

**SESI LIBAT URUS
INISIATIF KE ARAH KEBEBASAN MAKLUMAT
BERSAMA AGENSI KERAJAAN NEGERI ZON UTARA**

7-8 MAC 2024, PULAU PINANG

Anjuran
Bahagian Hal-Ehwal Undang-Undang (BHEUU),
Jabatan Perdana Menteri

Initiatif ke Arah Kebebasan Maklumat
dan Pelaksanaannya
di Peringkat Antarabangsa

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1. Bagaimana RTI/FOI relevan
2. Model RTI yang progresif
3. Soalan – soalan lazim
4. Cadangan

Bagaimana RTI relevan

Akses kepada Maklumat di Malaysia

RTI mengikut Standard antarabangsa

Akses kepada Maklumat di Malaysia

1. Perundangan di peringkat Persekutuan

- i. Tiada perundangan spesifik di peringkat persekutuan setakat ini yang meluhurkan hak mendapatkan maklumat dan rayuan.
- ii. Kebebasan berekspresi dan bersuara dijamin di bawah Artikel 10 Perlembagaan Persekutuan TETAPI tidak eksplisit mengenai hak dapatkan maklumat.

2. Kerangka Perundangan di peringkat Negeri

- i. Enakmen Kebebasan Maklumat di Penang (2010) dan Selangor (2011)

Premis

Hak Mendapatkan Maklumat atau Right to information (RTI) mencerminkan premis fundamental bahawa

maklumat yang dicipta atau dipegang oleh kerajaan dan institusi kerajaan yang berkenaan secara prinsipnya adalah awam (“public”) dan hanya atas sebab yang sah, ianya boleh tidak didedahkan, biasanya untuk tujuan keselamatan negara.

RTI mengikut Standard antarabangsa

“Kebebasan Maklumat adalah hak asasi manusia dan .. Penanda aras untuk semua kebebasan yang diiktiraf oleh Pertubuhan Bangsa-bangsa Bersatu.” (Pertubuhan Bangsa-bangsa Bersatu, dalam Perhimpunan Agung 1946, Resolusi 59)

“Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.” (UN General Assembly Resolution 59, 1946);

Hak untuk bersuara meliputi kebebasan untuk “mencari, menerima dan menyampaikan maklumat dan idea menerusi mana-mana media dan tanpa mengira sempadan.” (Deklarasi Sejangat Hak Asasi Manusia 1948, Artikel 19)

Right to freedom of expression include the freedom “to seek, receive and impart information and ideas through any media and regardless of frontiers” (Universal Declaration of Human Rights (UDHR) Article 19, 1948);

“Setiap orang memiliki hak untuk kebebasan berpendapat dan bersuara, termasuklah kebebasan untuk memegang pendapat tanpa gangguan, menerima dan menyampaikan maklumat, sama ada secara lisan atau menerusi mana-mana medium pilihannya” (Deklarasi Hak Asasi Manusia ASEAN, 2012)

“Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person’s choice.” (ASEAN Human Rights Declaration, 2012).

Sasaran Matlamat Pembangunan Mampan (Sustainable Development Goals 2015) Target 16.10 dan Prinsip Rio 10 (2002) menekankan kewajipan negara dalam menjamin akses awam kepada maklumat. https://www.instagram.com/cij_malaysia

MODEL RTI YANG PROGRESIF

Kos
(Cost)

**Terbuka
Secara Tetap**
(Open by
Default)
**Pendedahan
Maksimum**
(Maximum)

**Pendedahan
Proaktif**
(Proactive
Disclosure)

**Struktur
Pelaksanaan**
(Implementa
tion
Structure)

Aksesibiliti
(Accessibility)

**Mekanisme
Seliaan**
(Oversight
Mechanism)

**Skop
Pengecualian:
Ujian mudarat/
kepentingan
awam**
(Narrow Scope of
Exemption :
Harm/ Public
Interest Test)

SOALAN-SOALAN LAZIM

Bagaimanakah undang-undang ini akan memanfaatkan agensi kerajaan?

Adakah kita perlu mendedahkan semua maklumat di bawah undang-undang hak mendapatkan maklumat (RTI)?

Mengapakah kita memerlukan skim penerbitan proaktif?

Bagaimanakah jika sesuatu maklumat mengandungi data peribadi?

Bagaimanakah jika maklumat disalah guna oleh pemohon?

Bolehkah pegawai maklumat dibicarakan jika pendedahan maklumat membawa kemudharatan?

Adakah enakmen kebebasan maklumat (FOI) di Selangor dan Pulau Pinang boleh berfungsi secara selari dengan undang-undang FOI di peringkat persekutuan?

Apakah ujian kepentingan awam?

Mengapakah kita memerlukan badan pemantau yang bebas (atau Pesuruhjaya FOI)?

1) Penyelarasan undang-undang (Law reform)

- Akta Rahsia Rasmi;
- Kanun Keseksaan Seksyen 203A;
- Whistleblowers Protection Act

2) Unsur-unsur yang tidak harus dikompromasi:

- Oversight body
- Public interest
- Cost

3) Sesi libat urus berterusan (konsultasi awam; CSOs, media)

Amalan baik di negara lain

	Sri Lanka	India	Indonesia	Afghanistan	Australia	UK
Structure of Administration	9 provinces, 25 districts	28 states 8 union territories	7 regions, 34 provinces	34 provinces	6 states 2 territories	4 nations
RTI Legislations	Right to Information Act 2016	Right to Information Act 2005	Public Information Disclosure Act 2008	Access to Information Law 2018	Freedom of Information Act 1982 State laws	Freedom of Information Act 2000 Country law
Information Commission mandated under RTI legislations	Information Commission	Central Information Commission State Information Commission	Central Information Commission Provincial Information Commission Regional/ District Information Commission	Information Commission	Information Commission	Information Commission
Information Commission mandated under separate state FOI					State Information Commission (IC) e.g. Western Australia IC (under jurisdiction of separate state FOI)	(Sovereign) State Information Commission e.g. Scottish Information Commission (under jurisdiction of separate state FOI)

Rujukan:
Comparative Study: Structures and Status of Implementation of RTI Legislations (Afghanistan, India, Indonesia, Sri Lanka, Australia, United Kingdom), Centre for Independent Journalism (2021), p9

Amalan baik di negara lain

	Sri Lanka	India	Indonesia	Afghanistan	Australia	UK
Scope of RTI Law						
Constitution framework incorporates RTI	Yes	Court recognition	Yes	Yes	Court recognition	recognised under Human Rights Act (uncodified constitution)
Scope of Public Authorities						
All branches of government, state owned corporations and public funded organisation	Yes *includes security and intelligence bodies	Yes *info about private body that can be accessed by a public authority under any other law	Yes *Public bodies definition broad	Yes	Yes	Yes
Private entities where state or public corporation holds 25% or more shares	Yes	Yes	Yes	Yes	Yes	No
Public information held by public agency	Yes *includes material recorded in any form by public authority	Yes	Yes	Yes	Yes	Yes

Rujukan:
Comparative Study: Structures and Status of Implementation of RTI Legislations (Afghanistan, India, Indonesia, Sri Lanka, Australia, United Kingdom), Centre for Independent Journalism (2021), p9

Amalan baik di negara lain

	Sri Lanka	India	Indonesia	Afghanistan	Australia	UK
Scope of Access to Information						
Application process						
Applicant	Citizens and corporation	Citizens and corporation	Citizens and corporation	Citizens and corporation	A person who has made a request	Any person
Resident and foreigner Applicant	No	No	No	No	Yes	Yes
Can apply without having to provide reason	Yes *specifically stated that no need to provide reason or personal details except contact number	Yes	No *need to state reason under law	Yes	Yes	Yes *No discrimination for personal use or for campaign

*Rujukan:
Comparative Study: Structures and Status of Implementation of RTI Legislations (Afghanistan, India, Indonesia, Sri Lanka, Australia, United Kingdom),
Centre for Independent Journalism (2021), p12*

Amalan baik di negara lain

	Sri Lanka	India	Indonesia	Afghanistan	Australia	UK
Fee concession/ waiver	Yes *Fee waiver for successful appeals *Info Commission has broad powers to set fees and direct authorities to reimburse if info given late	Yes *no fee for requesters living below poverty line	Yes *generally low cost *can object if high fee is unreasonably charged	Yes *Cost starts only if exceed 20 pages *No fee waiver for poor requesters *not clear what other fees may be charged	Yes *Before charging fee, considerations include: - If fee would cause hardship - If in general public interest	Yes *Agency or Minister sets fees if feel fee burdens applicant or affect public interest
<u>Good practice: Reasoning and Transfer</u>	Not available	Yes *transfer within 5 days and applicant notified immediately about the transfer	No	No	Yes But without a specific deadline	Not available
Mandated referral to other agency						
Statutory Time to respond	14 days May apply for another 2 weeks if deem fit	30 days *48 hours (if concern life and liberty of a person)	10 days	10 days 1 day if necessary for safety, security and freedom of individual	30 days May take another 30 days	20 days
Extension possible?	Yes *14 days Decision (2012) made by Info Com, delays constituted harassment	Not available	Not available	Yes *3 days +24 hours (if concern safety, security and freedom of an individual)	Yes *30 days	Yes *60 days by the power of Secretary of the State in certain cases

Rujukan:
Comparative Study: Structures and Status of Implementation of RTI Legislations (Afghanistan, India, Indonesia, Sri Lanka, Australia, United Kingdom), Centre for Independent Journalism (2021), p13-15

Amalan baik di negara lain

	Sri Lanka	India	Indonesia	Afghanistan	Australia	UK
Mandated duty to assist applicants on making request	Yes *for larger requests, duty of officer to inform different format options and associated fees	Yes *including assistance to requestors with disabilities **dedicated infrastructure – toll free line or texting provisions for mobile phone users to follow up on requests	No clear instructions for officers to assist applicants	Yes	Yes *to complete or revise application if request fail to meet requirement	Yes
Access to a particular format requested	Yes *in language preferred but duty is to provide information as the language in document, and public authority is not compelled to give info in preferred language.	Not available	Not available	Not available	Yes	Yes To follow requestor's preference in so far reasonably practicable

Rujukan:
Comparative Study: Structures and Status of Implementation of RTI Legislations (Afghanistan, India, Indonesia, Sri Lanka, Australia, United Kingdom), Centre for Independent Journalism (2021), p17-19

Amalan baik di negara lain

	Sri Lanka	India	Indonesia	Afghanistan	Australia	UK
Records Management						
Mandates proper record management	Yes *Commission mandates public bodies to digitise records	Yes *most states have not made RTI accessible online	Not available	Not available	Not available	Yes *Code of Practice for records management developed by National Archives in p/ship with InfoCom
Destroyed records	Information officer required to provide legal affidavit to prove doc destroyed	Not available	Sanction against individuals for records destroyed or lost	Not available	Not available	Not available

*Rujukan:
Comparative Study: Structures and Status of Implementation of RTI Legislations (Afghanistan, India, Indonesia, Sri Lanka, Australia, United Kingdom),
Centre for Independent Journalism (2021), p20*

Amalan baik di negara lain

	Sri Lanka	India	Indonesia	Afghanistan	Australia	UK
Proactive Disclosure						
Explicit Categories of Proactive Disclosure	Yes	Yes	Yes	Not available	Yes	Yes
Features:	<ul style="list-style-type: none"> *Responsibility of Minister of all public authorities and heads of public authorities for complying with the rules *Minister (of Mass Media) under advice of Info Commission issued a regulation that public authorities must proactively publish a minimum of 16 categories of information *Regulation for lack of enforcement with clear complaints mechanism 	<ul style="list-style-type: none"> *120 days for proactive disclosure *emphasis on digital record management *established open data system 	<ul style="list-style-type: none"> duration category: "immediate, periodically or 'at any time'" *established open data system 	Not available	<ul style="list-style-type: none"> *Information Publication Scheme 	<ul style="list-style-type: none"> *Information Commission has power to enforce compliance within scope of the publication scheme that reduces cost and increase standards to RTI *established open data system

Rujukan:
Comparative Study: Structures and Status of Implementation of RTI Legislations (Afghanistan, India, Indonesia, Sri Lanka, Australia, United Kingdom), Centre for Independent Journalism (2021), pps 21-24

Amalan baik di negara lain

	Sri Lanka	India	Indonesia	Afghanistan	Australia	UK
Exemptions/ Classified Information						
Features: Harm test/ public interest test Weakness: lack of regulation/ guidelines to clarify how to apply test of harm against public interest	Model example with no list of national security and intelligence bodies exempted from RTI laws *each case assessed based on merits to ensure balance between legitimate state interest and public's right to know	*most exemptions include harm test and a strong public interest override. *special allowance mandated for information officer on information related to alleged cases of corruption and human rights violations	not available	not available *broad and unwarranted exemptions that is not harm tested	large scope of exempted documents	large number of detailed exemptions leaving no room for arbitrary discretionary powers to authority
Qualified (as opposed to absolute) exemption which are subject to public interest test	Yes	Yes	not available	not available	not available	Yes
Explicit Automatic Declassification	Yes *10 years	not available	not available	not available	not available	not available
Severability/ Partial Disclosure Clause	Yes	Yes	Yes	No	Yes *applicant should be notified that a copy has been prepared	Yes

*Rujukan:
Comparative Study: Structures and Status of Implementation of RTI Legislations (Afghanistan, India, Indonesia, Sri Lanka, Australia, United Kingdom),
Centre for Independent Journalism (2021), ppg 25-29*

Amalan baik di negara lain

	Sri Lanka	India	Indone sia	Afghani stan	Australia	UK
Notable decisions by Commission and/ or courts (on grounds of national security, defence, and/ or international relations)						
General Observation	not available	Court in Rafale case reiterates the strong case when applicant justifies that withholding information causes greater harm than disclosing it.	not available	not available	Increase in number of exemptions- a request may be subject to multiple categories of exemption, with recent increase in the use of vague labels such as “certain operations” and “national security” exemptions	Decision by Authority overturned based on reasons: - Age of material thus unlikely to cause harm, - high profile or controversy of issue
Exemptions must be specific	Commission rules that the public authority needs to clarify 1) which international agreement is in question, 2) specifically how it cause prejudice and 3) if information is obtained in confidence.	Commission rules that Information Officer need to specify which part of information will cause harm, merely stating that it is exempted is not sufficient.	not available	not available	not available	Appeal decision emphasised that requestor and Information Officer should identify specific harms if information was disclosed.
		Court rules that exemptions should not be seen as restricting right to information but as an equally important provision protecting other public interest.				Court rules that disclosure of MoU on treatment of detainees in conflict was not likely prejudicial to international relations as this information requested fell under qualified exemption. However in the same case, the court ruled that the request for policy on military capture and operations fell under absolute exemptions.

Rujukan: Comparative Study: Structures and Status of Implementation of RTI Legislations (Afghanistan, India, Indonesia, Sri Lanka, Australia, United Kingdom), Centre for Independent Journalism (2021), pps 32, 33

Amalan baik di negara lain

	Sri Lanka	India	Indonesia	Afghanistan	Australia	UK
Protecting National Security		Court rules that exemptions should not be seen as restricting right to information but as an equally important provision protecting other public interest.				<p>Court rules that disclosure of MoU on treatment of detainees in conflict was not likely prejudicial to international relations as this information requested fell under qualified exemption.</p> <p>However in the same case, the court ruled that the request for policy on military capture and operations fell under absolute exemptions.</p>
Upholding public interest and striking a balance with potential harm	<p>Information Commission ordered disclosure of information pertaining to financial irregularity rather than national security on payments made for new defence headquarters building.</p> <p>However, ordered redaction of information about details about troops in the defence building.</p>			<p>public interest overrides exemptions, in a corruption case even though involving to Minister of Defence.</p> <p>release of information after a period has passed even though it involves categories of people under exemption such as teachers and soldiers</p>		<p>Information Tribunal decided that disclosure of information related to arms trade may harm international trade.</p> <p>However it ruled that information related to government officials accepting bribes can be disclosed.</p>

Rujukan:
Comparative Study: Structures and Status of Implementation of RTI Legislations (Afghanistan, India, Indonesia, Sri Lanka, Australia, United Kingdom), Centre for Independent Journalism (2021), pps 34-37

Amalan baik di negara lain

	Sri Lanka	India	Indon esia	Afghani stan	Australia	UK
OVERIDING OSA-RTI RELATIONSHIP WITH OTHER LEGISLATION						
RTI law precedence over other laws	Yes *not allow certain provisions in other laws to override RTI provision	Yes *when Indian RTIA was legislated, the Parliament would be aware of provisions or rules under subordinate legislations, and subordinate laws could not be used to override RTIA provisions. RTIA cannot be undermined by other court rules.	not available	not available	not available	Information classified under OSA can still be reviewed and released, unless falls under exemption
Weakness:	Weakness: Parliament can still pass law that overrides RTIA as the override applies only to laws passed before RTIA	Evidence Act and Constitution on national security ground. A high court decision ruled that Indian Information Commission has no power to decide if RTI overrides OSA and Evidence Act interpreted as superior to Indian constitution				
Example where RTI does not override other laws		RTI cannot be used to avoid paying fees for that have been published by a public authority			FOIA does not cover documents that are otherwise accessible to the public.	

Rujukan:
Comparative Study: Structures and Status of Implementation of RTI Legislations (Afghanistan, India, Indonesia, Sri Lanka, Australia, United Kingdom), Centre for Independent Journalism (2021), pps 38 - 41

Amalan baik di negara lain

	Sri Lanka	India	Indonesia	Afghanistan	Australia	UK
Information Commission						
Structure of Commission		Central Information Commission State information Commission	Central Information Commission Provincial Information Commission Regional/ District Information Commission			
Selection of Commissioners	feature: CSO and Bar Council can nominate candidates	weakness: independence of commissioners questioned High percentage of commissioners are former civil servants	Open recruitment, however members who were journalists or CSOs had no prior experience in litigation.	members composed of representatives from various ministries, Bar Council, journalist union.	criteria for appointment is having legal academic background.	open application process in Scotland.
Special Powers of Information Commissioners						Has information-gathering powers for purpose of a review Decision is independent even if need to call head of security agency to give evidence.

*Rujukan:
Comparative Study: Structures and Status of Implementation of RTI Legislations (Afghanistan, India, Indonesia, Sri Lanka, Australia, United Kingdom),
Centre for Independent Journalism (2021)*

Amalan baik di negara lain

	Sri Lanka	India	Indonesia	Afghanistan	Australia	UK
Information Commission						
Best practice on appeal process	Broad grounds for appeal Burden of proof on public authority having acted according to RTIA Statutory timeframe for appeal	not available	not available	not available	not available	not available
Appeals, Mediation and/ or non-litigation adjudication to resolve dispute	Appeals process at the Commission: “documentary proceedings” or via an “in-person hearing”	Appeals process at the Commission: video conferencing	Mediation and/ or non-litigation adjudication Decision by Committee is not legally enforceable.	Informal review	Information Commissioner is created under a separate act from FOIA. Information Officer may refer FOI complaints to Commonwealth Ombudsman. Ombudsman may also refer cases to IC	Decision by Information Commission can be overruled by ‘veto’ power of Cabinet However, this ‘veto’ can be challenged in court.
Implementation of Information Commission - Key strengths	Draft law presented to public for feedback Preamble of RTIC supports statutory interpretation to RTI Act			Commission developed National Strategy on Access to Information		Scottish Commission primary role is assess authority compliance.

*Rujukan:
Comparative Study: Structures and Status of Implementation of RTI Legislations (Afghanistan, India, Indonesia, Sri Lanka, Australia, United Kingdom),
Centre for Independent Journalism (2021), pps 48-55*

Amalan baik di negara lain

	Sri Lanka	India	Indonesia	Afghanis tan	Austr alia	UK
Implementation of Information Commission - Key weaknesses	lacks power to conduct inspections of public authorities	can only recommend steps to public authorities to promote compliance with the law Backlog of processing appeals due to lack of timeline established by the Commission	Lengthy time to process complaint. Dispute resolution process to commence 14 days from day of receipt of response up to 100 days	not available	not available	Complex appeal process involving Information Commission and Tribunals to review appeals.
Implementation of Information Commission - Key weaknesses involving funding and independence	Budget from Ministry of Finance. Initially functioned for 8 months without funding.	Funding for Commission decided by government after amendment to RTIA in 2019. Government has power to interpret the new rules in 2019. no public consultation in drafting new rules 2019	Information Commission receives funding from Ministry of Communication and Information as its 'task force'.	Budget provided by ministries. No budget from government. Have not established office at state levels yet.	not available	Scottish Information Commission receives funding from Parliament. Financial reports are audited and may be called to Parliament to give evidence.

*Rujukan:
Comparative Study: Structures and Status of Implementation of RTI Legislations (Afghanistan, India, Indonesia, Sri Lanka, Australia, United Kingdom),
Centre for Independent Journalism (2021), pps 56-59*

#MYRightToKnow

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TERIMA KASIH!

