

Author Collaborative Work

Title FOI Around the World

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ABSTRACT:

A picture of freedom of information around the world is offered through the perspective of several authors including Michel W. Drapeau, Helen Darbishire, Caroline Morris, Jeremy Lewis, and Thomas Susman. The areas of the world discussed in this issue are Canada, the European Union, New Zealand, the United Kingdom and the United States. The feature on Spain highlights the developments on FOI from the only country in the European Union with over a million inhabitants not to have a full access to information law.

FOI Around the World

Canada

FOI in Canada is in turmoil, at least at the federal level. For a start, the former Commissioner abruptly resigned after less than two years in the position. No replacement has been named yet. His office is now struggling with a 2-year backlog of complaints. There are other significant system-wide problems. Although the FOI stipulates that records are to be disclosed within 30 days of receipt of an access request, the reality is that extensions of 90 days or more beyond the statutory timeframes are becoming more and more the norm. Increasingly also, federal institutions are relying on a variety of barriers, such as exclusions, exemptions and additional fees to block or slow down the flow of disclosure of government records. Recent testimony of officials before a Parliamentary committee has provided proof positive that, in some instances, public servants are instructed to not commit to paper what eventually prove to be embarrassing either elected officials or the public service leadership. The presence of these systemic problems may well serve as a disincentive for many to use the FOI even though if, numerically, Canadians are already not making extensive use of the act. The yearly number of access requests peaked at 29,000 in 2009 which is one request for every 1,000 Canadians. The situation is not expected to change very much until Parliament assumes a leadership role in the matter.

Michel W. Drapeau

Council of Europe

The world's first treaty on access to information, the Council of Europe Convention on Access to Official Documents was opened for signature on 18 June 2009 at a meeting of the Justice Ministers of the 47-country human rights organization held in Tromsø, Norway. To date 12 countries have signed; the first to ratify was Norway and both Hungary and Slovenia are expected to deposit instruments of ratification soon. The

other signatories are Belgium, Estonia, Finland, Georgia, Latvia, Montenegro, Macedonia, Serbia, and Sweden. Only the UK and the Netherlands have stated officially that they will not sign at present, as they are reviewing possible changes to the national access to information laws.

For more information see: <http://www.access-info.org/en/council-of-europe>

Helen Darbshire

European Union

The newly adopted Treaty of Lisbon establishes at Article 15 that "*Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union institutions, bodies, offices and agencies*" thereby expanding the right of access to all EU bodies and agencies. However, a report launched in Brussels on November 19th found that this right is being blocked by a series of practical obstacles. For example, the websites of most bodies surveyed only allow requestors to file information in English, and possibly in French and German, neglecting the other 18 official EU languages. Other problems included that requests went unacknowledged with some departments refusing to process requests submitted via their websites even though this was the only method offered. As a result of the report "[Question for Brussels: How should a citizen request EU documents?](#)" some departments have already announced that they will change their practices.

Article 15 in full:

"Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph.

Helen Darbshire

New Zealand

Freedom of information in New Zealand is governed by the Official Information Act. It is notable that the OIA applies to "information" rather than documents. The statute has a presumption in favour of disclosure, with a range of permitted reasons justifying the withholding of information. Personal information is the subject of the Privacy Act.

Caroline Morris

The United Kingdom

"The United Kingdom, having enacted freedom of information after a long generation of consensus-building, is well into its ramping-up phase; it is also taking actively to online web publication and official services. Employing a commissioner rather than a judicial system of oversight, it is developing a body of adjudication of FOIA disputes."

Jeremy Lewis

The United States

The United States has a mature FOI regime that has most recently (2007) been strengthened by amendments that are in the process of being implemented. After 8 years of an administration hostile to FOI, the new President and Attorney General have issued strong directives to improve transparency and FOIA administration. These hold great promise but have not yet been translated into reality. This month a new office of government information services is being established, and an experienced and committed director has been named. This office has the capacity and potential of transforming FIOA administration in the U.S. in many positive ways. Hence it is an exciting and promising time for open government advocates in the United States.

Thomas Susman

"The United States, one of the first political systems (with Sweden) to introduce freedom of information in statute, is undergoing a profound transition to official publication online; beginning interaction and engagement via official services online; and considering an overhaul of the massive national security classification system. It retains a judicial system of oversight that is uniquely active and costly; and has produced voluminous decisions."

Jeremy Lewis

Freedom of Information in the US is generally governed by the "Freedom of Information Act," passed by the US Congress in 1966. The law was amended in 1996 by the "Electronic Freedom of Information Act to address electronic records requirements. Federal agencies are generally required to disclose records pursuant to a request by any person, with a few exceptions. Individual states also have their own freedom of information laws, generally modelled after the federal law.

FEATURE:

Spain: Poised on verge of adopting an access to information law – but is it a right?

Spain is the only country in the European Union with more than a million inhabitants not to have a full access to information law (the other three countries are Cyprus, Luxembourg, and Malta). That may be about to change as the government is working on a draft law which will meet the standard of the Council of Europe Convention on Access to Official Documents.

Adopting an access to information law was an election promise for Spain's ruling Socialist Party (PSOE) in both 2004 and 2008. A civil society platform, the "Coalición Pro Acceso", has been pressing the government to keep that promise, and on December 10th, international human rights day, at a meeting with representatives of this platform, the government confirmed that it will present a law to the congress in the first half of 2010.

There are, however, still many outstanding issues, including whether the new law will recognise a fundamental right of access to information. Also still open is the structure of the independent authority that will oversee the implementation of the law – possibilities being discussed include combining it with the Ombudsman's Office or the Data Protection Agency.

In a separate development, in November 2009, the organisation Access Info Europe lodged a case with the Spanish Supreme Court claiming that its fundamental right to information was violated by the Ministry of Justice when it failed, in 2007, to answer a request about how Spain in implementing the UN Convention Against Corruption. An administrative appeal was rejected on the grounds that there is no legal basis for challenging administrative silence in response to a request for information. The Court of First Instance ("Audiencia Nacional") failed to resolve the case although it did reject the assertion that there is a right of access to information in the Spanish Constitution. The case is now pending before the Supreme Court although no ruling is expected before the adoption of the new access to information law.

Helen Darbshire