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The Right to Information in Thailand

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Members of the ABSDF (All Burma Students Democratic Front) give refugee children lessons about computers with machines donated to the Mae La Oon refugee camp.

Constitutional Framework

The turbulent history of Thailand is reflected in the number of constitutions the country has adopted since the overthrow of the monarchy in 1932.^[i] The right to information was first recognised by the 1997 People's Constitution and later included in the 2007 Constitution, stating that a person shall have the right to receive and to get access to public information, save in cases when certain enumerated interests and rights shall be protected.^[ii] The 2014 Interim Constitution does not include specific provisions on any of the rights and freedoms, but it does state that all rights and liberties protected by the constitutional convention and international obligations shall be protected.^[iii] The Constitution Drafting Committee (CDC) is currently working on a new version. Section 61 of the draft bill provides that citizens have a right to information.^[iv]

Right to Information Act

The Official Information Act (RTI Act) was approved in July 1997 and went into effect in December 1997.^[v] Civil society, which was generally dissatisfied with the political climate and distortion of information, was the main driving force in adopting the Act.^[vi] The government was responsive to the calls for greater transparency and a committee, formed of several law professors, prepared a White Paper on an Official Information Act, which transformed into a bill.^[vii]

Provisions of the RTI legislation

Principles

The RTI Act states that its rationale as “allowing people wide access in receiving information about various undertakings of the state is necessary in order for the people to be able to express opinion and exercise their political rights rightfully with the reality, which will better promote having a government for the people” and for the “development of a secured democracy and it will result in allowing the people to be fully aware of their rights and duties so they can protect their own interest”, as well as to protect the privacy rights of individuals. The Act repeals any laws that regulate the same content or are in contradiction with the RTI Act.

Scope

The RTI Act allows citizens to demand official information from a state agency; aliens are allowed to exercise the right to information to the extent allowed by the Ministerial Regulation. The bodies liable under the RTI Act include central, provincial and local administrations, state enterprises, the courts for information un-associated with the trial and adjudication of cases, professional supervisory organisations, independent agencies of the state and other agencies as prescribed in the Ministerial Regulation. There has been a long-lasting dispute whether independent public agencies such as the National Anti-Corruption Commission, the Office of the Auditor General and the Office of the Election Commission fall within the scope of the Act as they see themselves as independent from the RTI Act.^[viii] The Supreme Administrative Court has ruled that the National Anti-Corruption Commission falls under the RTI Act. “Official information” is defined as any material that communicates information and is arranged in a form of a document or any other form in possession or control of a state agency relating to the operation of the state.

Proactive disclosure

State agencies are required to publish information relating to their structure, powers, bylaws, regulations, orders, policies and interpretations and other information as

determined by the Official Information Board (the Board). They are also required to keep indices of documents. Historical information is sent to the National Archives Division.

Disclosure upon request

The law does not provide detailed guidance on the procedures and necessary steps taken by the requesters to demand access to information. The RTI Act only states that the requester may demand information that is not already published elsewhere by making a reasonably apprehensible mention of the intended information. The law does not mention what form the request should take nor regulate the substance. It is also silent with regard to whether the requesters may ask for a copy, electronic reproductions or inspection of documents. The office does provide a form of request which can be downloaded from their website.

In case the agency is not in possession of the requested documents, it shall give advice to the requester on obtaining the information elsewhere, but it is not obliged to transfer the request itself. There are no other provisions on providing assistance to people seeking information. If the agency has the requested information but it is not the originator, it may transfer the request to the agency that prepared the document to consider the request and make an order.

The law is extremely vague with regard to setting the deadlines and rules on extensions. It stipulates that the body must respond within a “reasonable time.” Despite the fact that the deadline is not fixed within the law, the Royal Decree on Criteria and Procedures for Good Governance requires state agencies to respond within 15 days.^[ix] Extensions are possible if official information is in a condition which can be easily damaged and a state agency needs more time for its provision.

An agency may lay down rules on collecting fees with the approval of the Board and it should give regard to impecunious requesters.

Exemptions

There are several exemptions from free access to official information that relate to the Royal Institution, national security or international relations, law enforcement, inspections and supervisions, internal opinion and advice, life or safety of any person, right to privacy, confidential information and other cases prescribed by Royal Decree. All exemptions apart from protection of “internal opinion and advice” are subject to a harm test. There is no public interest override except in a situation when the official who wrongfully discloses information is exempt from liability in case information concerns public interest, life, body, health or other benefit of a person. Information relating to the Royal Institution is to be kept secret for 75 years. Other information should be disclosed after 20 years which may be extended in five-year periods.

There is no mention of partial access when only part of the requested document contains exempted information.

The body must inform the requester of the reasons for refusal.

Appeals

The RTI Act distinguishes between a complaint and an appeal. A complaint may be submitted with the Official Information Board when the information is not proactively disclosed or in case of administrative silence. The Board is not independent, its oversight competences are very limited and it does not issue binding decisions. The appeal may be submitted with the Information Disclosure Tribunal (IDT), which is competent to hear a wide range of grievances. Its decisions are final, except when a further appeal is submitted to the administrative court. The Office of the Official Information Commission (OIC), which is part of the Prime Minister's Office, is the secretariat of both bodies.^[xi] The government has sent mixed signals on giving the OIC more power, denying a request to upgrade it to a Department but placing it under the direct control of the prime minister.^[xii] When an appeal is received, the OIC transfers it to one of the functional IDTs, which are established based on the areas of competence (Foreign Affairs and National Security; National Economy and Finance; Social Affairs, Public Administration and Law Enforcement; Medicine and Public Health; and Science, Technology, Industry and Agriculture).

Sanctions

Sanctions are prescribed for anyone who fails to comply with an order of the Board when it summons a person to give a statement or demands documents and evidence for inspection. There are also sanctions for anyone who wrongfully disclose information or otherwise fails to comply with the restrictions and conditions.

Publication / Reporting mechanisms / Promotional measures

The Board has the competence to issue recommendations and opinions on the implementation of the RTI Act. It also regularly (and at least annually) reports on the implementation of the Act to the Council of Ministers.

Implementation of the RTI legislation

The media, civil society organisations and citizens have received the RTI Act warmly, especially since the Act was used for accessing information in several prominent public interest cases. These cases revealed corruption and nepotism in admitting children to public schools and a corruption scandal in procuring medicine which resulted in demands for transparency by several advocacy groups.^[xiii] There has been a constant and sharp increase in the number of complaints and appeals issued against the first instance bodies. The number of complaints rose by 250% from 2002 to 2012

(from 184 to 647) and the number of appeals rose by 115% in the same period (from 118 to 253 appeals).^[xiii]

Nevertheless, the media has reportedly used the RTI Act infrequently and the implementation of the law has been widely seen as weak.^[xiv] The initial enthusiasm by users of the Act has subsided due to several identified limitations of the Act. The impediments to proper implementation include not respecting the timeframes set by the law and very long proceedings; unclear reasons for rejecting access requests; vaguely defined exemptions and wide discretionary powers of officials to apply exemptions; inefficient organisation of information; difficulties in enforcing decisions of the Tribunals due to overlapping laws; lack of responsibility of those in charge of implementing the law.^[xv]

With regards to the Commission, it has been noted that the OIC had very small number of staff, it only convenes once a month and several of the ex-officio members of the OIC frequently do not attend meetings.^[xvi] In addition, the OIC is not independent as it operates under the Prime Minister's Office.

The government has announced several times it will endeavour to amend the RTI Act; the latest promise came by the National Reform Council with the announced amendments of the media legislation.^[xvii] However, all past efforts to amend the Act have been unsuccessful.^[xviii]

Related legislation

Media and internet regulation

Defamation is criminalised in Thailand and the Computer Crimes Act prescribes a penalty of prison for online publication of forged or false content that endangers individuals, the public or national security.^[xix]

State Secrets Act

There is no state secrets legislation in Thailand, but a rule on secrets was issued in 2001 in connection with Section 16 of the RTI Act.^[xx] Thai political turmoil is reflected in its national security legislation and a series of emergency decrees that the government adopted after the coup in 2014. The 2015 Security Law, in conjunction with the Penal Code, stipulates that the "Peacekeeping Officers" may suppress the "propagation of any item of news or the sale or distribution of any book or publication or material likely to cause public alarm or which contains false information likely to cause public misunderstanding to the detriment of national security or public order."^[xxi]

Protection of whistleblowers

Thailand does not have a comprehensive whistleblowing protection legislation, but offers special protection to individuals under the Witness Protection Law^[xxii] in cases relating to anti-corruption, money laundering, narcotics, national security and other areas. It applies to public and private sector whistleblowers. There is also a provision in the Official Information Act that protects officials who order disclosure of public interest information, although there is no information on whether this provision could or has been used a

a limited whistleblowing provision. The provision excludes the liability under any law of a public official that acts in good faith and issues an order for disclosure of information for “securing a benefit of greater importance which relates to public interest, life, body, health or other benefit of a person and such order is reasonable” (Section 20(2) of the OIA).

Environmental protection legislation

The 2007 Constitution explicitly granted the right to receive information affecting the quality of the environment, health and sanitary conditions, the quality of life or any other important interest. Thai Enhancement and Conservation of National Environmental Quality Act of 1992^[xxiii] stipulates that individuals have the right to obtain information and data “concerning the enhancement and conservation of environmental quality,” except in if information is classified. The Information Commission Decree on Environmental and Health Information requires all relevant bodies to make environmental information available to the public.^[xxiv] For these reasons, Thailand scored well in Transparency pillar of the Environmental Democracy Index.^[xxv]

International Framework

Thailand has acceded to the ICCPR and signed and ratified the UNCAC.^[xxvi]

The country is a member of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific^[xxvii] and OECD Busan Partnership for Effective Development Co-operation.^[xxviii]

(file:///C:/Users/Emily/Documents/RTI/Asia%20Disclosed/RTI%20regional%20report%20word%20doc.docx#_edn28) In 2013, Thailand joined the COST – Construction sector transparency initiative, the “global transparency and accountability initiative that aims to stamp out corruption and mismanagement in public infrastructure.”^[xxix]

The Right to Know Principles (<https://www.article19.org/resources/asia-the-right-to-know-principles/>).

Read the full review of the Right to Know across Asia (<https://www.article19.org/data/files/medialibrary/38121/FINAL-Asia-Disclosed-full.pdf>).

[i] Bishop Sarah, Thailand’s interim constitution: paving the way for a return to authoritarianism? (<http://www.eastasiaforum.org/2014/08/20/thailands-interim->

constitution-paving-the-way-for-a-return-to-authoritarianism/) East Asia Forum, 20 August 2014.

[ii] Section 56, Constitution of the Kingdom of Thailand 2007 (<http://www.asianlii.org/th/legis/const/2007/1.html>), B.E. 2550 (2007).

[iii] Section 4, Constitution of the Kingdom of Thailand (Interim) (<http://lawdrafter.blogspot.com/2014/07/translation-of-constitution-of-kingdom.html>), B.E. 2557 (2014)

[iv] Constitution of the Kingdom of Thailand (<http://www.constitutionnet.org/vl/item/constitution-kingdom-thailand-draft-17-april-2015-unofficial-translation-english>) – draft 17 April 2015 (unofficial translation – English)

[v] Official Information Act (http://www.asianlii.org/th/legis/consol_act/oia1997197/), B.E. 2540 (1997).

[vi] Trapnell E. Stephanie (ed.), Right to Information: Case Studies on Implementation: Thailand (http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/285741-1343934891414/8787489-1344020463266/8788935-1399321576201/RTI_Case_Studies_Implementation_WEBfinal.pdf), *World Bank Group*, 2014, p. 482.

[vii] Trapnell, *ibid*

[viii] Center for Philanthropy and Civil Society, National Institute of Development Administration, Assessment on the Implementation of the Access to Information Law in Thailand (http://www.google.si/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCMQFjAA&url=http%3A%2F%2Fwww.right2info.org%2Fresources%2Fpublications%2FThai_AssessmentontheImplementationofATIlaw_2011.docx&ei=wodjVevEHuOp7AaO4YDwCg&usg=AFQjCNE_HRaZ3MzZQcIN499wVMmXNnwU), July 2011.

[ix] Royal Decree on Criteria and Procedures for Good Governance, B.E. 2546 (2003), see Trapnell p. 484.

[x] Office of the Official Information Commission (<http://www.oic.thaigov.go.th/eng/engmain.asp>).

[xi] Article 19 and Forum-Asia, Freedom of Expression and the Media in Thailand, December 2005.

[xii] Trapnell p. 483.

[xiii] Trapnell p. 493.

[xiv] Article 19 and Forum-Asia, *ibid*.

[xv] Mark Tamthai, Mechanisms to implement legislation on access to information, 2002 and Saiyasombut Saksith and Siam Voices, Thailand: 15-year-old Official Information Act – closer to the truth? (<http://asiancorrespondent.com/91197/thailand-15-years-official-information-act-closer-to-the-truth/>), *asiancorrespondent.com*, 26 October 2012.

[xvi] Mark Tamthai, *ibid*; Saiyasombut Saksith, *ibid*.

[xvii] Sattaburuth Aekarach, NRC to propose two media reform bills (<http://www.bangkokpost.com/news/politics/565031/nrc-to-propose-two-media-reform-bills>), *Bangkokpost*, 18 May 2015.

[xviii] Saiyasombut Saksith *ibid*.

[xix] Freedom House, Freedom of the Press 2014: Thailand (<https://freedomhouse.org/report/freedom-press/2014/thailand>).

[xx] Rule on Maintenance of Official Secrets, BE 2544 (2001) (http://www.thailaws.com/law/t_laws/tlaw10820.pdf)

[xxi] Order Number 3/2558 (3/2015) of the Head of the NCPO on Maintaining Public Order and National Security, Unofficial translation (<http://www.prachatai.com/english/node/4933>). See also: Global Voices, Thailand's New Security Law 'Annihilates Freedom of Expression' (<http://globalvoicesonline.org/2015/04/05/thailands-new-security-law-annihilates-freedom-of-expression/>), 5 April 2015.

[xxii] Witness Protection Act, B.E. 2546 (http://www.whistleblowers.org/storage/whistleblowers/documents/thailand/appendix%20i_%20witness%20protection%20act%20be%202546%20%282003%29%20of%20thailand.pdf), 2003; unofficial translation.

[xxiii] Enhancement and Conservation of National Environmental Quality Act (1992) (http://www.pcd.go.th/info_serv/en_reg_envi.html), B.E. 2535.

[xxiv] Environmental Democracy Index, Answers to the questionnaire for Thailand (http://www.environmentaldemocracyindex.org/sites/default/files/wri_ed_i_full_results.xls).

[xxv] Environmental Democracy Index: Thailand (<http://www.environmentaldemocracyindex.org/country/tha>).

[xxvi] Ratification information for ICCPR (http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec) and ratification information for UNCAC (<http://www.unodc.org/unodc/treaties/CAC/signatories.html>).

[xxvii] Asian Development Bank (ADB) and Organisation for Economic Co-operation and Development (OECD) Anti-Corruption Initiative for Asia and the Pacific, Participating countries (<http://www.oecd.org/site/adboecdanti-corruptioninitiative/theinitiativesmembercountriesandeconomies.htm>).

[xxviii] Busan Partnership for Effective Development Co-operation, Countries (<http://www.oecd.org/dac/effectiveness/busanadherents.htm>).

[xxix] The Construction Sector Transparency Initiative, Information on Thailand (<http://www.constructiontransparency.org/site/cons/templates/searchresults.aspx?pageid=6&search=thailand&cc=gb>).

