

## *Transparency and Silence: An Overview*

Today, the citizens of 65 countries have laws that provide mechanisms for them to request and obtain government records and other information—a key aspect of the transparency that is a hallmark of an open society. The number of “freedom of information” (FOI), or “access to information” laws has skyrocketed in recent years: some 53 such laws have been enacted in just the past decade and a half. But the mere presence of an FOI law on the books means little unless citizens are able to effectively use the law to access government records.

This report details the results of a study undertaken by the Open Society Justice Initiative and its partners to discover how government offices and agencies in fourteen countries—Argentina, Armenia, Bulgaria, Chile, France, Ghana, Kenya, Macedonia, Mexico, Nigeria, Peru, Romania, South Africa, and Spain—respond to actual, specific requests for information. The Justice Initiative and its partners designed an innovative research project to find out how well FOI laws work in practice.

Participants in the study filed 1,926 requests for information at offices of government bodies and agencies in the fourteen. Requesters included NGOs, journalists, business persons, non-affiliated persons, and members of excluded groups, such as illiterate or disabled persons or those from vulnerable minorities. The requests were for the types of information that public bodies hold—or should hold. As far as possible, no requests were made for classified information and other information that would ordinarily be exempted under standard access to information legislation. The Justice Initiative and its partners then evaluated and analyzed how the people who made requests were treated, how government offices and agencies responded, and the nature and quality of the responses to the requests. Follow up interviews revealed the reasons why officials and personnel at government offices and agencies performed in the way they did.

This report provides a snapshot of the state of access to information in the particular countries studied. The country comparisons below are indicative of broad trends and are not absolute measures of compliance with access to information principles—indeed, few countries performed consistently across all indicators.

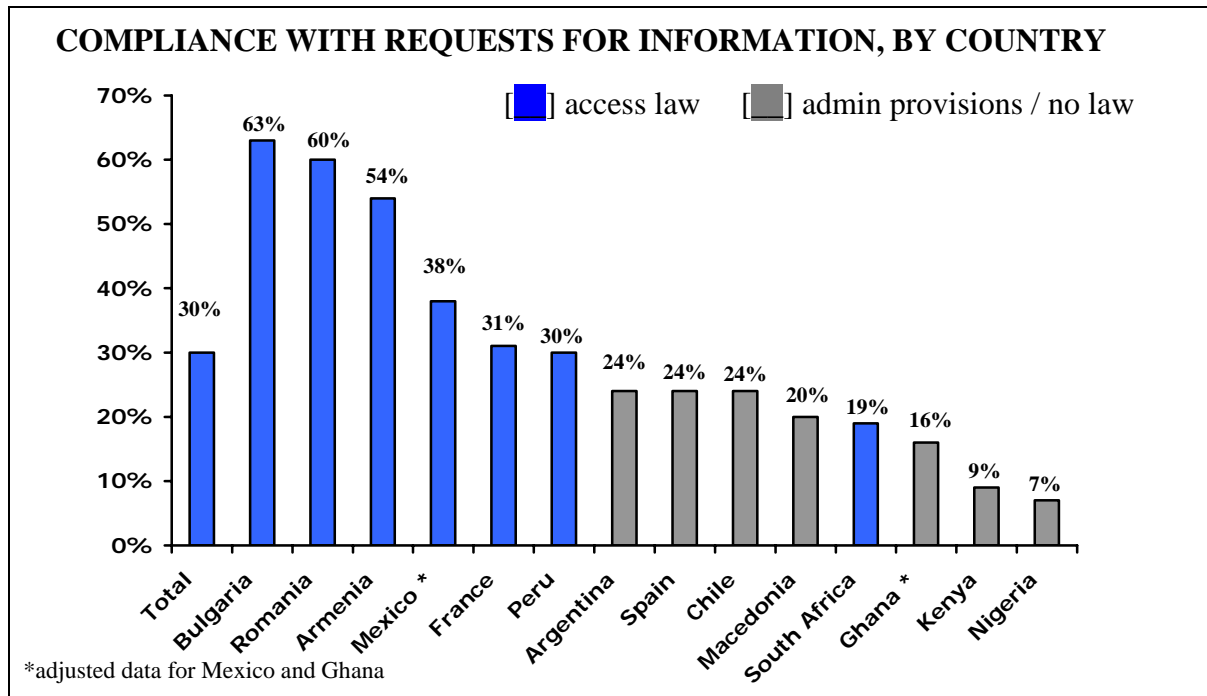
### **Main Findings:**

- 1. Freedom of Information Laws Make a Difference:** The report clearly indicates that freedom of information laws have had a significant, positive impact—the rate of responses to information requests was nearly three times higher in states with such laws.
- 2. Requests Often Met With Silence:** However, even in countries that have freedom of information laws, the government frequently fails to respond at all to requests for information. 56 percent of the requests made in countries without freedom of information laws went unanswered and that 38 percent of the requests made in countries with freedom of information laws went unanswered.
- 3. Transitional Countries Outperformed Established Democracies:**

One of the study's most striking findings is that in countries transitioning to democratic rule provided a higher percentage of information in response to requests than did two mature democracies. Armenia, Bulgaria, Peru, Mexico, and Romania produced more frequent and higher-quality responses than France or Spain. However, this does not mean that the governments of France and Spain are less transparent overall. France makes significant amounts of information available in published reports and on government websites, so the failure to respond to requests did not always mean the information was unavailable to the public.

- 4. Civil Society Involvement Helps:** Countries where civil society movements were active in the processes of drafting, adopting, and implementing access to information laws had a better response rate. In Armenia, Bulgaria, Mexico, Peru, and Romania, where NGOs were involved in promoting and ensuring implementation of access to information laws —by, for example, filing numerous requests for information and undertaking strategic litigation in response to government refusals—requests made for the study received more responses than requests in other countries with less NGO involvement.
- 5. Discrimination Plays a Role:** People from excluded or vulnerable groups—namely, racial, ethnic, religious, or socio-economic groups routinely subjected to discrimination—tended to receive fewer responses than persons who presented themselves as journalists, representatives of NGOs, or business persons. The study found that individuals who identified themselves as journalists or NGO representatives received responses between 26 percent and 32 percent of the time. Individuals who identified themselves as business persons received responses 19 percent of the time. But persons who were members of an excluded group received responses only 11 percent of the time.
- 6. European Countries More Responsive:** Europe, where FOI laws have been more widespread and longstanding than elsewhere, saw a greater percentage of responses than did Latin American and African countries. Access to information has developed in different regions during different periods as civil movements responding, for example, to human rights violations and corruption gained momentum.
- 7. Inconsistent Responses:** The study found that, where pairs of identical requests submitted by different requesters were presented to government bodies, the responses received were inconsistent 57 percent of the time. This was the case even in countries where government bodies responded most frequently to requests; for example, Bulgaria scored 50 percent, Romania 53 percent. In many cases, the inconsistency of responses reflected discriminatory behavior by government personnel toward the persons who requested the information. Furthermore, the study found that, where the same request was submitted twice and yielded noncompliant responses, the noncompliance manifested itself in different ways. In contrast, where government bodies surveyed were generally compliant with access to information laws and principles, the way they responded to requests for information tended to be uniform.
- 8. Written Refusals Are Rare or Lack Legitimate Grounds:** In instances where government bodies refused to provide requested information, they almost never put their refusals in writing. The study showed that, in countries with freedom of information laws, government

bodies made written refusals to provide requested information five percent of the time and that, in countries without freedom of information laws, only two percent of the time. Of the written refusals that were received, approximately 40 percent cited reasons recognized as legitimate under international and regional law for refusing the requests for information. But approximately 60 percent of the written refusals cited reasons not recognized as legitimate under international and regional law.



### Examples of Responses:

- In Nigeria, a requester hand delivered a request to the Ministry of Transport for the minutes of the meeting where the decision was taken to use London taxis for public transport in the Federal Capital Territory. He was told by an officer that he was “looking for *wahala* [trouble] by asking for minutes of a meeting held by government officials.” The official even suggested that the requester might be insane.
- In Peru, a number of municipalities conditioned processing of requests upon payment of a fee. One municipality, Lince, sent two requesters a written notice that: “In order to process your request you need to pay 25 soles (approx. U.S. \$8). This fee is to be paid within the next 48 hours or the request will not be processed.” Another Peruvian municipality, Santiago de Surco, informed a journalist requester that his information would cost 28.5 soles (approx. U.S. \$9) for 13 pages. To impose any fee beyond “the costs incurred to reproduce the required information” is specifically prohibited under Peru’s 2002 freedom of information law.
- In France, a requester who asked the Ministry of Defense for the number of deaths in the armed forces in 2003 received a telephone call from a ministry official wanting to know why the requester needed the information. The requester replied that it was for a

statistical inquiry, and that the data was public property. No further response was received: the final outcome was a mute refusal.

- In South Africa, a requester who is an illiterate elderly woman and speaks only Sesotho attempted to submit 20 oral requests, 10 in person and 10 by telephone. All her attempts to submit in person were unsuccessful: on three occasions she was given telephone numbers of other people who might assist. In total, she was unable to submit 15 of her 20 requests. The other five, all telephone requests, resulted in refusals to accept (in two cases) and oral refusals (in three). Officials were often evasive, referring her to others within the same office or to other offices. She was frequently refused entry to public buildings or was immediately directed elsewhere. As a result of the cultural and language diversity of South Africa, which boasts 11 official languages, she was not able to communicate requests with government bodies in the regions where her language, Sesotho was barely spoken. When she found officials who spoke Sesotho, in the Sakhisizwe municipality located in the Eastern Cape province, they refused to assist her further in submitting requests to the appropriate department.
- In Armenia, the Yerevan Center and Nork Marash district disclosed the number of court cases filed against media outlets in that district in 2002-2004 and full copies of all nine cases that had been heard within that period were released. The Freedom of Information Centre that led the monitoring in Armenia notes that Armenian courts had previously refused to provide copies of documents to those not party to a particular case. The decision by this court to release full copies of all nine decisions involving media outlets illustrates the power of the 2003 Law on Freedom of Information to secure information previously not in the public domain.
- In Bulgaria, an exceptionally active civil society organization, the Access to Information Programme (AIP), has been promoting access to information since 1996. AIP conducts training workshops (for 200–300 civil servants each year); publishes handbooks and annual reports; assists the administration in elaborating internal rules and systems for transparency; and makes policy recommendations. Additionally, AIP undertakes public interest litigation challenging refusals and targeting overly broad application of exemptions. Public awareness has been raised through AIP's training of NGOs, and good media coverage: Bulgaria even has a weekly FM radio show dedicated to access to information.

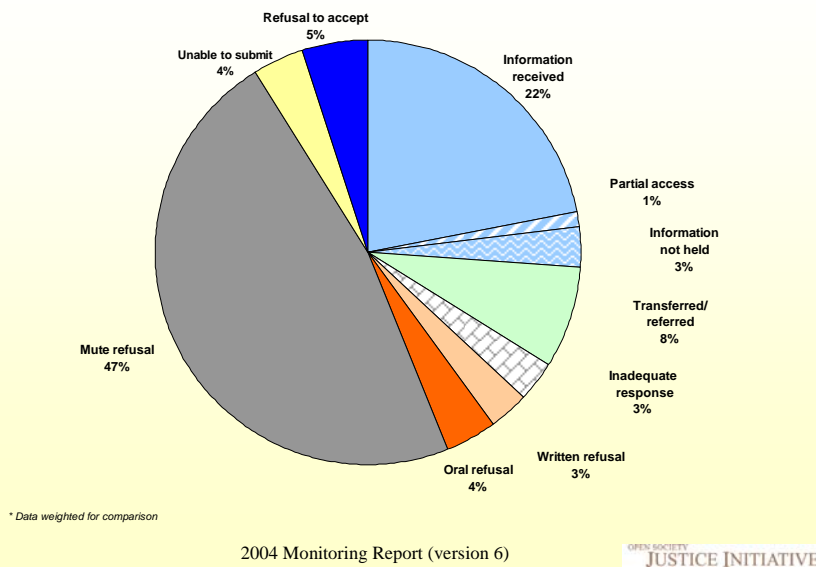
### **Top Performing Institutions:**

The sixteen top performing institutions in the study were

1. Ministry of Finance, Armenia
2. Ministry of Work and Social Issues, Armenia
3. Municipality of Sredets, Bulgaria
4. National Supreme Court of Justice, Mexico
5. Ministry of Environment, Armenia
6. Yerevan Avan District Administration, Armenia
7. Municipality of San Isidro, Peru
8. Bucharest Tribunal (regional court), Romania

9. City Hall, Bucharest Fourth District, Romania
10. Ministry of Justice, Romania
11. Municipality of Miraflores, Peru
12. Secretary of Culture, City of Buenos Aires, Argentina
13. Ministry of Environment and Water, Bulgaria
14. Municipality of Slatina, Bulgaria
15. Regional Court, Montana, Bulgaria
16. Supreme Court of Cassation, Bulgaria

**Figure 1: Responses to 1,926 Requests in 14 Countries, by Type of Outcome**  
 Analysis based on data from 14 countries, all requests



## Recommendations:

The report recommends that national and local legislatures adopt laws that provide the public with access to government information and records, and make it clear to public officials that noncompliance and discrimination in response to FOI requests are unacceptable. Given the importance of civil society pressure in making FOI laws effective, civil society organizations should monitor freedom of information practices, investigate suspected instances of discrimination, file lawsuits in instances where discrimination is found, and seek the imposition of penalties as set forth in antidiscrimination laws. The report makes a number of specific suggestions to help countries implement effective laws and regulations for freedom of information.

- Government and public institutions should be required to compile, maintain, and make public indexes and catalogues of the information that they hold. Such indexes and catalogues should list the titles of classified documents, that is, documents exempted from disclosure to the public.

- Access to information laws and regulations should state clearly that the failure of public officials to respond to requests for information is a violation of the public's right to access public information.
- Governments must create clear avenues for submitting information requests. Almost one in 10 of the requests attempted in this study could not be submitted, and therefore never reached an official who might have been able to process the request.
- Governments should respond to requests for information in a consistent and timely manner, by training officials, civil servants, and other relevant personnel and by establishing transparent, internal systems and procedures for processing requests for information.
- In responding to requests for information, public bodies should charge only reasonable fees directly related to the cost of reproducing and delivering information. Viewing original copies of documents should always be free of charge.
- Laws and regulations should state that public bodies can only exempt information from disclosure when releasing the information would harm an interest deemed legitimate under international and regional law, and when the harm is not outweighed by the public's interest in the information. Non-harmful information contained in the same documents as classified information should still be made available to the public.
- When requested information does not exist, public officials should be obliged to inform the person who requested the information. Such a response is a key element of open government and can form the basis of a constructive dialogue between the government and the public about the type of information needed in order to improve government efficiency and increase the quality of decision making and policy making.

---

*The Open Society Justice Initiative, an operational program of the Open Society Institute (OSI), pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies worldwide. The Justice Initiative combines litigation, legal advocacy, technical assistance, and the dissemination of knowledge to secure advances in the following priority areas: national criminal justice, international justice, freedom of information and expression, and equality and citizenship. Its offices are in Abuja, Budapest, and New York.*  
[www.justiceinitiative.org](http://www.justiceinitiative.org).