Access to Information in the Netherlands

Recommendations for Legal Reform

Access Info Europe & SPOON

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About Access Info Europe

Access Info Europe is a human rights organisation established in Madrid in 2006 and dedicated to promoting and protecting the right of access to information. Access Info runs a range of projects designed to leverage the right to information to increase participation and accountability, defend human rights, and advance democracy.

About SPOON

SPOON is a Dutch foundation offering expertise to organisations and individuals that wish to request information from the government. The mission of SPOON is to strengthen the right of access to information in the Netherlands, with the aim of advancing democracy and the rule of law. To this end, it produces research reports, engages in strategic litigation and assists with policy making.

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Executive Summary

The Netherlands has taken significant steps to strengthen its legal framework on access to information, aiming to promote greater transparency and government accountability. On 1 May 2022, the Open Government Act (OGA) entered into force, replacing earlier legislation and establishing clearer obligations for public authorities, with a strong emphasis on proactive disclosure. Additionally, enhancing the accessibility and organisation of public sector information remains a priority under the Netherlands' Fifth Open Government National Action Plan.

As part of the Access to Information (ATI) Network Project, Access Info Europe partnered with SPOON to conduct an in-depth analysis of the OGA. The assessment was based on international benchmarks, including the Council of Europe's Tromsø Convention on Access to Official Documents - which the Netherlands has not yet signed or ratified - and the widely recognised RTI Rating, a global standard for evaluating right to information laws.

Access Info developed a structured methodology for evaluating national legal frameworks against these standards. The methodology is divided into ten sections aligned with the first ten articles of the Tromsø Convention. Each section contains specific indicators, scored positively or negatively, with a maximum possible score of 300. The OGA received a total score of 211 out of 300. The full analysis available here.

The analysis confirms that the OGA is a robust piece of legislation, featuring a wide scope, a broad definition of documents, and strong proactive publication requirements. However, in terms of reactive transparency, the Act falls short in key areas when compared to the Tromsø Convention and evolving international standards. Notable shortcomings include:

- Provisions in other laws overriding the OGA;
- Broad disclosure exceptions, in some cases lacking a public interest test;
- Weak enforcement mechanisms of oversight.

Implementation challenges further compound these issues, including inconsistent compliance across authorities, significant delays in disclosure, and limited public awareness of the law. However, this assessment focuses exclusively on the legal framework, not its practical application.

Drawing on these findings, Access Info and SPOON have formulated targeted recommendations to better align the OGA with the Tromsø Convention and international best practices - recommendations that can inform the upcoming five-year review of the OGA.

Summary of Recommendations

1. Access regimes in other laws should not trump the Open Government Act

Recommendation to be in line with the Tromsø Convention: All information held by public bodies should fall within the scope of the access to information law, with disclosure limited solely to the exceptions explicitly outlined in that law. Consequently, any special disclosure regimes in other legislation should be harmonised with the exceptions under the Open Government Act (OGA) and should not override it with broader or more restrictive provisions.

2. Scope should be widened to include the entire judicial branch as well as private bodies receiving public funds

Recommendation to be in line with the Tromsø Convention: The entire judicial branch should fall under the law. At the least, this should encompass the administrative functions of all its organs.

Recommendation to be in line with international best practice: Private bodies receiving public funds and state-owned enterprises should be covered by the OGA.

3. Exceptions should be in line with Tromsø Convention and all subject to a harm and public interest test

Recommendation to be in line with the Tromsø Convention: Only exceptions laid down in the Convention should be included. Therefore, the following extra absolute and relative exceptions should be removed: Section 5(1)(1)(c), Section 5(1)(2)(i), and Section 5(1)(5).

Recommendation to be in line with the Tromsø Convention: Section 5(1)(3) should be reworded to make it clear that a public authority refusing access to an official document wholly or in part shall give the explanation for the refusal.

Recommendation to be in line with international best practice: All exceptions should be subject to a harm and public interest test.

4. Time frames for extensions should be specified in the law

Recommendations to be in line with international best practice: Any extensions that can be applied should be explicitly stated in the law. Time period for third parties to react should be explicitly stated in the law.

5. An Information Commissioner with binding decisions and sanctioning powers should oversee the Open Government Act

Recommendations to be in line with international best practice: An independent Information Commissioner with a mandate to oversee and monitor access to information should be established under the 5-year review of the Open Government Act. This body should have strong powers, including with binding powers and sanctioning authority, and everyone should be able to complain to this body.

Access to Information in the Netherlands: Recommendations for Legal Reform

1. Access regimes in other laws should not trump the Open Government Act

Article 1(2)(b) of the Tromsø Convention defines official documents as "all information recorded in any form, drawn up or received and held by public authorities". This information should be requestable and released upon request, subject only to an exhaustive list of exceptions laid out in Article 3 of the Convention.

The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, stated that one of the principles on freedom of information legislation is "disclosure takes precedence". Under this principle it is stated that laws which are inconsistent with the principle of maximum disclosure should be amended or repealed. They should not trump the access to information law:

> *the law on freedom of information should require that other legislation be interpreted, as far as possible, in a manner consistent with its provisions. Where this is not possible, other legislation dealing with publicly held information should be subject to the principles underlying the freedom of information legislation.*[1]

This is a standard in the RTI Rating. Indicator 28 assesses whether the standards in the access to information law trump restrictions on information disclosure (secrecy provisions) in other legislation to the extent of any conflict.[2]

The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression also states that other laws should not contain more restrictive exceptions that those within the access to information law:

> *The regime of exceptions provided for in the freedom of information law should be comprehensive and other laws should not be permitted to extend it. In particular, secrecy laws should not make it illegal for officials to divulge information which they are required to disclose under the freedom of information law.*

[1] Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, submitted in accordance with Commission resolution 1999/36, E/CN.4/2000/63 page 62

[2] https://www.rti-rating.org/country-data/by-indicator/28/

> *Over the longer term, a commitment should be made to bring all laws relating to information into line with the principles underpinning the freedom of information law.*[3]

According to the Open Government Act (OGA) there are several laws that contain their own special disclosure regimes regarding access to information, contained within the Annex, which has no fewer than 96 special regimes. When such a special disclosure regime applies, it takes precedence and thus the OGA does not apply.[4]

Permitting other laws to override the OGA with their own access regimes creates the risk of certain information being subjected to even more restrictive exceptions than those contained in the national access to information law.

The Ministry of the Interior itself has stated that for the Netherlands to become party to the Tromsø Convention, the provisions relating to disclosure and confidentiality that are included in specific sectoral laws – i.e. the special disclosure regimes – must be assessed separately for compatibility with the exceptions laid down in Tromsø.[5]

We have seen in practice that there are certain access regimes that are more restrictive than that of the OGA. For instance:

- the Instellingswet Autoriteit Consument en Markt (Iw ACM) prohibits any access to documents created by antitrust authority ACM other than what it voluntarily chooses to publish;[6]
- the Wet justitiële en strafvorderlijke gegevens (Wjsg) prohibits any access to documents made or received by the Openbaar Ministerie (District Attorney's Office) related to any criminal dossier, including dossiers on corporations;[7]
- the Wet op het financiële toezicht (Wft) even goes as far as to exclude from the reach of the OGA all documents that financial supervision authorities send to the Ministry of Finance regardless of whether it concerns individual cases.[8]

It has been seen that authorities have sometimes extended these special disclosure regimes to documents that are no longer held by the authority for which the special regime was created, but have been sent to other governmental authorities. For instance:

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[3] Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, submitted in accordance with Commission resolution 1999/36, E/CN.4/2000/63 page 62

[4] Annex to Article 8.8 of the Open Government Act (2022).

[5] Letter to Parliament on the progress of the implementation of the Open Government Act - Legal comparison Woo and the Tromsø treaty (Appendix number 1)(Reference 2022-0000373055)

[6] Article 12w of the Instellingswet Autoriteit Consument en Markt

[7] Titles 2 and 3 of the Wjsg.

[8] Article 1:42 of the Wft.

- a public hospital held the OGA not to be applicable to a document it had received from the Anti-Trust Authority.[9]
- the Ministry of Infrastructure and Waterworks held the OGA not to be applicable to a document created by the General Auditor but sent to the Ministry by a building company.[10]

To avoid this, disclosure regimes in other laws should be in line with the OGA and should not contain more extensive provisions that can take precedence.

Recommendation to be in line with the Tromsø Convention:

- ➢ All information held by public bodies should fall within the scope of the access to information law, with disclosure limited solely to the exceptions explicitly outlined in that law. Consequently, any special disclosure regimes in other legislation should be harmonised with the exceptions under the OGA and should not override it with broader or more restrictive provisions.

2. Scope should be widened to include the entire judicial branch as well as private bodies receiving public funds

In terms of scope of Tromsø, the term "public authorities" covers administrative authorities at national, regional and local level. It also covers legislative bodies and judicial authorities as well, insofar as they perform administrative functions, as defined by national law. Natural or legal persons are also covered insofar as they exercise administrative authority.

Judicial branch

Parties to Tromsø can choose to extend their national access to information law to cover the entire judicial, or alternatively to only cover the administrative duties.

Under Section 2(2) of the OGA it is stated that it applies to:

1. the Council for the Judiciary and the Board of Delegates
2. the Council of State, unless the Council is exercising the royal prerogative, and excepting the Administrative Jurisdiction Division
3. the Court of Audit

The OGA applies solely to the administrative functions of the designated bodies. While this is consistent with the Tromsø Convention's focus on administrative functions, the

[9] This decision was upheld by the Administrative Court (Noord-Holland), judgment of 27 March 2025 (unpublished, HAA 23/3128). An appeal with the Administrative Law Section of the Council of State is pending.
[10] Administrative Review Decision of the Ministry of Infrastructure and Waterworks of 13 February 2025 (unpublished, IENW/BSK-2025/25193). An appeal with the Administrative Court (Amsterdam) is pending.

OGA falls short by excluding the broader judicial branch, putting it at odds with the Convention's wider scope.

Private bodies receiving public funds

Under Tromsø, natural or legal persons are also covered insofar as they exercise administrative authority. The Explanatory note to the Convention states that the drafters foresaw that the Convention could also include, if the Parties so wished, natural or legal persons insofar as they perform public functions or operate with public funds, according to national law.

This is a standard that is included in the RTI Rating under Indicator 12 which assesses whether "The right of access applies to a) private bodies that perform a public function and b) private bodies that receive significant public funding."[11]

Under Section 2(2) of the OGA, it is stated that it applies to "administrative authorities". According to the Dutch General Administrative Law Act, there are two types of administrative authorities:

a. administrative authorities which are organs of a legal entity established by public law, and
b. administrative authorities which are other individuals or bodies that exercise public authority.

Whether an organisation falls under the OGA is not determined by whether it receives public funding, but whether it performs a public task assigned by law or exercises public authority. Therefore, private organisations that exercise public authority fall under the OGA, however, private bodies that receive public funding do not.

The draft bill of the OGA did include a provision that brought private bodies receiving public funds under the law. This was down to the reasoning that the government does not carry out all public tasks itself, but facilitates others to carry out that task with money or other resources.

Excluding these bodies from the scope of the OGA is not inconsistent with Tromsø. However, for the purpose of insight into the expenditure of public funds and the implementation of statutory tasks, private bodies receiving public funds should be brought under the scope of this law. This was also recommended by a comparative law study requested by the Ministry of Interior.[12]

[11] https://www.rti-rating.org/country-data/by-indicator/12/

[12] A Drahmann, LFD Honée and OA al Khatib, Disclosure of Government Information: A Comparative Legal Study of Legislation in Sweden, the United Kingdom, Germany, France, Slovenia, and Estonia (Government of the Netherlands 2022) https://www.rijksoverheid.nl/documenten/rapporten/2022/09/30/openbaarmaking-van-overheidsinformatie

State owned enterprises

The OGA adds a third category of organisations that fall under its scope

> Section 4(1) Application
>
> 1. Anyone may submit an application for public information to an administrative authority or an institution, service or company operating under the responsibility of an administrative authority. In the latter case the responsible administrative authority will decide on the application.

The RTI Rating assess, under Indicator 10, whether the right of access applies to State-owned enterprises (commercial entities that are owned or controlled by the State).

Therefore, inline with the RTI Rating, the OGA encompasses commercial entities that are "operating under the responsibility" the State fall under the scope of the law.

The OGA however does not require that a state owed enterprises should automatically fall under the scope of the law and the courts have generally confirmed that they do not, save exceptional circumstances of control over day to day operations by an(other) administrative authority.[13]

Recommendation to be in line with the Tromsø Convention:

- The entire judicial branch should fall under the law. At the least, this should encompass the administrative functions of all its organs.

Recommendation to be in line with international best practice:

- Private bodies receiving public funds and state-owned enterprises should be covered by the OGA.

3. Exceptions should be in line with Tromsø Convention and all subject to a harm and public interest test

The Tromsø Convention contains a set of exceptions where access to requested documents can be limited to protect certain interests. Article 3 of the Tromsø Convention lays out the following internationally accepted exceptions:

a. national security, defence and international relations;
b. public safety
c. the prevention, investigation and prosecution of criminal activities;
d. disciplinary investigations;

[13] The authoritative judgment is RTL Nederland B.V. v. Staatssecretaris van Infrastructuur en Waterstaat (Prorail), Administrative Jurisdiction Division of the Council of State, 14 May 2014, ECLI:NL:RVS:2014:1723, https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RVS:2014:1723.

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

These exceptions however, while legitimate, are all subject to the following harm and public interest test under Article 3(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.

Therefore, whilst certain limitations are permitted to the right of access to documents, access should only be refused if it would or would be likely to cause harm to a protected interest, and in all cases the application of the exception must be balanced against a public interest test.

The OGA has two sets of exceptions, those under Chapter 5(1)(1) which are absolute exceptions and those under Chapter 5(1)(2) which are relative exceptions subject to a harm and public interest test.

Absolute exceptions

Chapter 5(1) of the Open Government Act contains the following absolute exceptions:

Disclosure of information pursuant to this Act does not take place in so far as:

a. The unity of the Crown;
b. The security of the State;
c. Business and manufacturing information shared with the government in confidence by natural or legal persons;
d. Special personal data;
e. National identification numbers.

If an absolute exception applies to requested documents, the information may not be made public. There is then no room for the administrative body to make its own assessment.[14]

[14] Government of the Netherlands, Government-wide Instruction for Handling Woo Requests (1 April 2022) https://www.rijksoverheid.nl/documenten/publicaties/2022/04/01/rijksbrede-instructie-voor-het-behandelen-van-woo-verzoeken

The inclusion of absolute exceptions is not completely out of line with the Tromsø Convention, however the Convention itself does not contain any absolute exceptions, and its Explanatory Report states that absolute statutory exceptions should be kept to a minimum. For the OGA to be in line with international standards, it could get rid of absolute exceptions and only have relative exceptions that are subject to a harm and a public interest test, as seen in Tromsø.

On a positive note, it is important to highlight that the law does contain a public interest override under Section 3(4) where an administrative authority may disclose information, even if an absolute or relative exception applies, where there are compelling public interests - such as public security, public health, the environment, or protection of the democratic legal order.[15] Additionally, Section 5(6) allows the disclosure of information solely to the applicant, if there are compelling reasons not to withhold the requested information from the applicant, despite the applicable ground or grounds for exception.

What is out of line with Tromsø, however, is the absolute exception under Section 5(1)(1)(c) which prevents the disclosure of business and manufacturing data that natural or legal persons have confidentiality provided to the government. This is not an exception listed in the Tromsø Convention. The Explanatory Report to the Convention specifically states that its list of exceptions is "exhaustive", therefore any additional exceptions clearly go against the Convention. The Ministry of the Interior itself has stated that this exception deviates from the treaty and must therefore be considered a legal obstacle to ratification.[16]

Additionally, Section 5(1)(3) of the OGA states:

> If an application for disclosure is denied on one of the grounds listed in subsection 2, the decision must explicitly state the reasons for denying the application

This suggests that no reasons need to be given for denying access under the absolute exceptions in Chapter 5(1)(1). This in itself goes against Article 5(6) of Tromsø which states:

> 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.

[15] De Brauw Blackstone Westbroek, Netherlands introduces new access to public information regime (4 May 2022) https://www.debrauw.com/articles/netherlands-introduces-new-access-to-public-information-regime

[16] Letter to Parliament on the progress of the implementation of the Open Government Act - Legal comparison Woo and the Tromsø treaty (Appendix number 1)(Reference 2022-0000373055)

Despite the wording of Section 5(1)(3) of the OGA there is an obligation for the body to give a justification in accordance with the principle of justification (motiveringsbeginsel) as laid down in Section 3:46 of the General Administrative Law Act. This applies even if an absolute exception applies. This therefore makes the current wording of Section 5(1)(3) of the Open Government Act redundant. This section should be reworded to explicitly state that a justification for refusal of access should be given for both relative and absolute refusals, in line with both Tromsø and Dutch law

Relative exceptions

Section 5 of the OGA contains a list of relative exceptions. If a relative exception applies, a reasoned balancing of interests must be made between the stated interest of publicity and the interest protected by the exception.[17]

Within, however, there are extra exceptions that are not included in Tromsø:

- Section 5(1)(2)(i) concerning “good functioning of the State and other public entities and authorities” is very wide and not narrowly defined in a way that it could fall into the listed exceptions under Tromsø.
- Section 5(1)(5) states “in exceptional cases, the disclosure of information other than environmental information may be withheld if disclosure would cause disproportionate harm to an interest other than those mentioned in the first or second paragraph, and if the public interest in disclosure does not outweigh this harm.”

The legislature has expressed that this ground can only be used in "exceptional cases", where interests other than those protected by absolute and relative exceptions are at stake.[18] The Ministry of Interior has recognised that there is no equivalent exception in the Convention and it could only be considered valid if it is interpreted and applied in a treaty-compliant manner. Any other application would constitute a legal obstacle.[19]

The Explanatory Report to Tromsø states that the list of limitations in Article 3, paragraph 1 is exhaustive. Therefore, any extra exceptions would be considered to be out of line with the Convention.

[17] Government of the Netherlands, Government-wide Instruction for Handling Woo Requests (1 April 2022) https://www.rijksoverheid.nl/documenten/publicaties/2022/04/01/rijksbrede-instructie-voor-het-behandelen-van-woo-verzoeken

[18] De Brauw Blackstone Westbroek, Netherlands introduces new access to public information regime (4 May 2022) https://www.debrauw.com/articles/netherlands-introduces-new-access-to-public-information-regime

[19] Letter to Parliament on the progress of the implementation of the Open Government Act - Legal comparison Woo and the Tromsø treaty (Appendix number 1)(Reference 2022-0000373055)

Recommendation to be in line with the Tromsø Convention:

- only exceptions laid down in the Convention should be included. Therefore, the following extra absolute and relative exceptions should be removed: Section 5(1)(1)(c), Section 5(1)(2)(i), and Section 5(1)(5).
- Section 5(1)(3) should be reworded to make it clear that a public authority refusing access to an official document wholly or in part shall give the explanation for the refusal, even in the case of absolute exceptions.

Recommendation to be in line with international best practice:

- All exceptions should be subject to a harm and public interest test.

4. Time frames for extensions should be specified in the law

The Tromsø Convention Article 5 states:

> 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.

Time limits and extensions

The OGA states in Section 4(4) that the administrative authority must decide at the earliest possible opportunity, and in any event no more than four weeks.

Under Section 4(4)(2) of the OGA, if a request is too large or complex, the public authority can extend the timeline for two more weeks. The applicant must be notified of the deferment in writing, stating reasons, before the initial time limit has expired.

In the case of 'extensive requests', however, section 4(2)(a), recognises that it may not be feasible to decide on certain requests within the time limit specified in the law. The section does not require the government to provide a specific, new time period before the (extended) time limit expires.

Formally the government will still be in breach of the legal time limit after it expires., Should a requester in such circumstances complain to the administrative court that a public authority has failed to comply with timeframes, the administrative court can then rule that the administrative body must still make a decision within a certain period.[20] However, the length of this period is not prescribed specifically in the law but is to be reasonably determined by the court, considering the size of the request.

As a result, the government may lawfully make a decision on documents requests after an extended period not prescribed by law. This goes against the standards laid down in

[20] Article 8.4 of the OGA.

the RTI Rating which assesses under Indicator 23 whether there are clear limits on timeline extensions of 20 working days or less.[21]

Reaction time for third parties

In addition, the law also does not state a specified period for postponing the time limit for allowing third parties to react to the proposed decision to disclose documents concerning them. The general administrative law prescribes no specific period for this.[22]

Recommendations to be in line with international best practice:

- Any extensions that can be applied should be explicitly stated in the law.
- The time period for third parties to react should be explicitly stated in the law.

5. An Information Commissioner with binding decisions and sanctioning powers should oversee the Open Government Act

The Tromsø Convention states that an applicant whose request has been denied, expressly or impliedly shall have access to a review procedure before a court or another independent and impartial body established by law. The Convention however does not go further into what structure or powers this independent body should have. It simply states that the review procedure should be "expeditious and inexpensive".

Oversight of access to information in the Netherlands

Under the OGA if a requester is not satisfied with how their request to information was handled or if a public body is taking too long to answer the request, the requester can lodge an appeal to the administrative court. This, however, can be a lengthy procedure – a one to two year wait before a court decision is taken is not unusual. There is also the option to complain to the Advisory Board on Open Government and Information Management (ACOI).

Powers of the ACOI

Under the OGA, certain groups, that is journalists, researchers/scientists or other groups which, in the board's opinion, are eligible and have a professional interest, can submit a complaint to the ACOI for them to carry out mediation.

If mediation does not resolve the matter, the ACOI may decide to give advice to the relevant administrative authority, however this advice is not binding. The ACOI does not

[21] https://www.rti-rating.org/country-data/by-indicator/
[22] Article 4:8 of the Awb.

have enforcement powers, such as the ability to impose an administrative fine or an order subject to penalty payments.

The ACOI has several other tasks including advising the government and parliament on the implementation of rules regarding the disclosure of public information, and training public officials responsible for implementing the disclosure of public information.

International Standards

While the Tromsø Convention does not go into detail on the standards relating to oversight bodies, the powers of the ACOI, however, do fall below best practices of other oversight bodies in Europe:

1. **Lack of binding powers / sanctioning authority:** This is mainly because it does not have binding powers or sanctioning authority. The legal framework in several countries, including Albania, Croatia, Estonia, Serbia, Slovenia and the United Kingdom, provides Information Commissioners with the right to order the release of information.
2. **Only certain groups can complain to ACOI:** Moreover the OGA only allows certain groups to apply to the ACOI for mediation: "journalists, researchers/scientists or other groups which, in the board's opinion, are eligible and have a professional interest in the use of public information". This is unnecessarily limiting the right of some citizens to review. The OGA states that "everyone" has the right to information without having to state an interest (Section 1(1)). It further states that "anyone" can submit a request (Section 4(1)). The ability to apply for recourse when that right has been violated should therefore not be subject to the person's job or professional interest.
3. **Public information management spread across different bodies:** Additionally, in the Netherlands the task of advising on and supervising public sector information is spread across the Public Sector Information and Heritage Inspectorate (under the Archives Act), Advisory Board on Open Government and Information Management (under the OGA) and the Personal Data Authority (under the GDPR).

Information Commissioner

Under the OGA, it is stated that an evaluation of the Act will at the latest take place 5 years after its entry into force. Section 8(9)(2) states that this evaluation will consider whether it is necessary to appoint an Information Commissioner.

In order to be inline with international best practice, the Netherlands should implement an independent Information Commissioner with a mandate to oversee and monitor access to information. Everyone should be able to appeal violations of their right to information to this body and it should enjoy strong powers of enforcement (such a body

does not deny the possibility of the requester and the government to pursue review by the administrative courts).

Additionally, it could be more effective if this Information Commissioner had oversight over all aspects of public information management (such as archives, personal data protection and access to information). This body could integrate existing regulators and be given stronger enforcement powers.[23]

Having an Information Commissioner with competencies over both the right to information and the right to personal data protection, as is seen with the UK Information Commissioner, could be advantageous as the body would be qualified to carry out a fair balancing act between these two rights. Investigations carried out by such an oversight body, and potential sanctions given, can also encompass both access to information and personal data concerns.

See Annex I for Access Info Europe's standards regarding oversight bodies mandated to protect the right of access to information.

Recommendations to be in line with international best practice:

- An independent Information Commissioner with a mandate to oversee and monitor access to information should be established under the 5-year review of the Open Government Act. This body should have strong powers, including with binding powers and sanctioning authority, and everyone should be able to complain to this body.

[23] A Drahmann, LFD Honée and OA al Khatib, Disclosure of Government Information: A Comparative Legal Study of Legislation in Sweden, the United Kingdom, Germany, France, Slovenia, and Estonia (Government of the Netherlands 2022) https://www.rijksoverheid.nl/documenten/rapporten/2022/09/30/openbaarmaking-van-overheidsinformatie

Annex I

Standards for Oversight Bodies Mandated to Protect the Right of Access to Information

Structure:

- Independence: The members of the oversight body should be nominated by either the executive or the parliament, and approved by the parliament following open hearings and process by which the public may make representations.
- Candidates: There must be a prohibition on individuals with strong political connections from being appointed. Professional expertise should be required.
- Term: Members of the oversight body should be appointed for at least 5 years and have security of tenure during this period except for major breaches of the law and incompatibilities.
- Financial Independence: The oversight body must be able to propose its own budget for the future year, subject to parliamentary approval.

Mandate and Powers: the mandate and powers of the oversight body should include the following:

- Appeals: The oversight body receives and decides on appeals against administrative decisions (including administrative silence);
- Binding decisions: The decisions of the oversight body are binding and must be complied with or challenged in court; if not complied with, sanctions may be imposed;
- Powers of inspection: The power to both request copies of documents and to enter the premises of public bodies and review documents;
- Review of classified documents: The right to review documents that have been classified;
- Declassification of documents: The oversight body can order revisions to classification of documents / can recommend revisions to classification;
- Structural Remedies: The oversight body can order structural remedies in public bodies (such as improved record management, more training, etc.);
- Sanctions: the oversight body can impose sanctions and these must be paid or challenged in court;
- Education: the oversight body is mandated to ensure that relevant public officials are educated on the access to information law;
- Awareness Raising: The oversight body is charged with raising awareness about the law and educating the public;

- Monitoring implementation: The oversight body is charged with collecting data from public bodies so that it can monitor implementation of the Freedom of Information Act;
- Reporting: the oversight body must present a report to parliament, which shall also be public, on an at least annual basis.

Oversight of Proactive Publication: The oversight body should be charged with supervision of proactive publication requirements, including:

- Receiving complaints from public on proactive publication;
- Reviewing proactive publication ex-officio;
- Ordering specific remedies;
- Ordering structural remedies (such as improving websites, improving record keeping, or conducting more training);
- Reporting on compliance with proactive publication requirements in its annual report.

Advancing the Right: The oversight body should be charged with having a proactive role in developing the right of access to information. To this end it should be empowered to:

- Develop Criteria: the oversight body can develop guidance on implementation and criteria for interpretation of the Freedom of Information Act;
- Propose Legislation: The oversight body can propose legislative reforms / changes to implementing regulations to the executive and relevant parliamentary committees;
- Initiate and be a party to Litigation: The oversight body can participate as an amicus curiae or similar in relevant court cases in which it is not a party.