

Freedom of Information Laws: Emerging Trends and Lessons Learned

At lunchtime talk hosted by the World Bank's Legal Institutions Thematic Group, Tom Blanton, executive director the National Security Archive at the George Washington University, reviewed the major findings of his research and capacity-building efforts in 27 countries with NGOs seeking to open official files. He described an international movement for freedom of information that has produced new formal statutes guaranteeing citizens' right of access to government information in countries ranging from Japan to Bulgaria, Ireland to South Africa, Thailand to Great Britain, as well as current openness campaigns directed at the multi-lateral institutions, such as the European Union. He analyzed the effect of globalization on the freedom of information concept, which is changing from a primarily moral stance as an indictment of secrecy, and, in effect, acquiring value-neutral meaning, as another form of market regulation and administrative efficiency, and as a contributor to economic growth and the development of information industries.

Despite many obstacles, the freedom of information movement may actually be succeeding all too quickly, he warned. In the haste to guarantee a citizen's right to ask government for information and to receive it (what most people mean by freedom of information), reformers are not paying enough attention to threshold access problems that are more important than the individual citizen's transaction. Visitors to the United States are always surprised to learn that the first section of the U.S. FOI law requires government agencies to publish in the official register descriptions of their organization, its functions and procedures, and the forms, substantive rules, policies and regulations that govern it. Without such basic information, no citizen can make an informed and effective request for information, and no freedom of information regime can be truly open.

Blanton concluded with five core principles for effective freedom of information laws:

1. The presumption of release. In other words, the state does not own the information; it belongs to the citizens.
2. Narrow, legislatively-established exceptions. Any exemptions to release must be as narrow as possible and written in statute, not subject to bureaucratic variation and the change of administrations.
3. Identifiable harm. Any exceptions to release must be based on identifiable harm to specific state interests, not general categories like "national security" or "foreign relations."
4. Public interest balancing test. Even where there is identifiable harm, the harm must outweigh the public interest served by releasing the information, such as the general public interest in open and accountable government, and the specific public interest in exposing waste, fraud, abuse, criminal activity, and so forth.
5. Independent adjudication. A court, an information commissioner, an ombudsperson or other authority that is independent of the original bureaucracy holding the information should resolve any dispute over access.

For more information on laws ensuring citizen access to government information, contact Rick Messick, PRMPS, Rmessick@worldbank.org, or Tom Blanton, Executive Director, National Security Archives, tblanton@gwu.edu, or visit the Archives' Website <http://www.nsarchive.org/>