



The Right of Access to Information in Cyprus Open Cyprus Project

Draft Chapter IV for Public Consultation Legal Analysis Report

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For more information, see: <http://www.accessinfocyprus.eu/>

IV. THE LEGAL ANALYSIS

1. Introduction to the Legal Analysis

The right of access to information is a fundamental human right. International human rights tribunals such as the European Court of Human Rights and the Inter-American Court of Human Rights have confirmed that it is an inherent part of the universal right of freedom of expression and information. The Council of Europe Convention on Access to Official Documents (2009, hereinafter "Access Convention") enshrines the right of access to official documents held by public bodies.

Being a fundamental human right, the right to request and receive information is granted to everyone irrespective of their motives and intentions, and may only be subject to a narrow set of limitations as established by international law and as strictly necessary in a democratic society.

In over 50 countries worldwide the right to information enjoys constitutional protection and the legal framework of over 80 countries incorporates an access to information law. In the Council of Europe region, 40 countries have access to information laws in force and a further three (Spain, Luxembourg and Malta) have draft laws under consideration. That leaves Cyprus, in the company of the small states of Andorra, Monaco, and San Marino as the only countries without an existing or proposed legal framework for the public to gain access to information from public authorities.

The legal situation in Cyprus is complex as there are some provisions which relate to the right to information, including some provisions that can be exercised by journalists and by those wishing to reuse public sector information in the south. In the northern part there is a legal norm which is not fully in force because the implementing regulation has not been adopted.

The purpose of this legal analysis is thus to provide a clearer picture of the legal framework as it currently affects access to information in Cyprus.

The legal analysis is based on a comparison of current legal norms in Cyprus with the [10 Principles for an Open Cyprus](#) which were developed in consultation with international experts and which are drawn from international standards, comparative analysis of European access to information laws, and from the Council of Europe Convention on Access to Official Documents, as shown in the chart below.

Open Cyprus Principles	Access Convention
1. Everyone has a right, without discrimination, to access information held by public bodies	Article 2.1
2. Filing request should be simple and free of charge	Article 4.4
3. There is no need to justify why information is needed nor what will be done with it	Article 4.1
4. Public officials have the obligation to help requestors prepare the request and identify the public body to sent it to	Articles 5.1 and 5.2
5. Responses should be fast, within a maximum 15 working day timeframe	Article 5.4 / E.U. average response time
6. Information can be accessed in paper copy or electronically, and originals can be viewed	Article 6.1
7. Viewing originals is always free of charge. The only charges can be for photocopying or copying material onto a CD or DVD or other format	Article 7
8. In principle, all information is accessible, subject to limited exceptions. Refusals should be justified according to the exceptions	Articles 2.2.b; 3.1; 3.2; 5.5 Principle of Publicity in Preamble
9. Everyone have the right of appeal against refusals or against administrative silence to an independent body and to the court	Article 8
10. Public bodies should make available automatically the mail information about their structure, functions, budget and activities	Article 10

2. Summary of Findings: Failing to Meeting International Obligations on Transparency

Island-wide the public authorities in Cyprus are failing to meet their international legal obligation to ensure that all persons enjoy a right of access to information.

The Constitutional guarantees of freedom of expression and freedom of information do not translate into a legal framework that grants the right of access. Significant legal reforms are needed, including the adoption of a full access to information law in the south, an implementing regulation in the northern part, and amendments to numerous other laws island-wide that currently limit or only provide partial access.

These reforms will be essential in order to sign and ratify the Council of Europe Convention on Access to Official Documents.

This analysis against the 10 Principles of the Open Cyprus Coalition demonstrates that the current legal framework does not comply with a single one.

Even those other laws in the Republic of Cyprus other that might grant access to some classes of information, such as environmental information or archives, require amendments to comply with the basic principles of the right of access to information. The full access to information law which needs to be adopted should comply with the standards set by the Access Convention concerning proper administrative procedures to manage information requests (timeframes, fees, assistance, etc.). It should also establish a “principle of publicity” presumption that all information is in the public domain save that which can be withheld in accordance with the very limited exceptions permitted by the Convention. Any refusals to release information must be subject to both harm and public interest tests.

In the northern part, the current “Access to Information Law” requires several amendments to comply with European standards. Specifically, the scope of information available for access should be extended to include all classes of information held by public bodies as should be extended the subject of the right of access as to grant it to everyone. A first step on that direction would well be to approve an implementing regulation of the “Access to Information Law”, which clarifies the administrative procedure to request and receive information and defines the practical role and binding powers of the “Access to Information Assessment Commission”.

In both the Republic of Cyprus and the northern part, there is a need to comply with the proactive disclosure obligations imposed by the right to information and to ensure that all public authorities publish at least core classes of information on an ex officio basis.

3. Laws used in the Legal Analysis

This legal analysis is based on a compilation and translation of laws made by the partners in the Open Cyprus Coalition, leading the “Right to Access Information in Cyprus” project.

This section gives an overview of the laws which were used in the analysis, as well as the short names which are used in the text of the analysis.

The full wording of the relevant provisions of the laws referred to can be found on the Open Cyprus website.

NORTHERN PART – RELEVANT “LAWS”	
<i>FULL NAME & REFERENCE</i>	<i>SHORT NAME</i>
N.12/2006: Right to Access Information Law	“Right to Access Information Law” / “Right to Info Law”
N.7/1979: Public Officials Law	“Public Officials Law”
State Procurement Regulation	“State Procurement”
Rules of Procedures of the Parliament	“Rules and Procedures Parliament”

REPUBLIC OF CYPRUS – RELEVANT LAWS	
<i>FULL NAME & REFERENCE</i>	<i>SHORT NAME</i>
N.0/1960: Constitution of the Republic of Cyprus	Constitution
N.138(I)/2001: Act regarding Personal Data Processing	Data Protection Law
N. 132(I)/2006: Act Establishing Rules Governing The Re-Use Of Existing Information Held By Public Sector Bodies (Re-Use of Public Sector Information Act 2006)	Re-use PSI Law
N.145(I)/1989: Press Law: Act amending and unifying the Acts regarding taking measures for the protection of press freedom, the recommendation of Press Board and Press Authority, the publication, circulation and sale of newspapers and other printed matters, the registration of books, the possession of printing press, the establishment of printing and other relevant matters	Press Law
N.119(I)/2004: Act regarding the access of the public to information relevant to the environment	Environmental Information Law
N.208(I)/1991: Act providing for the establishment and operation of State Archive and for relevant matters	State Archives Law
N. 216(I)/2002: Act regarding regulations for security of classified information, documents and material and related matters	State Secrets Law
N.1(I)/1990: Public Service Law	Public Service Law
N.1(I)/2006: Act regarding the coordination of procedures for procurement of works, supplies and services in the water, energy, transport and postal services and related matters	Public Procurement Law
N.30(I)/2001: Act regarding the control of public aid	Public Aid Law
N. 158(I)/1999: Act regarding the general principles of administrative law	Administrative Principles Law
Charter of Citizen's Rights (non-binding declaration aimed at promoting efficient	Citizen's Charter

3.1 Laws not referred to in the analysis

Several laws from the Republic of Cyprus were reviewed by the legal experts working on the Open Cyprus Project but were not included in the final legal analysis. These are not referred to or only in passing in the analysis Principle by Principle because they do not contain relevant provisions for the purposes of this analysis. Mainly this is because they do not require transparency or make specific reference to information held by public bodies:

- Commissioner for Administration Laws, 1991-2004
- Act regarding the right of copyright, 1976-1993
- N.199(I)/1989: Act providing for the right of political parties to acquire, possess and dispose immovable and movable property and the conditions for this
- N.49(I)/2004: Act providing for declaration of assets of the president, the ministers and the members of the Parliament of the Republic of Cyprus and for the control of their estate
- N.2(III)/2004: Ratification Act of the Convention on combating bribery involving officials of the European Communities or the Member States of the European Union
- N.7(III)/2004: Ratification Act of the Convention on Civil Law for corruption and supplementary provisions

4. Constitutional Freedom of Expression Provisions

In both the northern part and the Republic of Cyprus the constitutional instruments contain provisions which mirror the language of Article 10 of the European Convention on Human Rights, the provision which protects freedom of expression and freedom of information.

The European Court of Human Rights has ruled that the right to freedom of expression and information in Article 10 grants members of the public a right of access to information held by public bodies. In particular, the Court has ruled that when the only holder of the information is a public body (in the words of the Court, when the public body is an "information monopoly") and when the information is needed to exercise the right to freedom of expression and especially to participate in public debate about matters of public importance, then the information should be provided, subject only to the limited restrictions permitted by Article 10.¹

The Constitutional provisions in Cyprus, along with the ratification of the European Convention on Human Rights therefore, in theory, grant to all in Cyprus the right of access to information held by public bodies. This implies a right that is enjoyed by all persons, wherever they are resident, on non-discriminatory grounds. As will be seen throughout the text, the current legal framework across Cyprus fails to meet

¹ See *Társaság a Szabadságjogokért v. Hungary* (App no 37374/05), ECHR, 14 April 2009 <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=849278&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>. See also *Kenedi v. Hungary* (Appl. no. 31475/05)

these human rights commitments and does not deliver a full right of access to information.

In the legal analysis that follows, particular reference is made to the constitutional provisions in the section on Principle 8 where we examine the existence or absence of the harm and public interest tests in the current legal framework in Cyprus. The shortcomings of the constitutional provisions mean that whereas Article 10.2 of the ECHR establishes a public interest test with the requirement that restrictions be only those “necessary in a democratic society”, the constitutional instrument in the Republic of Cyprus permits the same limitations to freedom of expression but lacks any language which introduces a test of democratic necessity on the restriction. In other words, it fails to establish a public interest test that would override a restriction given the particular circumstances in which it is applied. Similarly, in the northern part there is a test of whether a restriction is necessary but without the key qualification of being necessary in a democratic society as set out in Article 10 of the European Convention on Human Rights.

European Convention on Human Rights Article 10 – Freedom of Expression	
<p>1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.</p> <p>2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.</p>	
Republic of Cyprus Constitution Article 19 (paragraphs 1-3)	northern part – Article 24
<p>1. Every person has the right to freedom of speech and expression in any form.</p> <p>2. This right includes freedom to hold opinions and receive and impart information and ideas without interference by any public authority and regardless of frontiers.</p> <p>3. The exercise of the rights provided in paragraphs 1 and 2 of this Article may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary only in the interests of the security of the Republic or the</p>	<p>1. Every person has the right to freedom of thought or opinion. No person shall be compelled to disclose his thoughts and opinion. There can be no crime in view of the thoughts of a person.</p> <p>2. Every person has the right to express and publish his thoughts and opinion, by himself or collectively, by word of mouth, in writing, through pictures or other media. This right includes freedom to express opinion and to receive and impart information and ideas without interference by any public authority and regardless of the boundaries of the State.</p>

<p>constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the reputation or rights of others or for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.</p>	<p>3. The exercise of the freedom of speech and of the freedom of expression may be subject to such formalities, conditions, restrictions, or penalties as are necessary and as prescribed by law, only in the interest of national security or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the reputation or rights of others or for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.</p>
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In the northern part there is an additional constitutional provision on freedom of the press (Article 26) which refers to the “freedom of receiving information” but appears to do so in the context of the right of people to have access to the mass media rather than from public authorities.

4.2 The Right to Petition - not a right to ask for information!

In the Republic of Cyprus, Article 29 of the Constitution establishes:

1. Every person has the right individually or jointly with others to address written requests or complaints to any competent public authority and to have them attended to and decided expeditiously; an immediate notice of any such decision taken duly reasoned shall be given to the person making the request or complaint and in any event within a period not exceeding thirty days.

2. Where any interested person is aggrieved by any such decision or where no such decision is notified to such person within the period specified in paragraph 1 of this Article, such person may have recourse to a competent court in the matter of such request or complaint.

At first glance this would appear to give member of the public the right to request information since this could be interpreted as part of the “written requests” that they may present to public authorities.

Indeed, in submissions to the Council of Europe, that Articles 19 and 26 between them grants a right of access to information. In the “Addendum to the Compliance Report on Cyprus” adopted in June 2010 by the Council of Europe’s Group of States against Corruption (GRECO), it is noted that:

The authorities of Cyprus again stress - as is already reflected in the Evaluation and Compliance Reports - that anyone may access public information which is not confidential and that the Constitution (Articles 19 and 29) provides that a request for information can be made directly to the competent authorities, which have the obligation to accede to the request within 30 days.

The GRECO report then notes that while there may be some legislation referring to the right to information in Cyprus, it had found that “no law regulated the entire area of access to public information, to complement the basic provisions in this respect contained in the Constitution.”

The report goes on to emphasise the need for a comprehensive access to information law that meets the standards of the Council of Europe Convention on Access to Official Documents:

The legislation recommended by GRECO would apply in respect of all public institutions and provide detailed guidance to the general public, those who request information, and to representatives of the public institutions that decide whether to provide the information requested or not. Such legislation is not in place in Cyprus and the statement by the authorities “that almost all governmental bodies and departments have developed their own practices to enhance the right of the public to access information held by public authorities” further underlines the need for common standards, built on the Constitutional principles, that would apply in the same way in respect of all public institutions. GRECO recalls in this respect that the authorities had reported in the Compliance Report that any future such instrument would be prepared in the light of the Council of Europe Convention on Access to Official Documents (CETS No. 205). (GRECO notes that the Convention was opened for signature/ratification on 18 June 2009 and that Cyprus has not yet signed the Convention.)

Access Info Europe, IKME and KAB note that in addition to this, the constitutional provision is further undermined by article 33.1 of the Act 158(I)/1999, *Law to Codify the General Principles of Administrative Law* which specifically states that:

“Subject to the provisions of the Article 29 of the Constitution, the right to petition ... does not cover a request for the provision of information, unless this is provided by the law.”

In other words, Article 29 of the Constitution has no bearing on the right of access to information. This underscores the need pointed out by GRECO for a comprehensive access to information law.

5. Legal Analysis Principle by Principle

Principle 1

Everyone has a right, without discrimination, to access information held by public bodies

Summary

Principle 1 establishes that everyone has the right to access information held by all public bodies across Cyprus. According to international standards, every person should enjoy the right of access to information without discrimination for **reasons** of ethnicity or nationality, social or professional status, age, gender and others.

The right applies to all information held by public authorities (subject to limited exceptions as set out in Principle 8).

The **Council of Europe Convention on Access to Official Documents** (2009) establishes a general right of access to official documents held by public bodies. The definition of "official documents" given by the Access Convention (Article 1.2.b) is broad, encompassing not only formal records but all information recorded in any format: "*official documents means all information recorded in any form, drawn up or received and held by public authorities.*"

International jurisprudence has recognised that the right of access to information is an inherent part of the universal right of freedom of expression. Being a fundamental human right, it is granted to everyone irrespective of their motives and intentions, and may only be subject to a narrow set of limitations as established by international law and as strictly necessary in a democratic society.

Thus, Article 2.1 of the Access Convention establishes that "*each Party shall guarantee the right of everyone, without discrimination on any ground, to have access, on request, to official documents held by public bodies.*" As the **Explanatory Report** to the Access Convention further explains at Paragraph 1, "*the right of access applies to both natural and legal persons without discrimination, including on the basis of nationality, and even to foreigners living outside the territory of member states.*"

WHO HAS ACCESS TO INFORMATION IN CYPRUS?		
type of information	who (Republic of Cyprus)	who (northern part)
Information in hands of public authorities (subject to limitations)	Journalists	Citizens (not foreigners)
Environmental information (subject to limitations)	All (including foreigners)	(citizens, under general law)
Personal data held by public bodies	Affected persons – those to whom the data relates	All affected persons (including foreigners) who can demonstrate an interest
Information held in archives	State archivists, those with special Ministerial permission	(citizens, under general law)

Although the constitutional instruments in Cyprus grant the right of access, the legal framework does not support this. As the table above shows, some categories

of requesters, citizens, journalists, archivists, get privileged access to certain categories of information.

The legal framework which permits/limits this access is shown in the following table:

WHO MAY HAVE ACCESS	REPUBLIC OF CYPRUS						NORTHERN PART
	Environ. Info Law	State Archives Law	Personal Data Law	Press Freedom Law (all info)	Re-Use PSI Law	All Other Info	
All, including foreigners	✓	✗		✗	?	✗	✗
Citizens		✗		✗	?	✗	✓
Affected persons / Data subject (including non-citizens)		✗	✓	✗		✗	
Anyone with legitimate interests, including foreigners		✓		✗		✗	✓
Journalists		✗		✓		✓	
National archivists		✓					

Review of Relevant Legal Provisions - Republic of Cyprus

The Republic of Cyprus does not have an access to information law. Some access to information held by public bodies is granted by specific sectoral laws. As a result, although the Constitution guarantees freedom of speech to everyone, access to information is still the right of only a few.

The legal framework grants journalists, under the **Press Freedom Law** at Article 7.1, a general right of access to all information held by public bodies. This applies also to foreign journalists. Such positive discrimination on the basis of professional status is a violation of international standards on access to information.

It is common for there to be confusion between a general right to information and the right of access to personal data. These are, however, two distinct rights. The right of an individual to access their personal data is protected in the Republic of Cyprus in the **Data Protection Law**, which makes clear that this data can be accessed by the affected person(s) (Article 12.1). This is in line with European Union standards and does not substitute for nor excuse the absence of an access to information law.

The Council of Europe Access Convention states that the right to information also applies to information held in archives. In Cyprus, however, the **State Archives Law** does not grant the general public access before the expiry of a thirty-year period except in some limited cases determined by the responsible Minister (Article 8.1). The only exceptions to this are if the public records had already been accessible before their transfer to the State Archive (Article 8.1) or if special Ministerial level permission is granted (Article 8.4). In practice, the State Archives website has a form for application for inspection of archives where those making the request must state the reasons for their research (See Principle 3 analysis). It is also noted that the law does not define "general public" and thus it is unclear whether or not foreigners can access public records either during or after the quarantine period. In any case, access after 30 years does not constitute a right of access for purposes of this analysis since the right of access should apply to current as well as historical information.

The **Re-Use of Public Sector Information Law 2006** derives from the EU Directive on Re-Use (EC/98/2003) which is designed to ensure that when a government authority grants one user permission to make use of a large volume of information (such as a statistical database, or meteorological or geographical information), it must grant other users access on the same terms. So if a database is made available free to one user it must be free to other users as well, if there is a charge, they must be equivalent. The goal is to create a level playing field for reuse of information, particularly commercial reuse.

The EU Directive therefore states at Article 11.1 that "the re-use of documents shall be open to all potential actors in the market". There is, however, one important exception to the right to access information for reuse: it does not apply when the nature of the information is such that a requestor would have to express a legitimate interest before being granted access. Generally, this would only apply to narrow classes of information, such as information that contains personal data which would otherwise be withheld from the public domain. Other information which can be obtained under an access to information law should be accessible.

The problem in Cyprus is that while the EU Re-Use Directive presupposes the pre-existence of an access to information law, none exists. Furthermore the transposition of the EU Re-Use Directive to the Republic of Cyprus omits a definition of who may apply for the information, with language such as "any actor in the market". As a result, it is not clear if foreigners can apply for re-use public sector information in the Republic of Cyprus.

The only law in the Republic of Cyprus which clearly grants access to information on a non-discriminatory basis is the **Environmental Information Law** which at Article 2.1 grants all natural and legal persons, including foreigners, a right of access to environmental information.

In addition, there is the **Charter of Citizen's Rights** which is non-binding (i.e. it is merely a declaration, not a law) but which does make a commitment to providing citizens with information, including the commitment to answer letters promptly and

to provide clear information on the services of the public administration. It is not clear whether or not this charter applies to everyone or only to "citizens" in the narrow definition of the term. In any event, such as Charter in no way substitutes for a right of access to information guaranteed by a fully developed law consistent with the Convention on Access to Official Documents.

Review of Relevant Legal Provisions - northern part

The "**Right to Access Information Act**" has a definition of document which includes all kinds of information, with legitimate limitations, in hands of "public authorities" (Article 2), thus including archives and environmental information. It should be noted, however, that some broad classes of information including classified information, information relating to military and civil intelligence, "internal" documents, and technical and statistical information not directly relating to an administrative decision are all excluded under the exceptions, thereby limiting the scope of this law in terms of the information to which it applies (see Analysis under Principle 8).

Similarly the "Right to Information Act" at Article 5.1 grants the right of access to "everyone", but then at Article 5.2 limits the access by non-citizens: only foreign residents and foreign legal persons which are active in the northern part can have access to information and only to that information which directly concerns them or their activities.

This is clearly in direct contradiction to the concept of access to information as a fundamental human right. It is also contrary to the provisions of the Access Convention which, as the Explanatory Report makes clear, provide a right of access to "everyone" which applies both "irrespective of their motive and intentions" (Paragraph 17) and also applies "to both natural and legal persons without any discrimination, including on the basis of nationality, and even to foreigners living outside the territory of a Party to the Convention" (Paragraph 18 of the Explanatory Report).

As a result, the "Right to Access Information Act" does not comply with Principle 1 nor with the Council of Europe Access Convention which requires that all persons, including both citizens and non-citizens, have an equal right of access to information.

Recommendations

- 1) The authorities in the Republic of Cyprus should adopt an access to information law which grants all persons the right of access to all information, subject only to legitimate exceptions. The right currently enjoyed, on paper at least, by journalists should be extended to all persons without discrimination.
- 2) The right of access to information in the Republic of Cyprus should apply to all information, including that held in the archives. The right of access to the archives may be subject only to the limitations permitted by the Convention on Access to Official Documents.

- 3) The Re-Use of PSI Law should be amended so as to define who exactly is permitted to access public sector information, and it should be made clear that this includes all individuals, whether or not they are resident in or citizens of Cyprus, and to all companies and other legal persons.
- 4) The authorities in the northern part of Cyprus should modify the "Right to Access Information Act" to ensure that all persons have an equal right to request and receive information, without discrimination, regardless of nationality or residence.
- 5) "The Right to Access Information Act" in the northern part should be modified to ensure that the definition of information is not undermined by exclusions found in the section on exceptions.

Principle 2

Filing requests should be simple and free. Requests can be sent by post, e-mail or fax, delivered in person or questions asked verbally.

Summary

The Council of Europe **Convention on Access to Official Documents** establishes that the procedures for filing requests should be as simple as possible and that a variety of methods should be permitted to file requests for information. The Convention states at Article 4.3 that "formalities for requests shall not exceed what is essential in order to process the request".

The **Explanatory Report** to the Convention confirms at paragraph 43 that "the aim is to have as few [formalities] and simple [procedures] as possible" so that all types of written and verbal requests are permitted. Consequently, any country aiming to meet European standards on access to information should ensure that their legal framework permits easy and free submission of requests.

The current legal framework for access to information regime in northern Cyprus meets these standards although, as previously noted, the lack of an implementing regulation means that those standards are not withheld in practice. In contrast, the legal framework in Republic of Cyprus only partially meets European standards, as set out in Principle 2. Whilst the laws on Re-use of Public Sector Information and on Access to Environmental Information define how request may be submitted, there is no clear legal framework for the remainder of information held by public authorities.

SUBMISSION OF REQUEST	REPUBLIC OF CYPRUS					NOTHERN PART
	Re-use PSI	Environment Info	Archives	Data Protection	All Other Info	"Access to Information

						Law"
Post	✓	✓	✗	?	NO LAW	✓
E-mail	✓	✓	✗	?	NO LAW	✓
Fax	✓	✓	✗	?	NO LAW	✓
Delivered in person	✓	✓	✓	?	NO LAW	✓
Verbally	✗	✓	✗	?	NO LAW	✗
Filing: free of charge	✓	✓	✓	✗	NO LAW	✓

Review of Relevant Legal Provisions - Republic of Cyprus

In Republic of Cyprus, the lack of an access to information law means that for most information no mechanisms have been defined for submitting access to information requests to public bodies. Research by members of the Open Cyprus Coalition has shown that in practice different public authorities use different systems for receiving requests.

If the information requested is likely to be part of the state archives, then, according to the Ministry of Justice and Public Order website, State Archive section, "when the researcher has identified the specific records that are to be inspected an application is filled in." This requirement runs counter to Principle 5 and the Council of Europe standards, which should permit any person to write a letter of any format requesting access to information held in the archives.

When information requests are made on the basis of the **Re-use of PSI Law**, the requirements are more complicated than the standard set by the Convention on Access to Official Documents. For example, the Re-use of PSI Law requires that the applicant submits a standard form in which the purpose of re-use of that document is declared. This requirement is not mandated by the EU Directive on which this law is based (Directive 98/2003 on the Re-Use of Public Sector Information). In addition, the application procedure at Article 9 requires that the requester "identify the requested document". This is a very vague provision which is clearly open to misinterpretation by public officials who might, for example, take it as meaning that the applicant needs to know the formal name or official reference number of the requested document.

The **Environmental Information Law**, at Article 3, does not preclude any format for requesting environmental information but nor does it explicitly state which methods may be used. Indeed the language in the refusals section suggests that requests can be filed by post, e-mail, fax and in person. With respect to costs, Article 9.1 of the Environmental Information Law stipulates that requests are free unless there is a cost associated with the collection and treatment of the requested information.

The **Data Protection Law** does not define the precise methods for submitting applications to exercise the rights of access to personal data (Article 12), although it does state that objection to the processing of personal data must be made in writing (Article 13.1) and the data controllers are always obliged to reply in writing (Articles 12, 13). With respect to fees, the Data Protection law establishes, at Article 14, that the only fees are those for requests to correct records which will be refunded if the objection is found to be well-founded and accepted by the data controller.

In sum the legal framework in the Republic of Cyprus requires a series of legal reforms if Principle 2 is to eventually become part of the institutional culture.

Review of Relevant Legal Provisions - northern part

The "**Right to Access Information Act**" obliges "public bodies" to process all information requests, regardless of the means by which they are submitted. Specifically, Article 7.1 refers to "a letter of request" but Article 7.2 broadens the definition to include "electronic or other means" as lawful methods to file requests although the requirement at Article 7.2 for a signature precludes oral requests.

In Europe, law on oral requests is mixed, although many states do permit them, including for example: Albania, Armenia, Austria, Bulgaria, Denmark, France, Germany, Hungary, Macedonia, Moldova, Netherlands, Romania, Serbia, Slovakia, and Slovenia. The Explanatory Report to the Access Convention underscores at Paragraph 43 that a good number of countries grant this right.

This "Right to Access Information Act" is consistent with Principle 2 in that it permits a fee to be charged only at the time of receiving information and not during the application procedure. There are, however, problems with charges for receiving information which are considered further in the analysis of Principle 7.

Recommendations

In order to comply with Principle 2 and the Council of Europe Convention on Access to Official Documents standards, it is recommended that:

1. A specific access to information law is adopted in the Republic of Cyprus, with provisions which guarantee the right to file requests by the means of choice of the requester (letter, fax, hand-delivery, e-mail, and orally) and ensure that the filing of the requests is free of charge.
2. The Environmental Information Law in the Republic of Cyprus is amended so that the application procedure, including methods and fees, is clearly stated. Oral requests for access to environmental information should also be permitted.
3. An implementing regulation to bring into force the "Right to Access Information Act" in the northern part should be adopted. It is recommended to permit both oral and written information requests.
4. The rules for accessing environmental information in the northern part should be harmonised with the standards of the Aarhus Convention and the EU Directive, either as part of a specific legal framework or within the Right

to Access Information Act. Written, e-mail, and oral requests should be permitted.

Principle 3

There is no need to justify why information is requested nor what will be done with it

Summary

Principle 3 establishes that the exercise of the right to access information should not require a requester to show any personal interest in the information sought. Further, the requester should not be obliged to give a reason or justification for asking for information, nor to have to give an account of what s/he will do with it.

This principle reflects the **Council of Europe Convention on Access to Official Documents** which provides at Article 4.1 that “*an applicant for an official document shall not be obliged to give reasons for having access to the official document.*”

This principle is not fully respected in either the northern part or the Republic of Cyprus. In the northern part it is not respected because non-citizens do not have a right of access to information without giving reasons. In the Republic of Cyprus it is not respected because there is no access to information law which provides a general right of access and some of the other laws require reasons to be given, such as the Press Freedom Law and State Archives Law. Only the Environmental Information and Re-use PSI laws give a right of access without reasons, but they represent a small fraction of all information held by public authorities.

Justification	REPUBLIC OF CYPRUS						NORTHERN PART
	Re-use PSI	Environment Info	Archives	Data Protection	Press Freedom Law	All Other Info	
No duty to justify requests							“Access to Information Law”
	✓	✓ Article 3.1	✗	✓	✗ Article 7.2	NO LAW	✗ Article 5.2

Review of Relevant Legal Provisions - Republic of Cyprus

In the south, just one law makes clear that requesters do not have to give reasons: the **Environmental Information Law** clearly states at Article 3.1 that there is no legal duty to invoke or prove interest when submitting a request for environmental

information: "Public authorities are obliged to provide information on the environment [...] to any applicant without having to invoke or prove interest."

The **Re-Use of PSI Law** does not require reasons to be given but at the same time it does not apply in cases when another law requires that reasons be given to access a particular piece of information. Article 3.4 states that "[t]his Act shall not apply in cases in which citizens or companies have to prove a particular legitimate interest under the access regime to obtain access to the documents." This means that only information for which the requestor is not required to provide reasons or for which another access regime applies, such as the Archives Law or Data Protection Law, may be requested under the Re-use of PSI Law.

The **Data Protection Law** does not require that reasons be given, which is positive, but of course the requester has to demonstrate that they are the person to whom the information applies.

The **State Archives Law** does not require the general public to prove a legitimate interest in order to consult the State archives, but the official website of the State Archive publishes a series of forms that place obligations on requesters. For example, the "Purpose and Subject of Research" must be stated in the official form for accessing the archives (Documents Request Form) which amounts to proving a legitimate interest and thus is a violation of the Council of Europe Convention on Access to Official Documents, which requires that the right of access to information without having to give reasons also applies to the State Archives.

Any law which is limited to a certain category of requesters, such as the **Press Freedom Law**, is implicitly asking the requester to justify who they are and therefore why they want the information and hence is in contravention of international standards.

Review of Relevant Legal Provisions - northern part

The "**Right to Access Information Act**" at Article 5.1 states without qualification that "everyone has the right to access information." This right is then immediately narrowed by Article 5.2 which establishes that "*foreign residents and foreign legal persons active in [the northern part of Cyprus] can benefit from the rules of this Law provided that the information asked for concerns themselves or their activities.*"

The requirement that non-citizens and foreigners have to justify information request is counter to the principles of the Convention on Access to Official Documents which make clear that anyone can file requests without having to give reasons. It is thus a discriminatory provision.

Recommendations

In order to comply with Principle 3 and Article 4.1 of the Council of Europe Convention on Access to Official Documents, it is recommended that:

1. In the northern part, Article 5 of the "Right to Access Information Act" should be amended to remove the discriminatory provision regarding the

exercise of the right to access information by foreign residents and foreign legal persons.

2. In the Republic of Cyprus, a full access to information law should be adopted which establishes that anyone making an information request shall not be obliged to give reasons for having access to such information.

Principle 4

Public officials should have the obligation to help requesters prepare the request or identify the public body to send it to

Summary

The **Council of Europe Convention on Access to Official Documents** at Article 5, Processing of Requests for Access to Official Documents provides that:

1. *The public authority shall help the applicant, as far as reasonably possible, to identify the requested official document.*
2. *A request for access to an official document shall be dealt with by any public authority holding the document. If the public authority does not hold the requested official document or if it is not authorised to process that request, it shall, wherever possible, refer the application or the applicant to the competent public authority.*

With the exception of the Environmental Information Law in the Republic of Cyprus there is no clear provision in either the legal framework in the Republic of Cyprus or in the northern part requiring that information-seekers be given assistance with the preparation of requests or with identification of the public bodies to which they should be submitted.

	REPUBLIC OF CYPRUS				NORTHERN PART	
Duty to Assist Requestors	Environmental Information Law	Public Service Law	Citizen Charter (non-binding)	Access to Information Law	"Access to Information Law"	"Public Officials Law"
	✓ Article 4	Only partially Article	Only partially section c	NO LAW	x	x

		67.3				

Review of Relevant Legal Provisions - Republic of Cyprus

As regards the **Environmental Information Law**, Article 7 establishes that the Ministry of Environment and its public officials provide information, guidance and advice regarding the public right to access environmental information. According to Article 4, public authorities have the duty to clarify and assist the requester of environmental information and Article 6 specifies both mandatory and voluntary practical arrangements to that end such as the designation of information officers.

A broad interpretation of Article 60 of the **Public Service Law** might suggest that public officials should help requesters by all means possible in their duty to do their "utmost to serve the public." Furthermore, public officers are mandated at Article 67.3 to offer "technical or professional advice" while performing their public duty. This would not, however, apply specifically to information seekers since the Public Service Law only requires public servants to act in accordance with the law and there is therefore nothing illegal if they refuse to assist someone looking for information. Once an access to information law comes into force in the future, however, this obligation will exist.

Although the **Citizen Charter** is not a legally binding document, its content openly aims at improving the services to the public by all means possible. According to Section c of the Charter, public services are urged "to be easily accessible and friendly to the citizen and to provide adequate information". This vague, broad, and non-binding language in no way substitutes for an access to information law but nevertheless demonstrates that there is some requirement on public officials to help treat information requesters well and help them find information.

Review of Relevant Legal Provisions - northern part

The "**Right of Access to Information Act**" does not establish a provision requiring public officials to assist requesters but it does require requests to be transferred, which is very positive. The transfer obligation is established by Article which states that: "*Should the requested information or document be available at another public authority and department, then the application is passed on to the relevant public authority and department and the applicant is informed of this fact by writing or electronic means.*"

In addition, Article 9 states that in cases where the requested information has already been published, "*the applicant is informed when, where and by which means the information or document was published.*"

The "**Public Officials Law**" requires that "public officials" apply the legal frameworks "with due care" (Article 9) and again that they "fulfil their duties with care and caution" (Article 11). This does not however go so far as creating a specific obligation to assist information seekers.

Indeed, the Public Officials Law might discourage transparency as it holds officials personally liable for any "loss and damage they cause to the state, intentionally or

negligently” and can be taken to court if they fail in this duty (Article 11). It can be imagined that this provision might discourage an official from releasing information which is of high public importance but which might be deemed to cause damage to the state.

This concern is confirmed by Article 39 of law which states that “*civil servants are prohibited from passing any information or make statements on his/her department services policies and how these services are carried out, unless they are authorized by their superiors*”.

Recommendations

In order to comply with Principle 4 and with the Council of Europe Convention on Access to Official Documents, it is recommended that:

1. A full access to information law should be adopted in the Republic of Cyprus which provides a section about a general duty to advise and assist along similar lines as above.
2. The “Right to Access Information Act” in the northern part of Cyprus should be amended to add a section about the general duty to advise and assist, as for example: “public officials must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.”
3. It should be made clear in both the northern part and the Republic of Cyprus that public officials who release information in good faith when applying the terms of an access to information law and who do so in accordance with the provisions established under that law, will not be held liable for any subsequent damage which may arise or any perceived damage or negative political impact caused by making the information public.

Principle 5

Responses should be fast, within a maximum 15 working day timeframe

Summary

The average timeframe for responding to requests around Europe is just under 15 working days. This timeframe is consistent with the Council of Europe **Convention on Access to Official Documents** which states at Article 5.4 that:

“a request for access to an official document shall be dealt with promptly. The decision shall be reached, communicated and executed as soon as possible or within a reasonable time limit which has been specified beforehand.”

TYPES OF RESPONSES	REPUBLIC OF CYPRUS					NOTHERN PART
	Re-use PSI	Environment Info	Archives	Data Protection	All Other Info	"Access to Information Law"
Initial Response <i>Recommended:</i> 15 working days	20 days	20 days	not defined	4 weeks (to access)	NO LAW	15 days
Extensions <i>Recommended:</i> additional 20 working days	20 days	20 days	not defined	15 days (to object)	NO LAW	30 days

The legal framework in the northern part complies with Principle 5 and the Convention on Access to Official Documents by having a 15 working day timeframe for responding to requests. The possibility of an extension for up to 30 working days is also acceptable according to comparative international standards, although the Open Cyprus Coalition recommends a maximum 20 working day extension, giving public authorities 35 working days which is about seven weeks to answer requests. In the vast majority of cases it should be possible for public authorities to comply with this upper limit, unless their internal information is very poorly managed.

In the Republic of Cyprus there is no maximum time limit for responding to requests for most information held by public authorities because there is no access to information law. The time frames which are defined – for example, for access to environmental information – are in line with European standards by setting a 20 working day timeframe. Specifically the Environmental Information Law complies directly with the Aarhus Convention by establishing a 20 working day timeframe.

Review of Relevant Legal Provisions - Republic of Cyprus

Although the Republic of Cyprus lacks a general access to information law, several laws define reasonable timeframes for accessing specific types of information. For instance, the **Data Protection Law** at Article 12.3 requires that public and private bodies respond to requests for access to personal data within four weeks, whereas Article 13.1 establishes that data controllers respond to an objection to the processing of sensitive data submitted by the concerned data subject within a 15-day time limit.

The **Re-use of PSI Law** establishes at Article 9 that applications for the reuse of public information should be processed within 20 days. The relevant public body may extend this by another 20 days if this is reasonably justified and notified to the requester within three weeks of the date of the application.

Similarly the **Environmental Information Law** defines in Article 3.2.a a timeframe of one month, so approximately 20 or 21 working days, for responding to requests for environmental information, either to grant or refuse access. The public authority concerned is allowed to extend that time limit for up to another month if the volume and complexity of the information requested so demands (Article 3.2.b).

The one norm which might establish timeframes for more general access to information is the **Citizen Charter**, a non-binding policy document, which claims to set out the “period of time within which the department has the obligation to reply and provide fuller information and quicker services to the public”, but which then fails to define those timeframes. The Ministry of Interior has established that all letters should be responded to “promptly” but does not state precisely what this means in practice.

Review of Relevant Legal Provisions - northern part

The **“Right to Access Information Act”** establishes at Article 12 a time limit of 15 working days unless “the content of the request involves more than one public authority and department, in which case the information or document will be provided within thirty days”. If an extension is to be applied, the applicant must be informed of the extension within 15 working days.

With these provisions, Principle 5 is already integrated into the legal framework for access to information in the northern part of Cyprus. There are however problems with the application of these provisions. Adopting an implementing regulation of the law would be a first step to address these problems.

Recommendations:

In order to comply with the Open Cyprus Principle 5 and to ensure prompt responses to access to information requests within a pre-defined timeframe, as required by the Council of Europe Convention on Access to Official Documents, it is recommended that:

1. A detailed regulation defining the procedure and timeframes for information and administrative services should be adopted in the northern part of Cyprus to bring fully into force the Right to Access Information Act;
2. A legal framework should be adopted for the northern part of Cyprus for reuse of public information, with an average 15 day time limit;
3. Access to environmental information in the northern part can be assured either via a dedicated access to information law or under the general access to information law;
4. A specific access to information law is approved in the Republic of Cyprus, which establishes a 15 working day timeframe for responding to information requests. The extension period should be a maximum of 20 working days and should only be permissible in exceptional circumstances;
5. The government in the Republic of Cyprus approves specific laws and regulations to comply with the policy commitment to set strict timeframes

for all administrative procedures, including information requests, as expressed in the Citizen Charter.

Principle 6

Information can be accessed in paper copy or electronically, and originals can be viewed.

Summary

This Principle refers to two aspects of the right to access information. The first is that requesters should always have a right to view originals. The second is that copies must be provided, either in paper or electronic copy.

Comparative international standards and the Council of Europe **Convention on Access to Official Documents** establish that the requester has the right to specify the preferred format for receiving the information and that the information should be provided in this format wherever possible. This means that, if information exists in electronic format, to provide the requester with paper copies is a breach of the right.

The Convention states, at Article 6 on Forms of Access to Official Documents, that:

When access to an official document is granted, the applicant has the right to choose whether to inspect the original or a copy, or to receive a copy of it in any available form or format of his or her choice unless the preference expressed is unreasonable.

Upholding the right of access to information in electronic format is not just a right related to ensuring that citizens can reuse the information they obtain, it is also an indicator of an effective administration. Electronic storage of information permits it to be stored in a way that it can be accessed rapidly, processed efficiently, and shared with other public bodies.

The “law” in the northern part fails to provide requesters with the right to opt for the type of access (viewing or copies) or for the format (hard copy, electronic, etc.). It requires public authorities to provide certified copies of information, thereby making it hard to gain access to information in electronic format under the current law of access.

The legal framework in the Republic of Cyprus has no provision for accessing information in electronic format, or in any format for that matter given the absence of a general access to information law. There are two exceptions to this: requesters of environmental information can specify if they wish to view the view information or access it in hard copy or electronically and public authorities shall make every reasonable effort to comply with this request; and information destined for reuse should be provided electronically wherever possible.

Access in		
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specified format	REPUBLIC OF CYPRUS					NORTHERN PART
	Re-use PSI	Environment Info	Archives	Data Protection	All Other Info	"Access to Information Law"
Viewing	?	✓	✓	✗	NO LAW	✗
Copy	✓	✓	✓ (certified)	✓	NO LAW	✓ (certified)
electronic access	✓	✓	✗	?	NO LAW	✗

Review of Relevant Legal Provisions - Republic of Cyprus

The legal framework in the Republic of Cyprus does not anticipate a general right of access to information and therefore does not anticipate the forms of access. The exhortation in the *Public Service Commission Chairman's Salutation* that information be published proactively in digital format is laudable but does not substitute for responding to requests by providing information in electronic format.

The **Environmental Information Law** does provide, at Article 5, for requesters to specify the "form or type" of access they prefer. This can include viewing and copies. Public authorities should comply with the wishes of the requester except where the information has already been published in another form or type "which is easily accessible to the applicant" or where "it is reasonable for the public authority to provide this information in another format or type." These provisions reflect the language of the Aarhus Convention and the EC Directive on public access to environmental information but they are still potentially problematic provisions in the context of Cyprus where there is no culture of providing requesters with information in a format most suitable for their use.

It is positive that the Environmental Information Law also requires that public authorities provide requester with reasons as to why information was not provided in the format specified, but the language could be tightened here to ensure that public officials make due effort to provide the information in the format required. For example, if some data has previously been published in a printed report and a requester asks for that information in electronic format, it would be unreasonable to deny such access. This is consistent with Article 5.2 which requires that public authorities ensure the form or type of access allows easier reproduction of the information and that the information is accessible via telecommunications or electronic means.

The **Re-use of PSI Law** is more specific, Article 5.1.b, requiring that any public information that is approved for reuse should be available in electronic format

where possible. In addition, the law requires at Article 6.1.c and Article 8 that a list of the main documents available for reuse should be accessible on-line. This on-line list does not of course substitute for the provision of the actual documents in electronic formats. It is noted that in many countries, governments are developing data portals where full data sets can be downloaded instantaneously in electronic format, something which should be explored by the public authorities in Cyprus.

The **State Archives Law** does not provide for nor prohibit electronic access. At present, in practice, the State Archives only gives access in the form of paper copies. If a certified copy is required then, consistent with current administrative practice in Cyprus, it will be provided as a paper copy.

The **Data Protection Law** gives persons a right to access information about themselves in writing, which indicates that viewing of originals is not permitted. This is not a significant problem in the context of access to personal data in the way that it is with a general right of access to information. Additionally, there is no reference to electronic access although it is not explicitly prohibited.

The legal framework in the Republic of Cyprus therefore fails to provide for a general right of access to information in any format.

Review of Relevant Legal Provisions - northern part of Cyprus

The provisions of the "**Right to Access Information Law**" that refer to making a request, i.e. Article 7, do not make any reference to the right of the requester to state in which format they would prefer to receive the information. Such article merely states that "[t]he requested information and document [should be] clearly stated in the application."

A potential problem arises from the provisions which regulate the provision of information at Article 11. It is stated that "[a] certified copy of the requested document is communicated to the applicant by the public authority and department", which implies that the information will not be delivered in electronic format.

Article 11 also provides that viewing of the document will be permitted only if "the document is not suitable for copying or copying is most likely to damage the document", which runs counter to the Council of Europe standards which require that requesters must always be able to view the document unless this would risk damaging the document.

Positively the "Right to Access Information Law" in the northern part anticipates at Article 11 that in some cases it may be necessary to listen to recorded information or to view a film, and this is thus permitted as a form of access.

Overall the law in the northern part fails to grant a requester the following essential elements of the right to information: the right to view originals in almost all circumstances and the right to a copy in the preferred format, including electronic, whenever possible.

Recommendations

In order to comply with Principle 6 and with the Council of Europe Convention on Access to Official Documents, it is recommended that:

1. An access to information law should be adopted in the Republic of Cyprus which gives requesters the right to opt for the preferred type (viewing or copies) and format of access (hard copy, electronic, or other as relevant). The provisions of the law on access to environmental information are relevant here but an even clearer wording could be developed consistent with the provisions of the Convention on Access to Official Documents;
2. The legal framework in the northern part be amended to give requesters a clear right (a) to view original copies of the information should that option be preferred and (b) to have access to electronic copies of documents whenever the information already exists in electronic format;
3. In both the Republic of Cyprus and northern part, legal provisions or guidelines should be adopted on how to apply exceptions to information to be provided in electronic format. There are a number of technical models for this, of which the easiest – often used by the European Union – is to replace the text in a digital file with the words '*DELETED*' while indicating the size of the deleted text and providing reasons for each deletion in the accompanying decision letter.

Principle 7

Viewing original is always free of charge. The only charges can be for photocopying or copying material onto a CD or DVD or other format.

Summary

The Council of Europe **Convention on Access to Official Documents** at Article 7 on "Charges for access to official documents" provides that:

- on-site inspection of official documents "shall be free of charge" (with the minor exception of charges for entering museums and public archives);
- charges made for copies "should be reasonable and not exceed the actual costs of reproduction and delivery of the document", i.e. in accordance with the "self-cost" principle and not to make a profit from this activity. Where charges are levied, tariffs detailing such charges should be published.

The "Right to Access Information Act" in the northern part includes a broad variety of instances where a fee may apply at the time of requesting or accessing information. The charging provision in the northern part is, therefore, in breach of the Council of Europe Convention which requires that the level of the fee be based only on the actual cost of reproduction or delivery costs associated with providing the information.

The lack of a general access to information law in the Republic of Cyprus has the effect of multiplying the legal provisions on charging of fees when accessing and using public information. Different laws related to access public information state a variety of fees to be charged. The range of fees charge may have effect of discouraging requesters because they are unsure about the eventual cost of an information request.

Fee charged	REPUBLIC OF CYPRUS						NOTHERN PART
	Re-Use PSI	Environment Info	Archives	Data Protection	All Info	Other	"Access Information Law" to
viewing	x	✓	✓	✓ <i>amending only</i>	NO LAW		✓
Copy	✓	✓	x	?	NO LAW		x <i>statutory minimum</i>
electronic access	✓	✓	?	?	NO LAW		✓

Review of Relevant Legal Provisions - Republic of Cyprus

The **Environmental Information Law** does not permit fees to be charged for filing requests although fees may be charged for "providing information" (Article 9.2). Whilst it is positive that there is no charge for filing of requests, the charging provision is still vague and it would be better to specify that this means copying and delivery. It is stated that on the spot viewing is free but there is no specific mention of provision of electronic copies. It would be consistent with international standards and in particular the Council of Europe Access Convention to make clear that there are no costs associated with electronic delivery of information.

The **Citizens Charter**, although not a binding document, encourages the Administration to ensure "unimpeded" access to all administrative services, but it has no specific provisions about charges.

The **Re-Use of Public Information Law** states at Article 7 that charging for the reuse of public documents is permitted. Fees are to be set by the public body holding the documents and then approved by the Ministry of Interior. There are many factors that should be taken into account and individuals may request a cost analysis. It is noted that Access Info Europe has argued that the charging for receiving for data under laws on the reuse of public sector information may run counter to the standards of the Council of Europe Access Convention, something which is still being evaluated at the international level.

The **State Archives Law** establishes at Article 18.1 that the Ministerial Council shall issue Regulations, which shall be published in the Official Gazette of the Republic, for “charging for the inspection of files, located in the State Archive or storage sites determined according to this Act, for the issuance of certified copies or parts of such files and for the provision of any other service by the State Archives officers or officers of other storage sites.” On the website of the State Archives there is an application form for copies which states that the cost are €0.34 per A4 copy and €0.68 for A3 copies.

Review of Relevant Legal Provisions - northern part

“The Right to Access Information Act”, at Article 11.2, provides that:

“For every accessed information and document a fee is charged. This fee is determined by the Council of Ministers’ regulation on a proposal from the Finance Ministry and is charged by the public authority or department applied to and is registered as income with the Exchequer. This fee cannot be less than 0.5% of the minimum wage or more than the minimum monthly wage.”

Further, Article 11.3 states the elements to be taken into account in determining the fee: personal use of the information; academic use of the information; commercial use of the information; and information used by the press news. Also, the fee reflects “the effort and the time spent on research, investigation and analysis by the public authority and departments while gathering the requested information and documents.” This provision permits a wide discretion on the level of fee charged and not based on actual costs. It also includes aspects such as “research, investigation and analysis”, which are impermissible by international standards and also introduce the possibility that costs will be artificially inflated.

Hence the charging provision in the northern part is in breach of the Council of Europe Convention which requires that the level of the fee be based on the actual cost of reproduction or delivery costs associated with providing the information.

Recommendations

In order to comply with Principle 7 and with the Council of Europe Convention on Access to Official Documents, it is recommended that:

1. In the northern part, Article 11.2 of the “Right to Access Information Act” should be amended to comply with Article 7 of the Council of Europe Convention, by establishing that charging of fees is discretionary and that it may not exceed the actual costs of making copies and delivering the information.
2. An explicit regulation on charging fees for accessing information should be approved by the Council of Ministers in the northern part as stated in Article 11.2 of the “Right to Access Information Act”.
3. In the Republic of Cyprus, Article 9 of the Access to Environmental Information Law should be amended to comply the Council of Europe Convention on access to official documents by introducing a clause which

makes clear that the “provision” of information relates only to making copies and delivering the information; viewing of originals and electronic copies shall be free of charge.

4. A full access to information law should be adopted in the Republic of Cyprus which establishes that:
 - a) viewing original documents is free of charge;
 - b) that discretionary fees may be charged by public bodies only for making copies and delivering information;
 - c) electronic access to information should always be free of charge.

Principle 8

In principle, all information is accessible, subject to limited exceptions. Refusals should be justified according to exceptions.

Summary

The Preamble of the Council of Europe **Convention on Access to Official Documents** establishes a broad regime of access to information when it considers “that all official documents are in principle public and can be withheld subject only to the protection of other rights and legitimate interests”.

The exceptions permitted by the Convention at Article 3.1 are:

- National security, defence and international relations;
- Public safety;
- The prevention, investigation and prosecution of criminal activities;
- Disciplinary investigations;
- Inspection, control and supervision by public authorities;
- Privacy and other legitimate private interest;
- Commercial and other economic interest;
- The economic, monetary and exchange rate policies of the State;
- The equality of partners in court proceedings and the effective administration of justice;
- Environment; or
- The deliberations within or between public authorities concerning the examination of a matter.

The **Explanatory Report** to the Convention confirms that the “list of limitations in Article 3, paragraph 1 is exhaustive” which means that no other exceptions are permitted. Furthermore, Article 3.2 establishes that information can only be withheld from public disclosure if its release would **harm** one of these protected interests and if there **no overriding public interest** in accessing the information.

An example here will help illustrate the harm and public interest tests.

It could (possibly!) be argued that for the public to know about spending on the police force will harm the interests of fighting crime and protecting public safety, because criminals will know how many police officers there are and how many cars they have. On the other hand, there is a clear public interest in knowing about the number of police officers and what kind of resources and equipment they have in order to be sure that the government is being effective in the spending of funds to ensure that the public is well protected. It is very hard to have a proper debate about the quality of the police force and if the right amount of this budget is spent on policing without having this information. Therefore, although there is a potential harm to a legitimate interest, there is a greater (overriding) public interest in knowing the information.

A positive outcome of a public interest test will override the finding that release of the information might harm a protected interest. The Memorandum further explains that “the outcome of a harm-test is closely connected with the lapse of time”. As a result, Article 3.3 of the Convention suggests that national laws might “consider time limits beyond which the limitations (...) would no longer apply”. For instance, a lawful refusal to access official information on the basis of an exception for Disciplinary Investigations (d) should be limited to the period of time that those investigations remain officially open. Access to that official document should be granted thereafter.

Whenever an exception is applied, “a public authority refusing access to an official document wholly or in part give the reasons for the refusal,” as stated at Article 5.6.

The exceptions established by the Convention also apply to information classified as a state secret, which must be evaluated on a case-by-case basis each time a request for information is received.

REPUBLIC OF CYPRUS										NOTHERN PART
	Constitution Article 19	Re-use PSI Law	Environment Info Law	State Archives Law	State Secrets Law	Data Protection Law	Press Law	Public Aid Law	All Other Info	“Access to Information Law”
Exceptions Limited	x	x	✓	x	x	✓	✓	x	no law	x

Refusals Justified	x	✓	✓	x	x	✓	x	✓	no law	✓
Harm Test	✓	✓	✓	x	✓	✓	✓	✓	no law	✓
Public Interest Test	x	x	✓	x	x	✓	x	x	no law	x

Neither the legal framework in the northern part nor that in the Republic of Cyprus meets international standards for access to information because they do not apply to all information, as noted elsewhere in this analysis. In addition, even where access is granted, the exceptions are much broader than that permitted by international law.

Specifically, the "Access to Information Law" in the northern part and a combination of the State Secrets and State Archives laws in the Republic of Cyprus exclude much information that should otherwise be available under the access to information regime of a democratic country. In part the particular political context prevailing in Cyprus and the nature of the security concerns have contributed to a culture of secrecy and excessive protections for information which might impact on national security. Nevertheless, the Memorandum of the Convention foresees this situation and recommends at Paragraph 23 that:

the notion of national security should be used with restraint. It should not be misused in order to protect informational that might reveal the breach of human rights, corruption, within public authorities, administrative errors, or information which is simply embarrassing for public officials or authorities.

As part of the democratisation and stabilisation of Cyprus, it will be necessary to re-evaluate what information should be withheld from the public domain because its disclosure would genuinely harm national security or territorial integrity and which information could in fact be made public in order to further debate and build and open society.

Review of Relevant Legal Provisions - Republic of Cyprus

This section reviews the Constitution and laws which grant access to some classes of information and evaluates whether the exceptions which they contain fit with the standards of the Council of Europe **Convention on Access to Official Documents**. In addition to this evaluation it is of course noted that without a full access to information law the legal framework for access to information in the Republic of Cyprus still falls short of the Convention requirements.

Article 19 of the Constitution applies to all classes of information			
	Council of Europe Convention on Access to Official	Harm Test	Public Interest Test

<u>Exceptions in the law</u>	Documents		
Security of the Republic and Constitutional Order	✓	✓	✗
Public safety & order, public health & morals	✓	✓	✗
reputation and rights of others	✓	✓	✗
information received in confidence	✓	✓	✗
authority and impartiality of the judiciary	✓	✓	✗

The **Constitution** at Article 19 establishes the right to freedom of expression and information. This provision should be interpreted in line with the rulings of the European Court of Human Rights on the equivalent provision in the European Convention on Human Rights, Article 10. As noted in the Section 4, the European Court of Human Rights has stated that Article 10 grants a right of access to information from public bodies when they are the only source of the information.

The Republic of Cyprus has been a party to the European Convention on Human Rights since 1961 (date of signature; entry into force 1962) and is bound to abide by the jurisprudence of the European Court of Human Rights. This means that the legal system in Cyprus should recognise the right of the public to access information held by public bodies and the Republic of Cyprus Constitution should be interpreted as granting this right. As a result, any exceptions limiting the right of access to information should be in line with those limiting freedom of expression in Article 19 of the Constitution which must be consistent with Article 10 of the European Convention on Human Rights.

Republic of Cyprus Constitution Article 19.3	European Convention on Human Rights Article 10.2
The exercise of the rights provided in paragraphs 1 and 2 of this Article may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary only in the interests of the security of the Republic or the	The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial

constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the reputation or rights of others or for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.	integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.
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As can be seen from the table above, Article 10.2 of the **European Convention on Human Rights** (ECHR) sets limits on freedom of expression that are analogous to those set by Article 19.3 of the Constitution of the Republic of Cyprus. Nevertheless, Article 10.2 of the ECHR establishes a public interest test by the requirement that restrictions be only those “necessary in a democratic society”. Article 19.3 of the Republic of Cyprus Constitution permits the same limitations to freedom of expression but lacks any language which introduces a test of democratic necessity on the restriction, in other words, it fails to establish a public interest test that would override a restriction given the particular circumstances in which it is applied.

Re-use PSI Law only applies to administrative information			
<u>Exceptions in the law</u>	Council of Europe Convention on Access to Official Documents	Harm Test	Public Interest Test
Documents for which third parties hold intellectual property rights	✘	✔	✘
Protection of state security, defence and public security	✔	✔	✘
Commercial confidentiality	✔	✔	✘
Statistical Confidentiality	✘	✔	✘

The **Re-Use of PSI Law** includes limited exceptions which are all subject to a harm test. However, not all these exceptions are contemplated in the Convention on Access to Official Documents. This is because the EU Directive on Re-use of PSI includes exceptions which are not provided for in the Access Convention. Given that the right of access to information is a fundamental right, it should always take precedence over other laws which limit access. This will need to be taken into consideration when applying a future access to information law in the Republic of Cyprus to ensure that access is not denied on grounds established by other laws.

Environmental Information Law – applies to all environmental information

Exceptions in the law	Convention on Access to Official Documents	Harm Test	Public Interest Test
in-house communications, confidentiality of administrative proceedings	✓	✗	✓
confidentiality of proceedings of a public authority	✓	✓	✓
international relations, public security, national defence	✓	✓	✓
administration of justice, fair trial, and disciplinary investigations	✓	✓	✓
confidentiality of commercial and industrial information to protect legitimate economic interests	✓	✓	✓
intellectual property rights	✗	✓	✓
personal data protection, and protection of persons supplying information voluntarily	✓	✓	✓
protection of environment	✓	✓	✓

The **Environmental Information Law** transposes the **Aarhus Convention on Access to Environmental Information** in the Republic of Cyprus. The law grants access to environmental information with limited exceptions subject to both harm and public interest tests in most of the cases. However, refusals of access to in-house communications and administrative proceedings (Article 8.1.e) are not subject to a harm test. The Aarhus Convention does not require a harm test for in-house communications (Article 3.c) and administrative proceedings (Article 4.a) if “such an exemption is provided for in national law”. However, according to the standards of the Council of Europe Convention on Access to Official Documents, a harm and public interest test should be applied to all exceptions to access, including in-house communications and administrative proceedings.

The exceptions to access established by Article 8.2.e in order to protect intellectual property rights are in line with the Aarhus Convention (Article 4.e) but not the Access Convention. As the **Explanatory Report** to the Access Convention explains, a public authority may only “be justified in refusing to provide a copy of the document if (...) intellectual property rights might be infringed” (Paragraph 54). This means that according to the standards of the Access Convention, public bodies in the Republic of Cyprus should be permitted to refuse to provide a copy of environmental documentation if those documents are copyrighted by a third party, but the authority should not refuse access to view those copyrighted documents. There may be exceptional cases where even viewing original information would in itself contain the risk of direct harm to intellectual property rights.

Press Law applies only to information requested by journalists			
Exceptions in the law	Convention on Access to Official Documents	Harm Test	Public Interest Test
public order & security	✓	✓	✗
security of the constitutional order	✓	✓	✗
protection of the rights & reputation of others	✓	✓	✗

The **Press Law** provides all journalists, whether Cypriot or foreign, with a reasonably strong regime of access to information. Article 7 grants “the right (...) to search and receipt of information from any competent authority of the Republic” and these in turn are “obliged to provide the requested information.” Exceptions to this rule are set out in Article 7.3, and are shown in the chart above. These exceptions fail to meet the Access Convention standard as they do not include a public interest test.

The **State Archives Law** applies to all public records which the State Archivists determine should be preserved for posterity. It fails to meet the Access Convention standards in two main ways. First, documents are kept in Archives for 30 years (Article 8.1) and cannot be accessed without special Ministerial-level permission (Article 8.4). This violates the Convention on Access to Official Documents which should apply equally to documents held in archives, subject only to the application of limitations as provided for by the Convention. The one exception to this is documents which were accessible to the public before their transfer to the archives, but given the current state of access to information in Cyprus, this is likely to apply to only a limited number of documents and so does not assist with access to much of the information in the State Archives.

Second, the Ministerial prerogative to extend the 30-year period to prevent a “breach of good faith” (Article 8.2) when the information was provided in confidence from a source outside the Cyprus government is over-broad. Such information should always be available in principle. If it is necessary to protect the identity of those who provided the information that any relevant sections which reveal a name or could reveal the identity of living individuals in need of protection can be done by blanking out the relevant sections rather than withholding the entire document. Such a possibility currently exists in so far as the Minister may determine the conditions for any access (Article 8.2) but the language here is not strong enough: the legal grounds for withholding the information need to be specified, as well as the alleged harm that will be caused. In addition, a public interest test should be applied to determine whether, in some cases, information should be released.

The **Data Protection Law** complies with European standards on Principle 8 in the sense that the limitations which may be placed on the rights of the data subject to access their personal data is in conformity with the Convention on Access to Official Documents and international data protection standards.

A future access to information law should, however, ensure that in some cases the public will have access to personal data when that data refers to persons performing public functions, such as ministers or public officials. So for example, biographical data about a private individual or their salary may not be a matter of public interest but the public has a right to know about the relevant professional experience of a public official and how much he or she is earning with a salary drawn from public funds contributed by tax payers. In other words, there will be instances when the protections of personal data in the data protection law and the limitations it imposes on what may be done with that data are overridden by the public interest test that forms part of the public's right to know.

The **State Secrets Law** in the Republic of Cyprus will have an important relationship in the future with the new access to information law. The Law applies to classified information as well as to information originating from the EU which is classified. In addition, public works contracts the execution of which involves access to classified information fall under the scope of the Act.

Like many State Secrets laws, the law classifies information whose publication "without permission may harm to varying degrees the national security and general interests of the Republic, setting up a threat for its internal stability or international relations". This is a legitimate ground for classifying information and includes the harm test. It does not, however, include a public interest test which would therefore only be applied if a request for the information were to be made under a future access to information law.

The State Secrets Laws does not permit requests to be filed for classified information nor does it provide for administrative or judicial mechanisms to challenge the classification of a specific document. The future access to information law should ensure that requests can be made for documents which have been classified and that the classification should be reviewed upon receipt of the request; should it be found that there is an overriding public interest, the information should be released. The Information Commissioner and the courts should have oversight of access to classified information and should be empowered to order disclosure.

Review of Relevant Legal Provisions - northern part

At the level of the constitutional provisions in the northern part, the Article 24 provisions on Freedom of Thought, Speech and Expression also mirror Article 10 of the European Convention on Human Rights. The same right to "to receive and impart information and ideas" is included, as is the same listing of exceptions.

The one difference is that that the test of necessity is not qualified by reference to a democratic society, so that the "necessary" restrictions could be "necessary" on other grounds. This undermines the important protection of access to information in which there is a public interest.

northern part – Article 24	European Convention on Human Rights Article 10.2
<p>The exercise of the freedom of speech and of the freedom of expression may be subject to such formalities, conditions, restrictions, or penalties as are necessary and as prescribed by law, only in the interest of national security or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the reputation or rights of others or for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.</p>	<p>The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.</p>

In addition, there are four main problems with “the Right to Access Information Act” with respect to Principle 8.

First, information classified as state secrets in the northern part of Cyprus lies outside the scope of the “Right to Access Information Act” (Article 27), regardless of its content when such information has been classified as secret. This is counter to European standards which only permit case-by-case refusals to release information on grounds such as national security. If classified information is requested, it must be reviewed for possible release.

Second, a number of other exceptions, including regarding the civil or military intelligence unit’s activities (Article 18), the secrecy of communication (Article 22), information subject to intellectual property (Article 24), and internal information that is of “no concern to the public” (Article 25) are all excluded from the scope of the law.

Third, although most of the exceptions in the “Right to Access Information Act” establish a harm test but, in contrast, do not establish a public interest test. The failure to provide for a public interest test means that the law does not fully comply with Article 3.1 of the Access Convention which requires that the public interest test apply to each and every exception.

Fourth, some of the exceptions appear superficially to comply with the Access Convention but in fact do not because they exclude entire classes of information. A case in point is Article 26 which states that “opinions received, memorandum, proposals and recommendations received by the public authorities and departments while executing their activities are within the scope of this Law **unless stated otherwise**” (emphasis added). This provision contains the potential for broad exclusion of information by other law or regulation or simply by executive fiat.

Similarly Article 26 establishes that “Testimonies on cultural, scientific, statistical, technical, medical, financial, legal and similar matters by those who are legally obliged to do so, are accessible provided they form the principles of the public authority’s and department’s decisions.” In other words, if this information does not relate directly to and form part of a decision, it cannot be accessed. Since much statistical and technical information is not related to a specific decision, this would exclude large swathes of the information held by public authorities. It is also important to note the spirit in which the exceptions must be applied. The Explanatory Report of the Convention states at Paragraph 22 that Article 3 on the Convention calls for “the provision of the widest possible access to official documents and not hindering such access by a misapplication of the limitations.”

“Access to Information Act” – applies to all classes of information			
<u>Exceptions in the law</u>	Council of Europe Convention on Access to Official Documents	Harm Test	Public Interest Test
Classified information	✗	✗	✗
State security and national safety	✓	✓	✗
Foreign affairs	✓	✓	✗
National Economy	✓	✓	✗
Intelligence and national security	✓	✗	✗
Administrative investigations	✓	✓	✗
Judicial investigations	✓	✓	✗
Privacy	✓	✓	✗
Secrecy of communications	✓	✗	✗
Trade secrets	✓	✗	✗
Concept and Art Works	✗	✗	✗
Department’s internal organisation	✗	✗	✗
Department’s internal memorandum and	✗	✗	✗

advices			

The legal framework in northern part of Cyprus also currently lacks a Data Protection Law. Further, international experiences demonstrate that access to public information and personal data protection are better strengthened when the same independent public body oversees the defence of both the right to know and the right to privacy.

Recommendations - Republic of Cyprus

1. Any future access to information law in the Republic of Cyprus should include a list of exceptions consistent with the Council of Europe Convention on Access to Official Documents which establishes both harm and public interest tests for every exception.
2. Article 19 of the Constitution should be amended to include the language “necessary in a democratic society” to bring it into line with Article 10.2 of the European Convention on Human Rights.
3. The State Archives Law should be harmonised with the future access to information law by making it possible to request access to any information held in the archives, which may only be withheld if it falls under a legitimate exception. The future access to information law should also apply to any information which has been classified under the State Secrets Law.
4. Article 7.3 of the Press Law is amended so as to include a public interest test which determining whether to exclude any information in response to a request made by a journalist. In addition, the Press Law should be amended to require that public bodies justify in writing all refusals to grant journalists access to public information.

Recommendations - northern part

1. The “Right to Access Information Act” should be amended to include a public interest test for each limitation on access to information.
2. The “Right to Access Information Act” is amended in order to permit requests for access to classified information (state secrets). Requests may only be refused if it is demonstrated both that the release of such information would harm legitimated protected interests and rights and that there is no overriding public interest in its release.
3. The “Right to Access Information Act” should be amended to remove the blanket exclusions of information about civil or military intelligence unit’s activities (Article 18), the secrecy of communication (Article 22), information subject to intellectual property (Article 24), and internal information that is of “no concern to the public” (Article 25). These provisions should be reformulated to fit with the permissible limitations under the Council of

Europe Convention on Access to Official Documents and should be subject to both harm and public interest tests.

4. The fact that information is subject to intellectual property should not be a grounds for excluding it per se from the scope of the access to information law. Only when it is impossible to copy such information on grounds of protecting intellectual property rights should such information be excluded from release.
5. The State Secrets Law should be amended to comply with European standards on access to information by introducing the harm and public interest test into the law so that the 'secret' status of a document can change if its release becomes necessary in a democratic society.
6. That a data protection law be approved in the northern part so as to comply with European standards on the right to protection of personal data. The same body should have oversight of the right to information and the right to privacy.

Principle 9

Everyone should have the right of appeal against refusals or against administrative silence to an independent body and to the court.

Summary

The right to appeal against refusals to grant information or failures to publish information proactively must be granted to information seekers in line with the principle that all fundamental human rights should benefit from protection by the judicial system.

The right to appeal a refusal to provide information should be accessible to all members of the public, which means that it should not be an overly complex or expensive process. In addition, for protection of the right of access to information to be effective, decisions should be made rapidly (as the European Court of Human Rights has said "news is a perishable commodity" – if information is not provided rapidly, it can lose its value).

For these reasons, many EU member states have established the institution of an Information Commission or an Information Commissioner, an independent authority, usually with judicial powers, which can review failures to comply with the national access to information law and can order disclosure of documents should they find in favour of the requester. In a number of countries this information commissioner is combined with the data protection agency, something which works well as it permits the balancing of the two rights.

The Council of Europe **Convention on Access to Official Documents** supports the creation of such an institution, recommending that appeals be both to the courts and to "*another independent and impartial body established by law*" (Article 8.1).

Countries which have Information Commissioners: Germany, Ireland, Serbia, Slovenia, Switzerland, United Kingdom.

Countries with Information Commissions: Belgium, France, Iceland, Italy, Macedonia, Portugal, and Turkey.

Countries where Ombudsman has oversight of right to information: Albania, Armenia, Austria, Bosnia Herzegovina, Croatia, Denmark, Estonia, Finland, Greece, Kosovo, Lithuania, Norway, Sweden.

In Cyprus there is no effective oversight of the right of access to information. In the northern part the law establishes an "Access to Information Assessment Commission" but this body has not been set up. Taking cases to the courts is complex, time-consuming and slow.

In the Republic of Cyprus the Data Protection Commissioner is charged with receiving and processing appeals against failures to provide personal data but for all other information, there is either only recourse to the Supreme Court (for Environmental Information) or no specific mechanism.

	REPUBLIC OF CYPRUS					NOTHERN PART
	Re-use PSI	Environment Info	Archives	Data Protection	All Other Info	"Access to Information Law"
administrative appeal	✓	✓	✗	✓	✗	✓
independent body	✗	✗	✗	✓	✗	✓
Courts	?	?	✗	?	✗	✓

Review of Relevant Legal Provisions - Republic of Cyprus

None of the legal provisions relating to access to information in the Republic of Cyprus establish rapid and low-cost appeal mechanisms. The law which most resembles an access to information law, the **Environmental Information Law**, grants the possibility of an optional internal appeal and an appeal to the Supreme Court (Article 11). This is consistent with the **Constitution** of the Republic of Cyprus which at Article 146.2 establishes that the Supreme Constitutional Court is the competent court in issues of violations of any right, which would therefore include freedom of speech. The same right of appeal to the Supreme Court is established for the **Re-use of Public Sector Information Law**.

The **Data Protection Law** provides at Article 12.3 for an appeal to the **Data Protection Commissioner** if the controller does not reply in four weeks to a request for information about the processing of personal data or an objection to such processing (Article 13.2). As noted above, the Data Protection Commissioner in a number of countries is the body also responsible for ruling on access to information requests. Given that Cyprus already has such a body, it makes sense to give this agency responsibility for the oversight of a future access to information law.

Other laws such as the **Archives Law** and the **Commissioner for Administration Law** do not include any provision regarding appeals.

It should be noted that with respect to the right to petition, Article 36 of **Act 158(I)/1999, on the General Principles of Administrative Law**, establishes that any administrative silence after three months is considered negative, in other words, silence constitutes a refusal. Such a provision would not be acceptable for an access to information law because there should be an obligation always to provide reasons for a refusal, so administrative silence should never be permitted. It is also noted that the Article 33.1.c of the General Principles of Administrative Law makes clear that the right of petition does not apply to requests for information, unless otherwise provided by law.

For the future access to information law it should be ensured that the requesters have the right to appeal against administrative silence *per se* and should have the right to insist on a written response which, in the case that access to the information is to be denied, should give reasons, and should demonstrate how the harm and public interest tests have been applied. A future Information Commissioner should have oversight of the application of these provisions. A fast track appeals process against administrative silence should be established.

Review of Relevant Legal Provisions - northern part

The "**Right to Access Information Act**" in the northern part meets the international standards on paper in a number of ways. First it requires that public authorities inform requesters of the reason for any refusal and the options for appeal (Article 13). Next it establishes that in addition to the possibility of a court appeal, requesters have recourse to the "**Access to Information Assessment Commission**" which should be set up specifically to take decisions on implementation of the right of access to information. This Commission should investigate appeals against rejections by public authorities of access to information requests and make recommendations (Article 15). Appealing to the Commission is not mandatory but may be done before taking a case to court (Article 14).

There are two problems with this Commission: first, its decisions are not binding (Article 15.10) so it does not replace a decision by a judicial body and requesters still need to go to court to get a decision enforced.

The second, and more serious, problem is that the Commission has not been constituted! This body, which should comprise a number of legal experts including a member of the Bar Association, an attorney appointed by the Attorney General, a law professor, three civil servants, and an appointee of the Prime Minister, has not been created. Requesters unhappy with their access to information requests must therefore turn to court, a more complex and lengthy process.

To meet international standards, this body must be set up as rapidly as possible and should be granted binding decision-making powers.

Recommendations - Republic of Cyprus

1. Any future access to information law in the Republic of Cyprus should explicitly grant the right to appeal refusals and administrative silence, and should establish effective, rapid, and low cost legal mechanisms to do so. The law should require that requesters are informed of their rights to appeal when issued with any refusal notice.
2. Following best international practices on access to information, it is recommended that the existing Data Protection Commission becomes the oversight administrative body protecting the right of access to information and its implementation, becoming the Data Protection and Access to Information Commission.

Recommendations - northern part

1. As obliged by Article 15.1 of the "Right to Access Information Act", the "Access to Information Assessment Commission" should be constituted immediately and be provided with the appropriate means to exercise fully its oversight function.
2. Without excluding the possibility of requesters to appeal a refusal of access before the courts, Article 15.10 of the "Access to information Law" should be amended so that the decisions of the Commission are vested with binding power.

Principle 10

Public bodies should make available automatically the main information about their structures, functions, budget and activities.

Summary

According to international standards, public bodies have an obligation to make information public in a proactive way. The Council of Europe **Convention on Access to Official Documents** expresses at Article 9 the obligation of public

bodies to publish information about their core functioning and activities: “Provide information on the matters or activities for which they are responsible.” At Article 10, the Convention further requires public authorities to:

take the necessary measures to make public official documents which it holds in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest.

The Open Cyprus Coalition has conducted a study of the international standards to develop a comprehensive list of classes of information that public bodies in Cyprus should make available proactively. As the chart below shows, the current legal framework in Cyprus does not comply with the Principle 10 standard. Based on the Convention and comparative law, Principle 10 of the Open Cyprus Coalition calls on public bodies to make information available proactively.

Proactive Publication	REPUBLIC OF CYPRUS			NORTHERN PART		
	Environment Info	Public Procurement	Citizen Charter	“ATI Law”	“State Procurement”	“Rules & Procedures Parliament”
Website	✓	✗	✗	✗	✗	✗
Internal Regulations	✓	✗	✓	✓	✓	✗
Organisational Structure	✗	✗	✗	✗	✗	✗
Contact Info	✓	✗	✓	✗	✗	✗
Operational Info	✓	✓	✗	✗	✗	✗
Decisions and Policies	✓	✓	✓	✗	✗	✗
Decision-making Info	✓	✓	✗	✗	✓	✗
Evaluations	✓	✓	✓	✗	✓	✗
Meeting Minutes	✗	✗	✗	✗	✗	✗
Info on Services	✓	✗	✓	✗	✗	✗
E-Access to Services	✓	✓	✓	✗	✗	✗

Projected budget	x	✓	✓	x	x	x
Salary Info	x	x	x	x	x	x
Income and Expenditure	x	x	x	x	x	x
Subsidies Information	x	x	x	x	x	x
Open Meetings Information	x	x	x	x	x	x
Public participation	x	x	x	x	x	x
Public Procurement	x	✓	x	x	✓	x
Contracts Info	x	✓	x	x	✓	x
Registers and databases	✓	x	x	x	x	x
Information on Info Held	✓	x	✓	x	x	x
Right to Know Information	✓	x	✓	x	x	x
Info Links	✓	x	✓	x	x	x
Environmental Information	✓	x	x	x	x	x

Review of Relevant Legal Provisions - Republic of Cyprus

The **Environmental Information Law** includes legal requirements for the proactive publication of most classes of information. However, the content of the law is insufficient in respect to the disclosure of most kinds of financial information, including the spending of environmental projects and the salary of decision-making officials. The law also fails to provide for a legal obligation to proactively publish information on public participation mechanisms.

Regarding the **Public Procurement**, there are two main pieces of legislation which relate to the transparency of the public procurement process. The first is Law **12(I)/2006 "The Coordination of Procedures for the Award of Public Works Contracts, Public Supply Contracts and Public Service Contracts and Related Matters"** which is a general act regarding all the public procurements.

The second is **Law 11(I)/2006 Regarding Public Procurement on Projects, Supplies, and Services in the Fields of Water, Energy, Transportation and Postal Services** which refers to the public procurements in the specific sectors mentioned.

These acts require that public procurement contacts with a value of over €750,000 be published in the Official Journal of the European Communities. The tender opportunity may not be published locally before it is published at the level of the European Union.

Act	Relevant sections	Publication in Cyprus Gazette	Publication in EC Journal	Publication to buyer's profile
12(I)/2006	38 and 40	Yes- implied	yes	optional
11(I)/2006	44 and 45	Yes- explicitly	yes	optional

Neither of these acts provides for the right to access information about public procurement processes. That is to say, they do not establish the right of a person to request information regarding public procurement. On the other hand in both acts there are provisions regarding publishing public procurements and details of the contracts in the European gazette and the official gazette of the republic.

The policy behind these provisions is not to hold contracting authorities accountable and promote transparency in the sense of giving the right to people to know where their taxes go. The purpose is to make sure that the participants in a competition know who was the winner and if this was fair in order to be able to pursue their legal rights if they believe that they were infringed.

What therefore needed in the Republic of Cyprus is a clearer legal obligation to publish information about tender opportunities of any value at the national level. This should include broad dissemination not only in the Official Gazette but also on websites and using other media which are likely to reach those who may wish to participate in the tender process.

Finally, the **Citizen Charter** of the Ministry of Interior is a very positive official statement in favour of transparency and public participation because it requires each department of each public body to make available "specific and clear information about the services" it provides. However, it should be fully developed in all government departments and introduced as a binding document in the legal framework governing public bodies.

Recommendations - Republic of Cyprus

1. The Environmental Information Law is amended to introduce the duty of publishing basic financial information of environmental agencies, such as current budget and project expenditure, and public procurement and tenders information related to the environment.
2. The Public Procurement Law is amended, along with its regulations, so that all public procurement above a certain minimum value (for example, €3,000 or €5,000) are processed as open procedures and mediated by public tenders and notices.
3. It is recommended that a Right to Access Information Act that includes specific legal requirements for the proactive publication of essential classes of information is adopted in the Republic of Cyprus.

Review of Relevant Legal Provisions - northern part of Cyprus

As seen in the charts above, the legal framework in the northern part lacks specific legal requirements for proactive disclosure of information. Only the “**State Procurement Regulation**” contains some provisions on the classes of information to be proactively published. However, the general legal requirements are wholly insufficient.

Recommendations - North

1. The “Right to Access Information Act” is amended so as to introduce the necessary legal requirements conducive to comply with Principle 10 and the Convention on Access to Official Documents in matters of proactive publication of official documents “in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest” (Article 10).
2. “The Rules and Procedures of Parliament” are amended so as to introduce obligations of proactive publication, particularly regarding the following classes of information: draft bills, salary and expending information and public participation mechanisms as consultations and open meetings.
3. “The State Procurement Regulation” is amended at Article 9 to expand the classes of information to be published particularly in respect to procurement contracts and tenders information. It is also recommended that Article 6.2 and 7 are amended so that participants and minutes of the Procurement Commission meetings are publicly available at least once after procurements processes are closed.