the legal reasoning behind the decision, focusing on:

- ▶ The justification provided for restricting access.
- ▶ Whether the decision aligns with national regulations and international standards, such as those under the ECHR or Tromsø Convention.
- ▶ The balance between transparency and legitimate limitations, including whether the public interest in disclosure outweighed the reasons for restriction.

During the exercise, the trainer circulates among the groups to provide guidance, clarify questions, and encourage deeper discussion. Participants are prompted to consider key aspects, such as:

- ▶ “Were the legal grounds for restriction clearly justified and proportional?”
- ▶ “How does this case reflect or diverge from the principles of the public interest and harm tests?”
- ▶ “What lessons can be learned from this case to inform future decisions on access to information?”

Following the group exercise, a facilitated discussion brings all participants together to share their findings. Each group presents their case analysis, including their interpretation of the legal principles applied and any recommendations for improving the handling of similar situations. The trainer moderates the discussion, encouraging participants to engage with each other’s perspectives and draw connections between the cases analysed.

Key points and insights are recorded on a flip chart to capture the collective learning outcomes of the session.

The session concludes with a summary by the trainer, creating the main takeaways and linking them back to the broader principles of transparency, accountability, and adherence to legal standards. Participants are encouraged to reflect on how the exercise informs their understanding of the legal framework for restricting access and how they can apply these insights to their professional practices.

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Session 8: Oversight and control mechanisms (1.5 hours)

Sub-session 8.1.: Overview of international approaches to oversight (Information Commissioners, Ombudsman, courts).

Methodology: Briefing session, PowerPoint presentation, and Q&A session.

Comments:

This sub-session introduces participants to the key international approaches for overseeing access to information, emphasising the roles and functions of Information Commissioners and Commissions, government agencies, Ombudsman institutions, and courts. The session explores how these mechanisms collectively ensure compliance with access to information laws, resolve disputes, and uphold the principles of transparency and accountability.

The trainer begins with a briefing session, supported by a PowerPoint presentation, to outline the structures, responsibilities, and processes of each oversight mechanism:

- ▶ Information Commissioners and Commissions: Independent authorities responsible for monitoring compliance with access to information laws, adjudicating complaints, and providing guidance to public authorities. Examples are shared from jurisdictions where these bodies have effectively enforced compliance and resolved disputes.
- ▶ Government Agencies: Their role in supporting the implementation of access laws, conducting training for public officials, and managing internal processes to respond to information requests.
- ▶ Ombudsman Institutions: Their role as impartial mediators between citizens and public authorities, offering accessible mechanisms for individuals to challenge denials of access and ensuring fairness in administrative decisions.
- ▶ Courts: The critical role of judicial oversight in providing a final avenue for challenging denials of access to information. Courts assess whether public authorities have acted in accordance with legal standards and ensure that limitations on access are justified, necessary, and proportionate. Examples of court rulings from various jurisdictions are discussed, highlighting their impact on shaping access to information practices.

The trainer explains how these mechanisms complement one another, with courts providing a higher level of scrutiny and setting legal precedents that strengthen the enforcement of access laws.

The trainer emphasises the differences between these mechanisms, discussing their strengths and limitations and how they complement one another to create a robust oversight system. During the Q&A session, participants are encouraged to share insights from their own experiences with oversight mechanisms to consider how these approaches can be strengthened and applied in their own professional and national contexts to ensure that access to information laws are effectively implemented and respected.

Sub-session 8.2.: National oversight mechanisms and the relevant court practice.

Methodology: Interactive exercises: collaborative learning and problem-based facilitated discussions.

Comments:

This sub-session provides participants with an opportunity to explore their national oversight mechanisms and the role of courts in enforcing access to information laws. Through collaborative learning and problem-based facilitated discussions, participants analyse how these mechanisms operate in practice and address challenges related to compliance and enforcement.

The trainer begins with a short overview of the national authorities responsible for overseeing access to information. This includes a summary of their mandates, such as monitoring compliance, handling complaints, providing guidance to public authorities, and promoting awareness of access to information rights. The trainer highlights the processes followed by these authorities, such as mediating disputes, issuing decisions, and supporting applicants in navigating the system.

ACCESS TO INFORMATION IN THE CONTEXT OF FREEDOM OF EXPRESSION

The session transitions to collaborative learning, where participants are divided into small groups to analyse the structure and effectiveness of their country's oversight mechanisms. Each group is tasked with:

- ▶ Identifying the strengths and weaknesses of the existing framework.
- ▶ Discussing how oversight mechanisms interact with the judiciary to ensure compliance with access laws.
- ▶ Exploring the role of courts in resolving disputes and setting legal precedents that shape future practices.

Following this, the problem-based facilitated discussions focus on real or hypothetical scenarios where access to information is denied or contested. Participants examine how national oversight bodies and courts respond to these cases, applying legal principles to determine whether the decisions align with the standards set by international conventions such as the ECHR and Tromsø Convention. The trainer encourages participants to consider:

- ▶ The accessibility and impartiality of oversight mechanisms.
- ▶ The role of courts in ensuring accountability and providing final resolution in contentious cases.
- ▶ Practical strategies for improving coordination between oversight authorities and the judiciary.

The trainer circulates among the groups, providing guidance and addressing questions while ensuring that discussions remain focused on practical outcomes. Key points and recommendations from the groups are recorded on a flip chart to facilitate collective learning.

The session concludes with a plenary discussion, where each group presents their findings and shares examples of best practices or challenges from their jurisdictions. The trainer synthesises the outcomes, linking them back to the principles of effective oversight and judicial enforcement. Participants are encouraged to reflect on how these insights can inform their professional practices and contribute to strengthening national oversight and judicial mechanisms for access to information.

This sub-session equips participants with a deeper understanding of how national oversight mechanisms and courts function together to uphold transparency and accountability, fostering critical thinking and practical problem-solving skills.

Session 9: Evaluation and wrap-up

Multiple-choice test/evaluation.

Comments:

The **multiple-choice test** is designed to assess knowledge retention, comprehension of key concepts, and the ability to apply principles discussed during the course.

The trainer introduces the evaluation by explaining its purpose as a diagnostic tool to measure individual and group learning outcomes.

Feedback and certificate awarding.

ACCESS TO INFORMATION IN THE CONTEXT OF FREEDOM OF EXPRESSION

POST-TRAINING TEST

Group #1: Legal professionals (judges, prosecutors, lawyers)

1. Which of the following tests is used under Article 10 of the ECHR to justify limitations on access to information?

- a) Proportionality Test
- b) Three-Part Test
- c) Transparency Test
- d) Fairness Test

2. What is the legitimate ground for refusing access to official information under the Tromsø Convention?

- a) To avoid public criticism of authorities.
- b) To protect sensitive personal interests.
- c) To simplify administrative tasks.

3. Under the Aarhus Convention, the public has the right to access environmental information without stating a reason.

- a) True
- b) False

4. What legal principle is essential in balancing public interest and the right to privacy under the ECHR?

- a) Transparency Principle
- b) Proportionality Principle
- c) Confidentiality Principle
- d) Accountability Principle

5. Does the Tromsø Convention require public authorities to assist applicants in identifying the documents they seek?

Yes/No

6. Is denying access to official information automatically considered a violation of Article 10 of the ECHR?

Yes/No

The test should be expanded with additional questions specifically addressing the sessions on domestic regulations to assess participants' understanding of their national framework for access to information. For example, questions could focus on the timeframes within which public authorities are required to respond to requests for information under domestic law or the specific grounds allowed for refusing access, such as national security or privacy concerns. Another question could explore the role of national oversight bodies, asking participants to identify the responsibilities of entities such as the Information Commissioner or Ombudsman in their country.

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PRE-TRAINING TEST/SURVEY

Group #1: Legal professionals (judges, prosecutors, lawyers)

1. Which of the following is protected under Article 10 of the European Convention on Human Rights?

- a) The right to personal privacy.
- b) The right to freedom of expression.
- c) The right to participate in elections.
- d) The right to commercial confidentiality.

2. Does the European Convention on Human Rights explicitly guarantee the right to access official information?

Yes/No.

3. What is the purpose of the Tromsø Convention?

- a) To regulate data protection laws across Europe.
- b) To establish access to environmental information.
- c) To guarantee everyone's right to access official documents.
- d) To enforce media censorship policies.

4. The Aarhus Convention focuses solely on environmental issues.

- a) True.
- b) False.

5. Are NGOs considered public watchdogs under the European Court of Human Rights case law when requesting information of public interest?

Yes/No.

6. Which body has the final say in determining whether access to information has been unlawfully restricted under the European Convention on Human Rights?

- a) The Information Commissioner.
- b) The European Court of Human Rights.
- c) The Council of Europe.
- d) The national Ombudsman.

ACCESS TO INFORMATION IN THE CONTEXT OF FREEDOM OF EXPRESSION

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EVOLUTION OF INTERNATIONAL STANDARDS IN ACCESS TO OFFICIAL INFORMATION AS THE COMPONENT OF FREEDOM OF EXPRESSION

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INTERNATIONAL DOCUMENTS DEFINING THE RIGHT TO ACCESS OFFICIAL INFORMATION:

- ▶ European Convention on Human Rights
- ▶ International Covenant Civil and Political Rights
- ▶ Aarhus Convention
- ▶ Tromsø Convention

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THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

(EUROPEAN CONVENTION ON HUMAN RIGHTS)

- ▶ 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.
- ▶ 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.

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AARHUS CONVENTION

- ▶ The Aarhus Convention is formally known as the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. It was adopted on June 25, 1998, in the Danish city of Aarhus.
- ▶ The Convention aims to promote environmental democracy by granting the public rights regarding access to information, public participation, and access to justice in environmental matters.

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TROMSØ CONVENTION

- ▶ Entered into force on 1 December 2020.
- ▶ It has 17 Parties: Albania, Armenia, Bosnia and Herzegovina, Estonia, Finland, Hungary, Iceland, Latvia, Lithuania, Montenegro, North Macedonia, Norway, the Republic of Moldova, Slovenia, Spain, Sweden, and Ukraine.

The Tromsø Convention was the first binding international legal instrument to recognize everyone's right to access official documents (information) held by public authorities without discrimination, regardless of the requester's status or motives in seeking access.

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INTERNATIONAL BODIES THAT PROTECT HUMAN RIGHTS ON THE BASIS OF THESE INTERNATIONAL ACTS:

- ▶ European Court of Human Rights
- ▶ UN Human Rights Committee
- ▶ Aarhus Convention Compliance Committee

Council of Europe Convention on Access to Official Documents (Tromsø Convention)
– two monitoring bodies:

- ▶ Group of Specialists on Access to Official Documents
- ▶ Consultation of the Parties

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TROMSØ CONVENTION – CONSULTATIONS OF THE PARTIES

- ▶ The Consultation of the Parties is the second monitoring body established by the Tromsø Convention under its Article 12.
- ▶ Being more of a political body the Consultation of the Parties is composed of one representative per Party. It meets at least once every four years to consider the reports, opinions and proposals submitted by the Group of Specialists. An activity report shall be submitted by the Consultation of the Parties to the Committee of Ministers after each meeting. The Consultation of the Parties elects the members of the Group of Specialists.
- ▶ The Consultation of the Parties can make proposals and recommendations to the Parties, make proposals or formulate opinions on any proposal for the amendment of the Tromsø Convention under Article 19.

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ACCESS TO OFFICIAL INFORMATION – CRITERIA IN ECHR CASE LAW

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CRITERIA ACCORDING TO ARTICLE 10 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Procedural Requirements

1. **Lawfulness of the Interference:** Any restriction must have a clear legal basis. This means the limitation should be established through legislation that is accessible and foreseeable, ensuring that individuals understand the potential for certain information to be restricted and the reasons behind it.
2. **Legitimacy of the Aim:** The limitation must pursue a legitimate aim. The Convention outlines specific legitimate interests, as mentioned above, which justify the restriction of access to information.
3. **Necessity and Proportionality:** The restriction must be necessary in a democratic society and proportionate to the intended goal. This involves a careful assessment to ensure that the interference with the right to access information is balanced against the need to protect the public interest or the rights of others.

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NECESSITY OF THE INTERFERENCE IN A DEMOCRATIC SOCIETY

- ▶ The general principles for assessing the necessity of an interference with freedom of expression, reiterated many times by the Court since its judgment in *Handyside v. the United Kingdom*
- ▶ The Court has developed in its case law the autonomous concept of whether an interference is “proportionate to the legitimate aim pursued”, which is determined with regard **to all the circumstances of the case using criteria established in the Court’s case law** and with the assistance of various principles and interpretation tools.

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ECTHR CASE-LAW (BEFORE THE JUDGMENT OF THE GRAND CHAMBER IN THE CASE OF MAGYAR HELSINKI BIZOTTSÁG V. HUNGARY)

- ▶ Társaság a Szabadságjogokért v. Hungary (Application No. [37374/05](#)).
- ▶ Sdružení Jihočeské Matky v. Czech Republic (Decision on admissibility, Application No. [19101/03](#)).
- ▶ Youth Initiative for Human Rights v. Serbia (Application No. [48135/06](#)).
- ▶ Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung v. Austria (Application No. [39534/07](#)).

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THRESHOLD CRITERIA FOR THE RIGHT OF ACCESS TO STATE-HELD INFORMATION

- ▶ **The purpose of the requestor or why the information is needed.** This criterion includes an assessment of whether obtaining the information is really necessary for the person to fulfill his or her function of facilitating public debate on socially important issues, and whether failure to provide the information would create a significant obstacle to freedom of expression.
- ▶ **The nature of the information.** The information, data or documents to which access is requested must meet the requirements of the three-part test, i.e., be collected for the purpose of satisfying the public interest, and not simply out of curiosity.

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- ▶ **The role of the requestor.** Those who facilitate public discussion have special protection: journalists, civil society organizations/activists, researchers, authors of books on socially important topics, bloggers and popular social media users.
- ▶ **“Ready and available information”.** The provision of information should not impose an excessive burden on public authorities to collect and process data.

(Judgment of the Grand Chamber in the case of Magyar Helsinki Bizottság v. Hungary).

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THE PURPOSE OF THE INFORMATION REQUEST

- ▶ 158. First, it must be a prerequisite that the purpose of the person in requesting access to the information held by a public authority is to enable his or her exercise of the freedom to “receive and impart information and ideas” to others. Thus, the Court has placed emphasis on whether the gathering of the information was a relevant preparatory step in journalistic activities or in other activities creating a forum for, or constituting an essential element of, public debate (see, *mutatis mutandis*, *Társaság*, cited above, §§ 27-28; and *Österreichische Vereinigung*, cited above, § 36).
- ▶ 159. In this context, it may be reiterated that in the area of press freedom the Court has held that, “by reason of the ‘duties and responsibilities’ inherent in the exercise of the freedom of expression, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism” (see *Goodwin v. the United Kingdom*, 27 March 1996, § 39, Reports 1996-II).

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THE NATURE OF THE INFORMATION SOUGHT

- ▶ 161. Court considers that the information, data or documents to which access is sought must generally meet a public-interest test in order to prompt a need for disclosure under the Convention. Such a need may exist where, inter alia, disclosure provides transparency on the manner of conduct of public affairs and on matters of interest for society as a whole and thereby allows participation in public governance by the public at large.

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- ▶ 162. The Court has emphasised that the definition of what might constitute a subject of public interest will depend on the circumstances of each case. The public interest relates to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case with regard to matters which are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about. The public interest cannot be reduced to the public's thirst for information about the private life of others, or to an audience's wish for sensationalism or even voyeurism.
- ▶ 163. In this connection, the privileged position accorded by the Court in its case-law to political speech and debate on questions of public interest is relevant.

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THE ROLE OF THE APPLICANT

- ▶ 164. A logical consequence of the two criteria set out above – one regarding the purpose of the information request and the other concerning the nature of the information requested – is that the particular role of the seeker of the information in “receiving and imparting” it to the public assumes special importance. Thus, in assessing whether the respondent State had interfered with the applicants’ Article 10 rights by denying access to certain documents, the Court has previously attached particular weight to the applicant’s role as a journalist (see Roșianu, cited above, § 61) or as a social watchdog or non-governmental organisation whose activities related to matters of public interest (see Társaság, § 36; Österreichische Vereinigung, § 35; Youth Initiative for Human Rights, § 20; and Guseva, § 41, all cited above).

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- ▶ 165. While Article 10 guarantees freedom of expression to “everyone”, it has been the Court’s practice to recognise the essential role played by the press in a democratic society (see *De Haes and Gijssels v. Belgium*, 24 February 1997, § 37, Reports 1997-I) and the special position of journalists in this context. It has held that the safeguards to be afforded to the press are of particular importance

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READY AND AVAILABLE INFORMATION

169. In reaching its conclusion that the refusal of access was in breach of Article 10, the Court has previously had regard to the fact that the information sought was “ready and available” and did not necessitate the collection of any data by the Government (see *Társaság*, cited above, § 36, and, a contrario, *Weber v. Germany* (dec.), no. 70287/11, § 26, 6 January 2015). On the other hand, the Court dismissed a domestic authority’s reliance on the anticipated difficulty of gathering information as a ground for its refusal to provide the applicant with documents, where such difficulty was generated by the authority’s own practice (see *Österreichische Vereinigung*, cited above, § 46).

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ECTHR CASE-LAW

- ▶ Centre for Democracy and Rule of Law v. Ukraine #10090/16
- ▶ Affaire Cangi v. Turkey #24973/15
- ▶ Volodymyr Torbich v. Ukraine #14957/13
- ▶ Torbich v Ukraine #41713/13 and #29980/15

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KEY PRINCIPLES AND STANDARDS OF AARHUS AND TROMSØ CONVENTIONS

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THREE PILLARS OF AARHUS CONVENTION

The Convention is based on three main pillars:

- ▶ **Pillar One – Access to Information:** Guarantees the right of everyone to receive environmental information that is held by public authorities.
- ▶ **Pillar Two – Public Participation:** Involves the public in environmental decision-making, ensuring that public opinions and concerns are considered.
- ▶ **Pillar Three – Access to Justice:** Provides the public with the means to challenge public decisions that have been made in breach of the two previous pillars or environmental law.

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SCOPE OF AARHUS CONVENTION

- ▶ *Article 1* – In order to contribute to the **protection of the right of every person** of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.
- ▶ *Article 3 (9)* – Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters **without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.**

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AARHUS CONVENTION – GENERAL PROVISION

- ▶ *Article 3 (5)* – The provisions of this Convention shall not affect the right of a Party to maintain or introduce measures providing for **broader access to information**, more extensive public participation in decision-making and wider access to justice in environmental matters than required by this Convention

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DEFINITION OF INFORMATION OF AARHUS CONVENTION

- ▶ *Article 2*, “Environmental information” means **any information in written, visual, aural, electronic or any other material form**
- ▶ *Article 4*, “Each Party shall ensure that... public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested ... copies of the actual documentation containing or comprising such information:

b) In the form requested unless:

(i) It is reasonable for the public authority to make it available in another form, in **which case reasons shall be given for making it available in that form**;

(ii) Or the information is already publicly available in another form.

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AARHUS CONVENTION STANDARD ON THE PERSONALITY OF A REQUESTOR

- ▶ *Article 4* – Each Party shall ensure that... public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested ... copies of the actual documentation containing or comprising such information:
- ▶ (a) **Without an interest having to be stated**

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AARHUS CONVENTION – PROVIDING GUIDANCE

- ▶ **Article 3 (2)** – Each Party shall endeavor to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters

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TROMSØ CONVENTION – GENERAL PROVISIONS

- *Article 1* – The principles set out hereafter should be understood without prejudice to those domestic laws and regulations and to international treaties which recognize **a wider right of access to official documents**.

According to the Explanatory Report to the Convention, “no provision of the Convention may be interpreted as restricting access to documents which must be made available under other international obligations.”

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SCOPE OF TROMSØ CONVENTION

- ▶ *Article 2* – Each Party shall guarantee the right of everyone, **without discrimination on any ground**, to have access, on request, to official documents held by public authorities.

According to the Explanatory Report to the Convention, “the Convention gives “everyone” the right to have access to official documents, irrespective of their motives and intentions.

The Convention does not make any distinction between them and other individuals”.

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DEFINITION OF INFORMATION IN THE TROMSØ CONVENTION

- *Article 1*, “the Council of Europe Convention on Access to Official Documents prescribes that “official documents” means **all information recorded in any form**, drawn up or received and held by public authorities.”

According to the Explanatory Report to the Convention, “it is a very wide definition: “official documents” are considered to be any information drafted or received and held by public authorities that are recorded on any sort of physical medium whatever be its form or format (written texts, information recorded on a sound or audiovisual tape, photographs, emails, **information stored in electronic format such as electronic databases**, etc.)”

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TROMSØ CONVENTION STANDARD ON THE PERSONALITY OF THE REQUESTOR

- ▶ *Article 4* – An applicant for an official document shall not be obliged to give reasons for having access to the official document. Formalities for requests shall not exceed what is essential in order to process the request.
- ▶ Parties may give applicants the right to remain anonymous except when disclosure of identity is essential in order to process the request.

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ARCHIVE INFORMATION

According to the Explanatory Report to the Tromsø Convention:

15. Official documents transferred to archives remain under the scope of this Convention.

61. In principle, on-site consultation should be free of charge. However, the public archival authorities and museums may charge the applicant for the cost of the services they supply.

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TROMSØ CONVENTION STANDARD – PROVIDING HELP

- *Article 5* – The public authority shall help the applicant, as far as reasonably possible, to identify the requested official document.

According to the Explanatory Report to the Convention:

45. The authority **does have a certain margin of appreciation to determine to what extent it is reasonable to provide help**. Such assistance is particularly important if the applicant is disabled, illiterate or a foreigner with little or no knowledge of the language.

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OBLIGATION TO MANAGE OFFICIAL DOCUMENTS EFFICIENTLY UNDER THE TROMSØ CONVENTION

Article 9 of the Tromsø Convention provides that the Parties “shall take appropriate measures to: ... c) **manage their documents efficiently so that they are easily accessible** and

d) apply clear and established rules for the preservation and destruction of their documents”.

This provision is reflected in many legislations worldwide, primarily via introducing the obligation of the government to establish a well-structured and easily accessible document management system: “it is necessary that Parties to the Convention provide for measures to set up effective systems for the management and storage of the public authorities’ documents.” (Explanatory Report the Council of Europe Convention on Access to Official Documents, para. 71).

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LIMITATION OF ACCESS TO INFORMATION

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LIMITATIONS ARE PRESCRIBED BY:

- ▶ Part 2 of Article 10 of the European Convention on Human Rights
- ▶ Part 3 of Article 19 of the International Covenant on Civil and Political Rights
- ▶ Article 3 of the Council of Europe Convention on Access to Official Documents
- ▶ Article 4 of the Aarhus Convention

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LAWFULNESS

A norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his or her conduct and that he or she must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. However, it went on to state that these consequences do not need to be foreseeable with absolute certainty, as experience showed that to be unattainable (*Perinçek v. Switzerland* [GC], § 131).

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LEGITIMACY OF THE AIM PURSUED BY THE INTERFERENCE

- ▶ The Court may find that interference does not serve to advance the legitimate aim relied on or choose to retain only one of the legitimate aims relied on by the State, while dismissing others.
- ▶ The Court may consider that the lack of a legitimate aim for the interference amounted in itself to a violation of the Convention and therefore decide not to examine whether the interference in question had been necessary in a democratic society.

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NECESSITY OF THE INTERFERENCE IN A DEMOCRATIC SOCIETY

- ▶ Existence of a “pressing social need”
- ▶ Assessment of the nature and severity of the sanctions (the least restrictive measure)
- ▶ Requirement of relevant and sufficient reasons

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TROMSØ CONVENTION (ART.3)

Each Party may limit the right of access to official documents.

Limitations shall be:

- ▶ set down precisely in law,
- ▶ be necessary in a democratic society and
- ▶ be proportionate to the aim of protecting

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HARM TEST UNDER THE TROMSØ CONVENTION

Access to information contained in an official document may be refused if its disclosure would or would be likely

- ▶ to harm any of the interests mentioned in paragraph 1,
- ▶ unless there is an overriding public interest in disclosure.

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INFORMATION OF PUBLIC INTEREST

- ▶ Contribution to Public Debate
- ▶ Role of the Requester
- ▶ Transparency and Accountability
- ▶ Balancing Public and Private Interests

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TIME AND REASONS

- ▶ Restricted information must be provided if it has been lawfully released previously.
- ▶ Restricted information must be provided unless there are pre-existing legal grounds for restricting access to such information.
- ▶ Information with restricted access must be provided if there are no legal grounds for restricting access to such information that existed previously.

CASE OF ÉDITIONS PLON v. FRANCE Application no. [58148/00](#)

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OVERVIEW OF NATIONAL LEGISLATION ON ACCESS TO INFORMATION

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LEGAL GUARANTEES OF THE RIGHT TO ACCESS OFFICIAL INFORMATION/DOCUMENTS

Component 1 (for example – relevant provisions of the national Constitution)

Component 2 (for example – relevant provisions of the domestic law)

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DEFINITION OF OFFICIAL INFORMATION/DOCUMENTS:

Component 1 (for example – ready and available)

Component 2 (for example – information in different formats)

Component 3 (for example – created and collected by the public authority)

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DEFINITION OF PUBLIC AUTHORITIES

Component 1 (for example – government and administration at national, regional and local level)

Component 2 (for example – legislative bodies and judicial authorities insofar as they perform administrative functions according to national law)

Component 3 (for example – natural or legal persons insofar as they exercise administrative authority)

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REQUESTS FOR ACCESS TO OFFICIAL INFORMATION/DOCUMENTS

Component 1 (for example – obligation to give reasons for having access to the official information/document)

Component 2 (for example – formalities for requests)

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PROCESSING OF REQUESTS FOR ACCESS TO OFFICIAL INFORMATION/DOCUMENTS:

Component 1 (for example – the timeline for processing request)

Component 2 (for example – an obligation of the public authority to help the applicant)

Component 3 (for example – an obligation to deal with the requests on an equal basis)

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CHARGES FOR ACCESS TO OFFICIAL DOCUMENTS

Component 1 (for example – inspection of official documents on the premises of a public authority)

Component 2 (for example – tariffs of charges domestic regulation)

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REVIEW PROCEDURE

Component 1 (for example – the general review procedure)

Component 2 (for example – review procedure before a court)

Component 3 (for example – review procedure by an impartial body established by law)

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PUBLIC INTEREST TEST AND LIMITATIONS ON ACCESS TO INFORMATION UNDER THE NATIONAL REGULATIONS

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PUBLIC INTEREST TEST OR HARM TEST UNDER THE NATIONAL REGULATIONS

Component 1 (for example – relevant provisions of the national Constitution)

Component 2 (for example – relevant provisions of the domestic law)

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PUBLIC INTEREST TEST OR HARM TEST UNDER THE NATIONAL REGULATIONS

Component 1 (for example – relevant provisions of the national Constitution)

Component 2 (for example – relevant provisions of the domestic law)

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INFORMATION OF PUBLIC INTEREST UNDER THE DOMESTIC LEGISLATION

Component 1 (for example – definition)

Component 2 (for example – criteria)

Component 3 (for example – relevant case law)

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POSSIBLE LIMITATIONS TO ACCESS TO OFFICIAL INFORMATION/DOCUMENTS

Component 1 (for example – background)

Component 2 (for example – list of legitimate limitations)

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RELEVANT CASE LAW:

Component 1 (for example – illustrate limitations to the aim of protecting national security)

Component 2 (for example – illustrate limitations to the aim of protecting privacy and other legitimate private interests)

Component 3 (for example – illustrate limitations to the aim of protecting the deliberations within or between public authorities concerning the examination of a matter)

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OVERSIGHT AND CONTROL MECHANISMS

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TROMSØ CONVENTION STANDARDS

Article 8

An applicant whose request for an official document has been denied, expressly or impliedly, whether in part or in full, shall have access to a review procedure before a court or another independent and impartial body established by law.

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AARHUS CONVENTION STANDARDS

Article 8

Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law. In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to **an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.**

Final decisions under this paragraph 1 shall be binding on the public authority holding the information. Reasons shall be stated in writing, at least where access to information is refused under this paragraph.

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CONTROLLING AUTHORITY IN ACCESS TO INFORMATION – REQUIREMENTS

- ▶ Independence
- ▶ Balance of PDP and RTI
- ▶ Effectiveness
- ▶ Involvement in education and promotion of the RTI
- ▶ Involvement in drafting legislation and policy-making

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CONTROLLING AUTHORITY IN ACCESS TO INFORMATION – CHALLENGES

- ▶ Combination of personal data protection and access to information authorities
- ▶ Lack of resources, experts, and power
- ▶ Independent status and influence at the national executive authorities

<https://unesdoc.unesco.org/ark:/48223/pf0000389214/PDF/389214eng.pdf.multi>

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FROM GOOD LEGISLATION TO GOOD ADMINISTRATIVE PRACTICES:

At the EU level

- ▶ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents
- ▶ European Ombudsman

At the national level

- ▶ Improvement of national RTI laws
- ▶ Trainings for the state servants
- ▶ Monitoring and raising awareness

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TROMSØ CONVENTION REPORTING OBLIGATIONS

- ▶ **Regular Submission:** Parties to the Tromsø Convention are required to submit periodic national reports detailing the implementation of the Convention's provisions within their jurisdictions.
- ▶ **Content Requirements:** These reports must provide comprehensive information on how the Parties are fulfilling their obligations to ensure access to official documents. This includes details on legislative, regulatory, and practical measures taken to implement the right of access to information.

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AARHUS CONVENTION REPORTING OBLIGATIONS

- ▶ **National Reports:** Parties to the Convention are required to submit regular national implementation reports. These reports detail how each Party is implementing the Convention's provisions.
- ▶ **Content:** The reports typically cover access to information, public participation in decision-making, and access to justice in environmental matters.
- ▶ **Review:** The Secretariat compiles and reviews the national reports, providing an overview of the Convention's implementation across different Parties.

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