

## Lobbying Transparency via Right to Information Laws

There is a broad 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.

Whether the lobbying activity comes from big or small business or from other interest groups such as NGOs, it is essential that the public is informed about who in addition to public officials has had input into shaping a particular decision, policy or law.

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 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.

Regulation and control of lobbyists is not, however, sufficient to make the process of private influence on decision making transparent. For a member of the public to be able to follow how a particular decision was taken, it is essential that there is full transparency of that process which can only be achieved by the relevant public bodies making available certain categories of information.

Access Info Europe has identified the key categories of information to which the public should have access in order to increase transparency of lobbying. The ideal scenario is that this information is published proactively and that, where relevant, it is made clear which decision making processes are affected. In all cases, the information should be available under the right of access to information.

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.”<sup>1</sup>

### I. Lobby Transparency Disclosure Standards

The following classes of information should be made available by any public bodies involved in decision making including central government, ministries other public bodies and agencies, as well as regional and local government, and all national or sub-national legislative bodies. The principles also applies to the European Union.

#### 1. Meetings Information

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 what meetings have taken place. In order to achieve this, the following information should be published:

- » Meetings held between a public body and interest groups:
  - Meetings held by representatives of a public body with interest groups in the offices of the public body. For example Access Info Europe participated in a meeting at the European Commission to talk about the EU lobby register, along with other groups working on this registers.
  - Meetings, conferences and events attended by public officials which have been organised by lobby groups or at which they are present. For example, Access Info Europe with other ALTER-EU members organised an event on lobbying transparency which was attended by representatives of the European Commission and European Parliament.
  
- » The agendas of senior public officials giving a comprehensive picture of the meetings they have been too. Senior public officials include elected officials and appointed public officials who are at a senior level such as ministers and heads of department.
  
- » Parliamentarians and elected officials at the regional and local level should report on all meetings held with interest or lobby groups. The most effective way to do this is by publishing their detailed diaries or agendas. To the extent that meetings are with individual constituents, there is no need to provide details of whom they have met.

## 2. Documents submitted by interest groups

A public body should be ready to 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 consultation processes.

## 3. Agendas and Acts of Meetings

All meetings held by public bodies which are part of or relate to a decision making process should have an agenda with a sufficient level of detail for the public to know which issues were discussed at that meeting. These 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.

A record of the meeting 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.

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 such notes is this document received from the UK government about a meeting in Brussels [here](#).

## 4. Documents presented at/referred to in decision making meetings

Documents circulated to those participating in meetings should be made available to the public at the same time that they are available to meeting participants. Where documents are presented during a meeting or referred to during meetings these should also be made available.

## 5. Input to and evaluations of all public consultations

Where any kind of participatory or consultative process is held, then the documents and submissions contributed by lobbyists, interest groups and members of the public during those consultations should be made available to the public proactively.

In cases where individuals participating in a public consultation are given the option of not have their names published along with their contributions, this should never be granted to lobbyists or to those working in interest groups. For this reason it is essential to have a compulsory and comprehensive lobby register.

Access Info Europe considers that 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 the legal person is not included in the lobby register, as these can never be fully comprehensive. It might be the case that a small business or NGO does not know the lobbying rules but which is participating 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 which provide feedback and evaluations and which show how the submissions of lobbyists and others has been taken into account should be made public.

## 6. Documents used as justification in taking decision

A decision making process may involve consultation with many documents, not all of which will be deemed to be relevant to or be drawn upon in the final decision making process. It is important that the public is provided with copies of the key data and arguments which were used as the basis for a particular decision.

## 7. Declarations of Conflict 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. Such declarations shall include carrying out activities, whether paid or unpaid, or accepting positions or functions outside his or her public service employment, which would have a bearing on their public role. Public officials should declare membership of, or association with, organisations that could detract from proper performance of their duties as a public official.

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

To read in more detail about the content of interest declarations please see the Open Government Standards on Accountability: [http://www.access-info.org/documents/Access\\_Docs/Advancing/OGD/Accountability\\_Standards11072013.pdf](http://www.access-info.org/documents/Access_Docs/Advancing/OGD/Accountability_Standards11072013.pdf)

## 8. Entry Register for Parliaments and Key Government Offices

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

If there is a register of lobbyists, one control mechanism is only to provide regular parliamentary access badges to registered lobbyists.

Where it is possible to separate visits to the cabinet office, ministries and other bodies for lobbying purposes from visits to carry out administrative procedures, the entry register should be made public as well. An example of good practice is the White House's register of visitors which is public.

A public register of those entering and leaving a parliament or public buildings does not substitute, however, for a detailed record of meetings held so that it is possible to know precisely who met whom about which issue.

## **II. Decision making or Legislative Footprint**

A decision making or legislative footprint permits members of the public to follow the progress of a particular process and to know what stage it is at and to access all relevant documentation, including that received from lobbyists and interest groups.

It is good practice to group all this information in one location on a website, and to provide regular updates as the decision making or legislative process advances.

Another good practice is to set up an alert service by which the public can subscribe to alerts on about upcoming debates and public consultation opportunities related to the particular decision-making process or legislative initiative.

The decision making or legislative footprint should provide an historical record of the process by which the decision was reached or the law adopted.

## **III. The Decision Making Exception**

Most access to information laws have an exception which permits information to be withheld from the public domain on grounds of protecting the decision making process. It is usual for this exception to be balanced against a public interest test. In other words, any alleged harm to decision making should be weighed on a case-by-case basis against the public interest in open, transparent and accountability decision making.

Examples of a legitimate use of the decision-making exception would include protecting the process of deciding on granting a licence or a public procurement contract in the time between the closing of applications and announcing the awarding of the licence or contract. Clearly during this time period, it would not be necessary to publish the relevant documents but after announcing the decision, the relevant information, including details on bids and the contract awarded should be made public. Legitimate protection of decision making is normally a time-bound process after which the relevant information should become public.

There is a clear importance of having a "space to think" inside government, particularly in the very earliest stages of policy making, and to fail to protect this could impact negatively on the quality of policy development by reducing the space for brainstorming and creativity. However, beyond the space to consider and discuss in a frank and open manner embryonic policies, there is nothing specific about the early stages of decision making which gives it a special protection; as the European Court of Justice has confirmed that the principle of transparency

applies to the entire decision making process.<sup>2</sup>

Furthermore, it is increasingly recognised that government can take better decisions if it opens up the process to a wider public, and this not only ensures that relevant facts are brought to the table, but also reduces the risk of capture by private interests.

Full transparency around all lobbying relating to decision making is therefore essential. It is also essential that there is a level playing field of access to information and that the information which is available to lobbyists is also available to civil society organisations and the broader public.

Thus a 21<sup>st</sup> Century open government approach is to ensure that decision making is as open as possible, permitting maximum levels of participation and accountability.

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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. "The mere fact that the request for disclosure was made at the very early stage of legislative process was not sufficient to allow the application of the exception" European Court of Justice, Final Judgement in Case 280/11 P - 17/10/2013 Council of the EU vs. Access Info Europe, paragraph 60.