

Measuring RTI Implementation

This document presents a methodology prepared by the Freedom of Information Advocates Network (FOIANet), which is designed to be a simple tool to help civil society conduct parallel assessments of the extent to which States have met SDG Indicator 16.10.02 (which is to adopt and implement RTI laws). Every country is expected to implement all SDGs. Existing tools – such as the RTI Rating (www.RTI-Rating.org) – already tell us whether or not States have adopted RTI laws and, if so, how strong those laws are. The purpose of this methodology is to provide a simple, standardised tool to assess the extent to which States with RTI laws are implementing them properly. Three main approaches to measuring implementation are included in this methodology, namely an assessment of the extent to which a State is proactively disclosing information, the extent to which institutional measures have been put in place to assist with implementation, and the extent to which requests for information are being responded to properly (assessed via a simple request testing approach).

In each country, we are suggesting that reviewers focus on between 5-10 different public authorities, ideally from different sectors (such as ministries, oversight or regulatory bodies, public corporations and so on).

Proactive Disclosure¹

Proactive disclosure is the release of information by government without a request. This type of disclosure enables many people to access information from their government. Many FOI laws include a list of information which must be made proactively available. To measure proactive release, reviewers should assess the list of information that must be made available proactively and compare it with what they see on public authorities' websites and/or at their libraries. At a minimum, public authorities should publish on a proactive basis the following categories of institutional, organisational and operative information, as well as information about their procedures for releasing information:

¹ This section draws heavily on the Right to Information chapter of the OGP's Open Government Guide.

Availability of institutional, organisational, operative and contact information

Type of information	Section of the law which requires disclosure	Indicator	Published (Full/ Partial/ None)	Data Source (website or location of information)
Institutional		Are functions of the ministry/authority and its powers published?		
Organisational		Is Information on personnel, names and contacts of public officials published?		
Operational		Are any authority strategies, plans or policies published?		
Legislation		Are the laws governing the institutions' operations published?		
Service Delivery		Are the descriptions of services offered, including forms required to be filled out and deadlines for application published?		
Budget		Is information about the projected budget, actual income and expenditure, and/or audit reports published?		
Public Procurement and Contracts		Is detailed information on public procurement processes, criteria, outcomes of tenders, copies of contracts, and reports on completion of contracts published?		
Registers		Are any registers mandated by law for the Agency to create available online?		
Participation		Is information about the mechanisms and procedures for consultation and public participation published?		

Availability of information about the Right to Information

Type of information	Section of law that requires disclosure	Indicator	Published (Full/ Partial/ None)	Data Source (website or location of information)
RTI information		Is an annual report on the status of implementation of the RTI law published including number of requests granted, refused and time taken to respond?		
How to make an RTI request		Is information on how to make an RTI request published, including contact details?		
Costs for publications		Is information about the costs/fees for paying for photocopies of information?		
List of information requested		Is information related to RTI requests which were granted published?		

Institutional Measures

1. For both tables below, the first column lists actions which should be taken to determine how well an ATI law is being implemented. Column two indicates whether or not the listed action has been taken while the remarks column allows researchers to comment on how it has been done.
2. The first table is about the overall framework for implementation (i.e. it assesses central government actions and only needs to be applied once for each country) while the second table focuses on individual authorities covered by FOIA (and should, as a result, be applied separately to each authority being assessed).

Notes:

- A nodal agency is a central authority sitting inside of government which is responsible for coordinating, capacity building and RTI standard setting for other agencies in the country.

Table 1: Overall Framework for Implementation

Question/ Issue	Yes/No	Remarks
1. Has government established an RTI nodal agency? <i>(If yes, comment on its roles and functionality)</i>		
2. Has government established an independent RTI oversight mechanism, such as an information commission? <i>(If yes, comment on its work and how effective it has been)</i>		

Table 2: Implementation by Individual Public Authorities

1. Has the authority appointed an Information Officer who is responsible for RTI implementation? <i>(If yes comment on how the mandate functions)</i>		
2. Does the authority have an RTI implementation plan? <i>(If yes, comment on the extent to which such a plan has been operationalised)</i>		
3. Has the authority developed/ issued guidelines for receiving and responding to information requests? <i>(If yes, comment on their usage)</i>		
4. Does the authority prepare and public annual reports, including statistics on requests? <i>(If yes probe for the availability of the latest report and the period it relates to, otherwise the any hindrances to that effect).</i>		
5. Has the authority provided RTI training to its information officers? <i>(If yes, comment on when the most recent training programme was conducted).</i>		

Processing of Requests

This is the most open-ended of the three approaches for measuring implementation because we felt it was important to leave it open to participants to choose questions that not only assessed implementation but also were relevant to their work or that of their partners.

The basic methodology involves making two or three requests for information to each of the 5-10 focus public authorities. Some care needs to be taken at this point to avoid alerting the authorities to the fact that a test is going on. If the number of requests is low, so that even making two requests to a public authority will raise suspicions, this could be cut to just one request. You might think about who will make the requests and about using different individuals so as not to raise suspicions.

Some attention should be given to the sensitivity of the requests in terms of whether or not exceptions are potentially engaged. The differences between requests in different countries in this regard will mean that the results will never be strictly comparative. However, to limit this, we suggest that you aim to ask a range of questions, from those for which it is absolutely clear that no exception is engaged to those where this is more arguable (although all requests should aim to be for information that you do not consider to be exempt under the law).

Information about making the request and how it was responded to should be recorded, ideally in the table below (although it might be easier to do this in an excel file).

	Date Request Submitted	How Request was Filed	Date Receipt Received	Submitted (Y/N)	Date, if any, of response	Result	How information provided	Fee charged, if any	Comments
Authority 1, Question 1		(i)	(ii)	(iii)		(iv)	(v)		
Authority 1, Question 2									
Authority 2, Question 1									
...									

- (i) Post, e-mail, fax, hand delivered
- (ii) The date, if any, you receive an acknowledgement or receipt for the request
- (iii) If you were unable to submit, provide an explanation in Comments
- (iv) See the list below

- (v) Electronic copy, hard copy, right to inspect, and so on

The Result will be one of the following (explanations below):

1. Oral Refusal
2. Written Refusal
3. Transferred
4. Referred
5. Mute Refusal
6. Information received
7. Partial Access
8. Incomplete Answer
9. Information Not Held

From among these, (6) is a legitimate result, (2), (3), (4), (7) and (9) might be legitimate results and (1), (5) and (8) are never legitimate. Whether the response was timely (i.e. in accordance with the time limits set out in the law) and any fee charged was appropriate (again, in accordance with the limits in the law) should be recorded in the comments.

1. Oral Refusal

This is when an official from the authority informs you orally (spoken word or telephone) that they refuse to provide the information. If any reasons are given orally for not accepting the request, these should be recorded under comments.

2. Written Refusal

This is when a refusal to provide the information is given in any written form (e.g. letter, e-mail or fax). The grounds given for refusing should be recorded under comments.

3. Transferred

This is when the authority transfers the request to another authority. Whether the authority informs you about this or not, and any reasons given, should be recorded under comments.

4. Referred

This is when the authority informs you that you should lodge the request with another authority (as opposed to transferring it itself).

5. Mute Refusal

This is where the authority simply fails to respond at all to a request or where answers are provided which are so vague that they cannot be classified in any other category listed here. A mute refusal is deemed to apply when the period in the access to information law for responding to requests has expired.

6. Information Received

This is when access is granted and information which responds to the request and which is relatively complete is provided.

7. Partial Access

This is where only part of the information is provided and part of the information is refused, based on an exception. In this case, information may be blacked-out or “severed” or you are provided with only some of the relevant documents. In this case, any reasons for refusing part of the information should be recorded in the comments.

8. Incomplete Answer

Information is provided but it is incomplete, irrelevant or in some other way unsatisfactory. This is different from Partial Access inasmuch as the authority appears to be treating this as a complete response (even though it is not) and it has not indicated that it is refusing information.

9. Information Not Held

This is where the authority responds claiming that it does not hold the information. Whether this seems to be credible or not should be recorded in the comments.