



Council of Europe Group on Access to Information (AIG)

**Report submitted by Armenia
pursuant to Article 14, paragraph 1
of the Council of Europe Convention
on Access to Official Documents (CETS No.205)**

Received by the Secretariat on 12 January 2023

I - GENERAL INFORMATION

- a. The existence or not of a State body/agency responsible for the preparation of the report as well as the State bodies/agencies which contributed to the report by providing relevant information.

Armenia does not have an authorized body for freedom of information (commissioner). As a result, it is envisaged that the report will be compiled by the body with the most experience in the field of freedom of information, with the support of other state bodies. In this case, the questionnaire was completed by the authorized body for personal data protection.

- b. The involvement, participation or consultation with relevant non-state stakeholders including NGOs, civil society, and any other relevant stakeholder in the implementation of the Convention.

The protection of freedom of information in Armenia is mostly carried out by non-governmental organizations specialized in the field. As a result, the process of ratification of the convention was also carried out with the participation of civil society. Now there is already public control over the implementation of the convention by sectoral non-governmental organizations (see <http://www.foi.am/en/>).

LEGISLATIVE AND OTHER MEASURES TAKEN TO GIVE EFFECT TO THE PROVISIONS OF THE CONVENTION

Article 1 – General provisions

1. *The principles set out hereafter should be understood without prejudice to those domestic laws and regulations and to international treaties which recognise a wider right of access to official documents.*
2. *For the purposes of this Convention:*
 - a. *(i) “public authorities” means:*
 1. *government and administration at national, regional and local level;*
 2. *legislative bodies and judicial authorities insofar as they perform administrative functions according to national law;*
 3. *natural or legal persons insofar as they exercise administrative authority.*
 - (ii) Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that the definition of “public authorities” also includes one or more of the following:*
 1. *legislative bodies as regards their other activities;*
 2. *judicial authorities as regards their other activities;*
 3. *natural or legal persons insofar as they perform public functions or operate with public funds, according to national law.*
- b. *“official documents” means all information recorded in any form, drawn up or received and held by public authorities.*

- 1.1. The **definition of “public authorities”** as adopted in national legal and/or policy frameworks relating to access to official documents, including specifications and/or examples of authorities covered by this definition.¹

¹ Please provide specifications and/or examples of activities performed by legislative bodies, judicial authorities and natural or legal persons which may be included in the definition of public authorities on the basis of a declaration made by the Party pursuant to Article 1, paragraph (2)(a)(ii)(1), Article 1 paragraph (2)(a)(ii) (2) or Article 1, paragraph (2)(a)(ii)(3).

According to Article 3 of the RA Law on Freedom of Information state bodies, local self-government bodies, as well as their officials are included in the scope of state bodies considered as information holders. By the way, some private organizations (state budget sponsored organizations as well as organizations of public importance) are also considered information holders).

- 1.2. The **definition of “official documents”** as adopted in relevant national legal and/or policy frameworks, including specific information as to whether this definition covers information stored electronically or in databases.

According to Article 3 of the RA Law on Freedom of Information official documents include records/data of facts, people, subjects, events, phenomena, processes that are received and formed as defined by legislation, despite of the way those are possessed or their material carrier (electronic or hard copy documents, records, videos, films, photos, drawings, schemes, notes, maps, etc.)

- 1.3. Do official documents transferred to archives remain within the scope of national legal and/or policy frameworks relating to access to official documents?

Yes, archived documents remain within the scope of the RA Law on Freedom of Information. Moreover, archived documents are stored in the state body-information holder for 7 years since archived, then transferred the national archive, which is also an information holder within the meaning of the RA Law on Freedom of Information.

Article 2 – Right of access to official documents

1. 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.
2. Each Party shall take the necessary measures in its domestic law to give effect to the provisions for access to official documents set out in this Convention.
3. These measures shall be taken at the latest at the time of entry into force of this Convention in respect of that Party.

- 2.1. The **legal and/or policy framework** guaranteeing the right of access to official documents, including specific information on relevant domestic laws, regulations and policies recognising the right of access to official documents.

The constitutional basis of access to official documents is Article 51 of the RA Constitution. Article 42 is also applicable. This right is covered by the Freedom of Information Act.

- 2.2 Specifications as to whether the right of access to official documents is guaranteed to **everyone**, including non-nationals of the Party.

Paragraph 1 of the Article 6 of the RA Law on Freedom of Information states, that each person has the right to address a request to information holder to get acquainted with and/or get the information sought by the applicant as defined by the law. Paragraph 2 of the same article states, that foreign citizens can enjoy the rights and freedoms foreseen by the following law as defined by the Republic of Armenia Law and/or in cases defined by international treaties (the Law was adopted in 2003).

Despite this, the 2015 edition of the RA Constitution includes Article 51, which establishes the right to receive information for everyone, without specifying exceptions based on

citizenship. According to the Article 51 of the RA Constitution everyone has the right to receive information about the activities of state and local self-government bodies and officials and to get acquainted with documents.

2.3 Whether the Party guarantees the right of access to official documents **irrespective of the use** of the information received by the requestors of access.

According to the Paragraph 4 of the Article 9 of the RA Law on Freedom of Information the applicant does not have to justify the request.

Article 3 – Possible limitations to access to official documents The Parties

1. 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:

- a. national security, defence and international relations;
- b. public safety;
- c. the prevention, investigation and prosecution of criminal activities;
- d. disciplinary investigations;
- e. inspection, control and supervision by public authorities;
- f. privacy and other legitimate private interests;
- g. commercial and other economic interests;
- h. the economic, monetary and exchange rate policies of the State;
- i. the equality of parties in court proceedings and the effective administration of justice;
- j. environment; or
- k. the deliberations within or between public authorities concerning the examination of a matter.

Concerned States may, at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that communication with the reigning Family and its Household or the Head of State shall also be included among the possible limitations.

2. 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.

3. The Parties shall consider setting time limits beyond which the limitations mentioned in paragraph 1 would no longer apply.

3.1 Whether the Party has introduced **limitations** to the right of access to official documents, including specific information on such limitations, whether they are set by law and whether the relevant legal and/or policy frameworks provide for limitations of the right of access to official documents which pursue aims not listed in Article 3(1), and if so, specifying which ones.

According to the Article 8 of the RA Law on Freedom of Information information holder, with the exception of cases defined in the 3rd clause of the Article, refuses to provide information if: a. contains state, official, bank or trade secret; b. infringes the privacy of a person and his family, including the privacy of correspondence, telephone conversations, post, telegraph and other transmissions; c. contains pre-investigation data not subject to publicity; d. discloses data that require accessibility limitation, conditioned by professional activity (medical, notary, attorney secrets). e. infringes copy right and associated rights.

If a part of the information required contains data, the disclosure of which is subject to denial, then information is provided concerning the other part.

Information request cannot be declined, if: a. it concerns urgent cases threatening public security and health, as well as natural disasters (including officially forecasted ones) and their aftermaths; b. it presents the overall economic situation of the Republic of Armenia,

as well as the real situation in the spheres of nature and environment protection, health, education, agriculture, trade and culture; c. if the decline of the information request will have a negative influence on the implementation of state programs of the Republic of Armenia directed to socio-economic, scientific, spiritual and cultural development, the applicant does not have to justify the request.

- 3.2. Whether the relevant legal and/or policy frameworks provide for limitations of the right of access to official documents which pursue aims not listed in Article 3(1), and if so, specifying which ones.

The grounds of limitation of the right of access to official documents are provided in the Article 8 of the RA Law on Freedom of information and are comparable to the limitations listed in Article 3(1).

- 3.3. Specification as to why the limitations to the right of access to official documents are **necessary** and as to their **proportionality** to the aims listed in Article 3, paragraph 1.

Article 8 of the RA Law on Freedom of Information, similar to Article 3 of the Convention, defines the possible grounds (aims) for limitations of the right of access to official documents. Any particular document (information) is defined as restricted (confidential) by separate sectoral laws.

- 3.4. Whether the Party's legal and/or policy framework contains provisions which permit **refusal** of access to official documents in compliance with Article 3, paragraph 2.

Paragraph 1 of Article 8 of the TA RA Law on Freedom of Information exhaustively lists the grounds for refusal of information, and the Paragraph 3 of the same article provides for a specific "harm test" defining that Information request cannot be declined, if: a. it concerns urgent cases threatening public security and health, as well as natural disasters (including officially forecasted ones) and their aftermaths; b. it presents the overall economic situation of the Republic of Armenia, as well as the real situation in the spheres of nature and environment protection, health, education, agriculture, trade and culture; c. if the decline of the information request will have a negative influence on the implementation of state programs of the Republic of Armenia directed to socio-economic, scientific, spiritual and cultural development. In fact, this is a regulation excluding refusal of information in case of overriding public interest.

- 3.5. How the Party ensures that an **evaluation takes place of any overriding public interest** in the disclosure of information contained in an official document that would harm or would be likely to harm any of the interests listed in Article 3, paragraph 1.

Assessing the presence or absence of an overriding public interest is not left to the discretion of information holders. The Law (legislator) itself assessed the fields related to the overriding public interest and mentioned them in the Paragraph 3 of the Article 8 of the RA Law on Freedom of Information.

Article 4 – Requests for access to official documents

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

- 4.1. Whether the Party's legal and/or policy framework on access to official documents guarantees that the applicant shall not be obliged to **give reasons** for having access to official documents.

According to the Paragraph 4 of the Article 9 of the RA Law on Freedom of Information the applicant does not have to justify the request.

- 4.2. Whether **anonymous** requests for access to official documents are authorised and if so, how the public authorities implement this in practice and how are the applicants informed about this possibility.

Anonymous requests are not authorised by the Law: Paragraph 1 of Article 9 of the TA RA Law on Freedom of Information states, that a written request must be signed to include applicant's name, last name, citizenship, place of residence, work or study (in case of legal persons: name, physical address). Paragraph 5 of the same article states, that in case of oral inquiry, the applicant must in advance tell his name and last name. However, in practice, the strict identification of the applicant is not carried out, because the information managers do not have the possibility to identify people only by name, signature and address. For example, the unified platform of e-requests (it is a state platform) also allows submitting unsigned requests, which, in practice, are discussed in the same way as signed requests.

- 4.3. Measures taken to assess the necessity of the **formalities** applicable to requests for access to official documents or to periodically review such formalities.

Article 5 – Processing of requests for access to official documents

1. The public authority shall help the applicant, as far as reasonably possible, to identify the requested official document.
2. A request for access to an official document shall be dealt with by any public authority holding the document. If the public authority does not hold the requested official document or if it is not authorised to process that request, it shall, wherever possible, refer the application or the applicant to the competent public authority.
3. Requests for access to official documents shall be dealt with on an equal basis.
4. A request for access to an official document shall be dealt with promptly. The decision shall be reached, communicated and executed as soon as possible or within a reasonable time limit which has been specified beforehand.
5. A request for access to an official document may be refused:
 - (i) if, despite the assistance from the public authority, the request remains too vague to allow the official document to be identified;
 - Or
 - (ii) if the request is manifestly unreasonable.
6. A public authority refusing access to an official document wholly or in part shall give the reasons for the refusal. The applicant has the right to receive on request a written justification from this public authority for the refusal.

- 5.1. Which public authority is competent to decide on a request for access to an official document? Which other authorities are consulted? How is a request for access to an official document processed when received by the public authority which does not hold the requested official document or is not authorised to process the request? Which public authority deals with such request?

Each information holder (each public authority) bears the responsibility of discussing and answering the requests addressed to it. The law does not establish an obligation for an information holder to discuss the provision of information with other authorities.

According to the Paragraph 10 of the Article 9 of the RA Law on Freedom of Information if the information holder does not have the requested information, or if its provision is beyond its powers, than within 5 days after the written request is filed, it must inform the applicant about that in a written form, and if it possible, also point out the information on the information holder (including archive), that holds the requested information.

- 5.2. Measures taken by public authorities to **process requests** for access to official documents and to **provide assistance** to a person requesting such access;

The procedures of discussion of an information request are described by the Article 9 of the RA Law on Freedom of Information. This article sets out the procedure for submitting and discussing both oral and written requests (see also the answer to the point below).

According to the Point 2 of the Paragraph 2 of the Article 13 of the RA Law on Freedom of Information, the official f information holder who is responsible for ensuring the freedom of information explains the procedure, conditions and forms of information provision to the information seeker in an accessible manner in accordance with the procedure established by the legislation.

- 5.3. Measures taken by public authorities to ensure that requests for access to official documents are dealt with on an equal basis and that **no distinction** is made on the basis of the nature of the request or the status of the requestor.

The procedures of discussion of an information request are described by the Article 9 of the RA Law on Freedom of Information. The said article, among other things, clearly defines the options for responding to a request for information, providing both the responsibilities of the information holder and the deadlines for responding to the request. Thus, according to Paragraph 7 of the mentioned article if the information required by the written request is not publicized, than the copy of that information is given to the applicant within 5 days after the application is filed. If the information required by the written request is publicized, than information on the means, place and time framework of that publication is given within 5 days after the request is filed. c) If additional work is needed to provide the information required, than the information is given to the applicant within 30 days after the application is filed, about which a written notice is being provided within 5 days after the application submission, highlighting the reasons for delay and the final deadline when the information will be provided.

- 5.4. Whether a maximum **time limit** is set for public authorities, by law, any other applicable policy framework or through practice, to reach a decision on a request for access to official documents, notify the applicant about the decision, to make the document available if the decision is favourable, and to inform the applicant about any possible delays.

The RA Law on Freedom of Information sets a 5-day deadline for all cases of responding to an information request (providing information, refusing to provide information, informing the applicant about the absence of requested information, etc.). If additional work is needed to provide the information required, then the information holder can extend the period of providing the information up to a maximum of 30 days, buy in this case a written notice (highlighting the reasons for delay and the final deadline when the information will be provided) must be provided to the applicant within 5 days.

- 5.5 Whether the public authority gives **reasons in cases of refusal** of access to official documents, wholly or in part, on its own initiative and whether it provides justification in writing to the applicant upon his/her request for explanations about the refusal.

According to Paragraph 3 of the Article 11 of the RA Law on Freedom of Information, in

case of declining a written information request, information holder must inform the applicant about it within 5 days in a written form, by mentioning the ground for the refusal (relevant norm of the law), as well as its appeal procedure.

Article 6 – Forms of access to official documents

1. When access to an official document is granted, the applicant has the right to choose whether to inspect the original or a copy, or to receive a copy of it in any available form or format of his or her choice unless the preference expressed is unreasonable.
2. If a limitation applies to some of the information in an official document, the public authority should nevertheless grant access to the remainder of the information it contains. Any omissions should be clearly indicated. However, if the partial version of the document is misleading or meaningless, or if it poses a manifestly unreasonable burden for the authority to release the remainder of the document, such access may be refused.
3. The public authority may give access to an official document by referring the applicant to easily accessible alternative sources.

- 6.1. The form or **format** in which official documents are made available to the applicant once access to these documents is granted as well as information on whether the applicant has the possibility to choose the form of the document he/she wishes to consult in compliance with Article 6, paragraph 1.

According to Paragraph 8 of the Article 9 of the RA Law on Freedom of Information, the answer to written request is given on the material carrier mentioned in that request. If the material carrier is not mentioned and it is impossible to clarify that within the time limits foreseen by the law, then the answer to the written request is given by the material carrier that is the most suitable for the information holder.

- 6.2. How the public authority deals with requests to access official documents for which some of the information cannot be disclosed due to applicable limitations. Information on whether the rest of the document is released and whether the relevant decision of the public authority gives clear indications as to where and how much information is **deleted** and indicates the limitation justifying each deletion.

According to Paragraph 2 of the Article 8 of the RA Law on Freedom of Information, if a part of the information required contains data, the disclosure of which is subject to denial, then information is provided concerning the other part. According to Paragraph 7 of the Appendix 2 of the RA Government Decision No. 1204 of 2015 the information (the document to be provided) must be provided by making the information to be rejected illegible (covering, blacking out or erasing) without editing the rest of the information (the document). If a significant (fifteen percent or more) portion of the information provided by the information holder must be rendered illegible, the information may be provided in the form of permitted pages or excerpts.

<https://www.arlis.am/DocumentView.aspx?DocID=147567>

Article 7 – Charges for access to official document

1. Inspection of official documents on the premises of a public authority shall be free of charge. This does not prevent Parties from laying down charges for services in this respect provided by archives and museums.
2. A fee may be charged to the applicant for a copy of the official document, which should be reasonable and not exceed the actual costs of reproduction and delivery of the document. Tariffs of charges shall be published.

- 7.1. Whether inspection of official documents on the premises of the public authority is ensured **free of charge**.

The RA Law on Freedom of Information does not impose a fee or a charge for getting acquainted with the information within the premises of the information holder.

- 7.2. Whether the applicant can obtain a copy of the requested official documents free of charge. In the case that **fees** are charged, information on how they are calculated, whether tariffs are published and if so, how and where.

According to the Law, there is no charge for providing information in the following cases: 1) response to oral requests; 2) for up to 10 pages of printed or copied information; 3) for information via e-mail (internet); 4) responding the written information requests about information, the publication of which can prevent dangers facing state and public security, public order, public health and morals, others' rights and freedoms, environment, person's property (Paragraph 2 of the Article 7 of the Law); 5) providing notice about the changes of the deadline for providing information (Part 3 of Paragraph 7 of the Article 9 of the Law) or providing notice about the absence of requested information (Paragraph 10 of the Article 9 of the Law), 6) declining the information request.

However, compensation for the costs of providing information can be charged taking into account the above-mentioned requirements of the Law. The tariffs (amount of compensation) for the provision of information are defined by the RA Government Decision No. 1204 of 2015. According to Paragraph 10 of the Appendix 2 of the Decision No. 1204, the amount charged for information exceeding ten pages (or if the requested information is in a non-standard format (for example, colour copying, large format copying, etc.), the amount of money charged for providing that information) must not exceed the amount of actual and reasonable costs incurred to provide the information.

- 7.3. Whether fees are charged for access to official documents in **archives**

For the archived information, which continues to be stored in a state body-information holder, the regulations mentioned in the previous point apply. Charges different from the above may be set for access to documents stored in the archives depending, for example, on the type of access or tooling required (According to Article 23 of the RA Law on Archives, on the one hand, state and municipal archives provide the user of archive documents free of charge with the necessary conditions for searching and studying archive documents. On the other hand, state and municipal archives can provide paid information services to the user of archival documents, sign contracts with him/her on the commercial use of archival documents and their reference-search tools).

Article 8 – Review procedure

1. 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.
2. An applicant shall always have access to an expeditious and inexpensive review procedure, involving either reconsideration by a public authority or review in accordance with paragraph 1.

- 8.1. Whether the relevant legal and/or the policy framework provides for a **review procedure**, before a court or another independent and impartial body established by law, which is accessible by the person whose request for having access to official documents has been denied.

The RA Law on Freedom of Information provides for the possibility of appeal both in court and to an authorized state administration body, but Armenia does not have a freedom of information authorized body. Therefore, only the judicial mechanism of appeal is applicable. Appeals regarding the access to official documents are subject to administrative court review.

- 8.2. The **type of decisions** made by the court or the independent body, notably whether the latter is able to overturn decisions taken by public authorities which it considers to not comply with the applicable law/s, or to request the public authority in question to reconsider its position.

Yes, courts have such jurisdiction, and court decisions are binding.

- 8.3. The **duration** in time of the review procedure involving either reconsideration by a public authority or by the court or the independent body and whether fees are charged for it.

Examination of cases in the field of freedom of information (access to official documents) by the courts can last from several months to several years. And yes, fees are charged (approximately 25 euro).

Article 9 – Complementary measures

The Parties shall inform the public about its right of access to official documents and how that right may be exercised. They shall also take appropriate measures to:

- a. educate public authorities in their duties and obligations with respect to the implementation of this right;*
- b. provide information on the matters or activities for which they are responsible;*
- 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.*

- 9.1. Measures taken by public authorities to **inform** the public about its right of access to official documents and how this right can be exercised.

The RA Law on Freedom of Information itself does not provide for the implementation of a public campaign on freedom of information. In the absence of an authorized body for freedom of information, no body carries out such a systematic function, and the burden of raising public awareness is mainly taken by representatives of civil society (specialized non-governmental organizations).

- 9.2. **Training** (pre-service and during service) and any other measures taken to ensure that public authorities are aware of and knowledgeable about their duties and obligations concerning the implementation of the right of access to official documents.

Questions about freedom of information included in the questionnaires of civil service competitions. Trainings of state servants are carried out on a case-by-case basis within the framework of various programs or events with the support of sectoral non-governmental organizations and international organizations. In relevant cases, issues regarding freedom of information (access to official documents) are also discussed during trainings conducted by the authorized body for personal data protection.

- 9.3. Measures taken by public authorities to set up effective systems for the **management and storage** of official documents that they hold, including information on how such measures facilitate access to official documents.

The procedure for registration, classification and storage of information developed by the information holder or delivered to the information holder as well as the procedure for providing information or its copy by state and local self-governing bodies, state institutions and organizations has been defined by the RA Government Decision No. 1204 of 2015. Digitization is also of some importance for the accessibility of official documents, in particular, the e-request.am unified platform for electronic requests has been launched, through which it is possible to send requests, follow the process of discussion of the request and get acquainted with the response to the request.

- 9.4. Rules applied for the preservation and destruction of documents by public authorities.

Preservation and destruction of documents by public authorities is regulated by other laws. In particular, according to the RA Law on Archives archived documents are stored in the state body-information holder for 7 years since archived, then transferred and stored in the national archive.

At its own initiative and where appropriate, a public authority shall take the necessary measures to make public official documents which it holds in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest.

Article 10 – Documents made public at the initiative of the public authorities

- 10.1. Measures taken to encourage transparency by public authorities through the publication of official documents that they hold, notably information on the criteria used by public authorities to determine which documents they should publish **proactively**.

The scope of information (documents) to be proactively published is defined by the Paragraphs 2, 3 and 4 of the Article 7 of the RA Law on Freedom of Information, according to which information holder urgently publicizes or via other accessible means informs the public about the information that he has, the publication of which can prevent dangers facing state and public security, public order, public health and morals, others' rights and freedoms, environment, person's property. If it is not otherwise foreseen by the Constitution and/or the Law, information holder at least once a year publicize the following information related to his activity and or changes to it, 1) activities and services provided (to be provided) to public; 2) budget; 3) forms for written enquiries and the instructions for filling those in; 4) lists of personnel, as well as name, last name, education, profession, position, salary rate, business phone numbers and e-mails of officers; 5) recruitment procedures and vacancies; 6) influence on environment; 7) public

events' program; 8) procedures, day, time and place for accepting citizens; 9) policy of cost creation and costs in the sphere of work and services; 10) list of held (maintained) information and the procedures of providing it; 11) statistical and complete data on inquiries received, including grounds for refusal to provide information; 12) sources of elaboration or obtainment of information mentioned in this clause; 13) information on person entitled to clarify the information defined in this clause.

Changes made to above-mentioned information are publicized within 10 days.

Also, according to the Paragraph 14 of the Appendix 2 of the RA Government Decision No. 1204, the official website of the state body should have a "frequently asked questions" or other relevant section, where the same questions asked repeatedly (five or more times) and their answers are published.

10.2. How these official documents are **made public**, in which format and whether any measures are taken to facilitate the public's understanding of these documents.

According to Paragraph 5 of the Article 7 of the RA Law on Freedom of Information, information to be proactively published is publicized via means accessible to the public, and in cases when the information holder has an internet page, also via that page.