Reactive Disclosure

Whereas proactive disclosure looks at whether public authorities make information available even in the absence of a request for it, reactive disclosure is about how public authorities respond to RTI requests.

1. Substantive Issues

The key issues to be assessed here are:

- Is it easy to submit RTI requests (electronically, in other ways)? Do you need to use the form? Is the form easily available? Do you need to prove citizenship? If so, is this easy to do?
- Is only the minimum information required by the law demanded when making an RTI request or is other (additional) information demanded?
- Can RTI requests be made in commonly used local languages or only official languages?
- Is assistance provided when needed?
- Is a receipt provided when an RTI request is lodged?
- If the public authority does not hold the information, do they transfer the RTI request to the authority which does hold it (or at least refer the requester to another public authority)? In a timely manner? Are transfers made which the law does not authorise (i.e. where the request should not be transferred because the original public authority holds the information)?
- How long does it take to process RTI requests: are responses provided as soon as possible? within the maximum time limits? are any extensions legitimate in terms of the rules in the law for this? are responses provided within the period set for any extensions?
- Is information provided in the format stipulated by the requester? If not, are reasons for this given? Are these reasons in line with the law (i.e. in line with the conditions regarding not respecting the requester’s preferred format set out in the law)?
- Are only reasonable fees charged for RTI requests (i.e. in line with what the law and any rules on this allow, including no fee for lodging the request)?
- If an RTI request is refused, is appropriate notice in line with the legal requirements provided?
- Are claims for exceptions reasonable or overbroad (this is a subjective issue but can be assessed both directly by reviewing these claims and also by looking at the percentage of the appeals which are based on refusals that the authority loses, if that information is available)?
- Are any guidelines adopted by the public authority followed when RTI requests are processed?
2. Assessment Tools

The primary assessment tool here is to test responses to RTI requests by making a number of actual RTI requests. Such requests should be put to all of the public authorities which are being covered by the assessment. Some issues to consider here:

- How many RTI requests are to be put to each public authority. It is important for the public authority not to suspect that this is a test, or it may make a particular effort to respond well to these RTI requests. To avoid this, thought should be given to who will make these requests (not well known people) and how many such requests will be put to each authority (if an authority suddenly receives several requests it might become suspicious).

- The RTI requests should range in terms of how ‘challenging’ they are, with at least some being very simple and easy. There are different ways an RTI request can be challenging. One is when it is difficult to decide whether or not the information is exempt. Another is when an RTI request generates a lot of responsive information. A third is when responding to the request will require consultations with other public authorities and/or with third parties.

- From among the range of possible responses, the following rules apply:
  - Only one response – full disclosure of the information – is always valid.
  - Three responses may or may not be valid depending on the circumstances, namely: a written refusal (in whole or in part, in which case partial information should be provided); transfer of the RTI request or referral of the requester to another authority; and indicating that the information is not held.
  - Three responses are never valid, namely: oral refusals; mute refusals (failures to respond at all within the time limits); and providing only part of the information (without indicating that the rest is either exempt or not held). Obviously where it is not even possible to lodge an RTI request in the first place this is not a valid ‘response’.

- The requesting exercise should seek to assess all of the substantive issues listed above.

- Depending on the time available for the requesting exercise, three approaches may be employed:
  - Just lodge the RTI requests and do not do anything else
  - Lodge the RTI requests and then follow-up with the PIO and/or lodge an internal complaint (as needed)
  - Lodge the RTI requests and then lodge an appeal with the oversight body (as needed)

- The requesting exercise is by far the most time consuming of all of the assessment tools. Consideration should be given to ways to reduce this burden, for example by getting interns or students to help with making the RTI requests.
• The requesting exercise also takes by far the longest of all of the assessment tools, so it should be started first.

The following additional assessment tools should be used here:
• A desk-based literature review, including of any annual reports prepared by the public authority and of any requesting exercises which have been done by others
• Key informant interviews, including with the PIO and individuals who have made repeated RTI requests
• A self-assessment by the public authority

3. Grading

Two types of scores are calculated for each request. The first type of score – a processing score – is made up of three Yes (1 point)-No (0 points) sub-scores, as follows:
1. A receipt score (based on whether a receipt was provided)
2. A timeliness score, based on whether the request was answered within the statutory time limits, with any extensions being assessed for reasonableness
3. A fee score, based on whether any fee charged was in line with the legal requirements

These three yes (1)-no (0) scores are averaged to obtain the processing score for each request.

Then, each request is given its own result score based on the following:

1. For full disclosure of the information, which is always valid, one point is given.

2. For oral refusals or mute refusals (failures to respond at all within the time limits), as well as for cases in which it was not even possible to lodge the RTI request in the first place, all of which are never valid, zero points are given.

3. Four other responses – a written refusal (in whole or in part, with partial information having been provided), transfer of the RTI request or referral of the requester to another authority, providing only part of the information, and indicating that the information is not held – may be more or less valid, depending on the circumstances. The assessor should decide whether the response is LIKELY, MAY BE or is UNLIKELY to be valid, based on all of the circumstances. One point is given for LIKELY, one-half point for MAY BE and zero points for UNLIKELY.

The total points for each request are calculated by adding up one-third of the processing score and two-thirds of the result score. Then, the final point score for
each public authority is calculated by averaging its points from each request (i.e. adding up the points for each request and dividing by the number of requests).

The final point score for the jurisdiction should be calculated by averaging the points for each request (not the points for each public authority because a different number of requests might have been lodged with different public authorities).

A colour grade (whether for individual public authorities or the jurisdiction as a whole) should be awarded based on the final point scores as follows:

<table>
<thead>
<tr>
<th>Red</th>
<th>Yellow</th>
<th>Green</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-0.33</td>
<td>0.34-0.66</td>
<td>0.67-1.0</td>
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</tbody>
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