

# Access Info Europe

## Anti-Corruption Transparency Monitoring Methodology

*A practical guide to using  
the right of access to information  
for preventing and exposing corruption*

25 October 2011

**Access Info Europe** is a human rights organisation dedicated to promoting and protecting the right of access to information in Europe and globally. Access Info's mission is to advance democracy by making the right to information work in practice as a tool for defending civil liberties, for facilitating public participation in decision-making, and for holding governments accountable.

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## About this Methodology

The Anti-Corruption Transparency Monitoring Methodology was developed by Helen Darbshire and Lydia Medland from Access Info Europe. This report was written by Helen Darbshire and Lydia Medland, with additional editing by Pamela Bartlett from Access Info. Section 4 on Testing Transparency in Action was written in collaboration with Sasa Segrt and Marina Lasic from Transparency International Croatia based on data collected by them.

The access to information monitoring methodology presented here is based on the protocols for a series of projects carried out by Access Info Europe and its partners since 2005 which have been refined through the findings of successive monitoring exercises. The indicators presented in Section 3 of this Methodology are based on studies of the United Nations Convention against Corruption as well as other international legal standards and a review of the work carried out by Access Info Europe in its own projects and in collaboration with other civil society organisations and experts. Special thanks are due to Sandra Coliver of the Open Society Justice Initiative and to Carlos Cordero and Juanjo Cordero of Sustentia, for their input and ideas in previous monitoring exercises. Thanks also to Martin Tisné, now of the Transparency and Accountability Initiative, for supporting previous research in this area as part of Tiri's projects to promote integrity and to advance transparency of international development aid funds.

The Anti-Corruption Transparency Monitoring Methodology which underpins this report was also used in and further developed during the project "Turn on the Light" funded by the European Commission. This 2010 project was led by the Network for Affirmation of NGO Sector – MANS Montenegro, and carried out by Transparency International Bosnia and Herzegovina, Transparency International Croatia, MANS, and Access Info Europe. Thanks are due to all project partners and individuals involved in this project for their contributions. The results of the requests from Croatia are available in the final chapter of this Methodology with full details on line on the TI Croatia and Access Info Europe websites; a report on results from Bosnia and Herzegovina is available on the TI Bosnia and Herzegovina and the Access Info Europe websites.

This Anti-Corruption Transparency Monitoring Methodology was also made possible thanks to financial support from the Open Society Foundations.



## Section 1

### Introduction to the Anti-Corruption Transparency Monitoring Methodology

The Access Info Europe “Anti-Corruption Transparency Monitoring Methodology” is designed for anyone wanting to assess levels of transparency in the fields of corruption prevention and integrity promotion.

Being transparent implies that governments make available, either at their own initiative or in response to access to information requests, certain classes of information<sup>1</sup> which are essential for evaluating how public power is being exercised and how public funds are being spent.

The Anti-Corruption Transparency Monitoring Methodology is a practical guide which can be used by civil society, journalists, academics and others to evaluate whether the key information needed to prevent and/or identify corrupt practices within government is in fact readily available.

The Methodology draws on international anti-corruption treaties such as the United Nations Convention against Corruption, as well as other international standards and best practices, to propose some core classes of information which should be published by democratic and accountable governments. These core classes of information include, for example, copies of public procurement contracts, assets declarations by public officials, and information on decision-making in privatisation processes.

The classes of information which have most direct relevance to anti-corruption initiatives have been set out, *inter alia*, in international texts such as the United Nations Convention against Corruption (UNCAC) and similar regional instruments.<sup>2</sup> In some cases the reference is explicit, in some cases it can be derived from the obligations established by these conventions.

In addition, the work of many civil society groups, including movements such as Transparency International and associated networks such as the UNCAC Coalition,<sup>3</sup> has resulted in the development of the criteria as to which classes of information should be made available. National law increasingly mirrors these standards (and in turn contribute to them).

Access Info Europe has since 2006 contributed to standard-setting in this area through its participation in a number of projects which have had a component of researching or promoting transparency in specific sectors, many of them touched by corruption. These projects have included: research into transparency on core government decision making; public procurement and privatisation transparency; access to assets declarations; access to information about the implementation of international anti-corruption treaties; combating corruption in post-conflict zones; transparency in the management and exploitation of natural resources; transparency

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1. A *class of information* refers to a type of information, such as a budget or meeting minutes which is contained in one or more documents. It can include information which is held in databases, diagrams and statistics. See the General Indicators for examples of classes of information.

2. These include also the Council of Europe Criminal Law Convention, the Council of Europe Civil Law Convention, the Inter-American Convention against Corruption, and the African Union Convention on Preventing and Combating Corruption. A useful resource page can be found on the website of Transparency International:

[http://www.transparency.org/global\\_priorities/international\\_conventions/conventions\\_instruments](http://www.transparency.org/global_priorities/international_conventions/conventions_instruments).

3. For more information on the UNCAC Coalition see: [www.uncaccoalition.org](http://www.uncaccoalition.org).

of overseas aid; access to information in the environmental and health sectors; and transparency of corporate lobbying.

In defining the indicators for the Anti-Corruption Transparency Monitoring Guide, Access Info Europe reviewed the international standards, the information which is typically needed by civil society in anti-corruption and integrity promotion projects, as well as the classes of information that should be made available proactively under the stronger of the world's 90 access to information laws.<sup>4</sup>

More details on the specific indicators selected for the Anti-Corruption Transparency Monitoring Methodology are presented in Section 2.

## 1.1 Transparency and the Fight against Corruption

It is often asserted that there is a direct correlation between levels of government transparency and levels of corruption – that “*sunlight is the best disinfectant.*”

Hence, a pillar of anti-corruption efforts is the eradication of excessive secrecy and the promotion of openness: international treaties require greater transparency and many countries include bold promises on transparency in their commitments to prevent corrupt practices.

It is therefore essential that civil society monitor levels of government transparency very closely in order to evaluate how well governments are complying with these commitments. The willingness of a government to be open about the way in which decisions are taken and public funds are spent can be taken as an indicator of whether or not its commitment to combating corruption is genuine.

Furthermore, for civil society organisations working to promote change, the findings of such monitoring exercises can be used in advocacy to promote greater transparency.

In many cases, obtaining information such as public procurement contracts, assets declarations, detailed accounts of public spending, political party financing and so on, does not in itself reveal corruption, although it can be seen as an antidote which prevents corruption occurring.

On occasion however, the information released in areas susceptible to corruption may actually result in cases of corruption being discovered, for example if contracts are found to be miss-awarded or if issues of conflict of interests are discovered in information received.

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4. A useful resource on proactive publication of information which contains details on the classes of information is the report *Proactive Transparency, the future of the right to information?* by Helen Darbishire, published by the World Bank in August 2010. The Generic Questions presented in this Methodology also draw on the research carried out for that report.

## 1.2 The Right to Information and Anti-Corruption monitoring

The right of access to information includes two dimensions, the right of the public to present requests for information and receive answers to their questions, and the obligation on public bodies to publish information proactively.<sup>5</sup>

When it comes to anti-corruption transparency commitments, governments should make as much information as possible available without the need for the public to ask for it. In most countries, this has not yet been achieved, and for this reason it is necessary to submit requests for information in order to obtain many of the classes of information identified in this guide.

For that reason, the Access Info Europe **Anti-Corruption Transparency Monitoring Guide** both provides civil society with the methodology to monitor proactively published information and gives detailed guidance on making use of the right of access to information in order to secure information which should be produced by governments.

In countries which have access to information laws, there are a number of reasons why it's valuable for civil society to make use of these laws in order to obtain documents necessary to check for probity in government processes. These reasons include that:

- » Obtaining information legally rather than from whistleblowers or inside sources means that no one has to run a risk to release the information, and also it means that the information was legitimately obtained and is easier to use in advocacy work and news reporting.
- » Unlike a simple letter, public officials are obliged to respond to requests for information within set time-frames, if governments do not respond it is normally possible to appeal to oversight bodies and/or courts.
- » When civil society, journalists, and academics exercise the right to information, it is a way to promote recognition of and compliance with this right by public officials and it is a way to increase the awareness of and appreciation for this right by civil society and the general public.

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5. For basic information on the right of access to information see, <http://www.access-info.org/en/what-is-the-right-to-know>



## Section 2

### Ways to use the Anti-Corruption Transparency Monitoring Methodology

The Anti-Corruption Transparency Monitoring Guide has a built-in flexibility so that you can design a monitoring exercise which meets your particular needs.

There are three main ways to use this methodology, described below. The main difference between the three methods is that they vary in the scale of the monitoring (the number of classes of information considered, the number of requests to be submitted) and hence in the time and effort needed.

Civil society organisations, journalists, academics, and others considering conducting a monitoring exercise should consider carefully which approach is best suited to their interests and advocacy goals: there is no point conducting a comprehensive monitoring of all classes of information if your interest is exclusively in public procurement in the construction sector or in financing of political parties. On the other hand, an extensive monitoring will also give a picture of the state of the national access to information law which can generate data of value to organisations with a broader transparency agenda.

#### 2.1 The Comprehensive Anti-Corruption Monitoring

If your goal is to gain a broad view of how one or more countries are performing in terms of anti-corruption transparency, then you can opt for a comprehensive monitoring. The results will give you a broad understanding of whether a country is generally producing and making available the information essential for preventing corruption.

A comprehensive monitoring also allows you to identify which areas of government activity are more or less open, and to assess whether the country is complying with the anti-corruption commitments of international treaties such as the UNCAC.

To conduct a comprehensive monitoring in one country using this Methodology implies filing around 300 or more access to information requests, and the number could reach upwards of 1000 or more should you decide to monitor a large number of public authorities or to request, for example, large numbers of public procurement contracts.

At the same time, in countries which have strong and functioning proactive disclosure regimes, there will be far less necessity to file requests for information as a good part of the information contained in the classes of information (indicators) section of this Methodology will already be in the public domain, for example through publication on government websites.

**Advocacy Value:** The information generated by a comprehensive monitoring will tell you both about the availability of classes of information needed to prevent or expose corruption and about the quality of the implementation of the access to information law in your country.

Thus a comprehensive monitoring will generate data that can be used in advocacy for strong and effective anti-corruption measures as well as for an improved access to information framework.

**Collaborative Approach:** A comprehensive monitoring can be carried out in a collaborative way by several groups working together. To do this in one or more countries, the lead

organisation or researcher might want to work with an existing civil society coalition, research group or activists' network. Alternatively a specific group can be formed for the project.

The collaborative approach may help make the exercise feasible both financially and logistically. Having a group of organisations or researchers can help demonstrate the shared understanding of the importance of the issue and increase the readiness and confidence of potential funders to support the initiative. Alternatively, should funds be short, it helps spread the burden and makes it easier to do the research. In either case, special attention needs to be paid to ensuring that the methodology is followed in the same way in order that the results are comparable.

## 2.2 The Sector-Specific Monitoring

If your work, interest or advocacy goals are concerned with a particular anti-corruption issue you may want to use this methodology to assist your research and investigation of practices in that area.

In Section 3 of this Methodology we list the classes of information which are generated in typical publicly-funded processes which follow a classic decision-making cycle from planning through to implementation to evaluation. Although more minor activities of public bodies may not generate all the information identified, this gives a typical picture. In addition, for the six corruption-prone areas covered in depth by this Methodology, we have identified specific classes of information that should be made available.

When the Methodology is applied to a single anti-corruption area, you can plan on submitting between 20 and 50 requests, which makes doing a focused monitoring relatively easy for even a small organisation or research group.

In this Methodology we identify the classes of information which can be used as systematic indicators for levels of transparency in each of the following areas:

- i. privatization processes
- ii. public procurement
- iii. licensing procedures
- iv. wealth and potential conflict of interest of public officers
- v. financing of political parties
- vi. implementation of anti-corruption policies by administrative bodies, police and prosecution.

These areas are fairly broad and can be further specified and adapted, for example if you want to monitor the transparency of a certain type of licensing or privatisation.

The methodology is not, however, limited to research in these areas. Using the general indicators you will be able to adapt the methodology to investigate other related issues, for example the award of subsidies or lobbying by big business.

## 2.3 Information- or Project-Specific Monitoring

If your investigation is targeted to a particular type of government activity or you are interested in a certain type of information, you may wish to use this methodology by selecting just one class of information, or at most a few classes relating to the particular project you are investigating. This selective use of the methodology could work at the regional, national or international level.

For example:

- » **Single Issue Monitoring:** You may be interested in a single issue, in a single country, for example the privatisation of a public water company. In this case you may want to use some or all the general indicators and those specific to privatisation to ask for the classes of information that should have been produced during the privatisation process, from the minutes of early meetings to reports and evaluation of the process. This would give you a comprehensive picture of the transparency of a single public works project.
- » **Activity-Specific Monitoring:** You want to focus on procurement contracts for road bridge construction at the regional level in a single country. In this case you might request only information relating to recently approved road bridge construction projects in three regions of your country.

It is recommended to select a mixture of more high-profile and controversial cases and more routine ones which are less sensitive and where the information is more likely to be available. This will indicate where there are particular problems of lack of transparency and are likely to be a pointer to more corruption-prone areas.

Using Section 3 of the methodology you can interpret and order the responses you receive, enabling you to assess the openness of these procedures and also to evaluate how well the access to information law is being implemented at the regional level.

You can then use any information you obtain for your anti-corruption work and in addition use the results on levels of transparency to campaign for reform.

- » **Information-Specific Monitoring:** If you are researching a very specific issue, you may want to take a relevant class of information, such as gift registers held by all ministries and regional authorities. You could also be interested in a transnational monitoring of very specific information in a number of countries, such as the data on the number of public officials prosecuted for corruption in each of the past 5 years in all the countries in your region.

The Anti-Corruption Transparency Monitoring Methodology provides you with the structural framework and request protocol and guidance for doing that and for classifying your results in a way that ensures they are comparable across a range of public bodies or countries.

In any of these cases you will be able to use this methodology to help you establish a systematic approach to monitoring anti-corruption using the right of access to information.

## Section 3

### How to Conduct an Anti-Corruption Transparency Monitoring

The Methodology for arriving at comparative ranking of transparency can be applied at the national level to compare different public authorities or it can be used to generate results which will permit comparative assessment of transparency in the anti-corruption field across a number of countries.

Given that different public authorities have different tasks – for example there may be just one privatisation body per country – the full Methodology is designed to be applied in one or more countries to generate an overall figure for levels of transparency and comparable data on the availability of certain classes of information.

The Anti-Corruption Transparency Monitoring Methodology itself consists of four steps:

Step 1: Decide what information to ask for.

Step 2: Identify your target public bodies.

Step 3: System for classifying the outcomes of the monitoring exercise.

Step 4: Scoring system for ranking the outcomes.

#### STEP 1: Decide what information to ask for

The indicators proposed in this Anti-Corruption Transparency Monitoring Methodology are, as noted in the introduction, classes of information identified through examination of the relevant provisions of the international anti-corruption treaties.

Hence the Methodology described in this document sets out a comprehensive approach for testing and evaluating levels of government transparency in the field of anti-corruption. It focuses on six key areas of government activity referred to in Section 2.

The indicators set out categories and classes of information which can be used as the basis for formulating questions that in turn can be presented as requests for information.

However, to monitor specific classes of information in these fields alone is not sufficient. There are certain generic classes of information which should be made available by any public body, for example information about its structure, functioning, budgets, and decisions. Hence the Methodology also defines these generic classes of information which can be included in the review of transparency in any of the six areas or in other areas selected by those conducting the monitoring exercise.

The generic questions are based on the information generated at each point in the decision-making cycle as shown in the diagram on Page 13.

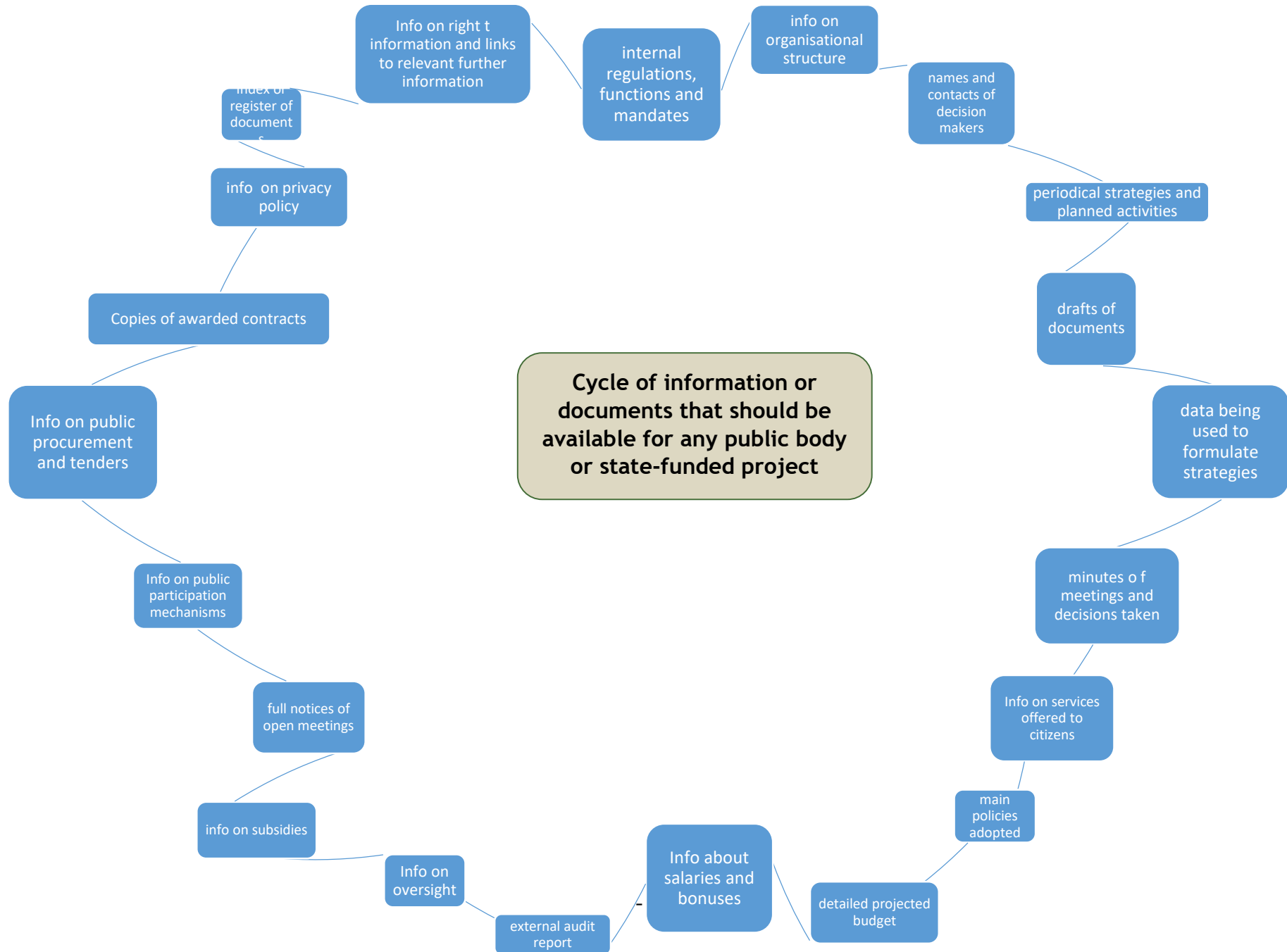
Thus in the seven areas (one generic and six anti-corruption specific), a full set of classes of information has been defined. In total there 50 classes of information, each of which acts as a baseline indicator of levels of transparency: is the information available, yes or no?

At the next level of detail, each type of information to be requested acts as an indicator of whether or not the government is providing access to information needed to evaluate the

existence and implementation of mechanisms to prevent and check for possible corrupt activities, diversion of funds, and abuse of political power.

When the monitoring is actually carried out across a number of public bodies in a country, these indicators therefore translate into as many as 1000 requests, or even more if a very comprehensive monitoring were to be carried out.

As noted in Section 2 above, there exists the option of being selective about which areas to monitor or which classes of information to request throughout all the areas. You can use the indicators to help you define a more targeted monitoring in a specific field of anti-corruption work.



## Generic Indicators: Classes of Information

**Institutional Information:** Legal basis of the institution, internal regulations, functions and powers;

**Organisational Information:** Organisational structure including information on personnel, names and contact information of public officials;

**Operational Information:** Strategy and plans, policies, activities, procedures, reports and evaluations – including the facts and other documents and data being used as a basis for formulating these, while they are being formulated;

**Decisions and Acts:** Decisions and formal acts, particularly those that directly affect the public – including the data and documents used as the basis for these decisions and acts, to be provided in real time during the decision making process;

**Public Services Information:** Descriptions of services offered to the public, guidance, booklets and leaflets, copies of forms, information on fees and deadlines;

**Budget information:** Projected budget, actual income and expenditure (including salary information) and other financial information and audit reports;

**Open meetings information:** Information on meetings including which are open meetings and how to attend these meetings;

**Decision-Making & Public Participation:** Information on decision-making procedures including mechanisms for consultations and public participation in decision-making;

**Subsidies Information:** Information on the beneficiaries of subsidies, the objectives, amounts and implementation;

**Public Procurement information:** Detailed information on public procurement processes, criteria and outcomes of decision-making on tender applications; copies of contracts, and reports on completion of contracts.

**Lists, Registers, Databases:** Information on the lists, registers and databases held by the public body. Information on the databases accessible online;

**Information about Information Held:** An index or register of documents/information held including details of information held in databases;

**Publications Information:** Information on publications issued, including whether publications are free of charge or the price if they must be purchased;

**Information about the Right to Information:** Information on the right of access to information and how to request information, including contact information for the responsible person in each public body.

## Privatization Transparency Indicators:

| Category                          | Classes                                       | Sample requests for specific types of information  |
|-----------------------------------|---|--|
| General Privatisation Information | List of privatisations carried out            | Ask the main privatisation agency per country/region for a list of all the privatisations which have been carried out since year XXXX (e.g.: 1995 or 2005) [ <i>OR</i> : "for the past 5 years"].  |
|                                   | Privatisation Policy and Evaluation mechanism | Request privatisation law and any related policy documents for each of the years from year XXXX to the present.<br>Request report on how each privatisation carried out in the past XX years was evaluated against this law/policy, both prior to and subsequent to the privatisation.<br>Request documents or reports which show how the evaluations of earlier privatisations shaped changes to the law/policy (if any changes were made).   |
| Specific Contract Information     | Privatisation Contract                        | Request a copy of the relevant contract(s) between the Public Institution and the Contractor for each of the selected contracting processes.   |
| Privatisation Processes           | Details of privatisation processes            | For each of selected privatisation processes:<br>1. Request copies of the minutes of meeting at which the decision was taken to privatise the particular company.<br>2. Request details of publication of the privatisation notice, including the dates, with information on amount of time between publication and closure of bidding.<br>3. Request data on the number of bidding companies, their names, and the value of each offer.<br>4. Criteria: Request the privatisation approval decision procedures, the list of criteria (costs, quality, safety) and the weighting given to these criteria.<br>5. Request the Evaluation report (scoring) of the decision committee or minutes of the meeting.<br>6. Background Checks/Independent Assessment of purchaser: Request whether the decision was based solely on the submitted documents and tender criteria, or whether any background checks were carried out on the bidders, particularly on the winning bidder, into issues such as whether any other Public Institution had imposed sanctions on the bidder, or whether the bidder had been found guilty of any breaches of law (financial, corruption, environmental, health and safety, labour practices, etc).<br>7. Potential Conflict of Interest: request whether any specific checks were made for potential conflicts of interest between the bidders and/or winning bidder and the Public Institution. |



|                                     |                   |  |
|-------------------------------------|-------------------|--|
| Compliance with Privatisation Terms | Compliance checks | Request from the Privatisation agency details on any inspections or evaluations carried out after the privatisation and of the reports related to these inspections/evaluations. |
|-------------------------------------|-------------------|--|

### Public Procurement Indicators:

| Category                            | Classes   | Sample requests for specific types of information  |
|-------------------------------------|---|--|
| General Contract Information        | List of contracts   | List of all contracts held by the Public Institution with external suppliers of goods, services, including the name of the contractors and the value of the contract and a summary of the nature of the goods/services to be provided.   |
|                                     | Evaluation mechanism  | Request from the Public Institution its mechanisms for evaluating compliance with the terms and timeframes of contracts, including whether random checks are made or if it is systematic for all contracts. Request copies of reports summarizing the findings of these evaluation mechanisms, in particular reports on any problems identified related to non-compliance.   |
|                                     | Sanctions   | Request a summary of all sanctions - financial, administrative, etc. - imposed on contractors for failing to comply with the terms of contracts, including on grounds of deliver timeframes, non-delivery of services/goods, substandard quality of services/goods, etc.   |
| Specific Contract Info              | Contract  | Request a copy of the relevant contract(s) between the Public Institution and the Contractor for each of the selected contracting processes.   |
| Public Procurement / Tender Process | public bidding guidelines<br>details of publication of tender | For each of the selected contracting processes:<br><ol style="list-style-type: none"> <li>1. Request copies of the invitations to tender.</li> <li>2. Request details of publication of the invitations to tender including the dates, with information on amount of time between publication and closure of bidding.</li> <li>3. Request data on the number of bidding companies, their names and value of each offer.</li> <li>4. Criteria: Request the tender approval decision procedures, the list of criteria (costs, quality) and the weighting given to these criteria.</li> <li>5. Request Evaluation report (scoring) of the tender decision committee or minutes of the meeting.</li> </ol> |

|                                |                                   |   |
|--------------------------------|-----------------------------------|---|
|                                |                                   | <p>6. Background Checks: Request whether the decision was based solely on the submitted documents and tender criteria, or whether any background checks were carried out on the bidders, particularly on the winning bidder, into issues such as whether any other Public Institution had imposed sanctions on the bidder, or whether the bidder had been found guilty of any breaches of law (financial, corruption, environmental, health and safety, labour practices, etc).</p> <p>7. Potential Conflict of Interest: request whether any specific checks were made for potential conflicts of interest between the bidders and/or winning bidder and the Public Institution.</p> |
| Compliance with Contract Terms | Reporting                         | Request information about the reporting obligations of the Contractor to the Public Institution and request copies of reports submitted.  |
|                                | Evaluation                        | Request from the Public Institution details on any inspections or evaluations of the particular contract and request copies of the reports related to these inspections/evaluations.  |
|                                | Sanctions report from Public body | Request details of whether any sanctions - financial, administrative, etc. - have been imposed on this particular contractor related to the terms of this or any other contract with the Public Institution during the past 5 years.  |

## Licensing Indicators

Define which kind of licensing to focus on, e.g.: construction/planning permission, licence to run a specific kind of business (bar, construction, hotel, factory, pharmacy, petrol station, shops, taxi, cinema, etc.). You might want to limit this to a specific geographic area. For example, licenses all the nightclubs in the capital, or for all the hotels in one region.

| Category                      | Classes                    | Sample requests for specific types of information   |
|-------------------------------|----------------------------|---|
| General Licensing Information | Types of Licenses          | Request information about the types of licenses available from the public institution together with all the criteria about how to obtain a license, the legal basis, the time-frames in which a decision will be given, as well as any other locally specific requirements for obtaining the licence.   |
|                               | List of Licenses           | List of all concessions/licences granted by the Public Institution and the amount paid for each concession/license.   |
|                               | Evaluation mechanism       | Request from the Public Institution its mechanisms for evaluating compliance with the terms of licenses, including whether random checks are made or if it is systematic for all licenses. Request copies of reports summarizing the findings of these evaluation mechanisms, in particular reports on any problems identified related to non-compliance. |
|                               | Inspections Policy         | Provide information on the policy for conducting inspections of (a) licence holders (b) businesses operating illegally without licences.  |
|                               | Inspections Info           | Provide a list of all inspections that were carried out in the past XX years, along with the findings of these inspections.   |
|                               | Sanctions                  | Request a summary of all sanctions - financial, administrative, etc. - imposed on license-holders for failing to comply with the terms of licenses and related inspections. Request also a list of all the companies fined for not having a particular kind of license.   |
|                               | Sanctions publicity policy | Request information about law/policy governing publication of information about issuing of sanctions to businesses.   |
| Reporting                     | Reporting                  | Request information about the reporting obligations associated with the licenses.   |

## Assets Declarations Indicators

| Category  | Classes                              | Sample requests for specific types of information   |
|---|--------------------------------------|---|
| Asset declarations                                | Assets declarations                  | If not available on the Internet or other public register, request from the Public Body the assets declarations of the head and 15 most senior officials of the body. Request the assets declarations of all public servants with responsibility in areas of high corruption risk, in particular those involved in privatisation, public procurement and licensing. |
|   | Evaluation of assets declarations    | Request from the independent oversight body information on its review of the assets declarations coming from the monitored institutions. Request information/reports on any issues identified or concerns raised with the monitored institutions.   |
| Declaration of activities / conflicts of interest | Declarations of interests/activities | Request from the Public Body the declarations of external activities and potential conflicts of interest of its senior staff. NB: You may want to focus on the particular staff having responsibility for involved in privatisation, public procurement and licensing.  |
|   | Evaluation of interest declarations  | Request from the independent control body information on its review of the conflict of interest declarations coming from the monitored institutions. Request information/reports on any issues identified or concerns raised with the monitored institutions.   |
| Gifts   | Gifts policy & practice              | Request from the public body reports on all gifts or hospitality received by senior public officials during a specified period of time.   |

## Indicators on Financing of Political Parties

Research shows that political parties themselves are not covered by access to information laws in the majority of countries. Therefore questions should be directed to the body responsible for the administration and enforcement of political party regulations and oversight. In

most countries this will be the national electoral management body, a regulatory body specially created for this purpose or a government department.

| Category                   | Classes                                | Sample requests for specific types of information   |
|----------------------------|--|---|
| Donor Registers            | Public subsidies to political parties  | If not available on the Internet or other public register, request from the public body or political parties a list of public subsidies donated to XX parties during XX time period. This list should include amount, donor, intended purpose of donation and conditions of donation. The above can be repeated for individual candidates if relevant.  |
|                            | Private subsidies to political parties | If not available on the Internet or other public register, request from the public body or political parties a list of private subsidies donated to XX parties during XX time period. This list should include amount, donor, intended purpose of donation and conditions of donation.<br>The above can be repeated for individual candidates if relevant.  |
| Sanctions                  | Sanctions                              | Request details of those parties, candidates and/or public bodies sanctioned in the past XX years. Where applicable request information about the three various types of sanctions that may have been given; financial, penal and electoral. Sanction information should include names, dates and details of reasons for the giving of the sanction.<br>Follow-up: where it is known that sanctions have been given request information about whether these sanctions have been put into effect. Have fines been paid, have sentences been served or have electoral punishments taken effect. |
| Election campaign accounts | Election accounts                      | Request accounts of electoral campaign expenditures. Accounts requested should include both direct and indirect expenses and should be broken down by party and candidate where applicable.   |
| Independent reviews        | Independent reviews                    | Request copies of any independent reviews that have been carried out by independent review bodies or otherwise.   |

## Indicators on Implementation of Anti-Corruption Policies

| Category                                | Classes   | Sample requests for specific types of information  |
|---|---|--|
| Guidelines for prevention of corruption | Corruption risk assessment                        | Request any reports on assessment of risk of corruption related to the institution's activities. Request reports for defined periods or ask for regular reports.   |
|   | Implementing laws/policies                        | Request from the Public Institution information on steps taken to implement anti-corruption laws/policies/guidelines/regulations; including specifics such as actions taken in particular risk areas, specific preventive measures implemented, trainings carried out, problems identified and/or cases detected, recommendations made and corrective actions taken.   |
|   | Complaints and investigations                     | Request details of complaints mechanisms for alleging corruption and what protection is offered to whistleblowers. Request data on any complaints or allegations of corruption received, and whether these complaints came from public employees, bidders/contractors, or members of the public. Request whether an investigation was carried out and what was the outcome of the investigation.   |
|   | Supervision by Anti-Corruption departments/bodies | <p>a) If a national anti-corruption body or other relevant review mechanism exists, request from it information relating to its functioning with respect to the Public Institution being monitored. Ask for reports relating to specific instances of corruption investigated.</p> <p>b) If there is an institution-level anti-corruption unit, request information about its mandate, functioning, and staffing. Request also information about the number of cases of alleged corruption it has investigated in recent periods, and the findings in these cases, including the number of decisions and any sanctions imposed.</p> <p>c) If bodies/departments exist at both levels, ask institution for information on coordination between them and any relevant reporting, particularly sharing of data on allegations of or investigations into corruption.</p> |

## STEP 2: Identify your target public bodies

Once you have decided which information you are interested in, you need to determine which bodies might hold that information.

An example of a list might be:

| <b>Country: X</b>  |
|--|
| Ministry of Education                                      |
| Ministry of Health   |
| Ministry of Culture and Communications                     |
| Ministry of Transport                                      |
| Ministry of Commerce, Industry and Tourism                 |
| Ministry of Agriculture, Natural Resources and Environment |
| Ministry of Finance  |
| National Privatisation Agency                              |
| Anti-Corruption Agency (Attached ministry of Justice)      |
| Regional Authority – Industrial Zone                       |
| Regional Authority – Tourist Zone                          |
| Municipal Authority - Capital                              |
| Municipal Police Authority – Large Town                    |

For some areas of anti-corruption monitoring you will need to specify which topics you are investigating. As noted in Section 2, you might select just one area or a larger number. An example of types of public procurement projects and privatisation processes that you might select for monitoring is:

| <b>Procurement</b>                                   | <b>Privatisation</b>         |
|--|------------------------------|
| Motorway Construction                                | Aluminium Factory            |
| Textbooks for Schools                                | Telecoms Company             |
| Medicine for Hospitals                               | Coal Mine                    |
| Missiles   | Airport Management Company   |
| Police Uniforms                                      | Steel Company                |
| Contract for construction of bridge                  | Hotel                        |
| Demolition companies                                 | Bank                         |
| PR/Marketing to promote the country                  | Pharmaceutical Company       |
| Cars for parliamentarians                            | Water Utility Company        |
| Insurance contracts of the secret service properties | National Railway Company     |
| Energy contract with public institutions             | Media – National News Agency |

### STEP 3: Define your monitoring process

Now you need to define how you will carry out your monitoring, often known as your protocol, which will be an agreed way of working for all involved in the monitoring project in order to ensure comparability of the results.

One of the things to decide at this point is how you will search for the information you are interested in.

The right of access to information has two halves, proactive and reactive. Consequently, you have two options on how to approach a monitoring. You can simply request all the classes of information that you are monitoring or you can include a first stage in which you check where information may already be publicly available without the need to file a request, such as government websites or information centres.

#### The Two Parts of the Right of Access to Information

##### ***I. Proactive***

The public's right to information places a positive obligation on public bodies to provide, to publish and to disseminate information about their main activities, budgets and policies so that the public can know what they are doing, can participate in public matters and can control how public authorities are behaving.

##### ***II. Reactive***

The right of all persons to ask public officials for information about what they are doing and any documents they hold and the right to receive an answer. The majority of information held by public bodies should be available, but there are some cases where the information won't be available in order to protect privacy, national security or commercial interests.

In countries which have strong and functioning proactive disclosure regimes, there will be far less necessity to file requests for information as a good part of the information contained in the classes of information (indicators) section of this Methodology should already be in the public domain, for example through publication on government websites.

If information is already in the public domain, there are two ways in which to apply this Methodology: one is to divide monitoring into two, first conducting a survey of the information landscape by reviewing the websites of public authorities and, optionally, also reviewing other publicly available information such as documents published in official gazettes.

The alternative is to decide to submit requests for all the information you are seeking, irrespective of whether or not it is already in the public domain: it should be noted that the right to information always permits requesters to file a request for information and the onus is on public authorities to inform members of the public whether information has previously been published and where and how this may be accessed; such responses should only be deemed acceptable if the information is easily available (and if the public authority has taken into account whether the requester has internet access in the case of web publication).



When following either option, the completeness of the information published proactively and/or received in response to requests should be evaluated and classified according to the outcomes section of this Methodology.

### How to monitor publicly available sources of information

This means searching through the websites of public bodies and other typical sources such as the official gazette and wherever your country publishes the information (which may include in some countries public notice-boards) and making a good attempt to see if the information you are looking for has been published.

It is possible that the information is published but not easily *accessible*. If you cannot find the information after a reasonable period of time (which you can define in your own monitoring protocol, for example 10 minutes searching for one document), then you may need to go ahead and make the request.

It is not reasonable to expect citizens to search for hours on end looking for documents buried in websites. If the information turns out to already be published in response to your request the government body can direct you to exactly where it can be found.

You will need to ensure that your protocol sets out how the monitors keep a detailed record of what they find and where, and how easy or hard it is to find it. It is also recommended that you download a copy of the information found, as well as keep a record of the URL where it was located – that way, if the government body changes its website, you still have all the information for your results.

### How to prepare information requests

You will be sending a request for information to the relevant public body, in the form of an email or a letter (sent by post or delivered by courier or by hand). In countries with access to information laws, you will be exercising your right to ask for the information and the government has an obligation to respond within a specified period of time.

There are limited exceptions which mean that public bodies will not always give you the information you request, but they must always respond to your request.

### Things to consider when preparing your requests:

- » **Who can make a request?** Under most countries' access to information laws, anybody can make a request regardless of their nationality. In many countries "legal persons" such as NGOs and businesses can also make requests.
- » **How do I make my request?** Generally in writing, by post or e-mail, submitted to the public body in question. Some countries allow oral requests, although it's a good idea to keep a record of what you have asked and when.
- » **What should I say in my request?** Your request should be as specific as possible, to help the public officials identify the information and give them fewer reasons to reject it. In most cases it is not necessary to identify the particular document required.

- » **Do I have to say why I want the information?** There is no need to justify your interest or explain what you will do with the information.
- » **Do I have to mention any legal details?** You don't have to mention the access to information law, but doing so can be useful as it shows you know your legal rights.
- » **How should I write my request?** Writing a request is simple and straightforward. Use language appropriate to professional communication in your country. You will usually need to give your name and either a postal address or email address in order to receive the information. (See the sample requests below).

### Sample requests

You can now use the indicators (classes of information) and insert them into your information request as follows:

#### BLANK REQUEST

Dear Sir/Madam,

I am writing to request the following information under the [NAME OF LAW]

[INDICATOR]

I would prefer to have this information electronically sent to my e-mail address which is given below.

If you have any questions or need to clarify this request, please do not hesitate to contact me.

Yours faithfully,

[NAME AND CONTACT INFO]

#### SAMPLE REQUEST

Dear Sir/Madam,

I am writing to request the following information under the Law on Access to Information (2004):

**Copies of all relevant contract(s) between the Ministry of Energy and Upstream Water Company relating to the privatisation of the National Water Utility.**

I would prefer to have this information electronically sent to my e-mail address which is given below.

If you have any questions or need to clarify this request, please do not hesitate to contact me.

Yours faithfully,

Jane Smith  
15 Old Town Street, Capital City  
e-mail: jane@janesmith.com

Once a full set of requests based on the indicators has been developed, the monitoring exercise can commence.

## STEP 4: Tracking your Requests

As you search for information from public sources and/or submit requests, you should keep a detailed record what happens.

For the review of sources of information published proactively (on line or in hard copy), this will be relatively simple: you either found complete or incomplete information or you did not find any information.

For the information requests which you submit, the outcomes will be interim outcomes (what happens during the request process) and final outcomes (which are allocated once the organisation running the monitoring exercise assess that the request process has reached its conclusion and that there will be no further follow up).<sup>6</sup>

### Interim Outcomes

#### Unsuccessful submission

It may be that requesters have some problems with submission. The two most common problems are “**unable to submit**” or “**refusal to accept**” (see final outcomes at 4.3 for description). The procedure here is to make just one more attempt to submit the same request with the same public body. A follow-up request attempt should be carried out within two weeks of the first attempt. If the same problem occurs, then the final outcomes will be Unable to Submit or Refusal to Accept.

#### Successful Submission

Whether submitted by post, hand delivery, or email, if it appears that the request has been successfully submitted, this should be recorded.

- In the case of hand delivery if a receipt is given or a copy is stamped and accepted by the public authority, this counts as successful submission of the request and the date should be recorded.
- If a letter is sent by post or courier and the post office or courier company confirms that that it was delivered, this as a successful submission.
- If an e-mail doesn't bounce, then you can assume it is submitted and do not need to take further action.
- If a fax machine receives the confirmation of the data transmission, it is submitted.

#### Acknowledgements

It is good practice for public authorities to issue acknowledgements. This could either be a letter or e-mail recognising that the request was received. It may also give a reference number. A record should be made of the acknowledgement and the date it was received.

#### Request Transferred

This should be recorded when the public body informs the requester that it has passed the request to another public institution. A note should be made as to whether this was credible or not. A response from the second institution will be allocated one of the standard outcomes, and if within

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<sup>6</sup> The closure of this phase of the monitoring exercise does not mean that no further action will be taken: it is entirely possible to assign final outcomes but then nevertheless to continue with administrative or court appeals, and/or appeals to ombudspersons or information commissioners.

20 working days (4 weeks) of the transfer no response is received, it should be recorded as administrative silence and followed up accordingly.

### **Requester Referred to another public body**

If instead of being transferred, the requester is referred to another public body, the requester should adhere to the follow-up policy for the particular monitoring exercise. For a particular project, a decision can be taken whether to follow referrals or not, how many times to follow them, and how to record the final outcomes.

If the law requires transfers and a referral is received, this might be classified directly as a Referral. If an initial referral is followed and another outcome results (e.g.: information received, administrative silence) then that outcome should be recorded.

### **Clarification**

In some cases, public authorities may contact the requester regarding the processing of a request. This is something which is very positive if the public official is trying to make sure that they understand precisely what information you are seeking. For example, they might ask for clarification of how you would like to receive the information, or to indicate that the information is spread across many official documents so the response will be delayed, or to point out that the request is too broad and to seek ways to narrow it.

If, however, they are trying to find out why you are asking for the information, requesters should be careful when answering as it is important not to give reasons and not to let the public body know that the request is part of a monitoring. If they ask you why, then you should simply answer "I am carrying out some research" or "I am interested to know". Even if this answer is not acceptable to the public official the requester should simply record what happens during the discussion.

## **Responses and Follow up**

Within the period of twenty working days (approximately 4 weeks) after submitting the request, the requester will either have not received an answer or will have received some kind of a response.

A decision can be taken that for some of the answers there will be a follow-up before assigning a final outcome. The main follow-up actions that can be taken are as follows:

- In response to a case of an "oral refusal" then the requester should always ask immediately for a written refusal. If no answer is received within a further 10 working days (2 weeks), record this as a final oral refusal.
- Administrative Silence is when public bodies simply fail to respond to a request in any way whatsoever, then a further contact could be made to find out what happened to the request. A record should be kept of any conversation or written exchange. If a phone call results in an oral refusal, this should be the final outcome; if a letter results in an Information Not Held answer, this should be recorded. Note: follow up is optional but should be standardised across the entire monitoring.

There is a difference between follow-up and formal appeals. Formal appeals can be carried out but once again, there needs to be a standard policy across the entire monitoring exercise. With a very large number of requests, it might not be possible to file appeals in all cases in which case the main results are probably going to be based on the outcomes of the initial requests.

## Receiving the information

If a request is successful, either fully or partially, the requester will either receive the information directly or be notified that the information is ready to be collected. A record should be made of the content of the response, the date and the public officer signing it.

It is possible that requesters may be charged a fee for copying and mailing the information. A case-by-case decision will be made on what to do. Alternatively, a requester might be told to go to that public body to view the information. In this case no fee should be paid.

## Recording Data

It is possible to develop software for capturing and tracking data related to the filing of requests. Where such software or a database already exists, this can be useful for keeping track of timeframes and alerting requesters when to follow-up.

Where this is not an option, setting up a tracking system in Excel or Open Office Calc can be almost as effective for keeping a record of the main stages of the requesting process and for generating statistics and graphics at the end of the process. Further information on how to record this information is available from Access Info Europe.

## STEP 5: Allocating Final Outcomes

This section describes in detail the possible outcomes. Care should be taken to review the descriptions here when assigning the final outcomes to ensure consistency across all requests and between countries in the case of a comparative monitoring exercise.

### 1. Unable to submit

An Unable to Submit outcome means that it was not physically possible to submit the request. An example would be that the requester was not permitted to enter the government building by a security guard. Another example of this would be that the request letter was simply returned by the postal service for being incorrectly addressed. In other words, it was just not possible to “get through the door”.

### 2. Refusal to accept

A Refusal to Accept outcome is when a public official in a decision-making position inside the public body openly refuses to accept the request. An example would be when you get to the desk for registering letters of request and the civil servant in charge would have said “I am sorry, we do not accept requests!” or something similar. A Refusal to Accept could also include a reply to an e-mail or postal submission saying that the request cannot be accepted in that format. If any reasons are given for not accepting the request (such as that the public body is not obliged to respond to requests under the national access to information law), the monitor should record those.

### 3. Oral refusal

An Oral Refusal happens when someone from the public body gives a verbal response saying that they refuse to provide the information. For instance, this would include a response to hand-delivered requests such as *"I am sorry Madam, but we cannot provide that information as it is classified."* However, an oral refusal might also be made by telephone, either when the public official phones the requester or when the requester phones to check whether or not a written request was received. If a follow-up requesting a refusal in writing was made and this was successful in the sense that a written refusal was received, the final outcome will be written refusal.

### 4. Written Refusal

A Written Refusal is a refusal to provide the information which is made in any written form. The written refusal may come in the form of a letter, e-mail or fax or a written document handed to the requester. You should record a summary of any grounds stated in this written document in the comment field.

The following are not examples of a Written Refusal:

- If the letter refers the requester to another public institution, then see the "Transferred/Referred" outcome.
- If the letter states that the public institution does not hold the information, then this is recorded as an "Information Not Held" outcome (see \*\* point 4.9 below).

### 5. No answer: Administrative silence

Administrative Silence is when public bodies simply fail to respond to a request in any way whatsoever. Administrative silence is deemed to apply 20 working days (about 4 weeks or 30 calendar days) after the request was submitted. If any follow up was made during this period, such a phone call to the public authority in which the requester was assured that they are working on a response, then this should be recorded, but does not change the outcome: if no formal answer was received, then record Administrative Silence.

### 6. Information Received

"Information received" means that **access is granted** and the information required is provided in written form. *The information must answer the question satisfactorily and it must also be reasonably complete.*

If a large amount of information is provided which seems to hold the answer to the request but it is not easily identifiable, an evaluation will have to be made by the project leaders as to whether this is a complete or incomplete answer. What is important is that consistent criteria for this are applied across the whole monitoring exercise. For example, one criterion could be whether it took the requester more than two hours to identify the information sought from the material provided.

**Note:** In some cases requesters may be granted permission to view the requested information but not to receive copies. This should only be qualified as an Information Received outcome if a reasonable justification has been made as to whether or not it was impossible to provide the

information in the form provided. Additionally, if the form of access is viewing the materials, requesters should always be permitted to make notes or to take photographs, and if no harm would be caused to the originals, to requests that copies be made.

## **7. Partial access**

“Partial Access” is when only part of the information requested is provided and the remainder is **formally refused**. For instance, some information may be blacked-out or “severed” or you might be provided with a single document with some information which explains that more relevant documents/pages have been withheld by the public body. Partial Access differs from an “incomplete answer” (see below at outcome number 8) in that the monitored public institution openly informs the requester that some of the information is being withheld. Partial access is also different from an explicit refusal to provide it (Outcome #2) or administrative silence (Outcome #5). Partial access is normally granted when the public body considers that some of the information requested falls within the scope of the exceptions set out in the relevant laws.

## **8. Incomplete Information**

In this case, information is provided but it is **incomplete, unsatisfactory** or simply **irrelevant**. For the purposes of this monitoring, we will count as an “incomplete answer” those which provide less than 50% of the information asked for. An incomplete answer will apply if the documents provided in response to a given request do not answer the request or address only part of it. Another example of an “incomplete answer” is when the requester is directed to a website which does not hold all the information requested, or where it is not easy to find that information on the website.

## **9. Invalid Answer**

When the information provided is highly unsatisfactory or even completely irrelevant, then an Invalid Answer should be recorded. Such outcomes typically occur when a requester is referred to a website (in general, not a specific URL) and cannot find the relevant information. Or when a request for detailed spending in a particular area is answered with a copy of the public body’s annual report and accounts which does not contain the detailed breakdown of spending that would answer the specific question.

Note that a referral to another public body is a different outcome

## **10. Referral (not followed or not legal or not credible)**

This should be recorded when the public body states in its response that you should present such request of information with a different public institution. For a particular project, a decision can be taken whether to follow referrals or not, how many times to follow them, and how to record the final outcomes. Following the referrals until the requester receives three successive referrals which are followed and no information results apart from another referral, this might be classified as a final Referral. If the law requires transfers and a referral is received, this might be classified

directly as a Referral. If an initial referral is followed and another outcome results (eg: information received, administrative silence) then that outcome should be recorded.

## 11. Information not held

An Information Not Held outcome is when the public body informs the requester that **it does not hold the information** but **does not transfer or refer** the request to another public institution. For purposes of further evaluation, it is useful to record whether or not the information is credible. In this case the results for Information Not Held will be divided between compliant (credible) and non-compliant (not credible).

## 12. Excessive Fees Charged

It is against international principles on the right of access to information to charge a fee simply for submitting requests. In countries where fees are part of the freedom of expression law, such as Canada or Ireland, it might be decided to go ahead and conduct the monitoring exercise in spite of this and not raise any objections (If a fee is charged for submitting the requests in a country where there are no such fees laid down by law, then it should be qualified as a Refusal to Accept). In all other few countries, fees may only be charged for costs associated with the delivery of the results, such as providing paper copies of the requested information and for postage, or for the cost of a CD onto which material is copied electronically. If the fees charged are significantly above these copying and delivery costs, then the Excessive Fees Charged outcome should be recorded. In these cases the requester does not have to pay the fee and collect the information, although a decision might be taken to do this in order to be able to evaluate the information provided. In the latter case monitors have the option of assigning another outcome and noting that fees were paid, however, the policy for doing this should be consistent across any monitoring exercise.

## STEP 6: You are ready to start your anti-corruption monitoring!

You are now ready to start your own anti-corruption monitoring using the Anti-Corruption Transparency Monitoring Methodology.

Once you have followed these five steps and conducted the monitoring, you should have obtained information which strengthens your anti-corruption campaigning.

If you received very little, the starting point for your campaign will be pressing for greater transparency. If you have received some or a lot of information you will be able to use that to engage in policy making, to promote systemic reforms, and to identify areas at high risk of corruption.

In Section 4 you will find an example of Testing Transparency in Action, with the results from a monitoring survey carried out in 2010 in Croatia.





## Section 4. Testing Transparency in Action

In 2010 an anti-corruption monitoring was carried out by Transparency International Croatia was developed using the indicators in Anti-Corruption Transparency Monitoring Methodology.



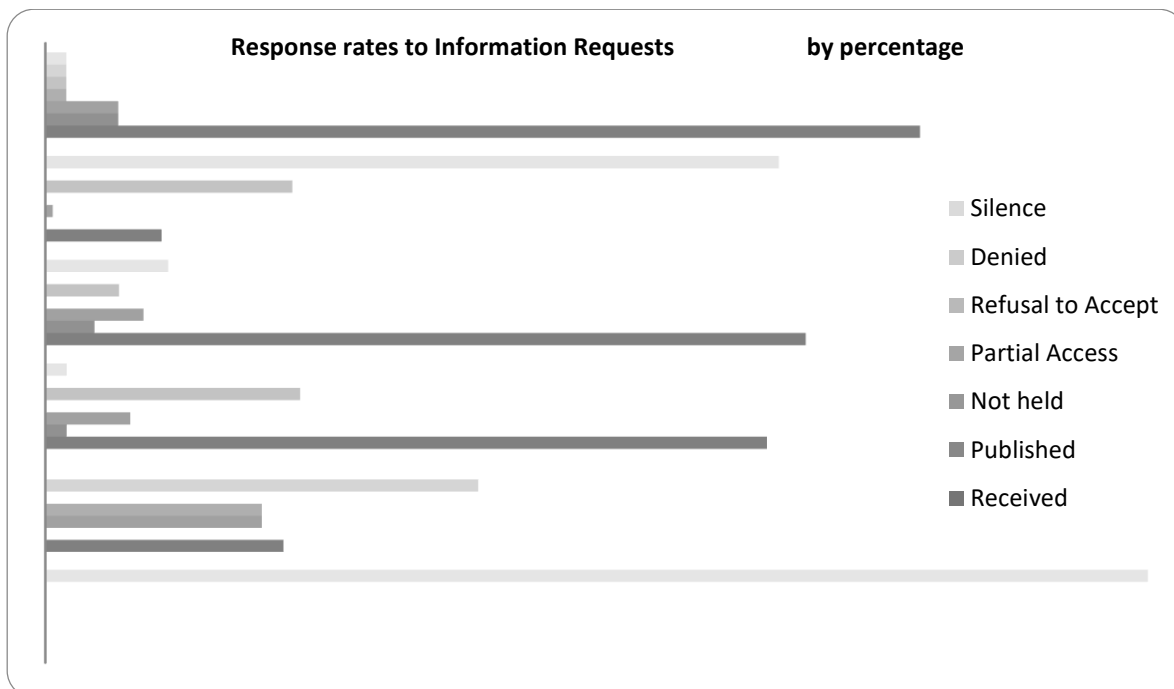
The monitoring followed a comprehensive approach in which the vast majority of the information in the methodology was requested in order to gain an overall picture of the functioning of the access to information law and to gain a broad vision of transparency in the six areas of corruption monitored. In total 62 information requests were submitted to relevant public authorities by post; they contained a total of 560 questions.

### 4.1 Croatia's Anti-Corruption Monitoring Results

- » Anti-corruption Questions submitted: 560
- » Questions for which information obtained: 186
- » Overall Result for information obtained: 33.21%

Only one third of the information requested was accessible to Transparency International Croatia. This shows that the majority of information routinely needed by civil society in order to fight corruption is neither published by governments nor available upon request when NGOs specifically ask for it.

**Table 1 Overall Results by Anti-corruption Area Monitored**



Some of the information obtained, however, suggests that since the introduction of the access to information law in 2003 there is increasing openness on the part of the Croatian government. Copies of contracts, audits, assets declarations, minutes, impact assessments, licences and many other documents that are fundamental to the fight against corruption were released to TI Croatia

without any problems showing that in some areas of public activity transparency is becoming the norm.

Outcomes of the monitoring varied greatly by area, showing how implementation of the access to information law still needs to be improved. While the majority of information about anti-corruption policies, conflict of interests, and licensing was made available to TI Croatia, no information at all was provided about privatisation and little information was available regarding public procurement and the financing of political parties.

## 4.2 Information Accessed by the Monitoring

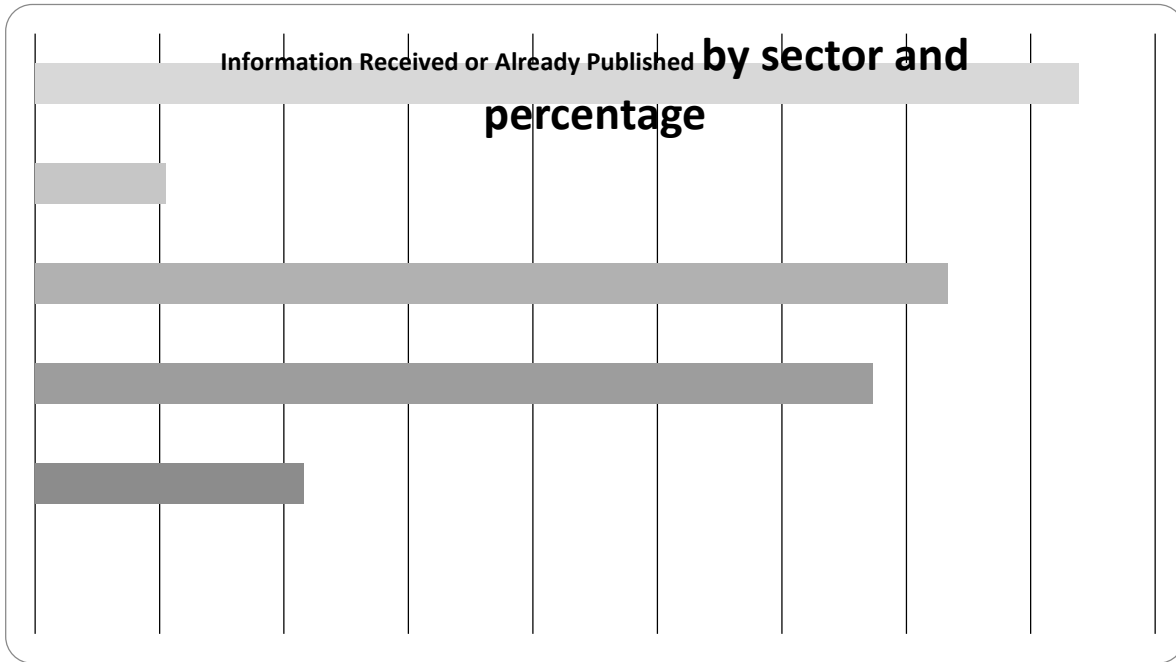
Mapping out which areas of government activity are most and least transparent is extremely useful for civil society, researchers, journalists, and the public. It both helps identify where the right of access to information can be used to gain quick and easy access to official information, and it orientates future campaigns for transparency and investigations into suspected areas of maladministration or corruption.

Knowing where the right of access to information is working well is also invaluable for anyone investigating corruption who needs official information very quickly. It is evidently preferable, wherever possible, to use the legal right of access to information rather than relying on whistleblowers or other sources who may be putting themselves at risk.

Among the types of information received by access to information requests under this project were:

- » Documents containing information on the number of reported cases of corruption and irregularities in the procurement process in 2009 and 2010. (request #11)
- » Documents that contain information about specific cases in which a conflict of interest was determined during 2009 and 2010. (request #211)
- » Copies of all documents that contain information about violations of the Code of Ethics in the period of 2007 - 2010. (request #375)
- » Documents that contain information on the number of closed police cases involving corruption in the period since 2007- 2010. (request #408)
- » Copies of all documents that contain information about the names of legal entities to which the political parties paid funds, including NGOs. (request #512)
- » Reports of gifts received by the Croatian Prime Minister Jadranka Kosor while performing her official duties. (request #1098)
- » Documents that contain information about possible violations of the Law on Preventing Conflicts of Interest in Public Office by the Prime Minister Kosor. (request #1099)

**Table 2 Anti-corruption Information Accessible by Sector**



### 4.3 Linking Monitoring to Advocacy for Legal Reform











#### **Law used to make the requests: Act on the Right of Access to Information**

Before beginning this monitoring exercise, a legal analysis was carried out of the Croatian access to information law by Access Info Europe. Following the legal analysis, TI Croatia and Access Info, together with other groups from the region, (TI Bosnia and Herzegovina and MANS from Montenegro) drafted 10 legal recommendations for reform of the Croatian legal regime of access to information. Later, after further consultation with local experts, TI Croatia added two more recommendations to the list.

During the course of the monitoring, TI Croatia formed part of a working group on the reform of the access to information law, and they participated actively in drafting of a new Act. They were able to use the legal recommendations drafted after the legal analysis as a key resource for proposing reforms. After amendments during the parliamentary process, the amended law was adopted in June 2010, since which date the right to information in Croatia is recognised as a constitutional right guaranteed to all citizens.

The requests made in this monitoring were therefore made at a time when the law was changing to enhance protection of the right to information. Croatia was recently included in the Right to Information Rating, an analysis of the legal frameworks for access to information (released September 2011) and was found to have a strong legal structure, coming in 6<sup>th</sup> place out of 89 laws evaluated with 123 points out of a possible total of 150. This high score is a direct reflection of the positive changes to the legal framework resulted which resulted from civil society advocacy in 2010. Changes to practice, however, tend to be slower and therefore we do not expect that the results of this monitoring to have been significantly affected by these changes.

Below are the recommendations adopted after the pre-monitoring legal analysis, with ticks showing where the recommendations have now been incorporated into law.

| Recommendation Number  | Adopted   |
|--|---|
| 1. Sign and Ratify the Council of Europe Convention on Access to Official Documents  |    |
| 2. Amend the law to incorporate a public interest test so as to ensure that exemptions are applied proportionally taking into account both the public interest as well as the damage that could result from releasing information. | <br><b>(Art 8 4 – FOIA 77/11)</b>  |
| 3. Amend the law to remove the exception on intellectual property in order to bring it into line with the Council of Europe Convention on Access to Official Documents.  |    |
| 4. Reform the law to limit the overly broad exceptions on national security and commercial and economic interests.   | <br><b>(Art 8 2 – FOIA 77/11)</b>  |
| 5. Review the list of public bodies subject to the law to ensure that it covers all the bodies that should be included according to the law.   | <br><b>(There is now no list of public bodies, all public bodies are included under the law)</b> |
| 6. Reform the Constitution of Croatia to establish full recognition of the right of access to information.   | <br><b>(Art 30 – Constitution)</b>   |
| 7. Develop and undertake citizen education programmes on the right to know.  | <br><b>(Croatian Personal Data Protection Agency – Art. 17a – FOIA 77/11)</b>                    |
| 8. Ensure that requesters are able to submit requests of access to information by e-mail and by fax.   | <br><b>(Art. 11 2 – FOIA 77/11)</b>  |
| 9. Ensure that the right of access to information is properly balanced with obligations of protection of personal data.  | <br><b>(Art. 8 1 – FOIA 77/11)</b>   |
| 10. When requests for information are denied information about appeals procedures should be given to requestors in all cases.  | <br><b>(Art. 15 3 – FOIA 77/11)</b>  |

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| <p>11. Amend the law to incorporate an information commissioner as an independent ombudsman appointed by the Croatian Parliament who investigates complaints from people who believe they have been denied rights provided under FOIA and as a second instance body.</p> | <p style="text-align: center;">✓</p> <p style="text-align: center;"><b>(Croatian Personal Data Protection Agency instead of Commissioner Art. 17a – FOIA 77/11)</b></p> |
| <p>12. Ensure that the public authority bodies send an annual report to supervising bodies.</p>  | <p style="text-align: center;">✓</p> <p style="text-align: center;"><b>(Art 25 – FOIA 77/11)</b></p>  |

### 4.3 Points to Note about this Monitoring

1. This monitoring was carried out in coordination with parallel monitoring carried out in the same year in Bosnia and Montenegro. The results presented here are those from Croatia. Results from Bosnia can be found on the Access Info Europe website.

As a result of the legal analysis and recommendation, TI Bosnia and Herzegovina submitted proposed amendments to laws on Freedom of Access to Information to the parliaments of the constituent parts of Bosnia and Herzegovina (the Republica Srpska and the Federation of BiH). Both sets of amendments propose sanctions for non-compliance with the right to information, in line with the sanctions in the state law of Bosnia and Herzegovina.

In addition, proposed Amendments have been presented in Republika Srpska to oblige public bodies to provide information about appeals procedures in all cases in which information is denied, including where rejection of information is given in formats not provided for in the Law on the Right to Access Information.

2. TI Croatia opted for the approach of sending multiple requests for information, referred to henceforth as “questions” in any one access to information request (a single letter or e-mail). Questions were grouped together into a single request in cases where several classes of information were being requested from the same public body. The advantage of this is that it saves time, the disadvantage is that there are fewer requests with which to check how well the country is implementing the access to information law. It generally depends on the country whether this is a sensible approach or not. Some countries may be more likely to partially answer requests which contain many questions, or they may apply extensions for “voluminous requests”.

3. The requests made in the thematic area of privatisation were submitted to a body which was dissolved six months after the monitoring ended. The fact that a body is about to be dissolved does not mean that they are not obliged to answer requests, however, in practice it may be why none of the questions made regarding privatisation were responded to.

4. Types of outcomes: The Classification of Outcomes used in the monitoring in Croatia and as reflected in the results tables above differed from those recommended in this Methodology in two cases:

- » **Refusal to accept:** In all cases where this occurred it was due to the fact that the body to which the request was submitted was not the appropriate body to answer the request. In some cases this meant that no administrative bodies were able to answer the requests.
- » **Incomplete Information:** In the monitoring of 2010 the distinction between 'partial access' and incomplete information was not made, therefore in the results for Croatia and Bosnia partial access includes both responses of incomplete information (where not all of the request is answered) and partial access (where part of the information is held by the public body but withheld from the requester). Access Info recommends that these categories normally be separated so that it is possible to assess when governments are actively withholding information from citizens.