

Access Info Europe



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Lobbying Transparency
via the Right of Access to Information

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1. Introduction

This document sets out the classes of information that should be made available by public bodies in order to get a full picture of the influence of interest groups, particularly lobbyists, on governmental and legislative decision making.

For a member of the public to be able to follow how a particular decision is being or was taken, it is essential that there be full transparency about the influences which shaped that decision.

As the General Court of the European Court of Justice has made clear, “if citizens are to be able to exercise their democratic rights, they must be in a position to follow in detail the decision-making process ... and to have access to all relevant information.”¹

Such transparency provides public oversight mechanisms which help to reduce the risk of capture of decision making by private interests. That need is ever more pressing in the current political and economic context in which there is widespread public concern about an overly-close relationship between private interests, such as those of banks and businesses, and public policy making. As the Organisation for Economic Cooperation and Development (OECD) stated in 2014, “today, in the wake of a global crisis where adequate protection of the public interest has been questioned worldwide, there is a growing need to assess the progress made in effectively ensuring an open, balanced and informed public decision-making process.”²

Equal access to information is key to ensuring a level playing field for all those interested in decision-making processes. Given that many professional lobbyists have the resources necessary to cultivate direct channels of communication with decision makers, it is essential that mechanisms are set in place to ensure that civil society organisations and the broader public have access to the same information as that available to lobbyists.

Furthermore, whether the lobbying activity comes from big or small business or from other interest groups such as NGOs, the public should always be informed about who, in addition to public officials, had an input into shaping a particular decision, policy, or law.

Hence, there is a broad and growing consensus on the need to make transparent the activity of lobbyists in order to know about – and where necessary to control – their impact on government decision making.

One way to achieve this is through the regulation of the activity of lobbyists, ensuring that all interest groups register and that they report on their lobbying spending and activities. As well as bringing greater transparency to the lobbying process, such a register contributes to ensuring that any laws aimed at controlling lobbying activity and spending can be enforced.

Many countries are currently developing lobby control regulations and setting up lobby registers and relevant intergovernmental bodies are examining the standards for such registers.

Access Info Europe asserts that regulation of lobbyists is necessary but not sufficient for

¹ *Access Info Europe vs. Council of the European Union*, General Court of the European Court of Justice, Case T-233/09, Ruling of 22 March 2011, paragraph 69.

² Press cutting of the OECD Forum on Transparency and Integrity in Lobbying. <http://www.oecd.org/gov/ethics/lobbying-forum.htm>.

the public to have a full picture of private influence on decision making. What is also needed is for the public to be able to track the influence of lobbyists on the decision-making process, which requires for a range of other information to be made available by the public bodies themselves.

The levels of transparency required to achieve that full picture of lobbying and to ensure accountability are set out in detail in these recommendations.

2. The Right to Information about Lobbying

The United Nations Human Rights Committee has confirmed that the right of access to information from public bodies is a fundamental right and that it places a positive obligation on governments to disclose information proactively as well as responding to requests for information. There is also an obligation on governments to put in place the legal mechanisms by which the right of access to information may be exercised.³

Given the high public interest in ensuring transparency of lobbying activity, governments should act to publish proactively core information concerning their relation with interest groups, and should guarantee the mechanisms by which members of the public can request the remaining information.

As a guide to how governments should act in this respect, Access Info Europe has identified the key categories of information to which the public should have access in order to increase transparency of lobbying.

We have mapped out which information is typically generated in decision-making processes, which information about lobbying should be collected, and which information should be published proactively, as well as defining the frequency and format of such publication. Access Info Europe has also indicated which other information should always be available upon request.

2.1 Location, frequency, and format of information

Information about contacts with lobbyists should be easy to find. When applicable, a link should be made between the information published about public officials' contact with lobbyists and the relevant entry in the Lobby Register, so that the public can identify who is lobbying whom.

Information in the register should be freely available for download, presented in a machine-readable format, using non-proprietary software, and in a manner which allows for comparisons over time and between units.

A central lobby portal could be created, by building, on the current version of the Lobby Register when there is one, to include information about lobby contacts and copies of documents submitted by lobbyists.

In terms of the frequency of publication, this has been indicated for each of the elements of section 4 below.

³ UN Human Rights Committee General Comment No. 34 - Article 19: Freedoms of Opinion and Expression CCPR/C/CG/34, Paragraphs 18 and 19.

3. Definitions

Access Info Europe uses the following definitions of lobbying, which have been developed by civil society organisations worldwide and are those used in the International Lobby Standards:⁴

Lobbying – the term should cover any communications which are made, managed or directed towards a lobbying target with the purpose of influencing public decision making.

Lobbying target (“Public Official”) – shall include any individual with decision-making powers (and their advisors), who are elected, appointed or employed within any branch of government, including supranational bodies. The lobby transparency standards also apply to parliamentarians and other elected officials at the supranational, regional and local levels.

Interest group representative or “Lobbyist” – An interest group representative is any natural person who engages in lobbying activities, whether for private, public, or collective ends, whether for compensation or without. Such persons should be required to register in a mandatory and comprehensive lobby register. In the case of those engaging in more sporadic contact, such as a one off participation in a public consultation or stakeholder meeting, then there should be a mechanism for identifying interest group representatives, such as through a declaration of interests to be made at the start of the process.

Citizen interactions – the lobbying framework shall stop short of regulating citizens’ personal interaction with government, save for where they may concern individual economic interests of sufficient size so as to potentially invoke the public interest of transparency and integrity.

3.1 Which Public Bodies should be bound by these principles?

These standards apply to all public bodies, including central government, ministries, other public bodies and agencies, as well as regional and local government, and all national or sub-national legislative bodies, as well as private bodies performing public functions, and public international organisations domiciled or operational in the country concerned, and to supra-national bodies such as the European Union.

4. Information Needed to Make Lobbying Transparent

All public bodies should collect and compile the information needed to permit the public to track the impact of interest groups on decision making.

4.1 The Appointment Diaries (Agendas) of Senior Public Officials

Public authorities should publish the appointment diaries (agendas) of senior public officials giving a comprehensive picture of the meetings they have attended and, to the greatest extent possible, upcoming meetings.

⁴ The International lobby standards are currently being finalised and will be presented in October 2015 at the OGP annual meeting in Mexico.

The appointment diaries (agendas) of elected representatives should be made public to the extent that they relate to meetings with interest or lobby groups. To the extent that meetings are with individual constituents, there is no need to provide the personal details of those with whom they met.

4.2 Content of Meetings with Interest Group Representatives

Meetings between public officials and lobbyists remain one of the main ways in which decisions are influenced and hence it is essential that the public know which meetings have taken place, between whom, what was discussed, and any agreements reached in the meetings. The definition of meetings includes telephone calls (including Skype and similar conversations) and meetings conducted in a written form, such as by emails.

Information on the nature and content of meetings between public officials and interest group representatives should always be made available proactively when it relates to ongoing decision-making and legislative processes.

The types of meetings about which information should be made public include:

- o Meetings held by representatives of a public body with interest groups in the offices of the public body, including stakeholder consultations
- o Meetings, conferences and events attended by public officials which have been organised by lobby groups or at which they are present.
- o Phone conversations held between public officials and interest group representatives should be noted. When they relate to an ongoing decision-making process they should be published proactively, in other cases the information should be available upon request.

The table below details information about meetings that should be published proactively:

Type of Information	What published	Frequency of Publication
Information on upcoming meetings	<ul style="list-style-type: none"> ▪ Date, time and location of the meeting ▪ Expected participants ▪ Agenda of the meeting ▪ Issues to be discussed ▪ Documents submitted by any parties in advance of the meeting 	<p>One week (5 working days) before the meeting.</p> <p>If this is not possible, the information should be made available as soon as it is known.</p>
Information to ensure accountability after a meeting	<ul style="list-style-type: none"> ▪ Date, time, location and duration of the meeting ▪ Participants present (specify clients/interests represented) ▪ Issues discussed ▪ Copies of all documents presented or considered during the meeting if not previously published ▪ Minutes of the meeting which must include at a minimum all agreements or conclusions reached ▪ Copies of any texts concluded or revised during the meeting 	<p>Within one week (5 working days) of the meeting taking place or as soon as relevant documents, such as minutes, are finalised.</p>

Notes on the information to be compiled and published:

Agendas: the agenda should contain a sufficient level of detail for the public to know which issues will be discussed at a meeting. Agendas should be made public as far in advance of the meeting as possible, and at latest when the meeting participants are notified of the meeting.

Minutes: A record of the meeting – minutes – should be kept, and it should be sufficiently detailed to permit members of the public to know which were the main issues discussed at the meeting and to be informed of any agreements reached or decisions taken.

Notes: Where there is no formal record of the meeting, then the notes taken by public officials participating should be made available to the public upon request. An example of release of notes of a meeting can be found in this document received from the UK government about a meeting in Brussels [here](#).

Personal Data collection as a precondition for contact with lobbyists: Public officials of all levels should be required to make clear in advance of (or at least at the very start of) all meetings with external interest groups that they will make a record of the name and professional associations of the person with whom they are meeting and that this information may be made public. They should likewise inform the interest group representatives that meetings are “on the record”. Public officials should refuse to meet with external interest group representatives who do not consent to have their names and professional affiliations recorded and made public, unless valid exceptions to transparency apply; see Section 5 on exceptions below.

4.3 Documents submitted by interest groups

A public body should make available all documents received from interest groups which relate to ongoing or potential decision-making processes and/or which seek to inform or influence the thinking of the public body on matters which fall within its sphere of responsibility.

The information made public should be that received both during and outside public any consultation processes.

The following table details the documents that should be published proactively:

Type of information	What published	Frequency of Publication
Documents presented by lobbyists	<ul style="list-style-type: none"> ▪ Documents tabled directly related to an ongoing decision-making process ▪ Drafting suggestions and recommendations ▪ Reports, research findings and other documents (even if not written explicitly for the particular decision-making process) ▪ Communiqués, press statements, news bulletins and other written material sent to the public authority 	No more than 15 working days after receipt of the document

Correspondence and other telematic contacts with lobbyists	<ul style="list-style-type: none"> ▪ Postal letters sent to or received from lobbyists ▪ Email exchanges with lobbyists ▪ SMS or other text messages ▪ Call logs 	Upon request
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4.4 Public consultations

Where any kind of participatory or consultative process is held, then the documents submitted by interest groups and members of the public should be made available proactively.

In cases where individuals participating in a public consultation are given the option of not having their names published along with their contributions, this should never be granted to those working for or with interest groups. Even if names will not be published, they should always be gathered in order to permit public bodies to control for participation by lobby group representatives. Public consultations should include a requirement to declare whether or not the person participating is working as a lobby representative.

All submissions made by legal persons should be made public with the name of the legal person (business, association, trades union, etc.). This should be the case even if for some reason the legal person is not included in the lobby register, for example a business participating in a one-off sector-specific consultation; it may well be the case that a small business or NGO does not know the lobbying rules but nevertheless participates in a public consultation in a way akin to an interest group.

The relevant public body should make public proactively all documents emanating from public consultations, including all submissions and all documents that provide feedback and evaluation of the process, and which show how the submissions of lobbyists and others has been taken into account.

Type of information	What published	Frequency of Publication
Submissions to public consultations	<ul style="list-style-type: none"> ▪ All submissions to the public consultation ▪ Documents submitted by interest group representatives, along with the names of the relevant persons and the details of who they represent ▪ Documents submitted by legal persons along with the details of the legal person and who they represent in the case of acting on behalf of another 	No more than 15 working days after the close of the consultation
Reports on public consultations	<ul style="list-style-type: none"> ▪ Evaluations of the consultation process ▪ Documents explaining how the input into the consultation has been taken into account 	Upon finalisation

4.5 Expert Groups

Whenever a public body proactively convenes experts in order to advise on a policy or decision-making process, then information about the composition, processes and outcomes of any consultation with experts should be made public.

This information should include the initial decision to convene the group, the criteria for its composition, the schedule of meetings, a complete set of all documents considered by the expert group, and all minutes, notes, reports and conclusions arising from the expert group.

Type of information	What published	Frequency of Publication
Composition of expert or working groups	<ul style="list-style-type: none"> ▪ Document explaining the criteria used for selection of experts. ▪ Conflict of interest declaration for experts appointed in a personal capacity. ▪ 'Statistics' with the number of types of members, e.g. personal capacity, organisation, members representing specific interests. ▪ Clear and accurate labelling needs to be systematised, which could be done by linking their entry to the transparency register 	<p>Prior to any experts being appointed and with enough time for representations to be made (at least 20 working days)</p>
Activity of expert or working groups and impact of expert or working groups	<ul style="list-style-type: none"> ▪ Agendas for the meetings ▪ Minutes of the meetings. The minutes should clearly show which stakeholders have agreed or proposed which views, in order to allow the public a clear idea of which interests are pushing for what. ▪ Documents shared by the experts within the group 	<ul style="list-style-type: none"> ▪ Agendas should be placed on line before a meeting, not afterwards. ▪ Minutes of a meeting should be placed on line as promptly as possible

4.6 Conflict of Interest, Codes of Conduct and Revolving Door Controls

4.6.1 Controls on Conflicts of Interest

Public officials who occupy a position in which personal or private interests might impact upon official duties must be required by law to declare those interests.

In these declarations a public official should be required to report on positions or functions outside his or her public service employment, as well as on all activities, whether paid or unpaid, which would have a bearing on their public role. Public officials

should declare membership of, or association with, organisations that could have a bearing on the performance of their duties as a public official.

Declarations of interest should be made on taking up a post, and at regular intervals thereafter and whenever there are any changes to the nature or degree of those interests.

Declarations of interest should then be made proactively available to the public, in an open machine-readable format, and be regularly updated.

To read more about the content of interest declarations please see the following [Open Government Standards on Accountability](#).

4.6.2 Codes of Conduct

That should also exist norms and standards of behaviour in public life, such as a code of conduct. There should be transparency about the control mechanisms for ensuring that the code of conduct is respected.

4.6.3 Revolving Door Controls

There should be a legal framework in place governing the hire of public officials from private companies and their subsequent employment with companies engaged in lobbying activity. There should be full transparency around the internal mechanisms for enforcing these revolving door rules.

4.7 Lobby Register

A register of interest group representatives who are actively engaged in lobbying is an essential tool for ensuring that there is transparency around lobbying, because, in addition to providing public bodies with controls over lobbying activity, such a register permits members of the public to identify who is engaged in lobbying and thus civil society and the media can monitor the impact of the impact of lobbying.

The register should be mandatory, comprehensive, and overseen by an independent body. There should be a requirement to update the information contained in the register on a regular basis.

The information register should be public, with all the information it contains downloadable in an open, machine-readable format.

The core information that should be capture by a register of lobbyists includes:

- » The full name of the lobbyist for both natural and legal persons;
- » The subject matter of lobbying activities;
- » The ultimate beneficiary of lobbying activities (where relevant)
- » The primary targeted institution or decision-making process and where they can be identified the key public officials concerned;
- » The type and frequency of lobbying activities;
- » Supporting documentation shared with public officials;

- » Declaration of any prior roles as public official held by the individual and/or immediate family members;
- » Sources of funding, including specification of public funding received.
- » Lobbying expenditure, including in-kind (calculated to set criteria, in cost bands if need be).

4.8 Entry Register for Parliaments and Key Government Offices

The entry register to main government offices, to the parliament – and to the senate / upper house of parliament where relevant – provides important additional information about which lobbyists are active and with which elected representatives they are in contact.

A public register of those entering and leaving a parliament or public buildings does not substitute for a detailed record of meetings held, but is valuable supplementary information.

For this reason, Access Info Europe recommends that every administrative and legislative building where public officials responsible for decisions work and which is or is likely to be visited by lobbyists should maintain an entry register of interest representatives and make it public proactively.

Visitors to these buildings should be required to state if they are acting as interest representatives and, if so, be informed of the fact that their names and the details of the visit will be subject to transparency rules. It is clearly important to make a distinction between those visiting a building for lobbying purposes and ordinary members of the public visiting to carry out administrative procedures.

Those engaged in regular lobbying activities who apply for passes such as parliamentary access badges should be required to register in the Lobby Register in order to obtain these badges.

4. Exceptions

The right of access to information is not an absolute right and in limited cases exceptions can be applied in order to protect legitimate interests from harm, although before information is withheld a public interest test must also be applied to evaluate, on a case-by-case basis, whether there is a prevailing public interest in open, transparent and accountable decision making.

A standard set of exceptions derived from evaluation of international standards, is set out in the Council of Europe Convention on Access to Official Documents, and is used here for guidance.

Given the particularly high public interest in transparency of lobbying, these exceptions should be invoked only very rarely. Nevertheless, the following exceptions might, in some circumstances, need to be taken into consideration:

- » *Privacy and other legitimate private interests*: when an individual present in a meeting would suffer serious consequences as a result of the release of information about his or her participation in a meeting. An example would be to if the person is a political dissident.

- » *Privacy and personal data protection:* Given the importance of transparency of lobbying, all interest group representatives should be ready to have their names and professional affiliations made public as a precondition for having meetings with decision makers, for engaging in telephonic or written contact with decision makers, and for participating in public consultations. Lobbyists should be informed that their data will be made public.

- » *Decision-making exception:* there is a legitimate need to protect some aspects of decision-making processes, and it is recognised that there is a need for a “space to think” inside government, particularly in the most embryonic stages of policy making. This exception might also apply when actually adjudicating on some form of competitive process, in order to ensure impartiality, for example, when deciding on granting a public procurement contract in the time between the closing of applications and announcing the awarding of the licence or contract, although clearly such information should be made public after the announcement of a decision. It should be noted, however, that there is nothing specific about the early stages of decision making which gives it special protection (see Footnote 1). When it comes to the classes of information set out below which are necessary to follow the impact of lobbying, the vast majority of the information should be made available as recommended.

- » *Commercial interests:* This should never be grounds for refusing to provide information about lobbying activities. Clearly much lobbying is conducted in the commercial interests of the lobbyist, but there is an overriding public interest in knowing about the lobby activity.