

Islamic Republic of Afghanistan

Access to Information Law

Chapter 1

General Provisions

The basis

Article 1

This law has been enacted following article 50 (3) of the Constitution of Afghanistan.

Objectives

Article 2

The objectives of this law are:

1. Protect the right of all natural and legal persons to access information from institutions.
2. Ensure transparency, strengthen the culture of provision of information, promote people's participation in good governance, ensure accountability in the conduct of institutions, and combat corruption.
3. Observe article 19 of the Universal Declaration of Human Rights in consideration of article 3 of the Constitution of Afghanistan.
4. Regulate the process of requesting and providing information.

Key terms

Article 3

The terms used in this law describe the following concepts:

1. **Information:** Any type of documents and recorded or registered information including written, audio, visual, sample or model.
2. **Personal Information:** Information about a person including his/her name, surname, residential and workplace addresses, condition of personal and family life, health records, letters, correspondences, transactions, bank account, passwords and all other information that are not related to his/her official duties.
3. **Applicant:** Is a legal or natural person who requests information from institutions.
4. **Publication:** Information dissemination in a manner that is accessible to and usable by the public.
5. **Information request form** is a printed or electronic sheet that is provided to the applicant, in accordance with this law, in order to provide details of his/her request for information.
6. **Institutions** include Offices of the President, National Assembly, the Judiciary, ministries, independent directorates, independent state commissions, local administrations, provincial councils, district councils, village councils, municipalities, municipal councils, state-owned

enterprises, government corporations and joint ventures and all other bodies and institutions established by law. This definition also includes any organization or institution which is owned, controlled or substantially funded by one of the institutions defined above as well as any other body which undertakes a public function.

Abridgement:

Article 4

The Access to Information Commission, hereinafter, is referred to as the “Commission” in this Law.

Chapter 2 Method of access to information

Right to access information:

Article 5

- (1) An applicant is entitled to right of access to information from institutions according the provisions of this law.
- (2) Institutions are responsible to provide information to applicants and the public according to provisions of this law.

Request for information

Article 6

- (1) The applicant shall request in writing or use the access to information form and refer to the relevant institution in order to request information.
- (2) The Information Request Form shall be prepared by the Commission and shall be made widely accessible to the public for free in both printed and electronic format.
- (3) The applicant is not required to give reasons for requesting the information or to name specific documents. The applicant shall only be required to provide information necessary to identify the information requested and to provide it to the applicant.
- (4) Institutions shall respond to applicants in a written or electronic format that is accessible to the applicant.

Protection of individuals

Article 7

Institutions shall protect individuals who disclose information related to corruption, mismanagement, failure to provide justice, criminal violation, breach of law, violation of human rights, and serious damage to the safety of the public and the environment.

Timeframe of providing information

Article 8

- (1) Institutions shall provide the requested information to the applicant as soon as possible within 10 working days beginning from date information is requested. In case the institutions have a justifiable reason(s), this duration can be extended to another 10 working days. In case of any extension of the period, the institution shall contact the applicant and provide him/her a written justification including reasons for extension.
- (2) Institutions shall provide media and journalists with the requested news-worthy information as soon as possible within one working day from the date of receiving the request for information.
- (3) Institutions are responsible to provide the requested information that is necessary for the safety, security and freedom of an individual within one working day of receiving a request.

Costs of providing information

Article 9

- (1) When provision of information demand expenses, the applicant is responsible to pay for the actual costs incurred. Otherwise the request is rejected.
- (2) The costs in paragraph one shall only include the cost of reproducing information and sending it to the applicant. Reproduction includes copying the original document in hard, audio or visual format. Applicants are exempted from paying any costs for the first twenty pages of the requested information.
- (3) The amount of costs and the manner of payments is established in accordance with the procedures prepared by the Access to Information Commission in consensus with the Ministry of Finance.

Procedure of providing information

Article 10

- (1) Institutions shall provide information to the applicant in the format requested provided that it does not cause damage to the original document.
- (2) An applicant can request information in any of the following forms:
 - 1- A copy of the original document in either paper or electronic form.
 - 2- An opportunity to inspect documents, models and samples at the premises of the public institution.
 - 3- A copy of the original document in a written, audio or visual form.
 - 4- Providing information in audio or visual form.
 - 5- Providing a sample.

Providing information through interview

Article 11

Providing information through journalists' interviews with officials and employees of institutions is not subject to the provisions mentioned in articles 6, 8 and 9 of this law.

Chapter 3 Provision of Information

Public information officers:

Article 12

- (1) To ensure the right of access to information, institutions shall identify and appoint Public Information Officers and other staff with clear terms of reference.
- (2) Public information officers mentioned in article 12 (1) shall make public the contact details (phone number, email, address, etc.) of Public Information Officer and other relevant staff.
- (3) Where needed for the proper discharge of his or her duties, the Public Information Officer may seek the assistance of other employees of the institution and all employees shall render all reasonable assistance.

Duties of Public Information Officer

Article 13

- (1) Public information Officer shall perform the following duties:
 - 1- Explain the Information Request Form to the applicant and in case of demand, provide written explanation on paper or electronically.
 - 2- Provide Information Request Form to the applicant and assist him or her based on provisions of this law and other relevant regulations.
 - 3- Provide applicants with a receipt upon receiving a request for information.
 - 4- Inform the applicant within 5 working days about availability or lack of availability of the requested information.
 - 5- Ensure that information provided is in accordance with the provisions of this law.
 - 6- Publish information in Institutions' web site and other relevant media.
 - 7- Perform all duties assigned by the related institution to improve access to information.
- (2) Where the applicant is unable to submit a written request due to disability or illiteracy, the public information officer shall write down the oral request and communicate it to the satisfaction of the applicant before obtaining his/her signature or thumb impression as the case may be.
- (3) Where an institution requires further clarification in order to identify the information sought, the Public Information Officer shall work with the applicant to clarify the request.

- (4) When the requested information is not available within the institution and it becomes evident that another institution holds the information, the institution shall forward the requested information to the institution that holds the information and inform the applicant of the same.

Rejection of information request

Article 14

- (1) Where a request is refused, in whole or in part, on the basis that the information is prohibited from public access, the Public Information Officer shall provide written notice to the applicant, specifying the exact prohibition and legal provision relied upon.
- (2) Public Information Officer shall provide details regarding the right of the applicant to lodge a complaint against a decision rejecting his or her request for information.

Annual Publication of Information

Article 15

- (1) Institutions are responsible to publish the following information at least once a year:
- 1- Organizational structure, duties and authorities of the institutions and their related progress reports
 - 2- Information related to sub-ordinate departments, provincial and regional units, development projects and programs.
 - 3- Phone number, email, address, and working hours.
 - 4- Financial status of the institutions including budget information and financial and audit reports.
 - 5- Details of direct services provided to public including forms to receive public services and time of delivery of such services.
 - 6- Information related mechanisms and procedures for citizens' participation in public hearings and consultations and their related reports.
 - 7- Procedure of addressing public information requests and public complains.
 - 8- Related legislative documents.
 - 9- Related rules, procedures and guidelines.
 - 10- Reports on results of consultation with the people regarding drafts of laws, regulations, guidelines, and other legislative documents.
 - 11- Domestic and international agreements, memorandum of understandings, and protocols.
 - 12- Bid advertisement, bid evaluation documents, procurement contracts, contract implementation reports, contract completion reports, audit reports of contract implementation, and other procurement related documents.
 - 13- Policy, strategy and other related plans of the institution.
 - 14- A list of the categories and types of information it holds.
 - 15- Public information officer name, phone number, email, and address.

- 16- Annual report outlining the implementation of this law.
- 17- Other information as deemed necessary by the Commission.

- (2) After finalization, important information and documents including contracts shall be put to public access in a manner that is understandable and easily accessible to common people.
- (3) Institutions shall create an information bank (data base) for a better preservation of documents and information as well as to facilitate public access to information.
- (4) Institutions shall publish information on their website in a format that is machine readable.
- (5) Individuals may re-use the information made public by an institution.

Prohibitions

Article 16

- (1) In the following instances, public access to information is prohibited:
 - 1- If the disclosure would harm independence, national sovereignty, territorial integrity, and public security.
 - 2- If the disclosure would harm Afghanistan's political, economic and social relations with other countries.
 - 3- In case it would endanger the life and properties of an individual.
 - 4- In case it becomes a barrier in the process of detection or prevention of a crime.
 - 5- In case it adversely affects detection, investigation or prosecution of a suspect or a precautionary measure in such cases.
 - 6- In case it adversely affects fair trial or enforcement of verdict.
 - 7- In case it violates the privacy of an individual.
 - 8- In case information is harmful to legitimate commercial interests, private properties and bank accounts, unless disclosure is allowed under any other law in force.
- (2) The following cases are exempted from clause 7 and 8 of Article 16 (1):
 - 1- In case a competent court approves disclosure of personal information.
 - 2- In case the copyright law and competition support law and all other legislative documents are not violated.
- (3) Information under Article 16 (1) shall be made available if it is in the public interest.
- (4) The public interest under Article 16 (1) shall be determined by the relevant institution.
- (5) Where a request for information relates to information provided on a confidential basis by a third party, the institution shall contact that third party with a view to obtaining either his or her consent to disclosure of the information or objection to disclosure, provided that where he or she objects to disclosure, his or her objection shall be taken into account, but the decision as to whether or not the information falls within the scope of the prohibitions shall be assessed by the institution.
- (6) No prohibition shall be applied to information which is more than 20 years old, provided that this may be extended, in exceptional cases, for up to a maximum of another ten years, at the recommendation of the highest level official responsible for the institution which holds that information and with the approval of the Commission.

- (7) Where part of a record contains prohibited information, that part shall be severed from the record and the remainder shall be disclosed.
- (8) Institutions shall categorize and classify information based on the level of confidentiality in accordance with particular procedures.

Reporting of information offices

Article 17

- (1) Public Information officers are obliged to submit an annual report on the implementation of this law to the commission.
- (2) The format and procedure of the report stipulated in Article 17 (1) shall be established in a separate procedure by the commission.

Chapter 4 The Commission

Establishment of the Commission

Article 18

To ensure the right of access to information, a commission of 5 members of both men and women shall be established in accordance with the provisions of this law.

Membership criteria

Article 19

A person fulfilling the following criteria can be appointed as a member of the commission:

- 1- Have citizenship of Afghanistan
- 2- Completed 30 years of age
- 3- Have a bachelor's degree at least
- 4- Not sanctioned from practicing civil rights and not convicted due to serious crimes, crimes against humanity, and corruption.
- 5- Have 5 years of relevant work experience
- 6- Have good reputation
- 7- Have no political party membership
- 8- Do not hold an appointed or elected public office

Establishing of Selection Committee

Article 20

- (1) In order to select the members of the commission, a selection committee shall be formed with the following structure:

1. Minister of Information and Culture, as the chairman.
 2. A member of Supreme Court based on decision of Supreme Court's High Council, as member
 3. A member of the Religious, Cultural, Education and Higher Education Committee of the Lower House, as member
 4. A member of Afghanistan Independent Human Rights Commission as elected by it, as member
 5. One elected representative of journalists' unions, as member
 6. One relevant and elected representative of civil society, as member
 7. Authorized representative of Independent Bar Association, as member
- (2) Ministry of Information and Culture shall function as the secretariat of the committee.
- (3) The Selection Committee shall announce acceptance of application for membership of the commission after five working days following its first meeting.
- (4) The Selection Committee shall identify 15 qualified candidates through a competitive process and introduce them to the President of the Islamic Republic of Afghanistan within 10 working days after the end of the vacancy announcement.
- (5) The President of the Islamic Republic of Afghanistan shall choose 5 out of 15 candidates considering their professional background and gender-balance as members of the commission with following terms:
1. Three member for the period of five years.
 2. Two member for the period of three years.
- (6) Members of commission shall be appointed for 5 years in the following terms.
- (7) Members of the commission can only be appointed for one term based on clause (5) and (6) of this article.
- (8) Members of the Commission shall not hold any job during their tenure except teaching in a higher education institutions.

Election of Chair, Vice Chair and Secretary

Article 21

Commission in their first meeting elect its Chair, Vice Chair and Secretary from amongst its members for a term of two and a half years. Their re-election in the same position is permitted for another term.

Functions and powers of the Commission

Article 22

- (1) The commission has the following powers and functions:
- 1- Oversee application access to information process from the respective institutions and the manner in which information is provided.
 - 2- Assess applicants' complaints.
 - 3- Demand documents from information offices of institutions, if required.
 - 4- Provide appropriate advice to information applicants and institutions

- 5- Evaluate reports of information offices of relevant institutions.
- 6- Present annual report of activities of the Commission to the President and the National assembly and publish such reports.
- 7- Promote the culture of access to information in the country through conducting educational programs.
- 8- Raise public awareness about the activities of the Commission.
- 9- Publishing of the decision of the Commission.
- 10- Monitor implementation of the provisions of this law.
- 11- Approval of the relevant procedures and guidelines.
- 12- Setting of minimum standards regarding the manner in which institutions are required to manage their information.
- 13- Perform all functions mentioned in this law.

(2) The term oversight used in this article means oversight of implantation of the provisions of this law.

(3) The Commission is independent in performing its functions as set out in this law.

Meetings of the Commission

Article 23

- (1) Ordinary sessions of the Commission shall be held once every week and the extraordinary sessions shall be held as per the request of the Chairman or with the suggestion of the one third of the members of the Commission.
- (2) Quorum set for holding sessions of the commission is the presence of majority of the members.
- (3) Decisions of the Commission shall be adopted based on the majority votes of the present members. In case of equality of votes, the side that includes the Chair is considered the majority except where a different modality is stipulated in this Law.
- (4) Other rules relating to meetings shall be set by a separate procedure.

Implementation of the Commission's decisions

Article 24

- (1) The decision of the Commission is final and shall be implemented following its declaration.
- (2) Where any institution fails to comply with a decision of the Commission, the Commission may notify the competent authorities in writing.

Office of the Commission

Article 25

The Commission shall have a central office and shall establish sub-offices as it deems necessary.

Disqualification of members

Article 26

- (1) Any member of the Commission shall lose membership in the following circumstances:
1. A written resignation after it is approved by the President.
 2. Physical and mental incapacity which prevents the member from performing his/her duties.
 3. Sentence to imprisonment for more than six months.
 4. Provision of false information to fulfill membership criteria.
 5. Completion of tenure.
 6. Lack of observing laws, regulations, rules, and procedures related to the Commission.
- (2) If a member of Commission loses membership in one of the cases mentioned in Clause (1) and more than one year of her/his tenure remains, the Ministry of Information and Culture shall call the Selection Committee as mentioned in Article 20 (1) within 10 work days and the Selection Committee shall announce acceptance of application and Curriculum Vitas (CVs) for vacant membership of the Commission.
- (3) The committee shall introduce two qualified candidates from among all candidates to the President.
- (4) The President shall choose one as a member of the Commission for the remaining time period.

Dismissal of the Commission Member

Article 27

The five members of the commission shall decide the circumstances under Clause 2, 4, 6 of the Article 26 to dismiss one of its members.

Limitations

Article 28

- (1) The Chair and members of the Commission shall not take part in decision making meetings in which they have a conflict of interest.
- (2) Chair and members of the Commission shall not disclose or use any information that they have gained and which is prohibited based on the provisions of this law, for their and their relatives' benefit while on duty or thereafter.
- (3) In case the Chair or members of the Commission violate the provision of article 28 (2), the violator shall be prosecuted in accordance the laws of the country.

Secretariat of the Commission

Article 29

- (1) In order to manage administrative affairs, the Commission shall have a Secretariat led by an Executive Director.
- (2) The Executive Director of the Secretariat shall fulfil the criteria set in Article 19 of this law and shall have at least five years of experience in management and human resources, finance and procurement.
- (3) The Commission following a vote of majority shall introduce three qualified members as potential Executive Director of the Secretariat to the President.
- (4) The president appoints one from the three proposed candidates as Executive Director of the Secretariat.
- (5) Staff of the Secretariat shall be hired based on the provisions of the laws.
- (6) The Secretariat carries on its duties based on the provisions of the laws and the procedures approved by the Commission and is accountable to the Commission.

Budget of the Commission

Article 30

- (1) The Commission prepares its budget in consultation with the government and shall be deemed independent in spending its budget and shall report its expenditure in accordance with the provisions of the laws.
- (2) In order to better carry out its mandate and for effective implementation of its duties, the Commission, in accordance with the provisions of the laws, can receive funds and technical support from national and international organizations.

Salaries and benefits

Article 31

Members of the Commission shall receive appropriate salaries and benefits based on the provisions of the laws.

Chapter 5 Complaints

The right to complain

Article 32

- (1) If an applicant feels that his/her request for information has not been addressed or is not satisfied with the institution's treatment, he/she can lodge a complaint to the same institution or the Commission.
- (2) Addressing the complaints as outlined in the Clause 1 of this Article shall be free of charge.

Complaint of the applicant

Article 33

- (1) The Public Information Officer of the institution that the applicant has requested information from, shall investigate the complaint and respond to the complainant based on the provisions of this law in five working days.
- (2) In case the applicant lodges a complaint first with the institution that he or she requested information from, after receiving a written answer or after five working days can address his/her complaint to the commission.
- (3) The Commission shall investigate the complaint within a maximum of twenty working days and make a decision.
- (4) If deemed necessary, the Commission may facilitate participation of the stakeholders in the complaint hearing process.
- (5) The agency from which the Complaint has been made, shall provide documents and evidence that it has acted based on the provision of this law.
- (6) The complaint redressal mechanism and assessment of related documents and evidences shall be established in a separate procedure by the Commission.

Addressing complaints

Article 34

- (1) The Commission has the following authority during a compliant hearing:
 1. Inviting both parties and listening to their statements verbally or in writing.
 2. Obligating the institutions to provide documents and evidence.
 3. Inspect offices of the Public Information Officers and the manner in which documents and information is managed in the intuitions.
- (2) The Commission can obligate the institutions during the redressal of complaints to provide any information to the applicant based on the provision of the law. In case of delay in the implementation of the provision of the law, the Commission shall make necessary decision.
- (3) The Commission can obligate the institutions during the redressal of complaint to make necessary decisions in order to improve the affairs of the Public Information Officers, proper management of documents, publication of information and publishing of annual reports.
- (4) If the applicant or institutions are not satisfied with the decision of the Commission, they may refer to a competent court within a maximum of thirty working days.

Violations and sanctions

Article 35

- (1) The followings are recognized as violation of this law:
 - 1- Providing such information to the applicant that does not conform to the contents of information request form.

- 2- Refusal of information to the applicant without justified reasons.
- 3- Providing such information to the Commission that is contrary to reality.
- 4- Destroying documents without lawful authority.
- 5- Not providing requested information within the allocated timeframe.
- 6- Not observing decisions and procedures of the Commission.
- 7- Lack of reporting by the Public Information Officer to the Commission within the specified timeframe.

- (2) In case any violation mentioned in article 26. (1) is proved, the Commission shall decide on one of the following punishments considering the circumstances:
 - 1- Admonition
 - 2- Written warning
 - 3- Decide to deduct a portion of the salary of the offending officer and advise the relevant institution to take action in accordance with the laws.
 - 4- In case of repetition of the violation, decide the transfer of the officer and advise the relevant institution to take action.
- (3) In cases of violations mentioned in Clause (1) of this article, which results in material and moral damage to the natural and legal persons should be compensated in accordance with the laws.
- (4) Institutions shall implement the correctional measures taken by the Commission and report to the Commission about its implementation.

Article 36

An individual who discloses information in good faith, if proved so, shall have appropriate legal, administrative and job protection and shall receive necessary support in accordance with the laws.

Chapter 6 Miscellaneous Provisions

Transfer of money to the bank

Article 37

The sums acquired through the implementation of this law shall be transferred to the revenue collection account of the government.

Information Management and Promotional Measures

Article 38

(1) Institutions shall ensure that the information which they hold is properly maintained in accordance with relevant standards and procedures including so as to enable them to comply with their obligations under this law and report to the Commission accordingly.

(2) Institutions are required to ensure that their staff receive appropriate training on how to implement this law and inform the Commission of such activities.

Superseding effect

Article 39

The provisions of this law, with regard to access to information, supersedes all other laws.

Establishing rules, procedures, and guidelines

Article 40

The Commission may establish rules, procedures, and guidelines in order to ensure better implementation of the provisions of this law.

Enforcement

Article 41

This law shall come into force 30 days after it is published in official Gazette and upon its enforcement the law published under Gazette Number 1156 in 1393 shall be considered null and void.