

## DEPTH OF CENTRAL GOVERNMENT FREEDOM OF INFORMATION LAWS

Freedom of information laws (FOI) – also referred to as access to information laws – are a fundamental pillar of open government. These laws contribute to strengthening transparency, enhancing government accountability and promoting informed participation in policy making. However, the strength and scope of these laws varies considerably across the OECD in terms of the institutions and types of information covered, reflecting different institutional and legal systems across countries.

In terms of institutional scope, for instance, the reach of FOI laws can potentially extend vertically to all levels of government (from central to local) and horizontally to all branches of central government (legislative, judicial and executive). In terms of coverage, FOI laws may contain lists of exemptions that may be applied to justify withholding certain information from disclosure. The *OECD 2010 Survey on Open Government* assessed both of these dimensions, looking at the breadth and scope of central/federal FOI laws in member countries.

### Definition

Exemptions to FOI laws can include class tests and harm tests. Under class tests, any information that falls within a certain category (such as national security) can be denied. Under harm tests, the government can deny a request for information on the basis that disclosure would cause potential prejudice, for example, to an individual or harm to the defence of the state (the two most commonly used harm tests). Exemptions to FOI requests can be both mandatory (public entity is required to withhold the information) or discretionary (public entities can use their judgment to withhold or disclose information).

### Overview

In most OECD countries, the reach of FOI laws extends vertically to all levels of government. In the majority of countries, all bodies that form the executive branch of the central government (e.g. Ministries/Departments and executive agencies) are subject to FOI legislation. Legislative and judicial branches are less likely to be included. Private entities managing public funds, such as those contracted by the government to provide services to citizens, are subject to FOI laws in over half of member countries.

The class tests applied by the greatest number of OECD countries concern exemptions related to national security, international relations and personal data. The most common harm tests also relates to national security and international relations.

### Comparability

Data were collected through the 2010 OECD Open Government Survey. Respondents to the survey were central government officials responsible for implementing open government initiatives. Data refer only to provisions in central/federal level FOI laws and exclude any additional FOI legislation which may exist at sub-national levels.

In some countries, public interest tests and/or ministerial discretion can override class or harms tests and lead to information disclosure if the public benefits from the information outweigh any harm that may be caused by disclosing it.

The survey was completed by 32 OECD countries, as well as by the Russian Federation. Data are not available for Germany, Greece and Luxembourg. The Italian FOI law applies only to administrative acts and does not refer to legislative acts.

### Sources

- OECD (2011), *Government at a Glance*, OECD Publishing.

### Further information

#### Analytical publications

- OECD (2009), *Focus on Citizens: Public Engagement for Better Policies and Services*, *OECD Studies on Public Engagement*, OECD Publishing.
- OECD (2005), “Public Sector Modernisation: Open Government”, *OECD Policy Brief*, OECD Publishing.
- OECD (2003), *Open Government: Fostering Dialogue with Civil Society*, OECD Publishing.

#### Methodological publications

- OECD (2010), *Accountability and Transparency: A Guide for State Ownership, Corporate Governance*, OECD Publishing.

#### Websites

- *Government at a Glance* (supplementary material), [www.oecd.org/gov/indicators/govata glance](http://www.oecd.org/gov/indicators/govata glance).



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Depth of central government freedom of information laws

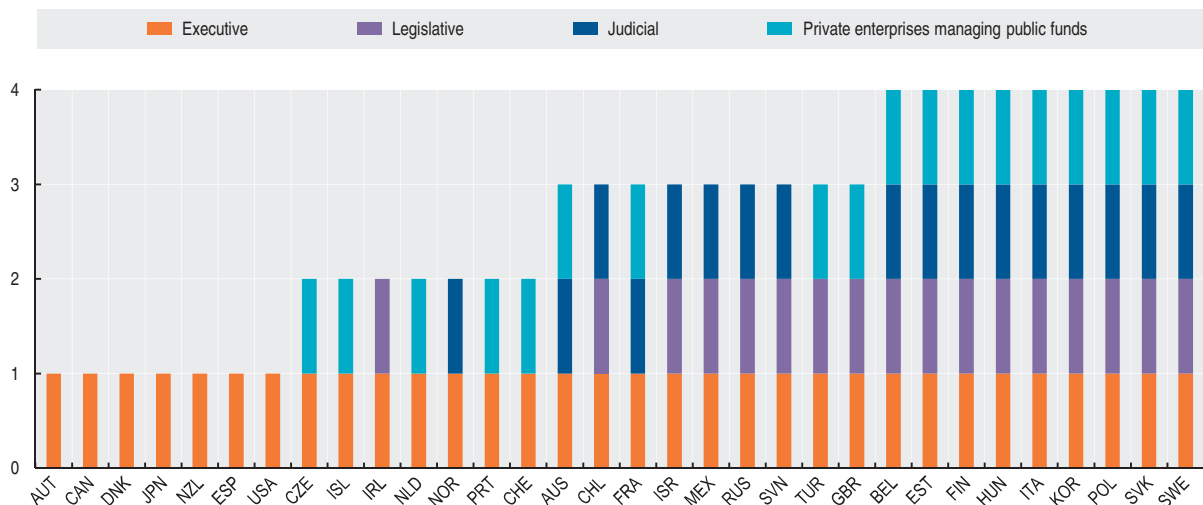
2010

	Class test							Harm test				
	National security	International relations	Personal data	Commercial confidentiality	Law enforcement and public order information received in confidence	Internal discussions	Health and safety	Harm to persons	Harm to international relations, or to defence of state	Harm to commercial competitiveness	Harm to the economic interests of the state	Harm to law enforcement agencies
Australia	○	○	○	○	○	○	○	○	○	○	○	○
Austria	●	●	●	●	○	○	●	●	●	○	●	○
Belgium	●	○	○	○	○	○	○	●	●	●	●	○
Canada	○	○	○	○	○	○	○	○	○	○	○	○
Chile	○	○	○	○	○	○	○	○	○	○	○	○
Czech Republic	●	○	●	●	●	○	○	●	●	●	●	●
Denmark	○	○	○	○	○	○	○	○	○	○	○	○
Estonia	●	●	●	●	●	○	●	●	●	○	○	●
Finland	○	○	○	○	○	○	○	○	○	○	○	○
France	○	○	○	○	○	○	○	○	○	○	○	○
Germany												
Greece												
Hungary	●	●	●	○	●	○	○	○	○	○	○	○
Iceland	●	●	●	○	○	○	○	○	○	○	○	○
Ireland	●	●	●	○	●	○	○	○	○	○	○	○
Israel	●	●	●	○	○	○	○	○	○	○	○	○
Italy	●	●	○	○	●	○	○	○	○	○	○	○
Japan	○	○	○	○	○	○	○	○	○	○	○	○
Korea	○	○	○	○	○	○	○	○	○	○	○	○
Luxembourg												
Mexico	○	○	●	○	○	○	○	○	○	○	○	○
Netherlands	●	○	●	○	○	○	○	○	○	○	○	○
New Zealand	○	○	○	○	○	○	○	○	○	○	○	○
Norway	○	○	●	●	○	○	○	○	○	○	○	○
Poland	○	○	○	○	○	○	○	○	○	○	○	○
Portugal	●	●	●	●	●	○	○	○	○	○	○	○
Slovak Republic	●	●	○	○	○	○	○	○	○	○	○	○
Slovenia	○	○	○	○	○	○	○	○	○	○	○	○
Spain	●	○	○	○	○	○	○	○	○	○	○	○
Sweden	○	○	○	○	○	○	○	○	○	○	○	○
Switzerland	●	●	●	●	●	●	○	○	○	○	○	○
Turkey	●	○	●	○	○	○	○	○	○	○	○	○
United Kingdom	○	○	○	○	○	○	○	○	○	○	○	○
United States	○	○	○	○	○	○	○	○	○	○	○	○
EU27												
OECD												
● Mandatory	15	10	14	12	8	3	6	13	14	12	10	7
○ Discretionary	15	18	13	16	18	20	15	16	15	16	15	17
○ Not applicable	1	3	4	3	5	8	10	2	2	3	6	7
Brazil												
China												
India												
Indonesia												
Russian Federation	●	●	●	●	●	○	●	●	●	●	●	●
South Africa												

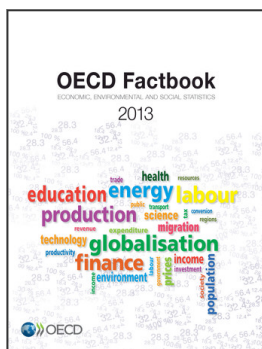
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