



NOTE

on

the draft Armenian Freedom of Information Law

ARTICLE 19
Global Campaign for Free Expression

London
January 2003

A draft Law of the Republic of Armenia on Freedom of Information (draft Law) is currently before the Armenian parliament. The draft has passed the first reading and is currently being amended in preparation for the second reading. This Note is intended as a contribution to the discussion regarding the amendment of the draft Law. This is the second Note on the draft Law by ARTICLE. The earlier comment, provided in October 2002, was submitted prior to the first reading of the draft Law.

Article 3

Article 3 defines a number of concepts used in the draft Law. Information is defined as “records of facts, people, subjects, facts, events, phenomena, processes that are formed as defined by legislation, despite of the way those are possessed or their material carrier”. This is a relatively broad definition, but it is unclear why it is limited through the list of types of information (facts, people, subjects, etc.) not why there is a need to refer here to other legislation. In addition, we would recommend that information should be covered regardless not only of how it is processed or material carrier, but also regardless of its “official status, whether or not it was created by the body that holds it and whether or not it is classified”. See the ARTICLE 19 publication, *A Model Freedom of Information Law*, section 7.¹

¹ ARTICLE 19, *A Model Freedom of Information Law* (London: ARTICLE 19, 2001).

Article 3 also defines an information holder as “state and local self-government bodies, state offices, state sponsored organizations as well as organizations of public importance and their officials that hold information.” Organisations of public importance is further defined as NGOs that play a leading role in providing goods or services. This definition is broader than that in the original draft, but could be broader yet. For example, we would recommend including all statutory and constitutional bodies, as well as bodies that carry out a public or statutory function. See the Model Law, section 6(1).

Article 6

Article 6 guarantees the right of everyone to request information. Article 6(2) provides that foreign citizens can also enjoy these rights in cases foreseen by Armenian law and/or international treaties. There is no reason to restrict the rights of foreigners to access information in this way and, in most countries, everyone has the right to request information. There is no legitimate reason to restrict the right of foreigners to access information and we recommend that legislation simply guarantee the right of everyone to information. This is also relevant to Article 9(1), which requires applicants to provide their citizenship.

Article 6(4) (in the translation, although it is actually the third paragraph of Article 6), provides the freedom of information can be limited in cases foreseen by the Armenian constitution and laws. There is no need to mention the power of the constitution to restrict freedom of information, since it is superior to national legislation so this is obvious. ARTICLE 19 strongly opposes explicitly granting other legislation the right to limit freedom of information. While in most legal systems, subsequent legislation may override previous laws, there is no need to specifically mention this, almost inviting them to do so.

We view it as of paramount importance that a freedom of information law explicitly override all previous secrecy legislation. Otherwise, the new law will fail to change the status quo, normally characterised by excessive secrecy. The freedom of information law should include a comprehensive set of legitimate exceptions, so there should be not need to extend these by secrecy laws.

Article 7

Article 7(3)(d) provides, among other things, that the private phone numbers of personnel be public documents. This is going too far, may be an intrusion into their privacy and is unnecessary.

Article 8

Article 8(1) sets out a number of possible exceptions to the right to information. There are a number of problems with this section. First, not all of the exceptions include a harm test whereby disclosure can be refused only if it will harm a legitimate interest.

For example, sub-article (c) refers simply to pre-investigative data not subject to publication, whereas a harm-based test would refer, for example, to situations where the disclosure “would, or would be likely to, cause serious prejudice to the prevention or detection of crime” (see the Model Law, section 29). Furthermore, the draft Law does not include a general public interest override, so that information must still be disclosed where the overall public interest in disclosure is greater than the threatened harm to the legitimate interest. See the Model Law, section 22.

Second, Article 8(1)(a) is too broad and defers to other legislation rather than setting out clearly the exceptions. Presumably the “state, official and bank” secrets referred to there are defined by other legislation. In this case, the points made above, under Article 6 are relevant. Otherwise, this law should clearly and narrowly define what these secrets may be.

Third, the exceptions listed here are too limited. We would advocate, in addition, the following exceptions:

- (a) for commercially confidential information (the draft Law refers to trade secrets and copyright but businesses provide a lot of additional information to public bodies, for example, as part of a bidding or regulatory process, which would harm their competitive advantage if it were disclosed to the general public): see the Model Law, section 27;
- (b) to protect health and safety (the draft Law provides for disclosure of information to protect health and safety but not for non-disclosure for this reason – sometimes disclosure of information may be dangerous): see the Model Law, section 28;
- (c) in the interests of national defence (every FOI law includes an exception for national defence): see the Model Law, section 30;
- (d) to protect public economic interests and to prevent unfair advantage from the premature disclosure of public economic information (it is necessary to provide some protection to public bodies that engage in commercial activities, analogous to confidential commercial information; also, the disclosure of some public economic information may give certain individuals an unfair economic advantage – for example, the premature disclosure of a pending rise in interest rates): see the Model Law, section 31; and
- (e) in the interests of law enforcement (it is not clear how broad the exception for pre-investigation data in Article 8(1)(c) is but protection needs to be afforded to a range of interests here, including prevention and detection of crime, the administration of justice, the apprehension of offenders, and so on): see the Model Law, section 29.

Article 9

Article 9(5) sets out a regime for responding to oral requests where certain, fairly stringent conditions are met. Oral requests must be responded to within the shortest possible timeframe, normally immediately. This is a useful innovation and may help promote the free flow of information. At the same time, the law should provide for oral requests that will then be reduced to writing and treated as written requests where the requester is illiterate or otherwise unable to make a written request. In such

situations, the Information Officer should assist the requester to make a written request. See the Model Law, section 8(3).

Article 10

Article 10 sets out the system of fees for information requests, based on the “custom base” as defined by the Law on State Costs. It also provides for free access to information in certain circumstances, such as for less than 10 pages of material or in response to oral inquiries.

The system as set out in Article 10 is generally positive. However, it would be better for the freedom of information law to contain its own system for setting costs, in part to ensure that costs are appropriately tailored to the right to information. It may be noted, in this regard, that the right to information is a basic human right and, to this extent, is not like many other public services.