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Procedural Guarantees Of Access To Information: International Standards And The Legislation Of The Republic Of Uzbekistan

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Abstract
Effective access to information on the activities of public authorities depends on the coherence of disclosure procedures and remedies against refusals or inaction. Drawing on doctrinal legal analysis, a systemic interpretation of legislation and comparative legal analysis, this article conceptualises procedural safeguards as an interconnected system in which the accessibility of requests, the certainty of time limits, the reviewability of refusals and the effectiveness of remedies must be assessed together. A comparison of Uzbekistan's legislation with the International Covenant on Civil and Political Rights, its interpretation by the United Nations Human Rights Committee and the European model of access to official documents identifies issues concerning the relationship between general and special procedures. Differences in the commencement of time limits, notification that information is not held and the conditions for deferred disclosure call for clarification of the applicable procedure. The article develops proposals for partial access, more specific requirements for reasoned refusals and acknowledgement of receipt of requests. It concludes that effective protection depends on actual disclosure while the information retains its value for public oversight.
Keywords: access to information, public authorities, procedural safeguards, information request, reasoned refusal, partial access, public oversight, judicial protection.

Public scrutiny of the activities of public authorities requires an opportunity to examine the grounds for their decisions and compare those decisions with the results of their implementation. Access to the necessary information depends on the procedure governing the requester's interaction with the authority that holds it. Even a legally recognised right of access may lose some of its practical value if a response arrives after a debate has ended or after the period during which public participation could influence a decision. Procedural safeguards should therefore be assessed by whether they enable information to be used in a timely manner for public oversight.

The relationship between access to information and public oversight highlights the distinction between an individual interest in consulting a document and the public interest in scrutinising government administration. Uzbekistan's constitutional framework connects these interests through the right to seek, receive and disseminate information and the duty to provide access to materials affecting a person's rights and legitimate interests, enshrined in Articles 33 and 34 of the Constitution of the Republic of Uzbekistan, respectively[1]. Read together, these provisions support an understanding of access to information as a prerequisite for forming and expressing an informed opinion on the activities of public authorities. The general right of access is not, however, confined to materials directly affecting the requester's personal interests.

Recognition of an information request as a form of public oversight gives particular significance to the procedure for handling it. The reference in Article 7 of the Law of the Republic of Uzbekistan on Public Oversight to the procedure established by legislation means that recognising the oversight function of a request does not, by itself, provide the safeguards needed for its determination[2]. An assessment of this mechanism must therefore encompass submission requirements, response periods, grounds for refusal and remedies for

1 Constitution of the Republic of Uzbekistan. 30 April 2023. Arts 33–34. URL: https://lex.uz/docs/6445147

2 Law of the Republic of Uzbekistan No. ZRU-474 of 12 April 2018 on Public Oversight. Art. 7. URL: https://lex.uz/docs/3679099

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restoring access. Inconsistencies between these elements may impede the use of requests even where the right to information is formally recognised.

The instrumental and oversight rationales for the right to information provide a theoretical explanation of this relationship. Roy Peled and Yoram Rabin discuss these alongside the political-democratic rationale and the proprietary rationale, which treats public information as belonging to the public[3]. The instrumental rationale emphasises the role of information in exercising other rights, while the oversight rationale concerns scrutiny of public power. For procedural safeguards, this implies that the value of disclosed information also depends on the opportunity to use it subsequently. Recognition of the right without the conditions necessary for its timely exercise cannot fully realise either function.

Establishing the importance of the right does not, however, determine whether a particular procedure is adequate. Toby Mendel's approach is relevant here, linking the legal protection of access to maximum disclosure, procedures that facilitate access, rules on charges and independent review of refusals[4]. These approaches reveal two levels of analysis: the reasons for protecting an interest in information and the legal means of giving effect to that interest. Connecting these levels makes it possible to assess whether a procedure enables information to be used to exercise rights and conduct public oversight.

This approach requires a distinction between proactive publication by an authority and disclosure in response to a request. The two methods complement one another but serve different purposes. Publication addresses an indeterminate group of users, whereas a request enables a specific information need to be defined. The existence of an official website does not, in itself, establish that access is adequate, and the absence of a particular document from published materials does not mean that it is confidential. The legal assessment must concern the accessibility of the requested information and the grounds for any restriction.

Procedural safeguards for access to information may accordingly be defined as a system of legally established rules and remedies that ensure the submission and recording of requests, the timely determination of requests for disclosure, the reviewability of restrictions on access and the restoration of infringed rights. The interdependence of its elements is a defining feature of this system. A fixed response period has limited value if the requester cannot prove that the request was received; a right of appeal loses some of its effectiveness if the refusal does not identify the legal ground applied.

A refusal to disclose information may affect a person's ability to form and express an informed opinion. Its lawfulness must therefore be assessed within the framework of freedom of expression. Article 19 of the International Covenant on Civil and Political Rights provides the legal basis for this approach by linking freedom of expression to the freedom to seek, receive and impart information. Read together, paragraphs 2 and 3 establish that a legal basis for a restriction is not sufficient: the restriction must also pursue an aim specified in the Covenant and satisfy the requirement of necessity[5]. For procedural regulation, this means that the reasons given for a refusal must permit scrutiny of whether the restriction applies to the particular information requested. This conclusion is relevant to Uzbekistan as a State party to the Covenant.

The United Nations Human Rights Committee's interpretation of Article 19 elaborates the procedural implications of this relationship. Paragraphs 18 and 19 of General Comment No. 34 connect access to information held by public bodies with clear procedures, timely processing, the absence of unreasonable financial barriers, reasons for refusals and review of refusals or failures to respond[6]. These provisions support a criterion linking initial disclosure with subsequent remedies: deficiencies at one stage should not render the other practically ineffective. In applying this criterion, the obligations under the Covenant must be distinguished from their interpretation by the treaty body.

3 Peled, R. and Rabin, Y. 'The Constitutional Right to Information'. Columbia Human Rights Law Review, 2011, vol. 42, no. 2, pp. 357–401. URL: https://www.meida.org.il/wp-content/uploads/2011/05/The-constitutional-Right-to-information.pdf

4 Mendel, T. Freedom of Information: A Comparative Legal Survey. 2nd ed., revised and updated. Paris: UNESCO, 2008, pp. 31–39. URL: https://cdi.mecon.gob.ar/bases/doc/unesco/documentos/4.pdf

5 International Covenant on Civil and Political Rights. Adopted by United Nations General Assembly Resolution 2200 A (XXI) of 16 December 1966. Art. 19. URL: https://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml. Status of participation: United Nations Treaty Collection, Chapter IV.4. URL: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4

6 United Nations Human Rights Committee. General Comment No. 34. Article 19: Freedoms of Opinion and Expression. CCPR/C/GC/34. 12 September 2011. Paras 18–19. URL: https://docs.un.org/ru/CCPR/C/GC/34

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The European model embodied in the 2009 Council of Europe Convention on Access to Official Documents provides a more detailed framework for organising access. The provisions in Articles 4–8 on keeping formalities to a minimum, assisting applicants in identifying documents, partial access and review of refusals relate the authority's duties to the difficulties that arise at different stages of obtaining information[7]. This model serves here as a comparative benchmark; its provisions are not treated as treaty obligations binding on Uzbekistan. The comparison is useful for assessing specific measures that could make the national procedure more certain.

One such measure is to distinguish the identification of a requester from an explanation of the purpose of a request. Identification may be relevant to processing a request and sending a response, whereas a requirement to explain its purpose raises the question of whether the interest in obtaining information must itself be justified. Article 4 of the Convention reflects this distinction: applicants are not required to give reasons for requesting access, while States may permit anonymous requests unless identification is essential for processing them. The permissibility of identification requirements and the need to demonstrate the purpose of obtaining information are therefore separate questions. Conflating them would obscure an assessment of procedural accessibility.

Taken together, these approaches suggest that procedural certainty requires requesters to be able to understand in advance the conditions for obtaining information and the consequences of an authority's decision. National analysis must therefore examine both the existence of individual safeguards and the coherence of their operation as a request moves between stages. It is through these relationships that the following discussion assesses the rules governing the submission and processing of information requests and the remedies available to requesters.

At the submission stage, a fundamental distinction must be drawn between the legal availability of a method of communication and the ability to prove that it has achieved its purpose. In Uzbekistan, Article 18 of the Law on the Openness of the Activities of State Authorities and Administrative Bodies permits oral, written and electronic requests, while Article 20 specifies their requirements[8]. The Instruction registered by the Ministry of Justice on 17 March 2016 under No. 2769 sets out the arrangements for receipt and registration[9]. Further improvement should therefore connect the permitted methods of submission with an acknowledgement of receipt accessible to the requester. This connection is particularly important for electronic requests, where sending and registration may appear to the requester to be a single action.

Acknowledgement of submission does not, however, determine the applicable procedure where a document contains demands of different legal kinds. A request for an existing report seeks information, whereas a demand for an investigation or the revocation of a decision calls for a different action by the authority. This distinction has a statutory basis. Article 3 of the Law on Openness excludes from its scope the handling of applications, proposals and complaints, which are governed by the Law on Appeals by Individuals and Legal Entities. The title of a document cannot therefore be a sufficient criterion for selecting a procedure; the substance of each demand must be assessed.

Where a document combines different demands, it would be appropriate to deal separately with its informational and other components and notify the requester of the procedures applied. This would preserve the independent character of the request for information rather than automatically subjecting it to the time limits for an investigation or the consideration of a complaint. Such an approach would allow cooperation between the responsible departments while requiring clarity about who must respond to each demand and within what period. Classification of the document thus becomes a distinct safeguard of predictable access.

The problem of predictability is particularly evident when time limits are compared. Equal periods do not imply identical procedures where their starting points differ. The fifteen-day period in Article 19 of the Law

7 Council of Europe Convention on Access to Official Documents. Tromsø, 18 June 2009. CETS No. 205. Arts 4–8. URL: https://rm.coe.int/1680084826

8 Law of the Republic of Uzbekistan No. ZRU-369 of 5 May 2014 on the Openness of the Activities of State Authorities and Administrative Bodies. Arts 3, 6, 18–20. URL: https://lex.uz/docs/2381138

9 Instruction on the Procedure for Receiving, Registering and Processing Requests for Information on the Activities of State Authorities and Administrative Bodies. Approved by Order No. 19-m/kh of the Director General of the Uzbek Agency for Press and Information of 22 February 2016; registered by the Ministry of Justice on 17 March 2016 under No. 2769. Paras 9, 17–18. Official text in Uzbek. URL: https://lex.uz/docs/2916710

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on Openness runs from registration, whereas Article 6 of the Law on Guarantees and Freedom of Access to Information links the period to receipt of the request. The absence of the requested information is also addressed differently. The Law on Openness requires the request to be forwarded to the competent authority within three working days of registration; the 1997 Law requires notification within seven days; and Article 9 of the Law on the Principles and Guarantees of Freedom of Information requires notification within five days of receipt. These differences affect both the waiting period and the allocation of responsibility for identifying the appropriate authority.

These provisions must be assessed within the scope of the respective statutes, since the special procedure has independent significance. Nevertheless, simply identifying the Law on Openness as a special statute does not resolve every question concerning its relationship with the general framework. In particular, Article 9 of the Law on the Principles and Guarantees of Freedom of Information permits deferred disclosure for a period not exceeding two months from submission of the request, whereas the Law on Openness does not expressly provide for it. In the author's view, legislation should expressly resolve whether this deferral may be used under the special procedure. Otherwise, a clear basic time limit does not ensure equally clear conditions for varying it.

The choice between receipt and registration as the starting point also affects the allocation of procedural risk. Where time runs from registration, establishing the date depends on the authority's internal records. Paragraphs 17 and 18 of Instruction No. 2769 govern registration and the recording of the date of receipt, but requesters need to be able to substantiate these facts. Acknowledgement of receipt and notification of the registration number should therefore be treated as complementary safeguards. They enable compliance with the time limit to be checked independently of the document's internal circulation between departments.

The relationship between an information request and an application or complaint requires similar certainty. Article 28 of the Law on Appeals by Individuals and Legal Entities permits an application or complaint to be considered for up to one month where further examination is necessary and allows extensions in exceptional cases[10]. Applying this procedure to an information request without separately determining its legal character would alter the conditions for dealing with it merely because it forms part of a combined document. The applicable time limit should therefore be expressly tied to the substance of the demand and should not change solely because it is submitted together with a complaint or proposal.

Meeting the deadline does not, however, exhaust the duty to provide a substantive response. A reference to a published source, permitted by Article 19 of the Law on Openness, can substitute for direct disclosure only to the extent that the requester can locate the information. A link merely to the homepage of a large website may leave the original information need unresolved. A legally relevant criterion for such a response is therefore whether it identifies the location of the information precisely. Providing the address of the document or relevant section, its title and publication date would make this criterion verifiable. Where the publication is inaccessible, provision should be made for supplying an available copy in a permissible form.

The relationship between the interest in obtaining information and the requester's costs is a separate condition of accessibility. Article 8 of the Law on Guarantees and Freedom of Access to Information protects the requester by making information affecting their rights and legitimate interests available free of charge; charges for other information may be agreed between the parties[11]. Public oversight, however, requires information whose significance may extend beyond an individual interest. Financial safeguards should therefore be specified for information of public importance, distinguishing the free provision of an existing electronic file from reimbursement of reasonable costs of physical copying and delivery. This distinction would help prevent unjustified financial barriers to access.

Where access is restricted, a central safeguard is the ability to verify the connection between the legal ground and the requested information. Article 19 of the Law on Openness already requires reasons for refusal, while Article 6 links restrictions to State secrets or other legally protected confidential information. Article 10 of the Law on the Principles and Guarantees of Freedom of Information also requires the reason for refusal to be

10 Law of the Republic of Uzbekistan on Appeals by Individuals and Legal Entities, as revised by Law No. ZRU-445 of 11 September 2017. Art. 28. URL: https://lex.uz/docs/3336171

11 Law of the Republic of Uzbekistan No. 400-I of 24 April 1997 on Guarantees and Freedom of Access to Information. Arts 6, 8, 12. URL: https://lex.uz/docs/2118

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stated [12]. The question is therefore whether the reasons provided are sufficiently substantive. Merely reproducing a category of protected information does not establish why the specific information falls within it or what extent of restriction is necessary.

In the author's view, adequate reasons must permit scrutiny of the provision applied, its relevance to the requested information and the extent of the refusal. The response should therefore be required to contain these elements and information on avenues of appeal. The degree of detail must be limited by the need to protect the confidential information itself: the explanation should disclose the legal reasoning while preserving confidentiality. This approach accommodates both the requester's interest in an effective remedy and the legally protected interest underlying the restriction.

Scrutiny of the extent of a refusal is directly related to the severability of protected information from information that may be disclosed. Where the ground for restricting access concerns only part of a document, refusing access to the entire document requires a separate justification. Unlike the express model in Article 6(2) of the Council of Europe Convention, the basic information laws examined here do not establish an equally explicit general procedure for such separation. This finding is confined to those statutes and does not exclude special rules in particular sectors. A general rule on partial access would make the specific information, rather than only the document as a whole, the object of assessment.

Even adequate reasons do not complete the system of safeguards if the requester has no effective means of restoring access. National legislation provides for judicial review and the imposition of remedial duties: the relevant provisions are found in Article 12 of the Law on Guarantees and Freedom of Access to Information and Article 189 of the Code of Administrative Court Procedure of the Republic of Uzbekistan. The effectiveness of protection therefore cannot be assessed solely by the existence of a power to declare a refusal or inaction unlawful. It also requires consideration of whether the terms of the decision enable the obstacle to access to be removed.

In an information dispute, this assessment requires a distinction between disclosure and reconsideration of the request. Where the entitlement to access has been established and the relevant circumstances clarified, the remedy should be directed towards obtaining the specific information. Where further assessment of protected interests is necessary, the decision should specify the actions the authority must take within its terms. The time for compliance also matters: Article 189 of the Code allows the court to set a period other than the general one-month period[13]. The risk that information may lose its relevance can therefore be addressed within the existing remedial framework and does not necessarily require a new institution.

This analysis connects improvements in regulation with the removal of uncertainty between the stages of access. Requesters need rules that enable them to identify the applicable procedure, establish when it began, scrutinise the reasons for refusal and secure compliance with a remedial decision. The following proposals follow from these requirements.

Coordination of general and special rules should first clarify the handling of combined demands and the conditions for deferred disclosure of information on the activities of public authorities. Legislative clarification would connect the applicable time limit to the legal character of the demand while preserving the special guarantees of promptness available to the media. The same reform should specify the requirements for responses that refer to published material, including a duty to identify the location of the particular information requested.

Acknowledgement of receipt should be established as a separate safeguard of compliance with time limits. The period should begin upon verifiable receipt, while registration should remain an internal duty of the authority. More detailed provisions in Instruction No. 2769 should require notification of the date of receipt, the registration number and information on subsequent processing; electronic acknowledgements could be generated automatically. Financial accessibility should be regulated separately by distinguishing the free transmission of an existing electronic file from reimbursement of the costs of physical copies and delivery.

12 Law of the Republic of Uzbekistan No. 439-II of 12 December 2002 on the Principles and Guarantees of Freedom of Information. Arts 9–10. URL: https://lex.uz/docs/52709

13 Code of Administrative Court Procedure of the Republic of Uzbekistan. Approved by Law No. ZRU-462 of 25 January 2018. Art. 189. URL: https://lex.uz/docs/3527365

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A general duty to provide partial access should be incorporated into the Law on Openness in the following terms: "The presence in a document of information to which access is restricted by law shall not constitute grounds for refusing to disclose the other information contained in that document, provided that it can be separated without losing its meaning or revealing information protected by law. The copy provided shall indicate the passages withheld and the legal grounds for restricting access." This wording would align the extent of refusal with the extent of the protected information and would need to be coordinated with legislation on State secrets, personal data and other legally protected confidential information.

More specific requirements for reasoned refusals should facilitate subsequent review. Article 19 of the Law on Openness should require the authority to identify the provision applied, explain its relevance to the requested information, state the outcome of its assessment of partial access and identify avenues of appeal. These elements form a coherent justification: the legal ground must relate to specific information and explain the particular extent of the restriction imposed.

Restoring access, in turn, requires certainty about what a decision in an information dispute requires and when it must be implemented. More specific requirements to inform requesters about avenues of appeal should be combined with the identification of remedial actions within the powers of the reviewing body. Effectiveness should be assessed by actual receipt of the information and the extent to which the infringement has been remedied. This approach connects the procedural outcome with the original request for information.

Procedural safeguards for access to information thus have independent significance as a system of conditions for exercising a right, rather than a collection of separate formalities. Their interdependence is evident in the relationship between time limits and acknowledgement of receipt, between effective review and the content of a refusal, and between restoration of the right and specific, timely compliance with the decision. The existence of each safeguard in isolation does not establish the coherence of the procedure as a whole.

A comparison of Uzbekistan's statutes reveals a need to clarify the relationship between general and special rules concerning the commencement of time limits, notification that information is not held and the conditions for deferred disclosure. A general duty to provide partial access and requirements governing the substance of reasons would make scrutiny of the extent of restrictions more certain. Acknowledgement of receipt and the specification of remedial actions would complement these measures at the initial and final stages of obtaining information.

Procedural certainty is linked to freedom of expression through the ability to obtain the information needed for an independent and informed assessment of the activities of public authorities. For public oversight, the effectiveness of access must be assessed by whether the information retains its practical value. Timely, actual disclosure is therefore the common criterion connecting the request procedure with remedies for an infringed right.

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