3 Protecting and promoting the right to access information as a core component of civic space

This chapter provides an overview of the fundamental right to access information as a key element of civic space and open government. It first outlines the role of access to information as a right, its intersection with other civic freedoms, and how the right is protected and promoted through international treaties and conventions. The chapter then focuses on the legal framework for access to information (ATI), including constitutional recognition and ATI laws, and how their various provisions can be more effectively implemented to foster civic space. Finally, it outlines trends, challenges and opportunities for strengthening the right to access information.

Key findings

- Transparency is a core element of a functioning democracy as well as of a healthy public interest information ecosystem. It is underpinned by the right to access information, understood as the ability of an individual to seek, receive, impart and use information. The right to access information has been enshrined in the constitutions of 70% of respondent OECD Members (78% of all respondents). Since the 2000s, there has been a significant increase in the adoption of ATI laws, however, countries still face challenges in the effective implementation of the law in practice.
- Most ATI laws require the proactive disclosure of a minimum set of public information: 84% of respondent OECD Members and of all respondents outline specific conditions for proactive disclosure in their guidelines on access to information. Some have also undertaken consultations with citizens and stakeholders to understand which types of information are most relevant and useful.
- Ensuring inclusive and equitable access to information for all citizens and stakeholders is key for the exercise of the right to access information. Almost all (82%) respondent OECD Members (78% of all respondents) have ATI laws that stipulate that anyone can file a request.
- Almost half of all respondents provide additional support for requesters with special needs to ensure inclusive and equitable access to information, with half also providing information on how to make a request on a dedicated portal or website. Furthermore, some countries have made efforts to use plain language and undertake specific campaigns, training, and workshops with citizens and CSOs to raise awareness of their right to information.
- Ideally, filing a request for information is simple, free of cost and subject to clear deadlines for public officials to respond. In addition, it is important to protect the identity of citizens and to ensure that there is no risk of profiling, unjust denials or reprisals. Very few countries ask requesters to provide a motive for their request. That said, the legislative framework has provisions for anonymity when requesting information for only 18% of all respondents.
- Providing a legitimate justification upon denial of a request is important to secure trust in the ATI law. In the event of refusal, 97% of respondent OECD Members (96% of all respondents) require a justification. However, enforcement and sanctions for non-compliance remain rare.
- Appeals processes are necessary in the event of access to information being limited by a public body. All respondents have at least one mechanism for appeal, whether internal (79% respondent OECD Members, 76% of all respondents), external (85% OECD, 82% of all respondents) or judicial (97% OECD, 94% of all respondents). Most countries make efforts to ensure that filing an appeal is simple, free of charge to the extent possible, subject to clear timelines and available to all without legal representation.
- A co-ordination and oversight body for the ATI law, with a clearly defined mandate, sustained resources, an adequate level of independence and capacity for enforcement, is essential for its implementation. Most countries have a dedicated ATI oversight body such as an information commission/agency/body or ombudsman with a specific mandate for ATI (45% of respondent OECD Members, 47% of all respondents), an ombudsman with a wider mandate (27% of respondent OECD Members, 25% of all respondents) or a central government authority (52% of respondent OECD Members, 45% of all respondents). Fifty percent of respondent OECD Members (61% of all respondents) also provide for the establishment of an ATI office or officer in their laws.

3.1. Introduction

Transparency is a core foundational element of a functioning democracy (Guerin, Mccrae and Shepheard, 2018[1]) and a key principle of an open government, defined by the OECD as a "culture of governance that promotes the principles of transparency, integrity, accountability and stakeholder participation" (Section 1.3 in Chapter 1) (OECD, 2017[2]). Government transparency refers to "stakeholder access to, and use of, public information and data concerning the entire public decision-making process, including policies, initiatives, salaries, meeting agendas and minutes, budget allocations and spending" (OECD, 2021[3]). In an increasingly complex and interconnected information ecosystem, providing timely, reliable and relevant public sector data and information to citizens[1] and stakeholders has become crucial in promoting governments' accountability, combatting corruption and addressing challenges such as mis- and disinformation (OECD, 2022[4]).

Government transparency is underpinned by the right to access information, understood as the ability of an individual to seek, receive, impart and use information (UNESCO[5]). ATI invites citizens and stakeholders to engage with public officials in a tangible way and breaks down barriers in the government-citizen relationship, enabling them to champion their needs and those of their communities. In this sense, it sets the basis for citizens and stakeholders to access and use public information to exercise their voice, contribute to setting priorities and engage in an informed dialogue about – and participate in – policy making and service design and delivery. Furthermore, it allows citizens to engage in the effective monitoring of government actions and facilitates the oversight of the decisions that affect their lives.

Moreover, access to information is inextricably linked to other core civic freedoms as well as to facilitating an enabling environment for civic space in the digital age and in supporting press freedom (Chapter 4). ATI contributes to strengthening freedom of expression and a pluralistic and diverse media environment as part of a broader public information ecosystem built on accuracy, objectivity and informed debate. As a result, ATI is a core element of a protected civic space and safeguarding this right must be fulfilled in tandem with promoting other civic freedoms.

All survey data presented in this chapter pertain to the countries that responded (33 OECD Members and 18 non-Members) to the transparency section of the 2020 OECD Survey on Open Government (hereafter "the Survey") except where explicitly stated otherwise (e.g. Figure 3.2).

3.2. The right to access information as a fundamental right

Throughout the years, access to information has been recognised as a fundamental right as it enables citizens and stakeholders to be informed of and exercise other rights. The value of ATI as a fundamental right and as a key safeguard for democracy has become more evident in the past years. Various crises (ranging from financial to health-related), recurring corruption scandals, and the rise of social media and mis- and disinformation have increased the need and demand for accurate information from government as well as a more open and transparent decision-making process.

"Access to information", "right to information", "right to know" and "freedom of information" are often used as synonyms[2] (UNESCO, 2015[6]) and were initially understood as a free flow of information and not necessarily as the capacity to request and source information from public bodies, as it is known today. Under that definition, ATI was recognised as a "fundamental right and the touchstone of all freedoms" by Resolution 59 of the United Nations (UN) General Assembly held in 1946 (UN, 1946[7]). In 1948, the Universal Declaration of Human Rights (UDHR) stated in its Article 19 that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (UN, 1948[8]). Although access to information was not explicitly mentioned, "to seek, receive and impart information" has been interpreted by international and regional human rights laws as providing the right of

ATI (McDonagh, 2013[9]). Most treaties, conventions and laws ensuring freedom of expression and information are framed similarly.

Importantly, the International Covenant on Civil and Political Rights (ICCPR) laid out general principles and limitations for the enforcement of the rights to freedom of expression and information in 1976 (ICCPR, 2011[10]). It specified that the exercise of both rights is "subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals" (OHCHR, 1976[11]). This implies that signatories commit to protecting and preserving the rights stated therein by taking administrative, judicial and legislative measures to effectively enforce them. Furthermore, in 2011, the scope of freedom of information, as set in Resolution 59 of the UN General Assembly, was broadened with the General Comment 34 from the UN Human Rights Committee to include information held by public bodies regardless of the format. It also provided an interpretation of how Article 19 of the ICCPR should be implemented by adhering states (Box 3.1) (ICCPR, 2011[10]).

Box 3.1. General Comment 34 on access to information from the UN Human Rights Committee

General Comment 34 from the UN Human Rights Committee recognises that Article 19, para. 2, of the ICCPR embraces a right to access public information. Information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production. Public bodies, including all branches of the state (executive, legislative and judicial) and other public or governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the state party. The designation of such bodies may also include other entities when such entities are carrying out public functions. To give effect to the right to access information, states parties should:

- Proactively put in the public domain government information of public interest.
- Make every effort to ensure easy, prompt, effective and practical access to such information.
- Enact the necessary procedures whereby one may gain access to information, such as by means of freedom of information legislation.
- Guarantee procedures provide for the timely processing of requests for information according to clear rules that are compatible with the covenant.
- Ensure fees for requests for information are not such as to constitute an unreasonable impediment to ATI.
- Ensure authorities provide reasons for any refusal to provide ATI.
- Check that arrangements are put in place for appeals from refusals to provide ATI as well as in cases of failure to respond to requests.

Source: ICCPR (2011[10]), *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf.

Acknowledging the importance of this right, Target 16.10 of the UN Sustainable Development Goals (SDGs) specifies the need to "ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements" (UN[12]) (Box 3.2).

Box 3.2. SDG Target 16.10: Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements

Conceptually, "public access to information" refers to the presence of an effective system to meet citizens' rights to seek and receive information, particularly that which is held by or on behalf of public authorities. Several existing frameworks and documents recognised internationally mention principles of ATI, including legal frameworks with the following provisions for access to information: limited exemptions; obligation of public authorities to provide information (including proactively); oversight and appeals mechanisms; and record keeping. These ATI principles are often reflected, to varying degrees, in freedom of information or right to information laws and/or policies.

Access to information has been acknowledged as a key element of sustainable development since the adoption of the Rio Declaration in 1992.

In 2015, the 2030 Agenda for Sustainable Development recognised access to information ATI as a necessary enabling mechanism for transparent, accountable and participatory governance, rule of law and peaceful societies, as epitomised by SDG 16: Peace, justice and strong institutions (UN, n.d.[13]). SDG Target 16.10 calls for states to "ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements". SDG Indicator 16.10.2 was agreed upon by the UN Statistical Commission in 2016 and approved by the UN General Assembly in 2017. The indicator measures the adoption and implementation of constitutional, statutory and/or policy guarantees for public access to information in accordance with Article 19 of the UDHR and of the ICCPR.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) has been designated to report on progress made on SDG Target 16.10 on ensuring "public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements" (UNESCO, 2020[14]). In particular, Indicator 16.10.2 is measured based on the "number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information" (UNESCO, 2020[14]).

The UN Human Rights Council, in its 2020 resolution on freedom of opinion and expression (General Assembly A/HRC/44/L.18/Rev.1) at its 44th regular session, recognised that "public authorities should strive to make information available, whether the information is proactively published electronically, or provided upon request" (UNESCO, 2020[14]). Within the perspective of the 2030 Agenda, is critical for empowering the public to make decisions, holding governments accountable, evaluating public officials in implementing and monitoring the SDGs and facilitating effective public participation.

Source: United Nations (n.d.[13]), *The 17 goals*, https://sdgs.un.org/goals; UNESCO (2020[14]), *From Promise to Practice: Access to Information for Sustainable Development*, https://unesdoc.unesco.org/ark:/48223/pf0000375022.locale=en.

At the regional level, the most relevant conventions recognising the right to information are found in Europe, through the European Convention on Human Rights (ECHR) and the Council of Europe Convention on Access to Official Documents (Tromsø Convention); the Americas, through the Inter-American Convention on Human Rights; and in Africa, through the African Charter for Human and People's Rights.[3] Through a series of regional enforcement and monitoring mechanisms of the conventions, such as the European Court of Human Rights or the Inter-American Commission on Human Rights (IACHR), citizens and stakeholders can file complaints and appeals processes in case of violations of their rights.

At the supranational level, the right to ATI has also been developed in certain sectoral policies, particularly the environmental sector. One relevant international example is the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted in 1998 (UNECE, 1998[15]). The ATI pillar of the convention calls upon adhering countries to make environmental information available for citizens within the framework of their national legislations. The OECD also adopted in 1998 the Recommendation of the Council on Environmental Information [OECD/LEGAL/0296] recommending Adherents take all necessary actions to increase the availability of public environmental information held by public authorities, improve the quality, relevance and comparability of data and promote periodic, publicly-accessible environmental reporting by enterprises (OECD, 1998[16]). This Recommendation was recently replaced by the Recommendation of the Council on Environmental information and Reporting [OECD/LEGAL/0471] and recommends that Adherents "take all necessary actions to increase the availability to the public of environmental information held by public authorities and ensure adequate dissemination and timely and user-friendly access". Another notable legal instrument at the regional level is the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean in 2018, also known as the Escazú Agreement (ECLAC, 2018[17]). This legally binding agreement, which entered into force in April 2021, includes obligations for generating, disseminating and providing access to information pertaining to environmental matters. Overall, the progress made on environmental policies and access to information at the supranational level helped boost national legal frameworks on ATI (Darbishire, 2015[18]).

3.3. The legal and institutional framework facilitating access to information

3.3.1. Constitutional recognition of the right to access information

At the national level, the legal frameworks for access to information can take different forms depending on the context and particularities of each country. In fact, ATI has been enshrined in many constitutions across the world. In 70% of respondent OECD Members and 78% of all respondents, including **Estonia, Mexico** and **Portugal** (Box 3.3 for more examples), it is recognised as a constitutional right.

Box 3.3. Examples of constitutions that recognise the right to access information

Belgian constitution

Article 32: "Everyone has the right to consult any administrative document and to obtain a copy, except in the cases and conditions stipulated by the laws, federate laws or rules referred to in Article 134" (2021[19]).

Colombian constitution

Article 20: "Every individual is guaranteed the freedom to express and diffuse his/her thoughts and opinions, to transmit and receive information that is true and impartial, and to establish mass communications media" (1991[20]).

Article 74: "Every person has a right to access to public documents except in cases established by law".

Finnish constitution

Section 12: "Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right to access public documents and recordings" (1999[21]).

Greek constitution

Article 5(A): "1. All persons have the right to information, as specified by law. Restrictions to this right may be imposed by law only insofar as they are absolutely necessary and justified for reasons of national security, of combating crime or of protecting rights and interests of third parties. 2. All persons have the right to participate in the Information Society. Facilitation of access to electronically transmitted information, as well as of the production, exchange and diffusion thereof, constitutes an obligation of the State, always in observance of the guarantees of articles 9, 9A and 19" (2008[22]).

Indonesian constitution

Article 28F: "Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by employing all available types of channels" (2002[23]).

Moroccan constitution

Article 27: "The citizens [feminine] and citizens [masculine] have the right to access information held by the public administration, the elected institutions and the organs invested with missions of public service. The right to information may only be limited by the law, with the objective of assuring the protection of all which concerns national defence, the internal and external security of the State, and the private life of persons, of preventing infringement to the fundamental freedoms and rights enounced in this Constitution and of protecting the sources and the domains determined with specificity by the law" (2011[24]).

Portuguese constitution

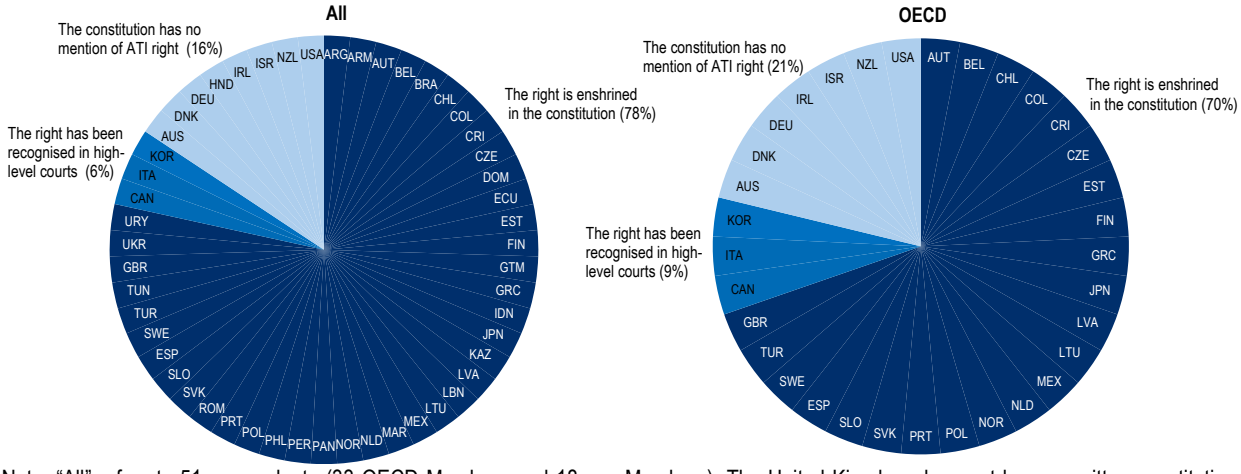
Article 268: "1. Citizens have the right to be informed by the Administration, whenever they so request, as to the progress of the procedures and cases in which they are directly interested, together with the right to be made aware of the definitive decisions that are taken in relation to them. 2. Without prejudice to the law governing matters concerning internal and external security, criminal investigation and personal privacy, citizens also have the right to access administrative files and records" (2005[25]).

Source: Government of Belgium (2021[19]), *The Belgian Constitution (English translation)*, https://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetUK.pdf; Government of Colombia (1991[20]), *Political Constitution 1 of 1991*, https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=4125; Government of Finland (1999[21]), *The Constitution of Finland*, https://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf; Government of Greece (2008[22]), *The Constitution of Greece*, https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf; Government of Indonesia (2002[23]), *The 1945 Constitution of the Republic of Indonesia*, https://www.parliament.go.th/ewtadmin/ewt/ac/ewt_dl_link.php?nid=123&filename=parsystem2; Government of Morocco (2011[24]), *The Constitution*, http://www.sgg.gov.ma/Portals/0/constitution/constitution_2011_Fr.pdf; Government of Portugal (2005[25]), *Constitution of the Portuguese Republic*, https://www.wipo.int/edocs/lexdocs/laws/en/pt/pt045en.pdf.

In **Canada, Israel** and **Korea**, the right has been recognised in high-level courts (i.e. jurisprudence, Supreme Court rulings, etc.). For 16% of all respondents, ATI is not mentioned in the constitution; however, some countries recognise the right directly in national legislation (Figure 3.1). Such is the case in **Honduras**; while the constitution has no mention of it, the law recognises "the right that every citizen has to access information generated, managed or held by obliged institutions provided for in this law" (Government of Honduras, 2006[26])".

Figure 3.1. Respondents with the right to access information enshrined in their constitutions, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (33 OECD Members and 18 non-Members). The United Kingdom does not have a written constitution. However, a series of acts are considered to be an equivalent to the constitution. The Human Rights Act 1998 is one of these and it mentions the right to information as part of the right to freedom of expression in Article 10: Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority regardless of frontiers.

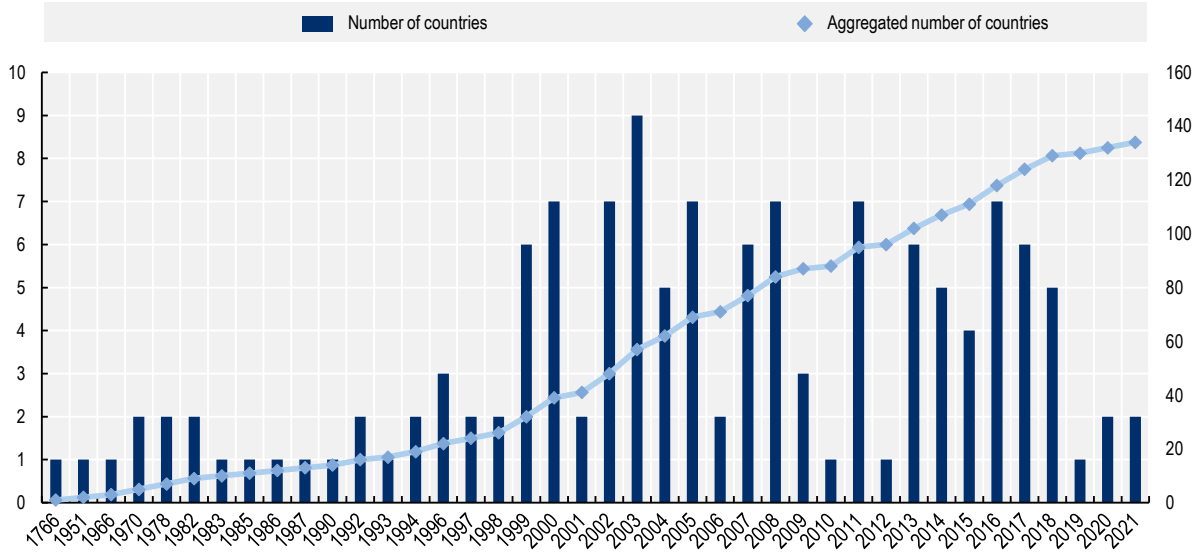
Source: 2020 OECD Survey on Open Government and the Global Right to Information Rating (n.d.[27]), "By country", https://www.rti-rating.org/country-data/ (accessed on 16 December 2021).

> ***Key measures to consider on recognising the right to access information***
>
> *Enshrining the right to information at the highest legislative level to recognise this fundamental right and ensure it is operationalised through a legal framework such as an ATI law. This would ensure longevity throughout changing political cycles and grant additional legitimacy to the development of a legal and institutional framework for access to information at all levels and branches of government.*

3.3.2. The right to access information is operationalised through ATI laws

The right to access information is mostly made operational through specific ATI laws that can be enacted at the national and subnational levels. These guarantees can also take the form of specific decrees, as is the case in **Costa Rica**, or directives or laws providing access to certain types of information (i.e. environmental, health). The first country to adopt an ATI law was **Sweden** in 1766, then **Finland** in 1951, followed by the **United States** in 1966. Since the 2000s, there has been a significant increase in the adoption of these laws, with 75% adopted during the past 2 decades (Figure 3.2). According to the Global Right to Information (RTI) Rating, ATI laws are present in 134 countries (RTI Rating[27]), including 37 OECD Members.[4]

Figure 3.2. Evolution of the adoption of ATI laws, 1766-2021

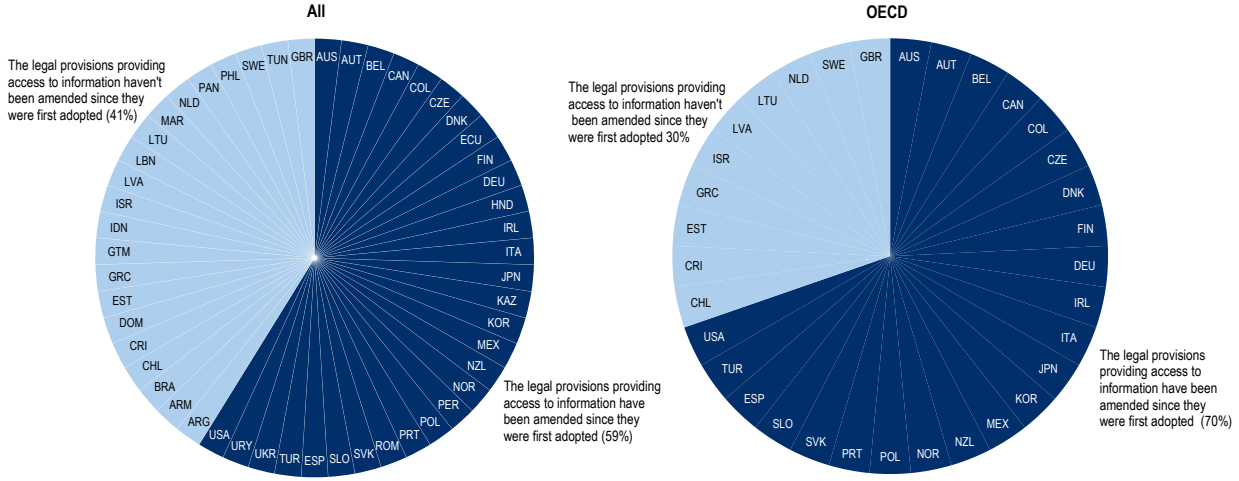


Note: Costa Rica does not currently have an ATI law in place.
Source: Author, based on Global Right to Information Rating (n.d.[27]), "By country", https://www.rti-rating.org/country-data/ (accessed on 16 December 2021).

The first generation of ATI laws essentially provided for the right of access to official "documents" or "records" – meaning documents officially created by the administration in the course of its duties. Recent laws have clarified the scope of the "right to access information" and the definition of "information" more broadly than documents or records; they refer to all material held by public authorities in any format (written, audio, visual, etc.). They have also strengthened proactive disclosure and have defined a clear mandate, responsibilities, and range of powers for bodies in charge of its implementation and/or oversight. In fact, 59% of the laws providing access to information in all respondents have been amended since they were first adopted, as is the case for **Italy**, **Ireland**, **Norway** and **Peru** (Figure 3.3), while 41% have not.

Figure 3.3. Respondents that have amended their ATI laws, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (33 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/8v561c

For OECD Members, most of the amendments expanded the right rather than restricted it. For example, in **Italy**, an amendment in 2016 introduced "generalised civic access", which is an approach intended to give citizens the widest possible access to public documents, meaning they can request any materials held by public bodies and not only the documents subject to publication as per the former law. In 2016, **Ireland** amended its law to expand the framework's reach to all public bodies unless specifically exempt. The new legislation also reduced the fees set for applications for both internal review and reviews by the Office of the Information Commissioner and introduced a minimum threshold and maximum fee limit for the search, retrieval and copying of information. As part of this process, two expert review groups considered and reported on the ATI system in Ireland in order to inform the drafting process. An internal group was composed of public sector stakeholders, while an external group consisted of representatives of academia, journalists, the Information Commissioner, citizens and activists.

The ways in which these new amendments and provisions vary can often be attributed to whether they were adopted recently or could be classed as first-generation laws. For example, the law may not specify certain digital formats or make references to making online requests, depending on when it came into force. Some good practices on consulting stakeholders include **Romania,** which opened the amendment process to a public consultation, which involved civil society, representatives from academia, trade unions, business councils and the media. **Poland** also involved civil society actors and ensured public actors, such as the ombudsman and relevant ATI offices, participated in consultations.

> ***Key measures to consider on operationalising the right to access information through an ATI law***
>
> *- Continually monitoring and evaluating ATI laws to guarantee that they reflect changes in how modern public administrations function, for example, in regard to new technology. These assessments can assist countries in identifying legal gaps and potential bottlenecks to streamline ATI practices.*
>
> *- Taking an inclusive approach by facilitating the participation of a diverse range of stakeholders when considering amendments to the law.*

As stated by the RTI Rating, although every ATI law is different and must respond to the specificities of each country, they all share similar provisions, namely: objectives and scope; provisions for proactive and reactive disclosure; potential exemptions and denials to grant information to the public; the possibility to file internal and/or external appeals; and measures to encourage promotion of the law (RTI Rating[28]).

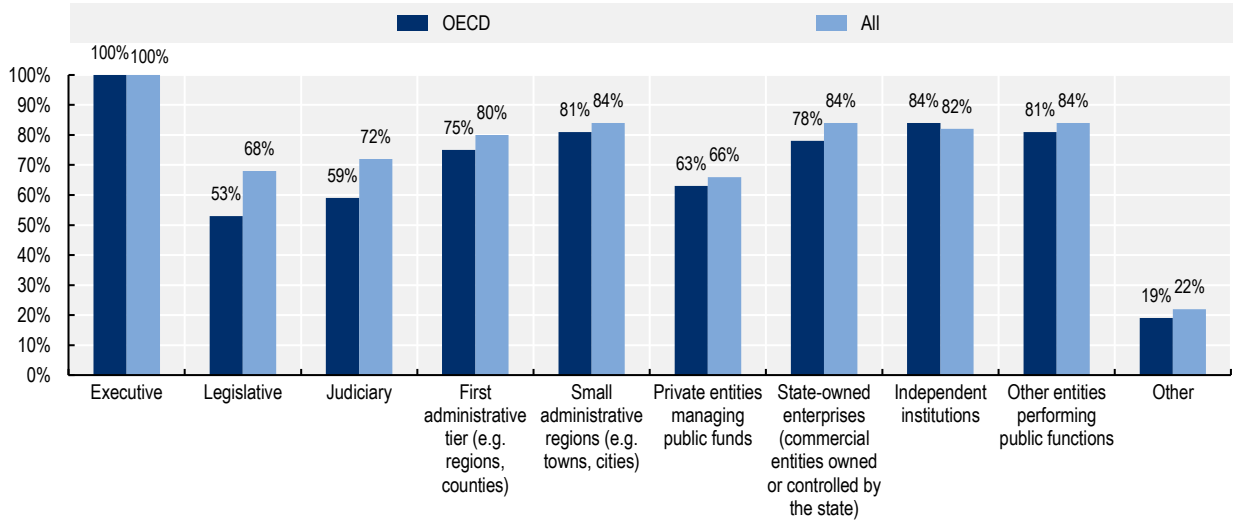
The objectives and scope of ATI laws

Ideally, an ATI law would include clearly stated objectives for granting access to public information and the term "information" would be defined. According to Article 19, information should be defined as "all records held by a public body, regardless of the form in which the information is stored (document, tape, electronic recording and so on), its source (whether it was produced by the public body or some other body) and the date of production" (Article 19, 2016[29]). In 76% of respondent OECD Members (82% of all respondents), the law applies to any material held by public authorities in any format. Other laws mention written, audio and/or visual formats, while 21% of respondent OECD Members (16% of all respondents) do not have any formats specified in the law.

The scope of application of ATI laws indicates whether the provisions in place apply to all branches of government, all levels of government, independent institutions of the state and the entities carrying out public functions or managing public funds. In addition to the national executive, 75% of respondent OECD Members (80% of all respondents) cover the first administrative tier[5] (e.g., regions, counties), and 81% of respondent OECD Members (84% of all respondents) include small administrative regions[6] (e.g., towns, cities) (Figure 3.4).

Figure 3.4. Scope of application of ATI laws, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 50 respondents (32 OECD Members and 18 non-Members). At the time of writing, Costa Rica did not have an ATI law but an executive decree applying to the executive branch, therefore the country was not included in this question.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/f472t9

In some countries with federal structures, ATI legislation passed at the national level also applies to subnational governments. In these cases, some subnational governments have passed their own to complement national legal frameworks, such as in **Brazil** and **Mexico**. While all states in Mexico have developed their own ATI laws and institutional frameworks, not all subnational governments have done so in Brazil. In other federal countries, the national ATI law only applies to information relative to the federal government, as in **Australia**, **Canada, Japan** and the **United States**. For example, in the case of the latter, all states have passed their own legislation to cover state and municipal information (RTI Rating, 2016[30]). While laws and frameworks around ATI – and whether or not subnational levels have their own specific laws – can depend on whether there are federal or centralised structures in place, it is essential that public bodies at all levels can locate clear and coherent guidance on how the requirements of ATI laws apply to them. Furthermore, Furthermore, this is also a significant factor in the usability of the law from a citizen's perspective and can ensure, for example, that citizens know which public officials they can contact when making a request and whether to submit their request to public bodies at the national or subnational level.

As shown in Figure 3.4, in 53% of all respondent OECD Members (68% of all respondents), the ATI law applies to the legislative branch and for 59% of respondent OECD Members (72% of all respondents) to the judicial branch. Most ATI laws also apply to different public bodies, such as state-owned enterprises (SOEs), independent institutions and other entities performing public functions. Some countries include other bodies, such as non-governmental organisations receiving public funds, as in **Denmark, Honduras** and **Tunisia**, or any legal person, such as in **Austria**, the **Dominican Republic** and **Peru**. Certain countries have separate legal frameworks (i.e. sectoral laws) that also include ATI requirements, as in **Armenia**. In several countries, additional legal frameworks have been developed specifically for other levels, branches or bodies. This is the case for **Brazil** for independent institutions, for **Panama** for entities performing public functions and for the **Philippines** for SOEs.

3.3.3. Ensuring the disclosure of information

Proactive disclosure: What, when and how proactive information is published

Proactive disclosure refers to the act of regularly releasing information without the need for a request by stakeholders. It reduces the administrative burden for public officials handling and answering individual ATI requests, which can often be lengthy and costly. Favouring proactive disclosure "encourages better information management, improves a public authority's internal information flows, and thereby contributes to increased efficiency" (Darbishire, 2010[31]). Finally, it ensures timely access to public information for citizens as information is published as it becomes available and not upon request (OECD, 2016[32]).

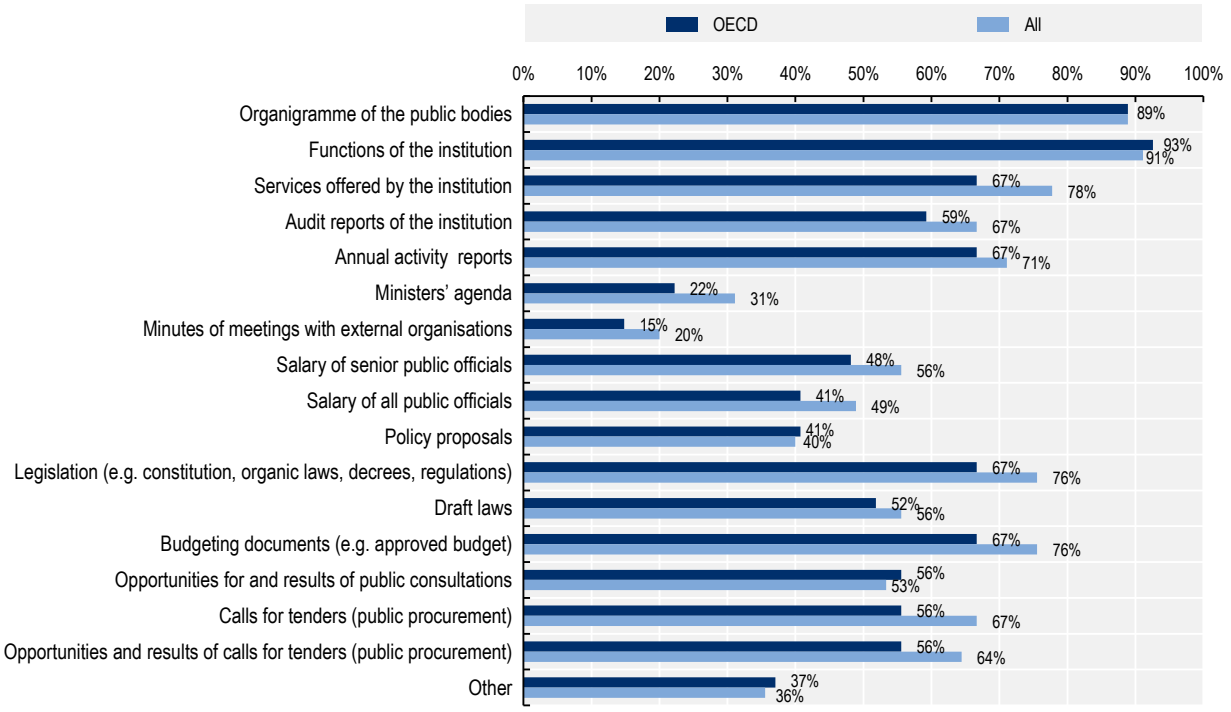
Most ATI laws require the proactive disclosure of a minimum set of public information to be published by each institution subject to the law. As shown in Figure 3.5, the most commonly disclosed items stated in the law or other legal framework are those related to the institution itself: its functions (93% of respondent OECD Members, 91% of all respondents), the organigramme (89% for both respondent OECD Members and all respondents) and the services offered (67% of all respondent OECD Members and 78% of all respondents). Other relevant documents regularly published include legislation, budgeting documents, annual activity reports and audit reports. A smaller number of countries proactively publish the minutes of meetings with external organisations (15% of respondent OECD Members, 20% of all respondents) or the ministers' agendas (22% of respondent OECD Members, 31% of all respondents). While two countries do not have a legally pre-defined list of information to be disclosed, they do publish information proactively in practice.

As illustrated in Figure 3.5, many of the forms of information proactively disclosed by governments are of particular interest to civil society actors and civil society organisations (CSOs) specifically. For example, governments committing to proactively disclosing and publishing opportunities for and results of public consultations can ensure that CSOs are aware of the ways in which they can engage with public decision making. Providing the results, in particular, can enable public officials to demonstrate how feedback and inputs were taken into account and reflected in the legislation, policy, strategy or any other subject of the consultation. Publishing policy proposals and budget documents also allows CSOs to remain informed about ideas and potential upcoming changes and offers them the time necessary to discuss (either among themselves, with their members if they are an umbrella organisation, or even with other CSOs working in a similar field) and provide a nuanced statement to the responsible public body or ministry. Calls for tender can also be of interest to CSOs interested in operating as partners in service provision alongside the government.

An important element of any ATI law is where and how information is published, as this facilitates access to a wide range of individuals. Among respondents, proactively disclosed information is mostly published on each ministry's or institution's website, followed by a central portal, or a combination of both. Other means of publication include official gazettes, which are mostly used for disclosing legislative information (e.g. constitution, organic laws, decrees, regulations) or budgeting documents.

Figure 3.5. Information proactively disclosed by central/federal governments as stated in the law or any other legal framework, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 45 respondents (27 OECD Members and 18 non-Members). For Costa Rica, the information relates to the executive decree applying to the executive branch.
Source: 2020 OECD Survey on Open Government.

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Governments have different approaches to the disclosure of information. Some share information on central portals, which often simultaneously function as open data portals, for example, in **Austria** (Government of Austria, n.d.[33]) and **Brazil** (Government of Brazil, n.d.[34]). Some have specific websites that inform citizens of the various bodies that hold public information and redirect them to relevant sites, e.g. **Canada**'s "Information About Programs and Information Holdings" webpage (Treasury Board of Canada Secretariat, n.d.[35]). Others publish different types of information on different websites. For example, the **Danish** Finance Agency clearly publishes the salaries of public officials on its website (Danish Finance Agency, n.d.[36]). **Ireland** publishes draft bills and acts centrally on the website of its legislature (Irish Houses of the Oireachtas, n.d.[37]), while **Italy** publishes formally approved legislation in an official gazette (Government of Italy, n.d.[38]). Regarding public funds, governments often have dedicated websites for financial and budgetary statements. For example, the **New Zealand** Treasury centrally shares annual activity reports and financial statements on its website (New Zealand Treasury, n.d.[39]). Similarly, calls for tenders and their results tend to have centralised web pages, as is the case in **Lebanon** (Government of Lebanon, n.d.[40]).

The accessibility and usability of these online tools are key to ensuring that all citizens can easily locate existing information. Furthermore, these websites and portals could be designed to minimise barriers for both the general public and those with specific needs. In fact, conducting consultations with users would allow governments to embrace digitalisation while ensuring that users can clearly identify how to source

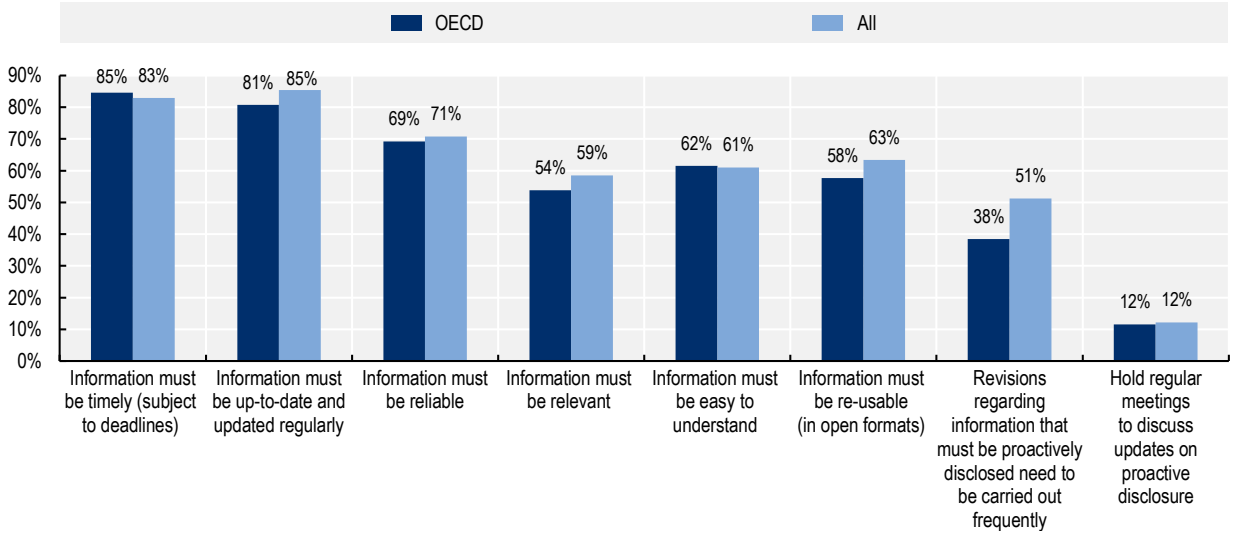
government information, which they can then employ to advocate for their needs, defend their civic freedoms and engage with public decision-making processes on laws, policies and services. In addition, information could be disseminated through a multi-channel approach to ensure that stakeholders with limited information and communication technology (ICT) skills or access to the Internet have the same opportunities to access and use public information.

Concerning how information is disclosed, most respondents (84% for both categories) have requirements for proactive disclosure outlined in specific guidelines. For example, **Australia**'s Statement of Principles to support proactive disclosure of government-held information offers insight into the type of information that countries can proactively publish (OAIC, 2021[41]). The principles outline that public bodies should regularly review requests and analyse trends with a view to maximising proactive disclosure of similar documents and encourages them to install proactive disclosure mechanisms whenever they create any new institutions or processes. Overall, guidelines for disclosure often require that information must be (Figure 3.6):

- Up to date (81% of respondent OECD Members with guidelines, 85% of all respondents with guidelines).
- Timely and subject to specific deadlines for instance: i) it should be published as early as possible, so it is relevant and actionable; and ii) if it is requested by an individual, the government is subject to clear deadlines on providing the information (85% of respondent OECD Members with guidelines, 83% of all respondents with guidelines).
- Reliable and accurate (69% of respondent OECD Members with guidelines, 71% of all respondents with guidelines).
- Easy to understand (62% of respondent OECD Members with guidelines, 61% of all respondents with guidelines).

Figure 3.6. Requirements mentioned in respondents' guidelines for proactive disclosure, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 41 respondents (26 OECD Members and 15 non-Members). Armenia, Austria, Belgium, Denmark, Latvia, Lebanon, Panama and the Slovak Republic do not have guidelines in place for proactive disclosure.
Source: 2020 OECD Survey on Open Government.

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Few countries have requirements to hold regular meetings to discuss updates on proactive disclosure (12% for both categories) or to carry out frequent revisions on what must be published proactively (38% of respondent OECD Members with guidelines, 51% of all respondents with guidelines). Other countries such as the **Czech Republic** have specific decrees (442/2006) that set out a framework for the proactive disclosure of information but do not specify the conditions; **Israel** has general and specific guidelines when disclosing information relating to public expenditure. Similarly, **Tunisia**'s guidelines go further in ensuring automatic data publication when datasets are extracted from an information system. Last, **Brazil** has detailed logistical instructions, for example, mandating that all websites have adequate content search tools and that the date of the last modification of the webpage should be indicated.

These measures avoid the risk of a "tick-the-box" exercise without due attention to quality. If the information made available is not in line with minimum standards or if there are vast amounts disclosed in a format that is not comprehensible or usable by most stakeholders, then its availability alone may not have any effect.

> ***Key measures to consider on the proactive disclosure of information***
>
> *- Prioritising which information is most useful when proactively disclosed to ensure its relevance and usability in consultation with stakeholders.*
>
> *- Tracking and measuring which information is most frequently requested and beginning to disclose this type of information periodically, guidance for which could be outlined in specific policy guidelines. They could also collaborate with citizens and stakeholders in dedicated focus groups or workshops to gain feedback and identify whether the proactive disclosure of information facilitates more engagement from civil society in public decision making.*
>
> *- Acknowledging that while there is no one-size-fits-all solution, creating a one-stop-shop of an online repository or central portal that is easy for citizens to navigate could minimise fatigue associated with searching through numerous websites. It could also improve the overall efficiency of these systems and the governance of ATI more broadly.*
>
> *- Conducting user consultations with stakeholders on the usability of online ATI tools to better tailor their format to increase uptake. Public officials could also use these consultations to understand which categories of information are deemed to be most useful for citizens and CSOs (e.g. draft legislation, policy proposals, cabinet decisions, budgets, etc.)*

Reactive disclosure

Countries have made substantial efforts to disclose information; however, not all information can and should be published. Reactive disclosure refers to the right for citizens to request information that is not made publicly available. Usually, the provisions for reactive disclosure under the law describe the procedure for making the request, including who can file the request, the possibility of anonymity, the means to file a request, the existence of fees and the timelines for response to the request.

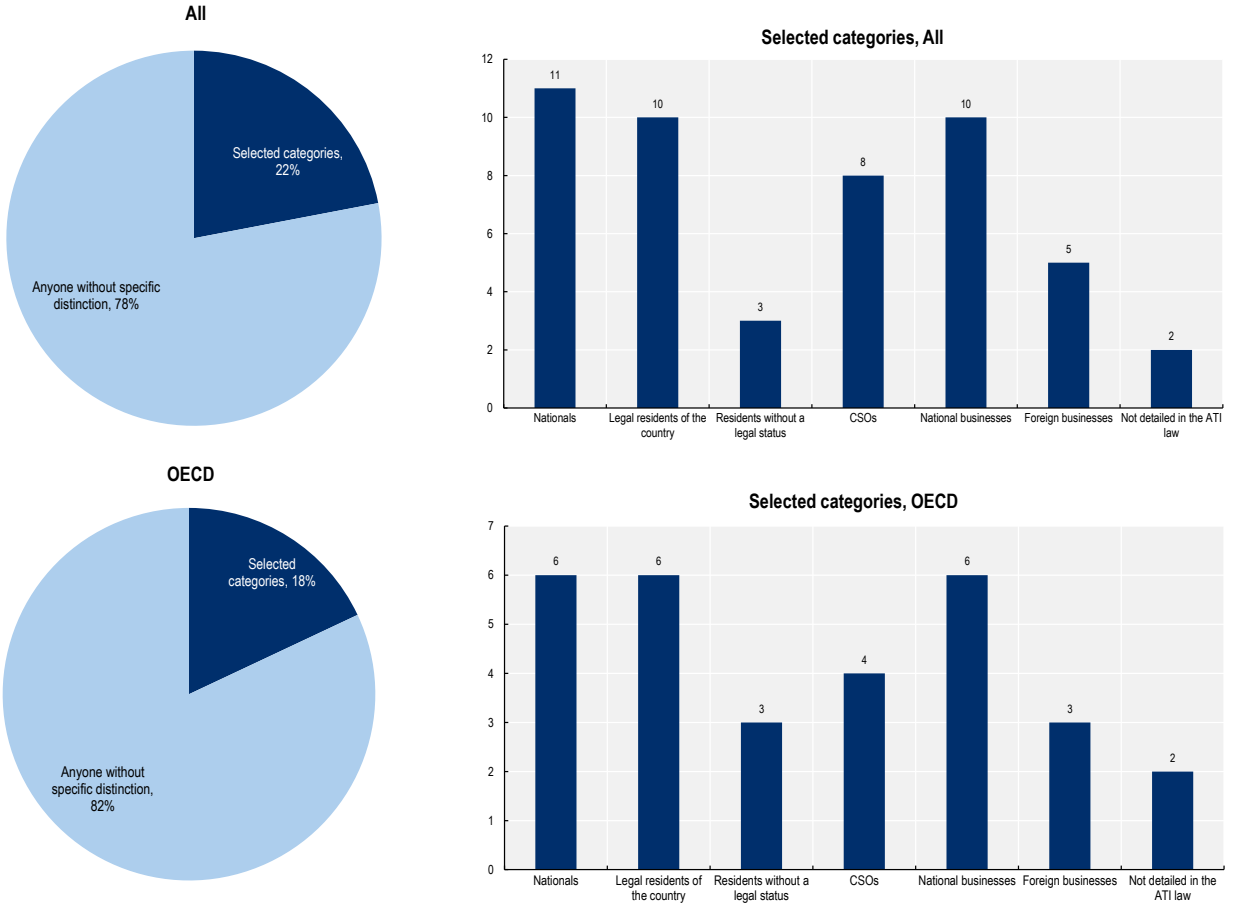
Any person or stakeholder should be able to make a request for information

In principle, any person regardless of age, gender, sexual orientation, religious belief, legal status and political affiliations, and institutions and organisations, whether governmental or non-governmental, from civil society, academia, the media or the private sector, should be able to make a request for information. In this regard, 82% of respondent OECD Members have ATI laws that stipulate that anyone can file a request for information (78% of all respondents) (Figure 3.7). No specific criteria, details or further qualifications are mentioned in the law to limit the definition of anyone. However, in some cases, laws clearly specify that requests can be made by nationals (18% of respondent OECD Members, 22% of all respondents), legal residents of the country (18% of respondent OECD Members, 20% of all respondents),

CSOs (12% of respondent OECD Members, 16% of all respondents), national businesses (18% of respondent OECD Members, 20% of all respondents) and foreign businesses (9% of OECD Members, 10% of all respondents). Only 9% of respondent OECD Members and 6% of all respondents include residents without legal status. The ATI laws in 6% of respondent OECD Members and 4% of all respondents do not include any details on who can make the request (Figure 3.7). For instance, the **Czech Republic**'s ATI law distinguishes between legal and natural persons. In addition, **Lithuania**'s ATI law provides in Article 3 that natural or legal persons and branches of enterprises established in the member states of the European Union (EU) and the states of the European Economic Area (EEA) located in Lithuania can request information.

Figure 3.7. Categories of individuals and stakeholders who can make a request for information, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (33 OECD Members and 18 non-Members). The graphs for selected categories refer to absolute numbers, not percentages.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/xqb2cg

In addition, a few countries ask requesters to indicate the motivation or reason for the request: for example, **Indonesia** seeks the purpose of the request. Others, like **Spain**, do not require the intention behind the request but allow requesters to state their reasons, which may be taken into account when the resolution is issued. However, the absence of motivation cannot serve as a reason to reject the request, meaning that ideally, the motive or reason for the request does not serve as a prerequisite for the publication of the information.

> ***Key measures to consider on reactive disclosure of information and personal information***
>
> *- Ensuring that ATI requests only require the minimum amount of information needed for the public official handling the request to be able to find the information and share it with the requester.*

This is especially fundamental in contexts where civic space is restricted, as seeking a motive for each request could lead the request to be ignored or denied, especially if the intention is to use this information to oversee government activities or critique their decision making, for example, through watchdog CSOs.

Protecting the identity of requesters is crucial

Protecting the identity of those filing an access to information request is important to avoid the risk of profiling citizens or stakeholders and governments acting on biases when responding to them, especially in countries where stakeholders and citizens are not protected from or are afraid of reprisals. In a context of shrinking or limited civic space, citizens and stakeholders may be unable, unwilling or fearful of interacting with government officials when seeking information or raising their voices to alert the government or society at large to instances of wrongdoing by public bodies or public officials. While 82% of all respondents do not allow for anonymous requests, for 18% of all respondents, the legislative framework explicitly protects the integrity and privacy of individuals and parties that file a request for information, such as in **Australia, Finland** and **Mexico**. However, in some of the countries where the law does not provide for anonymous requests, they have measures allowing for *de facto* anonymity. For example, some countries do not verify the information provided, such as the proof of identity or the email or contact address to send the requested information, as in **Chile,** the **Netherlands** or **Ukraine**.

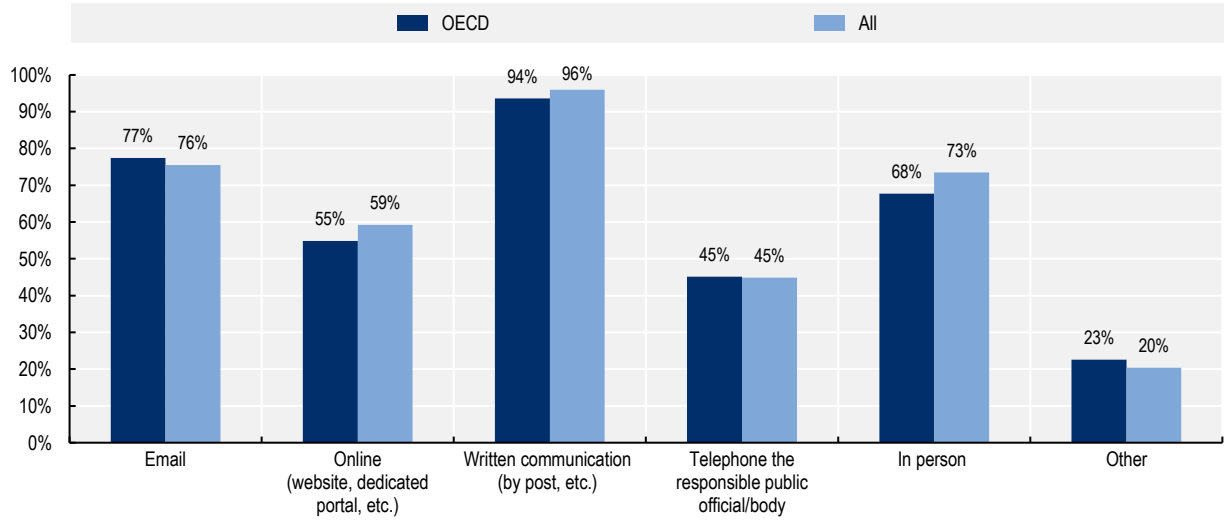
> ***Key measures to consider on reactive disclosure of information and anonymity***
>
> *- Protecting the identity of requesters could be prioritised to avoid the risk of identity-questing (profiling citizens and acting on biases) by governments. This is particularly key for protecting vulnerable and at risk groups, such as journalists, whistleblowers, activists and human rights defenders, from harassment, intimidation and violence.*

The ease of filing requests is critical to ensure access, quality and usability of ATI laws

Governments are increasingly aware that publishing information widely and committing to providing information upon request alone does not ensure that citizens and stakeholders can benefit from initiatives for greater transparency on an equal basis. For this reason, governments are increasingly committed to making these procedures as simple, clear and comprehensible as possible. In most countries, requests can be made by post (94% of respondent OECD Members, 96% of all respondents) and in person (68% of respondent OECD Members, 73% of all respondents). Most countries also allow requests by email (77% of respondent OECD Members, 76% of all respondents) or on line (on each ministry's website or a dedicated portal) (55% of OECD Members, 59% of all respondents) (Figure 3.8).

Figure 3.8. Means to make a request for information by law, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 49 respondents (31 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

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Box 3.4. The Fala.br platform in Brazil

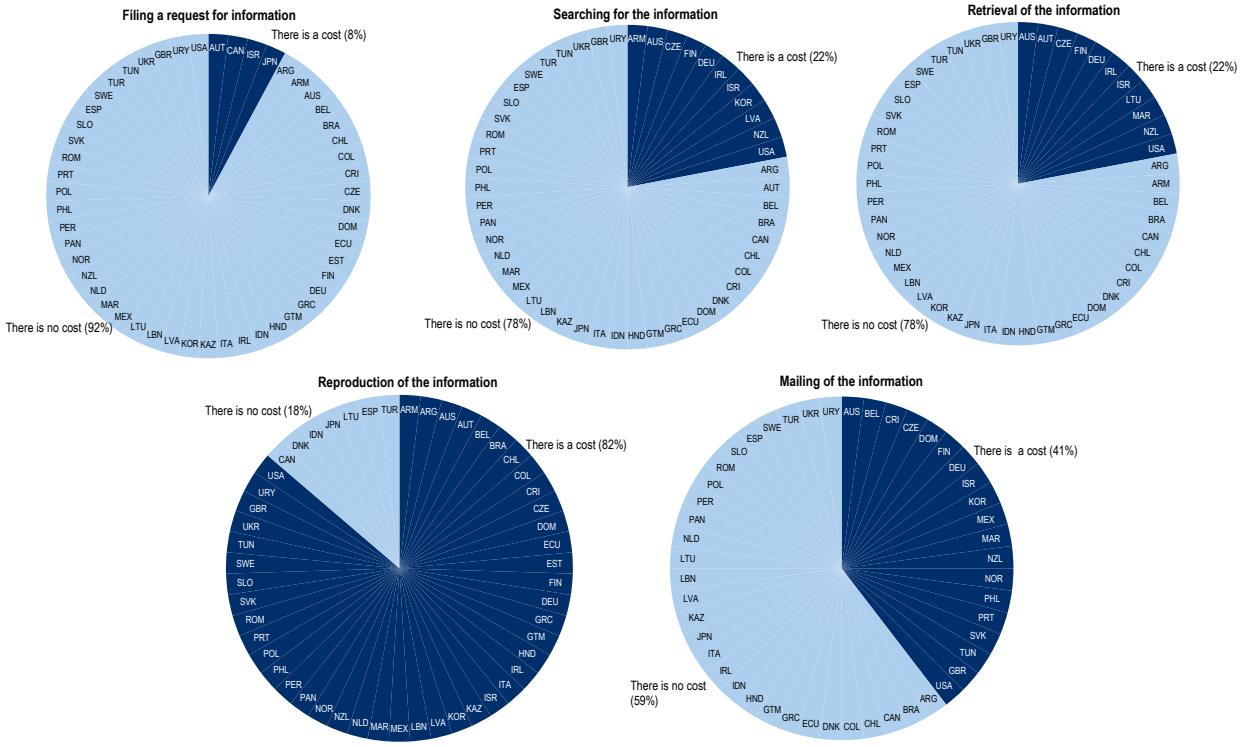
To ease the process of requesting information, Brazil created Fala.br, an innovative platform that combines the federal *ouvidorias* and Citizen Information Service obligations. It allows citizens to request information and make complaints or claims against any federal body, express satisfaction or dissatisfaction with a service or programme, and provide suggestions for improving or simplifying public services. Importantly, users can also follow the progress of their request and file an internal appeal in case of non-conformity with the response. In addition, Fala allows the government to provide up-to-date statistics on requests. Overall, by centralising ATI requests into a single system, the Fala platform has significantly simplified the process for citizens, stakeholders and federal government institutions when making or processing an ATI request.

Source: Government of Brazil (n.d.[34]), *Fala.BR - Plataforma Integrada de Ouvidoria e Acesso à Informação*, https://falabr.cgu.gov.br/publico/Manifestacao/SelecionarTipoManifestacao.aspx?ReturnUrl=%2f.

Filing a request for information in most OECD Members does not involve a cost. There can, however, be costs associated with obtaining the requested information in practice (Figure 3.9 and Figure 3.10). For example, while fees may be involved should the requester wish to have documents or other materials mailed to them, submitting an initial request itself is almost always free. In 12% of respondent OECD Members and 8% of all respondents, there is a cost for filing a request. In 31% of OECD Members and 22% of all respondents, there is a cost for searching for information; the same percentages of both categories also have costs for the retrieval of information. Regarding reproduction, there is a cost in 82% for both categories, while there is a cost for mailing information in 48% of OECD Members and 41% of all respondents. In some cases, as in **Uruguay**, the law specifies that there is no cost to file a request for information. However, the interested party will have to reimburse the public institution only the cost incurred in the reproduction of the information if needed.

Figure 3.9. Costs associated with the request for information process, 2020, all countries

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "Filing a request for information" and "Reproduction of the information" were answered by 51 respondents (33 OECD Members and 18 non-Members); "Searching for the information" and "Retrieval of the information" was answered by 50 respondents (32 OECD Members and 18 non-Members); and "Mailing of the information" was answered by 49 respondents (31 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

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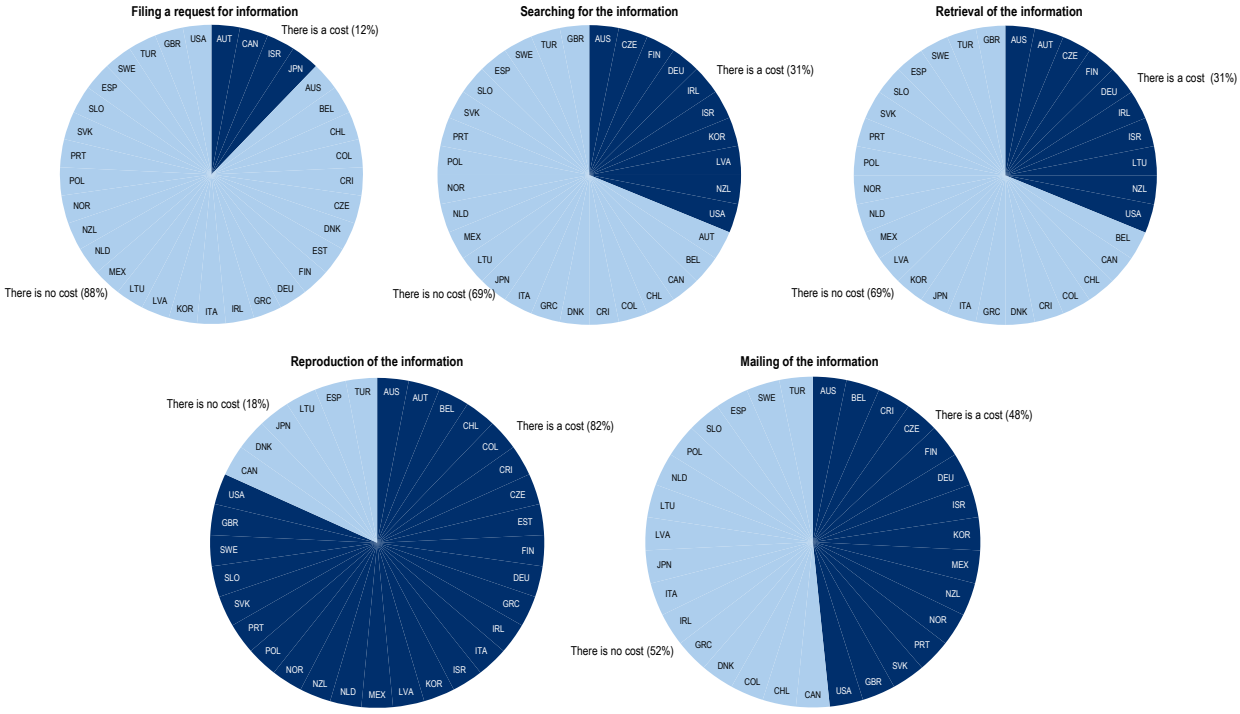
Figure 3.10. Costs associated with the request for information process, 2020, OECD Members

Percentage of OECD Members that provided data in the OECD Survey on Open Government



Note: "Filing a request for information" and "Reproduction of the information" were answered by 33 OECD Members; "Searching for the information" and "Retrieval of the information" was answered by 32 OECD Members; and "Mailing of the information" was answered by 31 OECD Members and 18 non-Members.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/9sctxy

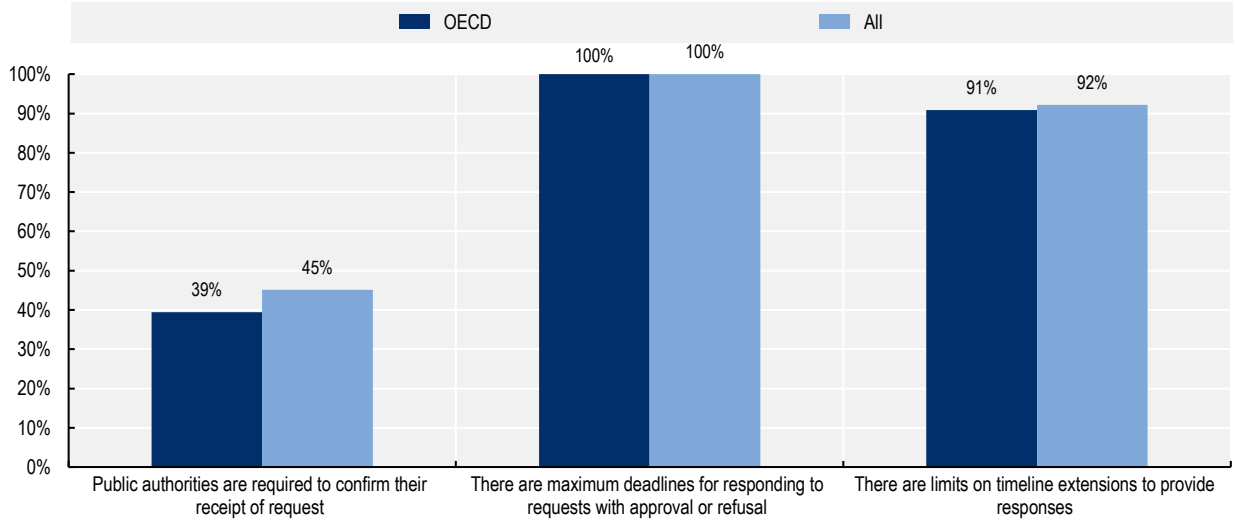
Ensuring that requests are free of charge is one of the most important ways to reduce obstacles to citizens and stakeholders exercising their right to information. Costs associated with requests can either greatly discourage citizens from lower socio-economic backgrounds from submitting a request or make it entirely impossible for them to do so. This is even more so if fees are in place at more than one stage of the process (e.g. filing a request, searching for information, reproduction of information and mailing of information) and there is no relief for impecunious requesters. Thus, entitlement to a fundamental civic freedom becomes unattainable for certain social demographics. This continues to be a relevant cause for concern as many countries charge fees related to the reproduction of the information, depending on the number of pages to be reproduced and on postage fees for example. When a variable fee is charged, a cap on the amount of the fee is applied only in a limited number of countries, such as **Austria, Finland** and **France**. Most governments distinguish between charging fees related to documents that are already available, for example on a central government portal, and those requests that require searching, retrieval, reproduction and mailing of the information.

> ***Key measures to consider on reactive access to information and costs***
>
> *- Ensuring that filing the request is both simple and free. The cost associated with searching, retrieval, reproduction and mailing could be kept to a minimum and remain consistent across the public administration.*

Having and respecting clear timeliness standards is crucial as it provides a degree of certainty to requesters on how long the process for their request will last. Extended time limits for the provision of information can be especially problematic if the information is urgently needed by the requester. In less than half of all respondent countries, public authorities are required to confirm their receipt of the request (39% of respondent OECD Members, 45% of all respondents), while in both categories, there are maximum deadlines for responding to requests with approval or refusal, with an average of 21 working days in OECD Members (Figure 3.11). Most countries (91% of respondent OECD Members, 92% of all respondents) have also established limits on timeline extensions on responses, with an average of 19 working days in OECD Members and 18 working days across all respondents.

Figure 3.11. Existence of a specific number of days to respond to a request at different stages of the information request process, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (33 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/45s6mb

For example, the **Dominican Republic** and **Estonia** respond no later than within 5 working days, which can be extended to 15 working days in the case of Estonia and 10 days for the Dominican Republic. In addition, **Belgium** initially provides for 30 days, which can be extended for another 15 days. **Australia** provides that public authorities must confirm their receipt of the request no later than 15 days of receiving the request and provide the information no later than 30 days of receiving the request.

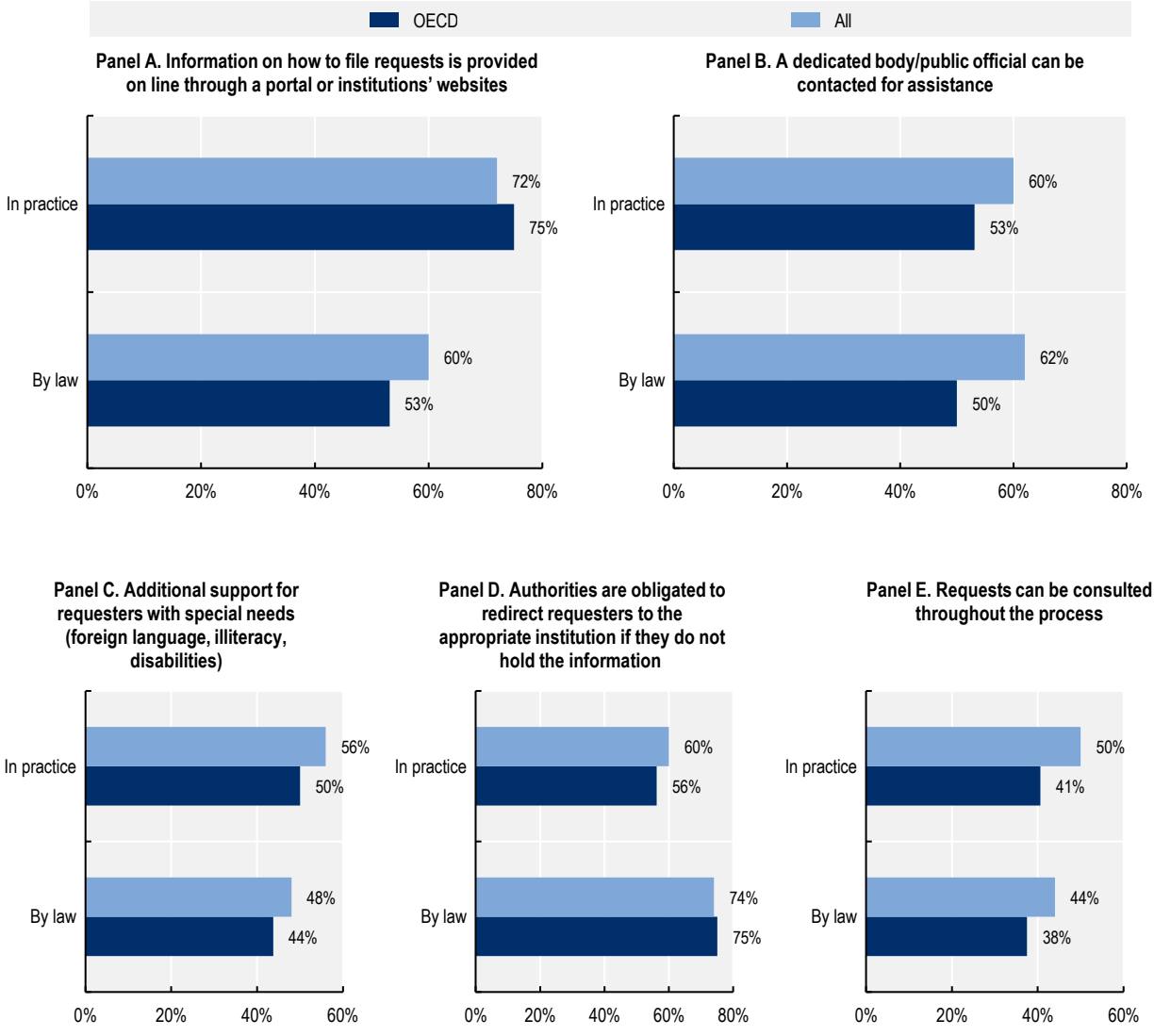
> ***Key measures to consider on reactive access to information and timeliness***
>
> *- Implementing clear guidelines and proper mechanisms to monitor that public officials provide information within the agreed timeframes through the request process.*
>
> *- Keeping timeframes to a minimum so as to not discourage the requester with significant delays.*

Furthermore, efforts to make procedures as simple, clear and comprehensible as possible can take different forms and be implemented either by law or in practice. In this regard, there are two main factors governments need to address to ensure that procedures are as effective as intended: accessibility and inclusion.

On accessibility, governments are making efforts to provide information on how to make a request on line, either on a portal or a government website (60% of all respondents by law, 72% of all respondents in practice). However, bridging the digital divide and addressing technology gaps between young and senior populations, rural and urban groups and those from high and low socio-economic backgrounds is crucial in ensuring equal opportunity to access information. Governments can endeavour to introduce more e-literacy and e-accessibility initiatives but, in the meantime, there must be other means to file requests for those without ICT skills or without at-home or community Internet access. For example, citizens could be able to call a contact point or visit the relevant office and ask in person, which is provided in 62% of all respondents' laws (Figure 3.12). Other means of communication could also be explored, such as community radios, television and newspapers to promote the law and different channels for making a request.

Figure 3.12. Procedures in place related to requests for information by law and in practice, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 50 respondents (32 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

Moreover, less than half of all respondents' laws allow requests to be consulted throughout the process (44% in law, 50% in practice). In practice, the procedure for requesting information does not always explicitly or clearly set out the means for requesters to follow up on their requests, exacerbating any existing incomprehension about how the ATI process works and leading to weariness among citizens in the face of inaction on the part of their public bodies. The ability to inquire about the status of a request is also key to allowing civil society actors to monitor its progress. For example, this can allow watchdog organisations to note if there is interference in the process or if the request is transferred repeatedly without any development. It can also allow them to demand an answer or submit an appeal in the case of administrative silence, unjustifiable delays or denials of information.

Improving inclusiveness through simple language and additional support for certain groups

Regarding inclusion, certain under-represented demographics, including those from low socio-economic groups, youth, migrants and refugees, Indigenous groups and people with disabilities, among others, can face additional obstacles in exercising their right to access to information. However, the more pressing issue is that many citizens do not realise that this right is available to them at all, nor do they fully comprehend its potential in allowing them to advocate for their own needs and demands. In this sense, groups whose voices most often go unheard miss yet another opportunity to be informed of the decisions of their elected officials and to participate in public life. As Transparency International recognises, the value of ATI lies in how it can allow citizens to raise concerns about government activities and demand their rights to essential services like education and healthcare, for example (2018[42]).

In the same way, having access to information allows CSOs to advocate on behalf of citizens in an organised manner that can lead to substantial changes in policies and services. Many of the barriers that exist for the political inclusion of certain groups also apply to their difficulties in accessing information. Such barriers include the use of technical jargon rather than simple guidance from governments, language barriers, a digital divide and technological gaps, as well as a lack of outreach to the communities that would benefit from awareness-raising on ATI. In this regard, many countries, such as **Uruguay** have developed programmes on gender and access to information, awareness-raising campaigns for youth, and guides for requesters to foster knowledge of the right and the process of requesting information.[7] For example, Morocco's Ministry of Administration Reform and Civil Service has developed a communication strategy on the right to ATI, which includes hosting meetings at the national, regional and local levels and using various media and communication channels to promote public awareness (Open Government Partnership, n.d.[43]). In addition, the National Institute of Transparency, Access to Information and Protection of Personal Data in Mexico regularly hosts workshops and engages in outreach with vulnerable groups facing structural barriers that can impede access to information (INAI, n.d.[44]). One outcome of these workshops was the production of guides on digital literacy for senior citizens and women in rural areas.

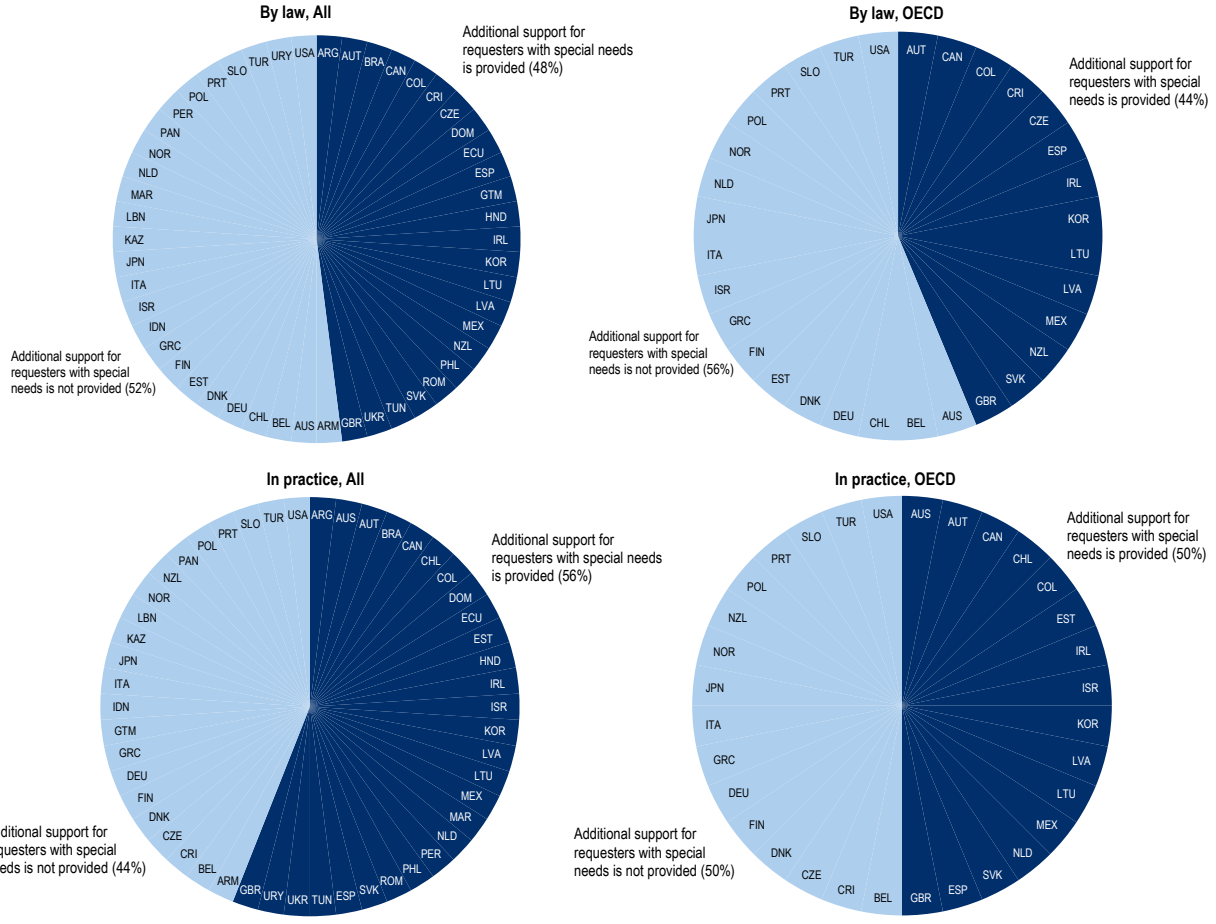
Furthermore, simple language, meaning writing that is as clear and concise as possible and is appropriate for as broad a target audience as possible, is essential in making information on ATI accessible. It is particularly necessary for groups with low levels of literacy or those without advanced language skills in the country in which they live. Furthermore, government websites, portals and documentation on the right to access information could be provided in all relevant languages to the extent possible. This is especially relevant for countries with two or more official languages and those with Indigenous groups with their own languages that often face additional difficulties in engaging with their local and national government given this barrier. To combat these constraints, governments have several initiatives in this regard. For example, some countries, including the **United States**, have introduced legislation on using simple language in the public administration, such as the Plain Writing Act (US Government, 2010[45]). Others, like the Ministry of Social Development in **New Zealand,** have introduced checklists for public officials on plain language

(Government of New Zealand, n.d.[46]). In 2019, the Ministry of Finance in **Finland** introduced a policy brief on how clear language prevents exclusion and "largely determines how well citizens can understand, follow and evaluate activities" (Government of Finland, 2019[47]). The **United Kingdom's** Digital Government Service also provides guidance on planning, writing and managing government content, with an emphasis on simple language (UK Government Digital Service, 2016[48]).

Survey results show that 44% of OECD Member respondents (48% of all respondents) have measures in their ATI laws to provide additional support to marginalised groups in making a request (Figure 3.13), with 50% of OECD Member respondents (56% of all respondents) providing support in practice.

Figure 3.13. Respondents that provide additional support for requesters with special needs, as specified in ATI laws and/or provided in practice, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 50 respondents (32 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

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Lastly, Box 3.5 illustrates some good examples from Colombia in making the ATI law more accessible to all social groups.

Box 3.5. Increasing inclusiveness in accessing information in Colombia

The *Procuraduría general de la Nación* has developed a series of tools to guide public officials in providing access to public information to people with disabilities, members of Indigenous communities and other minorities in the country. They have also created specific booklets for these members of society to ensure that they are aware of their ATI rights and how to use them.

The guide for public officials was created with the following points in mind, among others:

- Use simple language and avoid legal technicalities.
- Understand that it must be understood by people without knowledge of the matter.
- Keep it short.
- Only include theoretical and technical aspects when strictly necessary.

Access to public information for people with hearing disabilities

An explanatory video in sign language was developed for citizens with disabilities or hearing impairments in order to present the Transparency and Access to Information Law.

Access to public information for people with visual disabilities

The entire law was transformed into braille and macrotypes for citizens with disabilities or visual impairments.

Access to public information for ethnic populations that speak languages other than Spanish

Colombia has an Indigenous population of 2 million people. The law has been translated into six indigenous languages: Arhuaco, Chamí, Katío, Koreguaje, Nasa and Wayuu.

Source: Procuraduría general de la Nación (2014[49]), *ABC Principles and Law 1712 of 2014 with Differential Criteria for the Right to Access Public Information, Law 1712*, https://www.procuraduria.gov.co/portal/cartilla-criterio-diferencial.page; Procuraduría general de la Nación (n.d.[50]), *Guide to Differential Criteria in Information Accessibility*, https://www.procuraduria.gov.co/portal/media/file/GU%C3%8DA%20DE%20CRITERIO%20DIFERENCIAL(1).pdf.

Key measures to consider on reactive access to information and promoting inclusiveness

- Committing to the use of plain and simple language in all public communication with citizens, and especially in regard to guidance on access to information and requesting procedures to ensure that the right to information is used by all social demographics.

- Making ATI requests free of cost to enable inclusive and equitable access to information for all citizens and stakeholders, including those who rely most on public policies and services, or who are often disproportionately affected by government decisions.

- Undertaking specific campaigns, training and workshops with citizens and CSOs to raise awareness of their right to information and how requests are the main avenue to exercise this entitlement.

Use of exceptions, appeals processes and sanctions

Countries can have legitimate reasons to exempt some information from being disclosed. For example, public officials may invoke their ability to refuse to grant access to public information if they see legitimate consequences of doing so: the information in question could pose a threat to national security or international relations or could expose the personal data of an individual or violate their privacy. That said, exceptions must be appropriate. Often, these categories can be ill-defined and vague, allowing an excess of discretion for each public official in ways that could limit public access to information. In some cases,

this can be mere misinterpretation rather than purposeful misuse. However, for this reason, it is crucial that all exceptions are balanced by a strong appeals process coupled with independent oversight (Section 3.3.4 for bodies responsible for oversight).

Before the appeal stage, public interest tests and harm tests present two common ways to exempt information while ensuring that any exceptions employed are proportionate and necessary. Under harm tests, refusals are only made when disclosure poses a risk of actual harm to a protected interest, whether for a person, national defence, economic interests or others. The public interest test asks public officials to weigh the harm that disclosure would cause to the protected interest or individual and whether it justifies withholding information that may serve the public interest (Open Society Justice Initiative, n.d.[51]). A mandatory public interest override, which can force disclosure of information that is in the public interest, such as information on human rights abuses, corruption or crimes against humanity, is also an important standard in ATI laws. The international standards in this regard include the list outlined in Box 3.6.

Box 3.6. International standards for exemptions to providing access to information

According to international standards, exemptions to providing access to information include:

- National security (i.e. information that would compromise the safety of a country against threats such as terrorism, war or espionage).
- International relations (i.e. information that would compromise relations with other countries).
- Personal data (i.e. information that would infringe on an individual's right to privacy).
- Commercial confidentiality (i.e. information that would compromise the privacy of sensitive information of individual firms).
- Public health and safety (i.e. information that would compromise the health and safety of the public or a specific demographic).
- Law enforcement and public order information received in confidence.
- The prevention, investigation and prosecution of legal wrongs.
- Fair administration of justice and legal advice privilege.
- Privacy.
- Legitimate commercial and other economic interests.
- Management of the economy.
- Conservation of the environment.
- Legitimate policy making and other operations of public authorities.

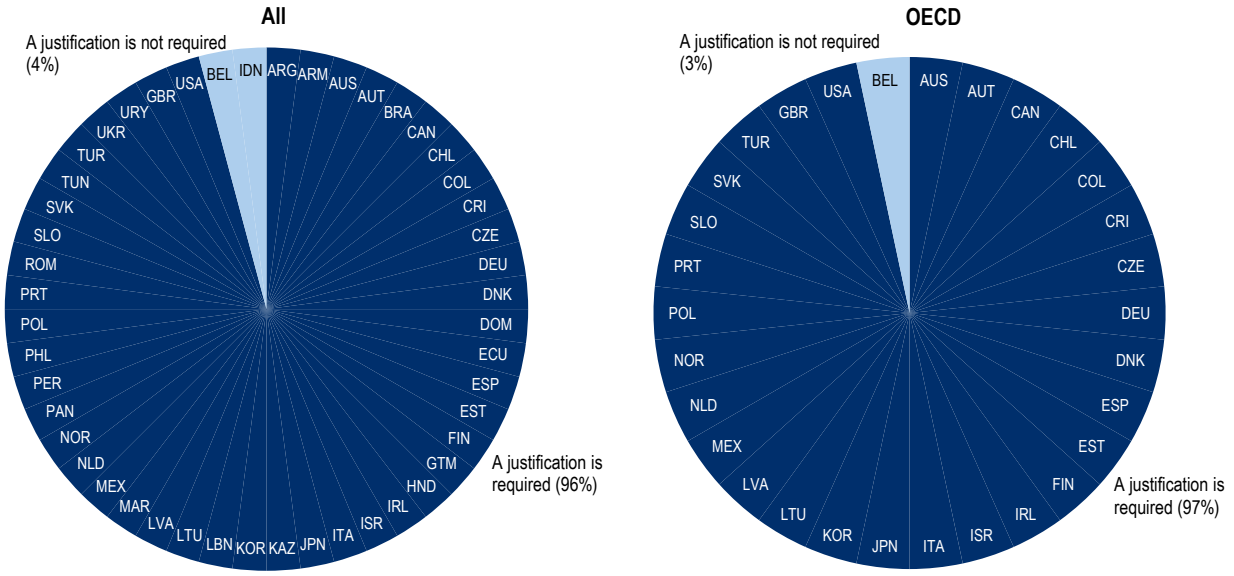
Source: Author, based on Article 19 (2016[29]), *The Public's Right to Know: Principles on Right to Information Legislation*, https://www.article19.org/data/files/RTI_Principles_Updated_EN.pdf; OAS (2020[52]), *Inter-American Model Law 2.0 on Access to Public Information,* http://www.oas.org/en/sla/dil/docs/publication_Inter-American_Model_Law_2_0_on_Access_to_Public_Information.pdf; OECD (2016[32]), *Open Government: The Global Context and the Way Forward*, http://dx.doi.org/10.1787/9789264268104-en.

In the event of a denial of a request for access to information, 96% of all respondents require a justification to be provided based on the use of exceptions (Figure 3.14). Having such a requirement in place is valuable as it can deter public officials from refusing a request as easily and encourages them instead to verify that the exception is legitimate or seek advice from an office or official in charge of ATI, or from an oversight body, on whether the exception is plausible.

In fact, most ATI laws provide requesters with the possibility to file appeals in the event of a denied ATI request or any improper procedures during the process. The grounds for these appeals vary across countries but most often include denial of information (100% of OECD Members, 98% of all respondents), negative administrative silence (94% for both categories), breaches of timelines (84% of respondent OECD Members, 86% of all respondents) or excessive fees (53% of respondent OECD Members, 46%of all respondents) (Figure 3.15).

Figure 3.14. Respondents that require a justification if the information is denied based on exceptions provided by law, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 48 respondents (30 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

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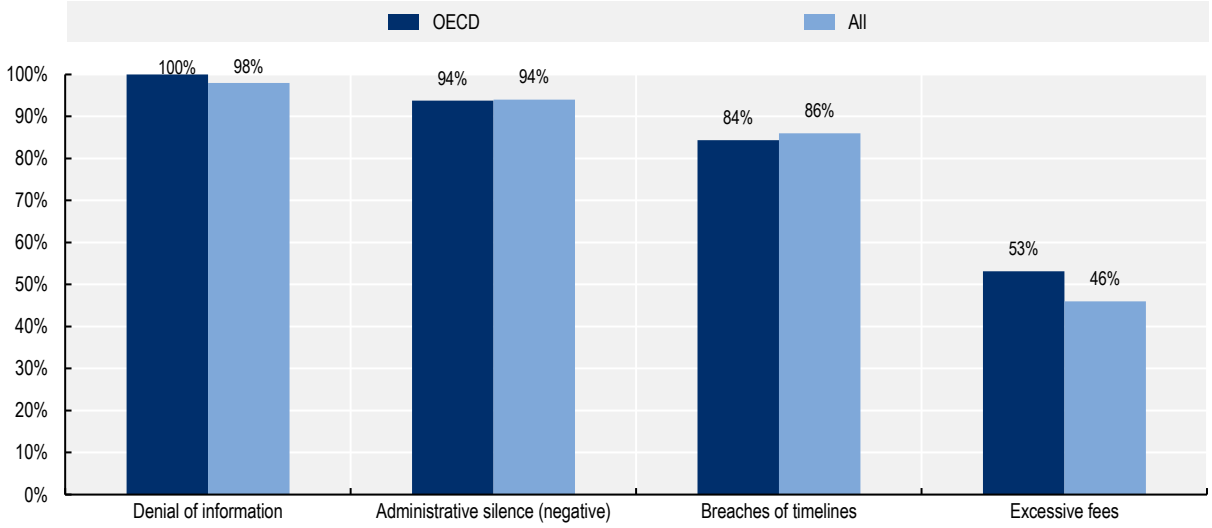
Figure 3.15. Grounds for appeals in the event of a denied ATI request, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 50 respondents (32 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

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The case for negative administrative silence, meaning the absence of a response within the period specified, is particularly relevant as a lack of a proper justification may lead to a discretionary use of denials. **Canada** has a more substantial process than most as the Office of Primary Interest makes recommendations on which exceptions (including both exemptions and exclusions) could be applied to the records requested. These recommendations are reviewed by the Access to Information and Privacy Office within the department and the information within the records can be withheld based on a final determination by the head of the institution or his/her delegate. Once the requester receives the response, the requester may submit a complaint to the Office of the Information Commissioner (OIC), who, during the investigation, may require further justification from the institution as to why the information in question was withheld. If the OIC believes the information was withheld in error or without sufficient justification, the Information Commissioner may order the institution to release the information.

> ***Key measures to consider on reactive access to information and appeals***
>
> *- Moving towards systematically providing a justification when a request is denied and avoiding negative administrative silence, so as to ensure that citizens and stakeholders trust the government and have the necessary basis to ask for a revision of a decision.*
>
> *- Ensuring the grounds for appeals are broad enough to reflect the multitudinous ways governments can refuse information – other than an outright denial – and guaranteeing that these refusals are subject to adequate oversight.*
>
> *- Verifying that, as with making requests, the process of filing appeals is simple, free of charge to the extent possible and subject to clear timelines. Whether internal, external or judicial, the available mechanisms could also provide information and support on all stages and aspects of the process and the grounds for appeal. It could also be accessible to all without legal representation or financial burden.*

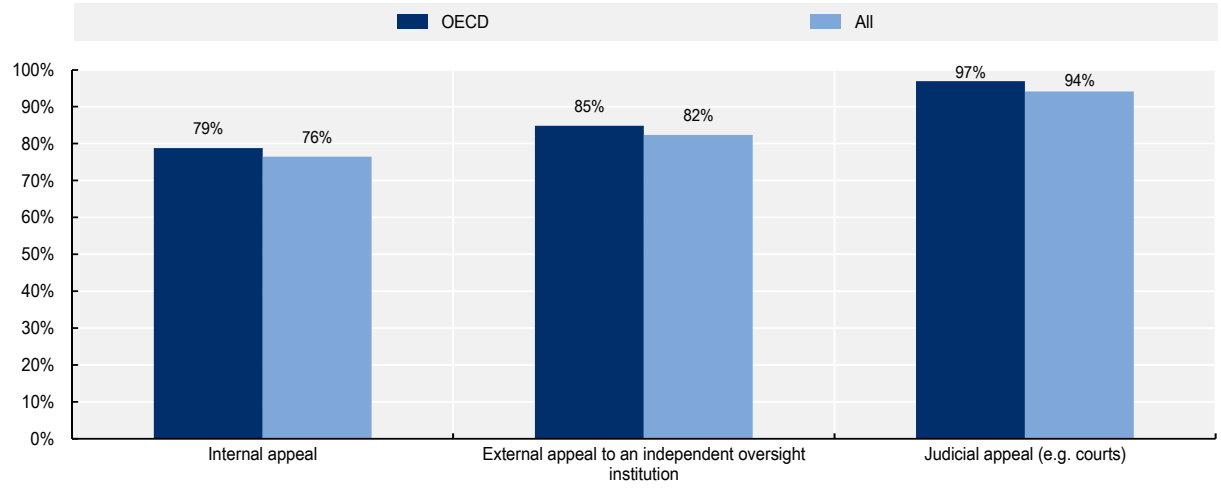
Processes for appeals that do not have clear guidelines or are not implemented in full can hamper the efficiency of this system and affect trust in the mechanisms that safeguard this right. The most common mechanisms for appeals are the following:

- **Internal appeal**: The requester can submit an internal appeal to the same institution or body that denied his/her original request for information.
- **External appeal to an independent oversight institution**: The requester can submit an external appeal to an independent oversight institution (e.g. an information commission, ombudsman).
- **Judicial appeal** (e.g. courts): The requester has the right to submit a judicial appeal. Some countries may require that requesters first lodge an internal or external appeal.

All countries have at least 1 mechanism for appeals, with 79% of respondent OECD Members (76% of all respondents) having in place an internal appeal; 85% of respondent OECD Members (82% of all respondents) an external appeal; and 97% of respondent OECD Members (94% of all respondents) having a judicial appeal (Figure 3.16). The judiciary plays a key role in upholding the right to access information as it is often the “last resort” for requesters to appeal a decision with an independent body. However, the courts are sometimes not competent to judge the case because the matter does not fall within their jurisdiction (for instance, the public official concerned is outside their jurisdiction). Other countries may face challenges with judicial pathways, as this option may be inaccessible (e.g. due to its cost), inefficient (e.g. due to delayed decision-making or an inability to enforce a decision) or the process may not be sufficiently independent.

Figure 3.16. Mechanisms in place for appeals in the event of a denied ATI request, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (33 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

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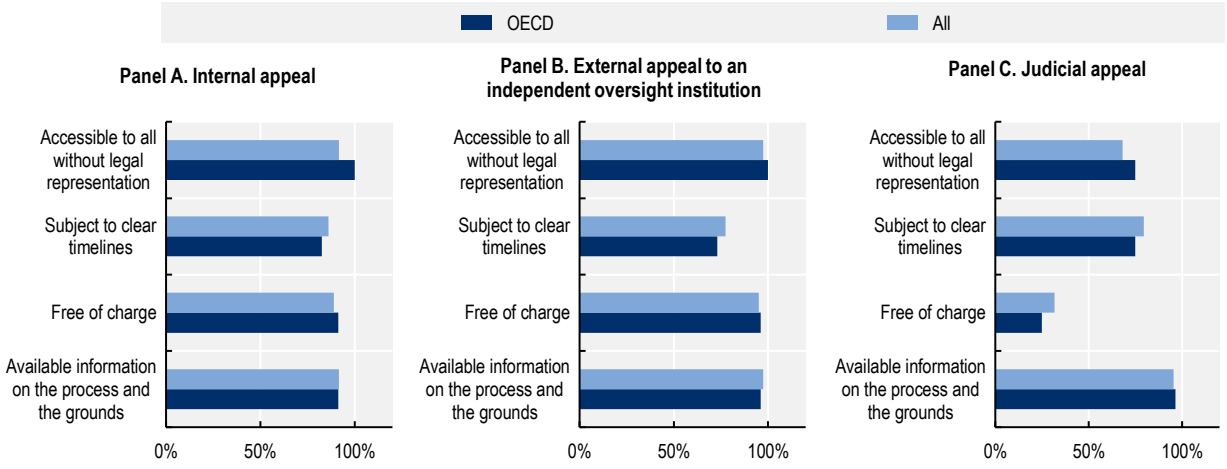
Concerning appeals, regardless of whether the appeal is internal, external or judicial, certain conditions could be met to improve these processes (Figure 3.17). For example, information could be available on the grounds for appeal (which is the case for 92% of all respondents for internal appeals, 98% for external appeals and 95% for judicial appeals). In addition, the processes could be free of charge and subject to clear timelines. Last, they could be accessible to all without the need for legal representation (which is the case for 92% of all respondents for internal appeals, 98% for external appeals, and 68% for judicial appeals). The **United Kingdom** provides a good practice in this regard as the country has internal, external and judicial appeals processes in place, with all three satisfying the below conditions (Figure 3.17). It also has a dedicated webpage entitled "If your request is turned down" to provide specific instructions to requesters on the next steps that they can take to submit an appeal (UK Government, n.d.[53]).

Figure 3.17. Conditions satisfied by the appeals or revision procedures related to denied ATI request, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: The figure corresponds to the countries with an internal, external and/or judicial appeal process. For internal appeals, "All" refers to 36 respondents (23 OECD Members and 13 non-Members). For external appeals, "All" refers to 40 respondents (26 OECD Members and 14 non-Members). For judicial appeals, "All" refers to 44 respondents (28 OECD Members and 16 non-Members).
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/brxzda

Establishing sanctions for public officials who fail to meet the obligations outlined in ATI laws is essential. The lack of sanctions can create perverse incentives, resulting in breaches of an ATI law, such as overly broad application of exemptions or simply administrative silence. It can also be the source of weak enforcement of the law. For example, in some countries, response periods are not respected even if there are legal limits, exceptions are overused without proper justification, and the sanctions for non compliance are either non-existent or are not applied in line with the provisions of the legal framework.

> ***Key measures to consider on reactive access to information and sanctions***
>
> *- Recognising that appeals procedures need to be effective and accessible to all citizens. Therefore, information on the process and the grounds could be available and the process must be free of charge, subject to timelines and available to all without legal representation.*
>
> *- Implementing strong and effective enforcement mechanisms and sanctions for public officials who fail to meet the obligations outlined in ATI laws to help avoid perverse incentives and ensure accountability for public officials who violate the law.*

3.3.4. Institutional frameworks governing access to information

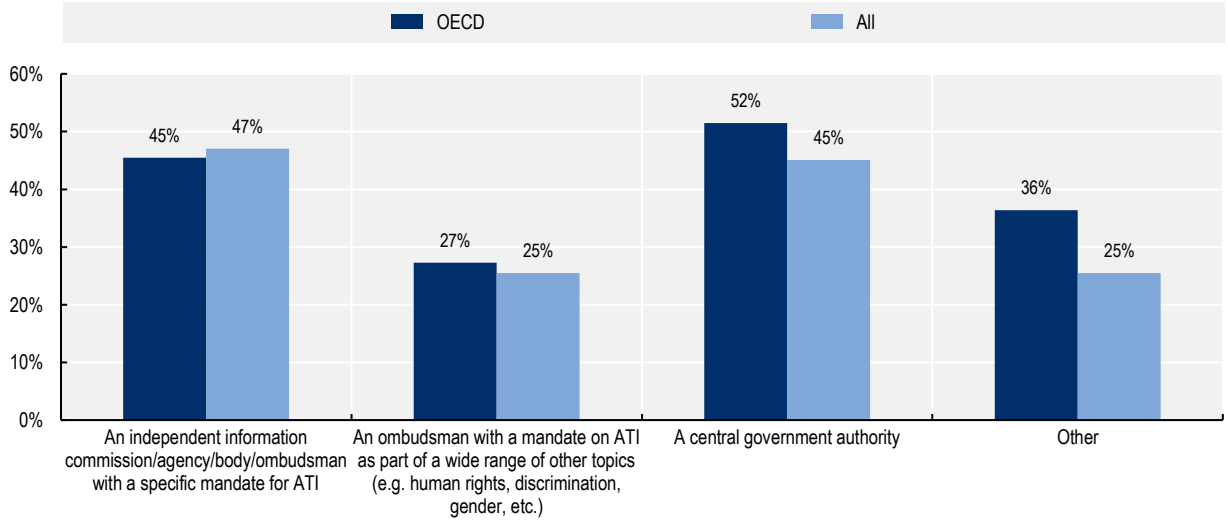
Bodies responsible for enforcement, monitoring and/or promotion of ATI laws

An important factor in implementing ATI laws is the existence of institutional arrangements for oversight of their application. The responsibilities of these bodies vary but often include enforcement, monitoring and promotion of the law. Such bodies can be an independent information commission (or agency or other body) with a mandate purely to oversee the implementation of ATI laws (which is the case for 45% of respondent OECD Members, 47% of all respondents) or they could be a body such as an ombudsman with an ATI mandate as part of a wider remit (e.g. human rights, discrimination or gender) (which is the

case for 27% of respondent OECD Members, 25% of all respondents). The ATI oversight mandate can also be assigned to a central government body, which is not independent of the executive branch (which is the case for 52% of respondent OECD Members, 45% of all respondents). Some respondents have systems in which 2 or more public bodies oversee the implementation of ATI laws. The "Other" category in Figure 3.18 (36% of respondent OECD Members, 25% of all respondents) comprises countries that either have no body specified in the law or have a body that does not fall under any of the aforementioned categories. As discussed in further detail in Section 4.5 in Chapter 4, governments are increasingly grappling with new challenges emerging from the need to balance access to information while ensuring the right to privacy and personal data protection. In this context, bodies responsible for access to information (ATI) are increasingly identifying synergies between ATI and on personal data protection in order to safeguard both rights, with some consolidating these policy areas into a single institution.

Figure 3.18. Bodies responsible for the enforcement, monitoring and/or promotion of ATI laws, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (33 OECD Members and 18 non-Members).
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/h8fj6u

The mandate and responsibilities of these bodies vary widely among countries but can be grouped into enforcement, monitoring and promotion of the law. In relation to enforcement, bodies can be in charge of managing an ATI online portal; consolidating the proactively disclosed information from other government institutions; reporting to parliament on its implementation regularly (e.g. yearly); and redistributing misallocated or non-allocated requests among government institutions. They are also related to appeals and/or revision processes, such as handling complaints on breaches to the law, initiating investigations on potential breaches, issuing opinions/witness in litigations on the law; and sanctioning public officials/institutions for non-compliance.

Monitoring responsibilities can be related to compliance with the law itself, the internal appeals process and/or the awareness of the law among citizens. Finally, bodies responsible for promoting the law can be in charge of advising public institutions on its application and providing training and/or awareness-raising campaigns to civil servants and/or civil society. According to the OECD Survey on Open Government findings, the most common responsibility of independent information commissions and central government authorities is advising public institutions on the application of the ATI law. For ombudsman institutions, it

is handling complaints on breaches of the law. Certain countries with two bodies with ATI mandates were found to face competing responsibilities in terms of enforcement of the law.

The independence and enforcement capacity of these bodies is crucial. Some do not have the necessary capacities to sanction non-compliance or adequate resources (human and financial) or independence to effectively fulfil their mandate. Furthermore, these oversight bodies often only have the competency to issue opinions or recommendations, leaving the public entity to decide whether to comply or not (OECD, 2019[54]). This can lead to weak implementation of ATI laws. Lastly, sometimes these bodies do not collect and properly disseminate data on the implementation of the ATI law by public entities and/or its use by citizens. One good example of data collection in this regard is that of **Uruguay**, which through its National Index of Transparency and Access to Information (INTAI), calculates the level of compliance of ATI among public bodies and assesses both reactive and proactive disclosure. Unfortunately, submitting a self-assessment to the Index is optional for these bodies and is not enforced (Government of Uruguay, n.d.[55]). The National Institute of Statistics and Geography (INEGI) in **Mexico** also collects statistics on the management and performance of the public bodies in charge of promoting transparency and access to public information (INEGI, n.d.[56]).

As noted in Section 2.4.1 in Chapter 2 on oversight and complaints mechanisms, publicly funded and independent oversight mechanisms are vital for the protection of fundamental rights, including the right of access to information. As the OECD report *The Role of Ombudsman Institutions in Open Government* (2018[56]) notes, these bodies often have varying mandates, from protecting human rights and dealing with complaints against the public administration, to mediation between citizens and their governments and whistleblower protection. Additionally, many ombudsman institutions have a role in ensuring access to information. For some, their responsibilities are part of a wider mandate on protecting civic freedoms and handling grievances more generally. In these cases, there may or may not be another body with a more central role in monitoring and oversight of ATI laws more specifically, for example an information commission.

In some countries, the ombudsman does have this official mandate and he/she undertakes tasks such as receiving and reviewing complaints from citizens, monitoring reactive and proactive disclosure by public bodies, providing advice and recommendations to the government on ways to improve ATI and raising awareness among the public (Zuegel, Cantera and Bellantoni, 2018[57]). For example, the Parliamentary Ombudsman in **Denmark** also has a mandate for maladministration with a specific focus on ATI (Danish Parliamentary Ombudsman, n.d.[58]). In fact, in 2016, the Parliamentary Ombudsman undertook an internal investigation in relation to the Access to Public Administration Files Act and how it was interpreted and used by ministries in an effort to foster greater openness (Zuegel, Cantera and Bellantoni, 2018[57]). Furthermore, many also have *suo moto* jurisdiction (Section 2.4.1 in Chapter 2), meaning they can begin investigative proceedings on their own initiative regarding non-compliance with ATI obligations (Zuegel, Cantera and Bellantoni, 2018[57]). In other countries, ombudsman institutions share their responsibilities on ATI with other bodies. For example, in **Finland**, the Parliamentary Ombudsman and the Chancellor of Justice both have wide-ranging powers on ATI (OECD, 2021[59]).

Ombudsman institutions can also play an extensive role in promoting the right to information. For example, the ombudsman in **Guatemala** has assisted in reviewing and drafting legislation and policy regarding access to information, while the ombudsman of **Peru** has launched a handbook for public officials on exceptions to the right to information to avoid overly broad interpretations of the law (Zuegel, Cantera and Bellantoni, 2018[57]). The only supranational ombudsman institution, the European Ombudsman, also plays a key role in ensuring public access to documents held by EU institutions, bodies, offices and agencies. Citizens can contact the European Ombudsman if their request is refused by any of these bodies (European Ombudsman, n.d.[60]).

As with other oversight institutions related to the protection of civic space, evidence collected by the Survey suggests that common elements support the effective functioning of ATI oversight bodies. First, the

establishment of a clear and well-disseminated mandate that sets roles and responsibilities is an important factor in ensuring the body's legitimacy. Second, the institutional autonomy and the independence of public officials within the organisation are key to reinforcing the impartiality of their decisions and operations. Last, their enforcement capacity – both in terms of their ability to issue sanctions and in having adequate human and financial resources to perform their role – is crucial for the oversight body to effectively conduct its mandate.

> ***Key measures to consider on oversight institutions for access to information***
>
> *- Establishing a dedicated ATI oversight body to ensure oversight, supervision, monitoring and evaluation of the ATI law. A clear mandate, sustained resources, an adequate level of independence and capacity for enforcement need to be provided to ensure the protection of the right. Where there is adequate institutional capacity, a long-term view could be taken to establishing an independent commission on ATI.*

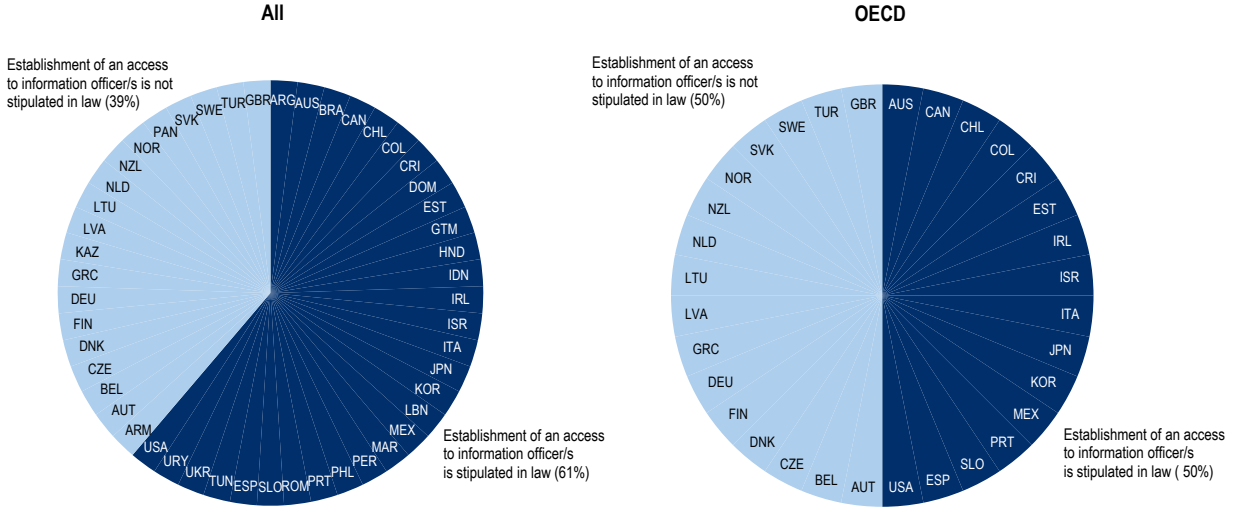
ATI information offices or officers across public institutions

Public institutions sometimes struggle with their ATI obligations due to a lack of a dedicated office or official charged with monitoring the law's implementation. Several ATI laws currently require the establishment of an information office or officer responsible for ensuring compliance with the legal framework. These officers are generally appointed to guarantee both proactive and reactive disclosure of information, including but not limited to, consolidating proactively disclosed information, responding to information requests, redistributing misallocated or non-allocated requests among other public bodies, and supporting colleagues in responding to requests.

Of all the countries that responded to the Survey, 61% stipulate the establishment of this office/r in their ATI law (Figure 3.19). However, while several countries may not directly include these provisions in the law, data from the Survey found that they have established similar positions in practice.

Figure 3.19. Respondents that stipulate the establishment of ATI information offices or officers in the law, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 49 respondents (32 OECD Members and 17 non-Members).
Source: 2020 OECD Survey on Open Government.

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Key measures to consider on establishing ATI information offices or officers

- Establishing ATI information offices or officers in all public bodies and equipping them with adequate resources to carry out their activities to support public administrations in effectively implementing ATI laws.

3.4. Trends, challenges and opportunities for strengthening access to information, as identified by CSOs and other stakeholders

As discussed in Section 2.1.5 in Chapter 2, emergency measures introduced to contain extraordinary situations, such as environmental disasters, health emergencies or terrorism threats, can present a threat to civic space, including ATI. Even strong ATI laws are not immune to external shocks and weakening, with countries adding new exemptions, extending deadlines and even suspending obligations in times of crisis. During the COVID-19 pandemic, several countries took advantage of turbulent contexts to disproportionately restrict their ATI laws, for example, by implementing emergency laws and measures that curtailed civic freedoms, and access to information in particular. The COVID-19 Civic Freedom Tracker from the International Center for Not-for-Profit Law (ICNL) found that 43 countries across the globe restricted access to information in the wake of the pandemic, including by using extraordinary and other informal measures (ICNL, 2021[61]).[8] The most common measures were suspending or altering deadlines for response or the appeals process. While many measures were overturned or repealed after some months, the situation revealed gaps in the ATI frameworks of many countries in regard to maintaining this right in a crisis context.

The pandemic proved that information and data can save lives but, for that to happen, safeguards must be put in place to ensure that information continues to be available. Ensuring the right to ATI while responding to other emergency measures revealed itself to be a complex task for governments. The following measures, based on findings from the RTI Rating (n.d.[27]); UNESCO (2020[62]); and Wylie et al. (2020[63]), could inform future responses to maintaining ATI in the midst of crises.

Key measures to consider on strengthening access to information

- Minimising restrictions on ATI by applying the three-part test:

- *First, there must be a legal basis in the national law that enables the limitation of the right in specific circumstances.*
- *Second, the restriction must protect a legitimate interest, such as national security, public order, etc.*
- *Third, the restrictions must be necessary to protect the legitimate interest (i.e. the least obstructive measures could be used).*

- Promoting the use of electronic requests for information.

- Enhancing proactive disclosure, especially with information and data related to the crisis (i.e. health, budgets, procurement and special programmes).

- Ensuring that oversight and enforcement ATI bodies can continue working by setting the necessary electronic systems in place if in-person attendance is restricted.

- Strengthening record management systems to monitor government decision making during the emergency.

- Elaborating a comprehensive public communication strategy to enable information sharing with citizens, which could be disseminated through a multi-channel approach clearly and simply. This can help counter disinformation and build trust during the crisis.

- Conducting a consultation with stakeholders to prioritise the information and data needs, including the preferable format and channels for dissemination.

Several lessons learned from across countries have emerged that can guide governments during a crisis to ensure ATI. Some countries and local governments have also started developing comprehensive guidelines for implementing ATI during a crisis context, such as Mexico City (Box 3.7).

Box 3.7. The Mexico City Protocol to Access Information in Times of Crisis

Following an earthquake in 2019 and the COVID-19 pandemic in 2020, the government of Mexico City decided to create a Protocol to Access Information and Transparency in Times of Crisis. In sum, it outlines the minimum actions for transparency in emergency situations, by bodies subject to the ATI law, by oversight bodies and by people and communities in each of the stages of a risk situation: prevention, reaction and recovery. These actions can include digitising documents, identifying which information could be published and disseminated during the emergency situation and how to monitor and evaluate emergency ATI actions.

To create the Protocol, the government conducted an open and participative process.

- First, it carried out six co-creation roundtables with multiple stakeholders to co-design a preliminary draft of ideas, proposals and definitions to be included in the protocol.
- Second, in collaboration with the National Center for Disaster Prevention and external specialists on risk management, the content for the Protocol was elaborated. For this stage, three co-creation roundtables with multiple stakeholders were encouraged to revise the content in a collaborative way and agree on a final document.
- Third, once the Protocol was launched, a toolkit was co-elaborated with stakeholders to help different actors implement the Protocol.

The final document is written in plain language and reflects the different needs of all sectors of society. It is also adaptable to any crisis context and provides recommendations to avoid the circulation of fake news during a crisis.

Source: INAI (2020[64]), *Información de Iberoamérica para hacer frente a los desafíos derivados por la emergencia sanitaria provocada por el Covid-19* (Information from Ibero-America to face the challenges derived from the health emergency caused by Covid-19) https://micrositios.inai.org.mx/accionescovid19/; INFOCDMX (2021[65]), *Protocolo de Apertura y Transparencia ante el Reisgo: Prevención, Reacción y Recuperación* (Opening Protocol and Transparency Before Risk: Prevention, Reaction and Recovery), https://infocdmx.org.mx/micrositios/2021/protocolo-apertura-y-transparencia/assets/files/inicio/Protocolo_Apertura_Transparencia_Riesgo.pdf.

Overall, most ATI laws in OECD Members align with the aforementioned good practices. Even though there is room for improving such provisions, research suggests that the main challenges for increasing ATI transparency are linked to their implementation and measuring their impact rather than weaknesses in the legal framework.

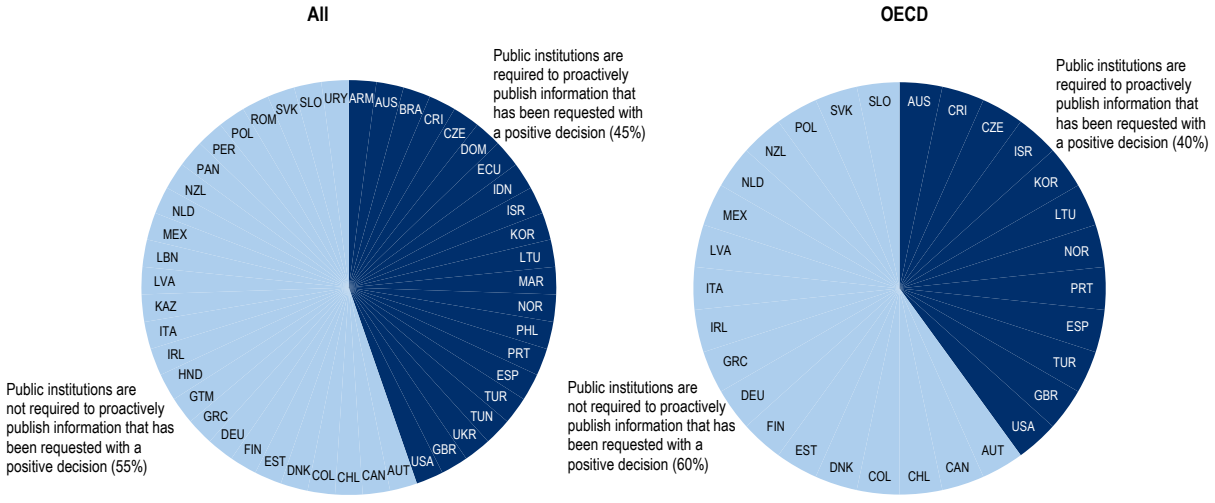
Countries can face a range of internal and external challenges in fulfilling the implementation of their ATI laws. The external challenges are those not explicitly related to the public administration but to elements and dynamics in the country that may influence its implementation. These can include: low levels of trust in public institutions, inadequate communication and awareness-raising for stakeholders, and complex geography and infrastructure. Furthermore, the success of ATI laws can be negatively impacted by internal challenges, which refer to the capacity of public administrations to implement ATI laws. These include a lack of political will, inadequate monitoring, evaluation and enforcement mechanisms, insufficient human and financial resources and inadequate technology and information systems management in the public sector.

The lack of strong monitoring and evaluation mechanisms is a major internal challenge in implementing ATI laws. At the national level, access to information laws are monitored and evaluated, to varying degrees,

by different types of national entities: parliaments, ATI bodies (independent commissions, ombudsman institutions, etc.), administrative services in charge of the laws and administrative evaluation bodies, such as general inspectorates and supreme audit institutions. For ATI in particular, robust data and statistics on the number of requests, the topics requested, the average response time and the reasons for denial/refusal, among others, allow countries to identify challenges, bottlenecks and specific needs for information. For instance, 45% of all respondents, like **Australia, Lithuania, Portugal** and **Tunisia,** require public institutions to proactively publish information that has been repeatedly requested with a positive decision taken on its disclosure (Figure 3.20). In **Uruguay**, although not required by law, public bodies proactively publish information that has been repeatedly requested with a positive decision taken on its disclosure. This measure can help ease the administrative burden of ATI requests, saving time and resources for the public administration in the future.

Figure 3.20. Respondents required to proactively publish information that has been repeatedly requested, 2020

Percentage of OECD Members and Non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 47 respondents (30 OECD Members and 17 non-Members).
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/9qjf6z

In addition, the Survey revealed that 64% of respondents collect data on the implementation of the ATI law. The types of data most commonly collected by OECD Members are the number of requests received and the number of requests processed, followed by the average time to respond to a request, the number of requests denied, the number of complaints received as well as the number of appeals (upheld and dismissed). Evaluation, in particular, makes it possible to predict the law's impact upstream (*ex ante*), to adjust its provisions as they are implemented (*in itinere*) and to determine whether they could be continued, abandoned or corrected (*ex post*).[9] Ultimately, monitoring and evaluation help to improve the quality of public debate and restore the legitimacy of public action by basing discussions and choices on facts and analysis (Conseil d'État, 2020[66]). Yet, only a few countries conduct some form of evaluation of their ATI laws, such as **Brazil** and **Ireland**, and even fewer undertake an impact evaluation, such as those conducted in **Finland** and **Italy**.

Key measures to consider on strengthening access to information

- Mainstreaming different forms of both process and impact evaluations as a first step towards recognising where reforms of the ATI law and its practice could be valuable.

3.4.1. Fostering impact evaluations and empowering civil society on the use of ATI to monitor government action and increase accountability

Determining whether ATI laws are being effectively implemented and are having a positive impact (i.e. whether they are contributing to more transparency and accountability and the overall public interest information ecosystem in a country) is difficult to assess and measure as there is limited evidence on the circumstances that can affect their effective implementation and their long-term impact. Conducting a quality impact evaluation can provide reliable information on why and how a policy was successful or not and the underlying causal mechanisms leading to success or failure (OECD, 2020[67]). Although standards or principles on the right to access information are subject to different types of national or international assessments, they mostly focus on the robustness of the ATI law by analysing its provisions or monitoring its implementation by collecting input data such as the number of requests received and/or denied, and the number of datasets available to the public. While this endeavour is useful in identifying whether the short-term objectives of an ATI law are being achieved (i.e. the public has full access to information), it is less valuable in understanding whether this information is being used and re-used by requesters, for what overall aim and whether the information goes on to have an impact beyond the individual level.

Assessing the impact of ATI laws on broader policy goals necessitates accurate, verifiable and documented data on government practices and perception of how access to information contributes to policy making and service delivery beyond value-based judgements. This implies having quality data on both the demand side of the law (the number of requests received and denied by subject, the average time of response, the number and reasons for denial/refusal, among others) as well as the supply side (responsiveness, capacity and awareness from implementing and oversight institutions). A comprehensive analysis of the supply and demand ecosystem of an ATI law, including the external factors affecting its implementation, can therefore help determine its maturity, quality and outcomes (Calland and Neuman, 2007[68]). Nevertheless, as discussed above, few countries have effective systems in place to gather such data.

Key measures to consider on strengthening access to information

- Learning from other countries wherein ATI impact data have been gathered and evaluations have taken place, and endeavouring to introduce and use systematic and evidence-driven impact assessments of both the legal framework and practice so as to improve ATI implementation and strengthen civic space.

Civil society also has a multi-faceted role to play in the process of assessing ATI. CSOs, in particular, can take different approaches, depending on their mission statements and intended outcomes (Box 3.8). First, CSOs can be invited to consult and engage with the government on potential ATI impact frameworks and give first-hand feedback on any gaps or issues that could be considered in the procedures involved. Since CSOs often operate as an important source of information for citizens, many employees of CSOs have filed an ATI request over the course of their tenure and can provide the government with reflections that they may not have otherwise contemplated. They can also lobby the government with comparative initiatives undertaken and data collected on measuring the ATI law in other countries. Second, CSOs can monitor governments to ensure that they follow through on the findings of assessment processes and that particular attention has been given to any recommendations from civil society and citizens, with clearly demonstrated feedback loops. CSOs can then take an active role in evaluating changes made to the ATI law or processes following the impact assessment.

Box 3.8. The role of civil society in using and ensuring access to information

Civil society has been an instrumental actor in the initial development and recognition of the right to access information. Towards the end of the 20th century, activists and reformers began to use constitutional and rights-based arguments and make comparisons between their countries' legal frameworks and those with more advanced laws on access to information (Darbishire, 2015[18]). In particular, in post-communist Central and Eastern Europe, civil society played a significant role in pushing through more constitutional provisions and laws to establish ATI as a fundamental instrument to strengthen democracy (Darbishire, 2015[18]). Growing debate among governmental and non-governmental actors across Europe led to significant changes at the European supranational level to heighten the importance of transparency in modern public governance (Darbishire, 2015[18]). Movements in Eastern Europe and Africa also began to inspire similar changes in Latin America. Globally, "a strong and well-organised international civil society movement pushed forward the standard-setting, through national, regional and international declarations on the main elements of access to information laws" (Darbishire, 2015[69]), some of which included the major milestones mentioned above.

Access to information empowers civil society and allows CSOs, journalists, activists and others to equip themselves with the knowledge needed to have their rightful say in matters that concern them (UNCAC Coalition, 2022[70]). Because of this, civil society actors have a stake in demanding that public officials fulfil their legal obligations so that they can carry out their own respective mission, whether they involve advocacy, lobbying, service provision, watchdog activities or others. CSOs can also use the information for varying purposes: for example, some CSOs may work in partnership with the government to deliver services and wish to access public documents or budgets that would inform their tasks. Others may serve as critics that seek to monitor and evaluate government actions and call for greater accountability in policy making. Regardless of the objective, CSOs have achieved significant impact in both using ATI and ensuring that the right is protected and promoted among citizens. For example, the Right2Know campaign in South Africa "aims to ensure the free flow of information necessary to meet people's social, economic, political and ecological needs" (Right2Know, 2022[71]).

CSOs, particularly those operating at the local level, know the needs of their communities and are often the first port of call for citizens looking for assistance, especially if their civic freedoms have been infringed upon. As a result, CSOs play a key role in raising awareness of the right to information. In fact, as the U4 Anti-Corruption Resource Centre states, there are many instances of platforms being created by CSOs to support citizens with submitting ATI requests and with making an appeal in the case of a denial (U4, 2014[72]). Many also help citizens access any previous requests made and find already available answers from government bodies (U4, 2014[72]). In filing their own requests, overseeing that ATI laws are implemented fully and encouraging citizens to request information, CSOs contribute to strengthening both transparency and stakeholder participation in public governance. There is also substantial evidence demonstrating the changes that materialise through the use of ATI laws.

Ireland: CSOs using ATI to improve public services

ATI also has demonstrated value in improving public services in the long term. A notable example of this in Ireland took place in 2005. ATI disclosures regarding the mistreatment of residents in public nursing homes led to nationwide debate and calls to improve healthcare facilities (CHRI, 2007[73]). Consequently, a Commission of Investigation was established to review the management, operation and supervision of one nursing home in particular. Additional information requests uncovered that the government had been aware of such issues and had delayed acting promptly. As a result of the controversy, an independent inspection of all nursing homes began nationwide in 2009 (HIQA, 2009[74]).

Source: UNCAC Coalition (2022[70]), "Access to information", https://uncaccoalition.org/learn-more/access-to-information/; U4 Anti-Corruption Resource Centre (2014[72]), *Right to Information Laws: Impact and Implementation*, https://www.u4.no/publications/right-to-information-laws-impact-and-implementation.pdf; Right2Know (2022[71]), "Latest from the Right2Know", https://www.r2k.org.za/; Commonwealth Human Rights Initiative (2007[73]), *Our Rights, Our Information: Empowering People to Demand Rights through Knowledge*, https://www.humanrightsinitiative.org/publications/rti/our_rights_our_information.pdf; Irish Health Information and Quality Authority (2009[74]), "Independent inspection of nursing homes to begin", https://www.hiqa.ie/hiqa-news-updates/independent-inspection-nursing-homes-begin.

Regarding measuring the broader impact of ATI on other policy goals, civil society can be instrumental in advocating for the law and highlighting its successes, which can lead to greater recognition from public officials of its importance across diverse policy areas. For example, journalists can shed light on meaningful changes that have resulted from information requests, especially in cases that could spur national or even international debate. Academics, research institutions and the private sector can collaborate with public bodies to produce useful statistics on the ATI law and present data in visually accessible and appealing ways for all demographics. Citizens themselves can be directly involved in activities such as focus groups and workshops on the impact of ATI laws from their perspective. CSOs and citizens that have filed a request can be interviewed to share their opinions and learn how their suggestions for improvement could be concretely implemented to ensure feedback loops end to end.

> ***Key measures to consider on strengthening access to information***
>
> *- Ensuring that the relationship between government and civil society in relation to access to information is mutually reinforcing and based on trust. Public officials could facilitate civil society access to information that enables them to undertake their advocacy, lobbying or watchdog activities by establishing the necessary in-person and digital channels, respecting deadlines for providing information, and sanctioning non-compliance based on the relevant provisions of ATI laws.*
>
> *- At the same time, civil society has a responsibility to raise awareness of the importance of ATI laws, inform citizens of ways that they can use information, and demonstrate the benefits of ATI and how it could be further improved, in order to allow them to fulfil their diverse roles while promoting greater government transparency.*

These types of actions by civil society are essential for fostering several types of accountability. The involvement of civil society in monitoring and evaluation of public policies and services is a key pillar of social accountability, meaning the ways in which CSOs, citizens and the media can increase accountability in state institutions beyond formal types of political participation (Lührmann, Marquardt and Mechkova, 2020[75]). Their participation in impact assessments in particular also contributes to policy outcome accountability, in that they can both encourage and assist policy makers in being accountable for the policies and services they implement as well as the overall outcomes and performance of such policies and services (Bovens, Schillemans and Goodin, 2014[76]). This process enables evidence-informed policy making and allows public officials to learn from successes and failures and can lead to necessary reform in ATI and other fields to ensure that stakeholders can continue to use, re-use and impart information widely.

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Notes

[1.] In line with the OECD Survey on Open Government, for the purposes of this report, the term citizen is meant in the sense of an inhabitant of a particular place and not as a legally recognised national of a state.

[2.] UNESCO states that "access to information", "right to information", "right to know" and "freedom of information" are often used as synonyms (UNESCO, 2015[6]). All four terms are used interchangeably in articles discussing such legislation and research suggests that there is no empirical difference in the substance of the laws, whether they are named access to information, right to information, freedom of information or otherwise (UNESCO, 2015[6]). No title seems to suggest that one concept is more comprehensive or robust than another and many countries use different terms for access to information (ATI) laws that have broadly the same functions (e.g. the Right to Information Act in India and the Freedom of Information Act in the United States). However, the diverse terminology highlights the particular (albeit related) dimensions of the issue.

[3.] The Asia-Pacific and Middle-East regions do have a certain recognition of this right at the supranational level, including Article 32 of the Arab Charter of Human Rights (OHCHR, 2004[77]) and Principle 23 of the Association of Southeast Asian Nations (ASEAN) Declaration of Human Rights (ASEAN, 2012[78]). However, both instruments and their respective enforcement and monitoring mechanisms are considered to be imprecise or inconsistent with international ATI standards (Article 19, 2015[79]; Ghormade, 2012[80]). Nonetheless, this right has been protected and promoted in some countries of both regions through laws, constitutional provisions and other transparency-related policies.

[4.] On 27 April 2022, the Legislative Assembly approved Bill 20.799, the "General Law of Access to Public Information and Transparency". As of 6 May 2022, it has been partially vetoed following concerns that certain provisions may in fact limit access to information and press freedom (CIVICUS, 2022[81]).

[5.] This refers to the large regions of subnational government, which often differ in terminology across OECD Members. Common examples include provinces, regions, districts and counties.

[6.] This refers to smaller units of the subnational government within the first administrative tier. Common examples include towns and cities.

[7.] For more information on Uruguay's initiatives, please consult the following links: access to information with a gender and diversity perspective, handbook for requesters, guide on exercise the right, campaign aimed at children and adolescents, and the Digital Citizenship Strategy for an Information and Knowledge Society.

[8.] These countries are: Algeria, Argentina, Armenia, Bangladesh, Bolivia, Brazil, Cambodia, Chad, Colombia, the Dominican Republic, Egypt, El Salvador, Ethiopia, Georgia, Ghana, Guatemala, Hungary, India, Islamic Republic of Iran, Jordan, Lesotho, Mexico, Moldova, Morocco, Myanmar, Nepal, Oman, the Palestinian Authority, Papua New Guinea, the Philippines, Romania, Russia, Serbia, the Solomon Islands, South Africa, Tanzania, Thailand, Türkiye, the United States, Uzbekistan, Venezuela, Yemen and Zimbabwe.

[9.] Process evaluations aim to assess the design, implementation and monitoring of a specific policy (e.g. a programme, initiative or strategy) and enable public officials to detect failures in implementation or delivery. Impact evaluations, however, assess the overall effectiveness of a programme, policy or strategy, in achieving its ultimate goals.