Access Info Europe

Cava de San Miguel 8, 4C

28005, Madrid

**Comments on the Draft Access to Information Law
of the Republic of Cyprus**

This document sets out Access Info Europe’s comments and recommendations on the Republic of Cyprus’ draft access to information law (in Greek, Νομοσχέδιο για πρόσβαση σε δημόσια έγγραφα).

Access Info Europe is a human rights organisation dedicated to promoting and protecting the right of access to information in Europe as a tool for defending civil liberties and human rights, for facilitating public participation in decision making, and for holding governments accountable[[1]](#footnote-1).

If you would like to discuss any of the points made in this document or have any questions about the recommendations made, please do not hesitate to contact us via phone (+34 913 656 558) or email (andreas@access-info.org / helen@access-info.org).

**Background to the law**

As of July 2015, Cyprus is one of only two countries in Europe, along with Luxembourg, not to have adopted a legal framework that recognises and guarantees the fundamental right of the public of access to information held by public bodies and institutions.

In 2011, Access Info Europe, in collaboration with Cypriot organisations as part of a European Union-funded study, published a series of findings and recommendations on the right of access to information in Cyprus. We found over 70% of the requests sent to public bodies in the Republic of Cyprus resulted in administrative silence, whilst only 7% of answers contained the information requested. One of our recommendations called for the adoption of legislation that would guarantee the fundamental right of access to information in the Republic of Cyprus[[2]](#footnote-2).

Therefore, Access Info Europe welcomes the initiative of the Cypriot government to adopt an access to information law that will guarantee the public’s right of access to information held by Cypriot public bodies and institutions.

It is worth noting that Cyprus has a unique opportunity, being one of the last European countries to adopt access to information legislation, to raise the bar across Europe in terms of international standards for transparency and access to information, and as a base upon which to build an open government.

This document contains the comments and recommendations from Access Info Europe to the draft access to information law that we received via email on 17 July 2015. We have proposed a number of changes to the law in order for it to comply with international standards, and to ensure Cyprus is able to sign and ratify the Council of Europe Convention on Access to Official Documents[[3]](#footnote-3).

In its current state, the draft law drawn up by the Republic of Cyprus falls far below recognised standards of transparency and access to information; according to an analysis of the draft text using RTI Rating indicators[[4]](#footnote-4), Cyprus would come in at position 97 of 102 countries (57 of 150 points) and would not be able to sign and ratify the Council of Europe Convention on Access to Official Documents.

We urge the Republic of Cyprus to adopt the recommendations outlined below in order to ensure a high-quality legal framework that would meet international standards on access to information.

**Summary of Recommendations:**

Access Info Europe recommends that the Republic of Cyprus’ draft access to information law be amended so that it:

* Recognise the fundamental nature of the right of access to information, as well as its instrumental nature in the exercise of other rights. The law should emphasise the benefits of the right of access to information.
* Confirm the law as the primary legal framework that governs access to information. Other laws that restrict access to government-held information must be brought into line with the right of access to information.
* Include by default all public bodies and institutions without exception, in a way that ensures it conforms to Article 1 of the Council of Europe Convention. Ministers should not be able to arbitrarily exclude public bodies from the access to information law.
* Ensure that information is public by default and that only contain limited exceptions are permissible, as outlined by the Council of Europe Convention on Access to Official Documents. The law must ensure that all exceptions are subject to a harm test and public interest test, and the ‘absolute’ nature of any exception is removed.
* Remove the ‘absolute nature’ of the exception to protect personal data, and instead, ensure that it is subject to a harm test and public interest test.
* Include all information held by public bodies, regardless of origin, as information that is available under the right of access to information, except for certain types of information that are judged to fall under limited exceptions outlined in the law.
* Empower the Information Commission with the ability to make binding decisions on the disclosure of information by public authorities, and via appeals to the Commissioner from requesters, including by removing Article 71 of the draft text.
* Remove from Article 9.1.a, the need to provide a copy of identification (“αντίγραφο ταυτότητας”) in order to submit a request.
* Clarify that it is free to submit requests

These recommendations are discussed in more detail, below.

**1. Recognise the Fundamental Nature of the Right**

Access to information is important as it enables effective participation in open, public debates about issues and interests affecting peoples’ lives. Without it, people have no ability to meaningfully participate in the decision-making process, to hold their governments accountable, to combat corruption, to reduce poverty, or, ultimately, to live in a genuine democracy.

**1.1. The Fundamental Right**

The right of access to information is recognised as a fundamental right by numerous bodies such as the Inter-American Court of Human Rights, the European Court of Human Rights, the UN Human Rights Committee as well as in over 50 constitutions worldwide.

The right of access to information is also instrumental in the exercise and protection of other rights, such as freedom of expression.

The Cypriot draft law on access to information does not recognise the ‘fundamental’ nature of the right of access to information, negatively affecting the legal framework proposed and its future implementation if it were to be adopted as it currently stands.

***Recommendation:*** The Cypriot draft law needs to recognise the fundamental nature of the right of access to information, as well as its instrumental nature in the exercise of other rights. The law should emphasise the benefits of the right of access to information.

**1.2. Primacy of the right of access to information**

In addition, Article 45 of the Cypriot draft text subjugates the access to information law to any other law that makes information secret further undermining the fundamental nature of the right.

***Recommendation:*** The Cypriot draft law must be confirmed as the primary legal framework that governs access to information. Other laws that restrict access to government-held information must be brought into line with the right of access to information.

**2. Expand the Scope of Access to Information**

The fundamental nature of the right to information means there is a presumption in favour of openness and access which guides access to information laws. This means in practice that by default, all public bodies and institutions fall under the law, without exception.

International standards on the right of access to information, as contained in model access to information laws, such as the Council of Europe Convention on Access to Official Documents, outline that all public bodies and institutions should come under access to information, without blanket exceptions.

The draft law of the Republic of Cyprus however, does not meet international standards even though it includes publicly-funded companies (Article 7). It is unacceptable that the draft text explicitly excludes from the law a number of public institutions (the following list of excluded institutions is provided in Annex 1 of the draft text); the President, Cabinet, Parliament, Judiciary, Attorney General, Auditor General, Governor of the Central Bank, and Accountant General of the State Treasury. The law also allows the Council of Ministers to exclude other institutions from the law as it sees fit.

***Recommendation:*** The Cypriot access to information law by default must include all public bodies and institutions without exception, in a way that ensures it conforms to Article 1 of the Council of Europe Convention. Ministers should not be able to arbitrarily exclude public bodies from the access to information law.

**3. Reduce Exceptions to the Right of Access to Information**

The right of access to information is understood to mean that all information held by public bodies by default is public by nature, and that only in certain limited circumstances, can access to information be denied.

International standards also understand that exceptions to access are only applied where disclosure prejudices, or poses a risk of actual harm to a protected interest (the ‘harm test’), and that the exception be weighed against the public interest in their disclosure (the ‘public interest test’).

**3.1. Limiting the Use of (Absolute) Exceptions**

International standards, including the Council of Europe Convention on Access to Official Documents, reject the inclusion of absolute exceptions in access to information legislation.

Articles 23 to 45 inclusive of the Cypriot draft text, outline 22 general exceptions to access to information, nine (9) of which are specifically stated to be absolute exceptions.

The Cypriot access to information law should not go beyond the exceptions outlined in the Council of Europe Convention on Access to Official Documents, which specifically states the following permissible exceptions to access:

1. national security, defence and international relations;
2. public safety;
3. the prevention, investigation and prosecution of criminal activities;
4. disciplinary investigations;
5. inspection, control and supervision by public authorities;
6. privacy and other legitimate private interests;
7. commercial and other economic interests;
8. the economic, monetary and exchange rate policies of the State;
9. the equality of parties in court proceedings and the effective administration of justice;
10. environment; or
11. the deliberations within or between public authorities concerning the examination of a matter.

The Council of Europe Convention states that these exceptions should only be applied if disclosure of the information would, or would be likely, to harm any of these above interests, unless there is an overriding public interest in disclosure.

In the case where information is excluded from disclosure, the rest of the information contained in a document for example, should still be released.

***Recommendation:*** The Cypriot draft access to information law must ensure that information is public by default and that only contain limited exceptions are permissible, as outlined by the Council of Europe Convention on Access to Official Documents. The law must ensure that all exceptions are subject to a harm test and public interest test, and the ‘absolute’ nature of any exception is removed.

**3.2. Balancing Privacy and Access to Information**

The right to privacy is an accepted and necessary exception to the right of access to information as it should be used to protect the privacy and personal data of individuals against abuse and misuse of such information. Yet, privacy and personal data protection should not mean greater government secrecy, as these exceptions should be appropriately weighed against the public’s right of access to information via the application of a harm test and public interest test.

Without the application of a harm test and public interest test, exceptions to access on the grounds of privacy and personal data protection can be used to block access to information that is crucial in the fight against corruption, or to block elected representatives and those holding public office or performing public functions from the necessary scrutiny and accountability expected in a democratic society.

Article 23 of the Cypriot draft access to information law unfortunately, asserts that information relating to personal data is an absolute exception. The absolute nature of this exception is unacceptable as it opens the door to increased government secrecy and it reduces the capacity for citizens to hold government officials and representatives accountable.

***Recommendation:*** The Cypriot draft law should remove the ‘absolute nature’ of the exception to protect personal data, and instead, ensure that it is subject to a harm test and public interest test.

**3.3. Documents Received from Third Parties**

As previously stated, international standards understand that documents held by public institutions and bodies are public by nature because they relate to the activities of the public body. Hence documents that are sent to public bodies from a third party are also covered by the right of access to information. Such documents could include documents relating to public procurement contract or documents submitted as part of lobbying in order to influence decision makers. Such documents must not be excluded outright from the right of access to information, and are covered by the access to information legislation of most countries.

Article 8.3 of the Cypriot draft law, however, specifically excludes documents from third parties from the access to information law. This is a serious exception that will reduce the public’s ability to hold its government accountable for the decisions that it makes.

***Recommendation:*** The Cypriot draft law should include all information held by public bodies, regardless of origin, as information that is available under the right of access to information, except for certain types of information that are judged to fall under limited exceptions outlined in the law.

**4. Give the Information Commissioner Binding Powers**

According to international standards, Information Commissioners should be empowered to make binding decisions on public authorities when they look into possible or actual violations of the right of access to information.

There are many advantages to giving an Information Commissioner binding powers: rapid resolution of appeals against refusals or failures to provide information thereby avoiding the necessity for long and costly judicial procedures, resolution of problems without the need for an overly formal procedure, and instilling public confidence in the implementation of the right of access to information.

At the same time, it is important that the Information Commissioner has all the necessary powers to consider the complaint and to reach an appropriate decision. This may include the power of review of contested information, the right to consult on public interest, and powers of on-site inspection.

Article 71 of the Cypriot draft access to information law, however, completely undermines the role of the Information Commissioner to hold public authorities accountable, because the resolution of potential disagreements about the disclosure of information is only enforceable through a judicial process.

***Recommendation:*** The Cypriot access to information law should empower the Information Commission with the ability to make binding decisions on the disclosure of information by public authorities, and via appeals to the Commissioner from requesters, including by removing Article 71 of the draft text.

**5. Streamline the Process of Making Access to Information Requests**

Access Info Europe recognises that there are a number of positive aspects to the draft access to information law, in particular those that refer to the process of submitting requests.

Access Info welcomes Article 8 that confirms that citizens are able to ask for information as well as documents held by public authorities.

Given the proliferation and normalisation of email as a core method of modern communication in the 21st century, we also welcome Article 9.1 that confirms email is a valid way of submitting a request. We also welcome the fact that Article 9.2 enables requesters to request their preferred format in which they receive the information asked for. Finally, Articles 10 and 14 oblige good practice by requiring authorities to not only to help the requester clarify the kind of information they are looking for, but to also to refer the requester to the correct authority that can deal with the request, if required.

However, the access to information law still has deficiencies with regards to the process of implementing the law that should be revised.

**5.1 Ensuring Requesters can Remain Anonymous when Submitting Requests**

Based on the principle that the right of access to information is fundamental in nature and that, “all information in the hands of public institutions is public except that which damages legitimate public interests as outlined in the said transparency law”, it does not make sense to require the identification of the requester given that once it is in the public domain, this information can be consulted by anyone who is interested in it. All information in the hands of public institutions is by its nature, public property and therefore it is not important to know who is asking for the information and consequently there should be no requirement to present an identity document to ask for information.

The requirement to provide identification is not only out of line with international standards but it establishes unjustifiable obstacles to access. For public officials, it also adds extra effort in managing requests as they first have to confirm the identity of the requester. This adds time and cost to the processing of access to information requests that are not necessary.

Supporting the arguments against the need to provide identification, the Council of Europe Convention on Access to Official Documents Explanatory Report encourages states to permit anonymous requests, given that it is a logical consequence of the principle of not needing to give reasons for making a request.

Article 9.1.a of the current version of the Cypriot draft access to information law however, states that requesters need to provide a copy of their identification in order to make a submission.

***Recommendation:*** Remove from Article 9.1.a, the need to provide a copy of identification (“αντίγραφο ταυτότητας”) in order to submit a request.

**5.2 Ensuring Requests are Free to Submit**

International standards understand that information held by public bodies should be free to access, because information held by public authorities is created with taxpayers’ money and by nature belongs to the public. Up-front fees for making access to information requests are not permitted by the Council of Europe Convention on Access to Official Documents.

It is important to note that the cost of responding to requests is heavily correlated with the efficiency of public bodies’ record management systems; it is not appropriate to pass this on to members of the public exercising their right to know, which effectively rewards poor record management practices.

Finally, charging high fees exerts a significant chilling effect on making requests, and there are strong public interest arguments against this, due to the significant benefits which flow from transparency. There is also the importance in a democracy of the public knowing what its government is doing, something which it is impossible to put a price tag on.

Article 15 of the draft access to information law of the Republic of Cyprus however, permits the application of fees or the payment of upfront costs at the point of making access to information requests.

***Recommendation:*** Access Info Europe recommends the Cypriot draft law clarify that requesters will not be required to pay upfront fees when submitting requests.

Access Info Europe is happy to receive feedback on the comments and recommendations made in this document, and encourages the Cypriot government to engage in conversation on transparency and access to information with us and other global experts on the topic, and develop the law further according to international standards. You can contact us via phone (+34 913 656 558) or email (andreas@access-info.org / helen@access-info.org).

Cyprus has a unique opportunity with this law to raise the bar across Europe on transparency and access to information, as a base upon which to build an open government, prevent corruption, promote public participation, and to hold government accountable.

We look forward to seeing the Republic of Cyprus’ draft access to information law approved, with amendments in line with international standards.

***Document Prepared by Andreas Pavlou, Access Info Europe
Madrid, 30 July 2015***

1. <http://www.access-info.org> [↑](#footnote-ref-1)
2. <http://www.access-info.org/pub-and-toolkits/14840> [↑](#footnote-ref-2)
3. <http://conventions.coe.int/Treaty/EN/Treaties/Html/205.htm> [↑](#footnote-ref-3)
4. <http://www.rti-rating.org> [↑](#footnote-ref-4)