

Minister for Justice and Public Order of the Republic of Cyprus, Mr Ionas Nikolaou,
Ministry of Justice and Public Order,
125 Athalassas Avenue,
Strovolos, Nicosia
Cyprus

1 July 2014

Sent by email: registry@mjpo.gov.cy

Dear Mr Ionas Nikolaou,

I am writing from the specialist access to information civil society organisation Access Info Europe regarding the draft law on access to information of the Republic of Cyprus.

Access Info welcomes the decision of the Government of the Republic of Cyprus to propose the adoption of a legal framework to facilitate the exercise of the right of access to information. This is a particularly pressing issue as there are 98 countries in the world with access to information laws and Cyprus is one of only two countries in the European Union without such a law (the other being Luxembourg which is also contemplating a draft law).

Access Info Europe takes the opportunity to recall that in 2011 we published [a study on the state of transparency in Cyprus](#) which highlighted the urgent need for the Republic to adopt an access to information law and to significantly improve levels of transparency in practice. This study was produced in association with Cypriot NGOs as part of a European Union project.

In our experience, wide and active engagement of civil society groups in the formulation of such laws helps to generate an effective and positive outcome for everyone involved. During the research for the study in Cyprus two years ago, we found that being in communication with government officials was a positive experience, and we would be happy to participate in a deeper dialogue with Cypriot civil society and the Cypriot government on further ways to improve the law.

Below, we provide comments on the draft law that was presented by the Government in a public consultation, although since it was not available in English, we have been unable to provide more detailed observations and we hope that these contributions are relevant. If you are able to provide an English translation, we would be happy to update our initial reactions with more detailed comments from our access to information experts.

1. Access to information should be recognised as a fundamental right, as recognised by the European Court of Human Rights, The UN Human Rights Council and the Council of Europe Convention on Access to Official Documents, and by over 50 national constitutions around the world. The current draft law does not recognise access to information as a fundamental right.

Recommendation: Recognise access to information as a fundamental right.

2. Presumption of Openness – All information held by public bodies should be automatically considered public by nature, consistent with the fundamental nature of the right, bar a small number of legitimate exceptions which are defined by international standards. The current draft law does not recognise that all information held by any public institution is automatically public by nature.

Recommendation: Recognise that all the information held in any format by all institutions, are public by nature.

3. Scope of the Law – All public authorities, institutions, and branches of government, including private companies operating with public funds or carrying out public functions should be included in any access to information law. This includes the Executive, the Legislative, and the Judiciary, as well as other public bodies that have been excluded in the current draft of the law. Transparency must be ensured throughout all levels of government, public administration and the provision of public services in order to ensure accountability and public participation in a functioning democracy.

Recommendation: The law on access to information must include all public institutions and bodies, including the executive, legislation, judiciary, and private bodies carrying out public functions or funded with public funds.

4. No Requirement for ID – A requirement to present personal identification in order to make a request in the current law is out-of-sync with international standards. Importantly, it adds a costly and cumbersome bureaucratic layer to the request process, potentially restricting the right of access to information.

Recommendation: Remove the requirement to present identification in order to make a request for access to information.

5. Cost – Requesters should not be required to pay for any part of the processing of an access to documents request. The Council of Europe Convention on Access to Official Documents makes clear that the only fees which may be charged are for copying and delivery costs. Electronic delivery of information and on the spot consultation should be free of charge.

Recommendation: Ensure that the process for requesting information is free for the public.

6. Timelines – On average, European access to information laws allow 14 working days for a final reply to an access to information request. This current draft law would be longer than this average, standing at 20 working days. The European Union has a 15 working day timeline which can be extended by 15 working days in exceptional circumstances for particularly voluminous or complex requests.

Recommendation: Reduce the number of working days to answer an access to information request to the European average of 15 working days, or lower.

7. Exceptions – Some exceptions to access to information are legitimate. The Council of Europe Convention on Access to Official Documents establishes an agreed list of exceptions which, in line with other international standards require that they should be very narrow in scope and always be subject to a harm and public interest test. The 20 pages of exceptions in the current draft of the Cypriot access to information law exclude too many types of information for the law to be effective, and do not require public interest tests.

Recommendation: Completely revise and reduce the exceptions of the draft law in order to bring it into line with international standards.

8. Information Commissioner – The current draft law does not meet international standards as the Commissioner only has the power to investigate administrative errors.

Recommendation: Any Information Commissioner should be independently appointed. Secondly, the Information Commissioner should be empowered to overrule the decisions of public bodies who decide to refuse access to information, and for these decisions to be binding.

9. Oversight: Information Commission for Appeals – The current draft only allows for appeals to a decision to refuse information to be made through the Courts.

Experience from around Europe shows that the institution of an Information Commissioner greatly helps with the implementation of an access to information law. In particular they provide a simple, rapid, and free mechanism for challenging failures to comply with the law. Countries with strong Information Commissioners who could provide good models for Cyprus include a range of countries such as Germany and the UK, as well as new democracies such as Serbia and Slovenia. The UK also has a specialised Information Tribunal. In many countries this body is combined with the function of the Data Protection Agency.

Recommendation: The appeals system should include a mechanism for requesters to appeal for free to the Information Commissioner, in addition to eventual recourse to the courts.

10. The Council of Europe Convention on Access to Official Documents is a good guide to set minimum standards for any European access to information law. It is important that Cyprus sign and ratify this Convention, and to do so the current draft must be amended considerably.

Recommendation: Ensure that the proposed law will permit the Republic of Cyprus to sign ratify the Council of Europe Convention on Access to Official Documents.

If you would like to discuss these comments further, we would be happy to explain further our suggestions. If you are able to provide us with an English translation of the draft law, we would also be happy to provide you with further comments in more detail.

Access Info Europe urges you to amend the draft law significantly in order for it to meet international standards on access to information.

Yours Sincerely,



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