Central Measures

This section looks at central institutional measures taken to implement the RTI law. These can be divided into two main areas: processing appeals and undertaking promotional measures. In almost every country where an independent oversight body (often called an information commission) exists, it bears primary responsibility for the first function. In many countries, the information commissions both process appeals and are the main official body that is responsible for promotional measures. However, in many countries, the oversight body is supported by what might be called a nodal body, or a body that operates inside of government (unlike the oversight body, which is supposed to be independent) which also undertakes promotional measures, often including providing assistance to individual public authorities. While this Methodology focuses on the oversight body, where a nodal body is active, it should also be reviewed to determine whether it is undertaking activities that deliver some of the substantive issues assessed here (in which case the country should be given credit for that because what is important is that the issues are delivered, not which body delivers them).

1. Substantive Issues

Two main areas are relevant here. The first is whether the necessary institutional steps have been taken to ensure that the oversight body is established and functional (effective). In most cases, the responsibility for this lies with the government and/or parliament. The second focuses on whether the oversight body is operating in an effective way, which is about whether it is discharging its responsibilities properly.

The key issues to be assessed in terms of the first issue, institutional steps, are:

- Have independent, effective governing members of the oversight body (commissioners) been appointed?
  - Sub-issues:
    - Are these positions filled and were appointments made in accordance with the law?
    - Are members independent in practice (this is ultimately subjective but can be assessed by their backgrounds, views of third parties, comment in the literature, a review of appeal decisions and even the views of members)?
    - Have any been removed? Was this justified (i.e. was it in line with the conditions for this in the law)?
    - Do they have appropriate expertise/qualifications (as provided for in the law)?
- How effective are the members (again this is quite subjective but can be gleaned from the views of third parties and comments in the literature)?
- Have they been provided with training/onboarding programmes?
- Are they diverse, including in terms of gender?

- Has the body been provided with funding which is reasonably sufficient to enable it to carry out its tasks?
  - Factors to consider:
    - Views of members and civil society
    - Changes in funding over time (i.e. does it go up or down or remain stagnant)
    - Comparison with the level of funding for other independent bodies
    - Range of activities the body is able to undertake as compared to its mission (i.e. is its funding enough to enable it to deliver its mission)
    - How the budget is allocated and whether it is a separate line item in the overall budget (or just included as part of a broader budget for a ministry)

- Does the body recruit its own expert staff (as opposed to staff being allocated from the civil service whose primary loyalties tend to lie with the civil service)?
- Does it have a full complement of staff (i.e. compared to its organigram or official documents)? Are they on long-term employment contracts?
- Does the oversight body make an effort to be geographically accessible to complainants (for example by having branches or focal people in different locations, by conducting hearings in different locations, by allowing complainants to participate via video and/or by dispensing with hearings in cases where they are not necessary)?

The key issues to be assessed in terms of whether the oversight body is operating in an effective way are:

- Does the oversight body process appeals appropriately and in accordance with the law?
  - Sub-issues:
    - Have clear and fair procedures for processing appeals been adopted?
    - How long does it take to process appeals (on average, longest 10%)?
    - Are basic due process rights (including the right of the complainant to be heard) respected?
    - Are appropriate decisions being made (this is subjective but at least it would be appropriate to comment on decisions that seem to the reviewer to be incorrect)?
    - Are appropriate remedies being awarded (again, this is subjective but it can be assessed by looking at the remedies that are allowed under the law and whether these seem to be applied in relevant cases)?
    - Does the body conduct follow-up to ensure that the remedies (its orders) are respected (i.e. implemented)?
o Does the oversight body have an appeals management system or some way of managing appeals and ensuring that they are processed quickly (within the time limits set out in the law) and appropriately?
  o Are the decisions on appeals posted online?

• Does the oversight body take active (suo moto) steps to ensure that public authorities are implementing the law properly?
  ➢ Sub-issues:
    o Does the oversight body monitor proactive disclosure and take steps where public authorities are failing in this area?
    o Does it monitor public authorities which are seriously failing to undertake the main institutional measures to implement the law (such as appointing PIOs or managing their records properly) and take steps to address this?

• Does the oversight body discharge its regulatory functions properly? This will depend on what the law requires/authorises it to do in terms of regulation.
  ➢ Possible sub-issues (depending on what the law requires/authorises):
    o Is it setting (appropriate) records management standards (whether they are appropriate is subjective but at least some comment on this can be made based on the content of any actual standards it has adopted)?
    o Has it adopted a schedule of fees that may be charged for responding to requests?
    o Has it adopted additional proactive publication obligations for public authorities?
    o Has it responded (quickly) to requests to extend the period of secrecy (i.e. beyond 20 or 50 years)?

• Does the oversight body take steps to raise public awareness about the RTI Law?
  ➢ Sub-issues:
    o Has it published a guide for requesters?
    o Has it sponsored public events?
    o Has it publicised the right, for example through media advertisements?
    o Has it undertaken other activities?

• Has the oversight body supported the provision of training to PIOs?
  ➢ Sub-issues:
    o Has it prepared a training manual and/or handbook for PIOs?
    o Has it participated in delivering training programmes?
    o Has it trained trainers?
    o Has it provided training on records management?

• Does the oversight body publish an annual report on overall implementation?
  ➢ Sub-issues:
o Is the report comprehensive (including by providing overall statistics about RTI requests), accessible (for example online and at the offices of the body) and easy to understand?
 o Does it include recommendations for improving the system (or just observations about how it is working)?
 o Has it been formally submitted to whomever is tasked with reviewing it (i.e. normally a minister and/or parliament)?

• Does the oversight body actively use whatever powers it has under the law to impose appropriate sanctions on individuals/entities who obstruct access? These may include the direct imposition of fines, referring criminal cases to the courts and/or ordering public authorities to put in place structural measures to improve implementation, such as by appointing a PIO or publishing an annual report.
• Has the oversight body commented on draft laws that affect RTI?
• Does the oversight body provide advice to public authorities which ask for it? What about members of the public?
• Has the oversight body taken any other steps to improve implementation?

2. Assessment Tools

The following assessment tools should be used here:
• A desk-based literature review
• Key informant interviews, such as with members of the oversight body, key civil society groups, key media users, potentially with complainants (although it might be difficult to identify them)
• Other desk-based review, in this case of actual decisions on appeals (if available, for example on the website). It will normally be necessary to select a random sample of the appeal decisions from among all of them because it would not be practical to review them all. For example, every 10th or 20th decision could be selected. Decisions should also be reviewed over a period of years. The review of the decisions should look at the following issues:
  o How long it took to resolve the appeals
  o The percentage of appeals that were decided in favour of the complainant
  o Whether decisions appear to be appropriate (i.e. correct) (although this is somewhat subjective, general comment on it is legitimate where decisions seem to be odd)
  o What sorts of remedial measures were imposed and whether they were effective
• A self-assessment completed by the oversight body

3. Grading
Grading for this assessment area is based on five yes-no questions and eight more qualitative questions. The five yes-no questions are:

4. Has funding been allocated (i.e. to the body)?
5. Does the body recruit its own staff (as opposed to this being done by the government, for example)?
6. Are the body's appeals decisions available online?
7. Has the body produced and published an annual report for the last two years?
8. Has the body published a guide for requesters?

While there is some margin for non-binary (yes-no) answers here, assessors are asked to allocate a simply Yes (1 point) or No (0 points) score here.

The eight more qualitative questions are:

1. Have the members been appointed?
2. Are the members of the body independent and effective?
3. Is the funding provided to the body reasonably sufficient for it to discharge its functions?
4. Does the body decide appeals in a timely fashion?
5. Are the due process rights of parties respected during appeals?
6. Has the body made reasonable efforts to raise public awareness?
7. How effective are the measures taken to provide training to officials?
8. Has the body made a reasonable effort to comment on draft laws that affect the right to information?

Here, assessors are asked to determine whether the system performs Strongly (1 point); Partially (0.5 points) or Weakly (0 points).

The overall point score is calculated by taking the 13 individual scores and averaging them. Finally, a colour grade should be awarded based on the final point score as follows:

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<th>Red</th>
<th>Yellow</th>
<th>Green</th>
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<td>0-0.33</td>
<td>0.34-0.66</td>
<td>0.67-1.0</td>
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