

Measuring RTI Implementation

The adoption, in 2015, of the Sustainable Development Goals (SDGs) represents an important opportunity for assessing the progress of States in a wide range of development areas. The SDGs cover a much broader set of issues than their predecessors, the Millennium Development Goals (MDGs). SDG 16, which is “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”, is particularly relevant for right to information (RTI) advocates. And, within that, SDG Indicator 16.10.2 (the indicators are the concrete achievements that will be monitored to assess progress towards the SDGs) is directly relevant to RTI, stating: “Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information.” Every country is expected to implement all of the SDGs.

This document contains a methodology prepared by the Freedom of Information Advocates Network (FOIANet) which is designed to be a simple tool to help civil society organisations conduct parallel assessments of the extent to which States have met SDG 16.10.2. Existing tools – such as the RTI Rating (www.RTI-Rating.org) – already tell us whether or not States have adopted right to information (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 assessment areas for measuring implementation are included in this methodology, namely 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).

Most of the assessment tools focus on the performance of individual public authorities, since they are the primary duty-bearers under RTI laws. Because it is not realistic to assess every public authority, this methodology calls on reviewers to select five to ten different public authorities in each country being assessed. These authorities should be selected so as to represent different parts of the public sector (such as ministries, oversight or regulatory bodies, public corporations and so on).

This methodology is not designed to provide a ranking of States or public authorities. At the same time, a three-point final grade of red, yellow or green is awarded so as to provide some comparative measure, as well as some indication of whether or not a State is meeting its SDG 16.10.2 obligations. We recognise that some of the assessment tools used in this methodology ultimately require judgement calls. However, the way that results are

aggregated across many variables means that such judgements are averaged out, meaning that final aggregated grades will be fairly robustly reflective of the performance of a country (even if there will also necessarily be some borderline cases).

An excel sheet accompanies this methodology which facilitates the consistent recording of data collected. It also includes built-in formulas to calculate the scores in line with the scoring instructions. Additional information can also be recorded in a Word document.

Assessment Area One: Proactive Disclosure¹

Proactive disclosure is the release of information by public authorities without a request. This type of disclosure enables many people to access information from their government. As it is part of international standards relating to RTI, we also need to assess it as part of this methodology. Public authorities should publish on a proactive basis both institutional information and information about their procedures for releasing information. The two tables below set out the minimum categories of information that each public authority should disclose proactively.

To measure proactive disclosure, reviewers should assess whether or not the authorities that are being assessed make the information in the two tables below available, whether through their websites and/or in other ways. Many RTI laws include a list of information which must be made proactively available but authorities should be assessed against the full list, even if the national RTI does not require this information to be published.

The assessment of whether or not information is published should be assessed against a five-point scale: (1) Full; (2) Full to Partial; (3) Partial; (4) Partial to None; and (5) None. The assessment of which score should be allocated, apart from (1) and (5), which are clear, ultimately depends on an evaluation of the reviewer of both what should be published in each category and how well the public authority has done vis-à-vis this. However, to try to ensure some consistency in the way scores are allocated, 'Partial' should be awarded where the authority has published around one-half of all of the information, 'Full to Partial' where the amount is clearly above one-half, and 'Partial to None' where the amount is clearly less than one-half.

Availability of institutional information

Type of	Indicator	Published	Data Source
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¹ This section draws heavily on the Right to Information chapter of the OGP's Open Government Guide.

information		(Full/Full to Partial/Partial/ Partial to None)	(website or location of information)
Institutional	Are functions of the authority and its powers published?		
Organisational	Is information about the organisational structure of the authority, including the names and contacts of key officials, published?		
Operational	Are any authority strategies, plans or policies published?		
Legislation	Are the laws governing the authority's operations published?		
Activities and Service Delivery	Are descriptions of the main activities undertaken and services offered by the authority, including, for the latter, any 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?		
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	Indicator	Published (Full/Full to Partial/Partial/ Partial to None)	Data Source (website or location of information)
RTI	Is an annual report on the status of		

information	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?		

Notes:

- The information listed above may not be available for different reasons. For example, the information may simply not have been disseminated. However, another reason is that a website might not be working or the authority might be building a new website. For purposes of this assessment area, unless the non-availability is very short term (for example because a website is temporarily taken down but so briefly that it is still possible to conduct an assessment during the period of evaluation), these reasons are irrelevant and scores should be allocated based on what information is actually accessible.
- All 12 of the categories on the two lists above are considered to be relevant to all public authorities. Some authorities will have more information falling within one or another category, but no authority should simply ignore a category. As a result, every public authority being assessed should be given a score for each category.

Scoring

Authorities should be given the following 'marks' for each result area:

Full	Full to Partial	Partial	Partial to None	None
100%	75%	50%	25%	0%

Individual authorities should then be awarded a global mark by averaging their scores for each result area (i.e. by adding their scores for each result area and then dividing by 12, the number of result areas). Individual authority's global marks should then be averaged to obtain an overall score (i.e. the global mark for each authority should be added and then divided by the number of authorities assessed).

Finally, a colour grade should be assessed based on the overall score as follows:

Red	Yellow	Green
0-33	34-66	67-100

Assessment Area Two: Institutional Measures

This assessment area looks at the institutional measures that have been put in place to support implementation of RTI laws. It is divided into two sections. The first focuses on the overall framework for implementation (i.e. it assesses central government actions and only needs to be applied once for each country). The second focuses on measures by individual authorities (and should, as a result, be applied separately to each authority being assessed). The two tables below reflect the substance of what is being assessed in each area.

1. For both tables below, the first column lists actions which should be taken to ensure that an RTI law is being implemented properly. The second column 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. Both tables are considered to represent minimum requirements for the effective implementation of an RTI law. Therefore, the presence or absence of these actions should be assessed regardless of whether or not the law calls for them. Thus, a country should be allocated a mark of 'no' if there is no independent oversight body, even if the law does not create such a body.

Note:

- A Nodal Agency is a central authority, often located inside of government but it could also be an independent body, which has certain responsibilities in the areas of coordination, capacity building and/or standard setting relating to RTI, but which is not an oversight body because it does not deal with complaints about requests for information. In some countries, this is a ministry which leads on RTI, while in other countries it is a human rights commission.

Table 1: Overall Framework for Implementation

Question/ Issue	Yes/No/ Partially	Remarks
1. Has government established an RTI Nodal Agency? <i>(If yes, comment on its roles and</i>		

<i>functionality</i>		
2. Has government established an independent RTI oversight body, 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

Question/ Issue	Yes/No/ Partially	Remarks
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 make available relevant information for making requests, such as a form for this (online and in paper form) and contact details for the Information Officers?		
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>		

The remarks column for both tables should be used to record relevant information which may be used for purposes of scoring. For example, where the independence or powers of the oversight body is limited, this should be mentioned. Where some training has been provided to information officers but this is limited in scope or depth (i.e. superficial), this could also be recorded.

Scoring

The following 'marks' should be allocated for each result:

Yes	Partially	No
100%	50%	0%

'Yes' should be awarded where the result is present and is of good quality. 'Partially' should be awarded where the result is present but has some weaknesses. For example, there may be an RTI Nodal Agency but it may have done nothing to support RTI, or the oversight body may not be independent or may lack the powers it needs to do its job properly. Alternately, there may be an RTI implementation plan, but it is of low quality or has not been updated for a long time. Annual reports may have been prepared only periodically or they may be very cursory in nature. 'No' should be awarded where the result is not present or is of such low quality as to be almost completely ineffective. In the case of appointment of an information officer, only marks of 'yes' or 'no' should be applied.

It may happen that it is difficult to find information about some of these institutional measures, such as whether an information officer has been provided with training. Although formally this might seem to warrant a 'not applicable' response, thereby removing the action from the scoring, the methodology calls for a 'no' to be allocated. This is because all of this information should be readily available (in the example above, the information officer should simply indicate to the reviewer whether or not he or she has received training) and the mere non-availability of this information is a serious RTI failing.

Average marks should then be generated for each of the seven (two plus five) actions being assessed here. For the overall framework, or central measures, the average will simply be the single mark obtained for the country. For the measures by individual public authorities, the average will be obtained by calculating the average mark for all of the authorities assessed. The overall score for this assessment area should then be obtained by calculating the average of all of the average marks for the seven actions.

Finally, a colour grade should be assessed based on the overall score as follows:

Red	Yellow	Green
0-33	34-66	67-100

Assessment Area Three: 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 five to ten 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 should 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 ask 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 along the lines of the table below (although in practice you should use the attached excel file for this).

	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 of 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 following 'manner of processing' issues should be recorded in the comments:

1. Whether a receipt was provided (if the law provides for this and, if relevant, within the time limit set out in the law).

2. Whether the response was timely (again, in accordance with the time limits set out in the law and any extensions were appropriate)
3. Whether information was provided in the format desired (again, if the law provides for this).
4. Whether and any fee charged was appropriate (again, in accordance with the limits in the law).

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

1. Oral Refusal
2. Written Refusal (in whole or in part)
3. Transferred
4. Referred
5. Mute Refusal
6. Information received
7. Incomplete Answer
8. Information Not Held
9. Unable to Submit

From among these, (6) is a legitimate result, (2), (3), (4) and (8) might be legitimate results and (1), (5), (7) and (9) are never legitimate.

Scoring

The request processing approach generates two types of results, the four issues identified above as 'manner of processing' issues and the final result. For each of these five issues, the following 'marks' should be allocated:

Yes	Partially	No
100%	50%	0%

The following considerations should be taken into account when allocating marks:

1. Provision of a receipt will normally receive a 'yes' or 'no' mark although 'partially' might be awarded, for example if the receipt was provided outside of the time limit set out in the law.
2. For timeliness, 'yes' should be awarded for a response which is provided within the initial time limit or within the allowed period for extensions, if any extension claimed is deemed to be legitimate (see below). 'No' should be awarded where the time limits were formally not respected (whether the initial time limits or an extension), or perhaps where a claimed extension was, although formally proper

(i.e. within the formal conditions of the law), deemed to be grossly excessive. 'Partially' should be awarded where breaches of the time limits were minor (such as responses being a few days late) or where formally proper extensions were not considered to be legitimate. There may be many reasons for this. For example, in some cases, the law sets out conditions for claiming an extension and these might not appear to be present. In other cases, the request could be too simple to need an extension. In yet other cases, the extension could be too long compared to the complexity of the request. Ultimately here, as in other cases in this methodology where judgement calls need to be made, common sense is needed.

3. For format, 'yes' should be awarded where the information is received in the format desired or any refusal to do so appears to be sanctioned by the law (for example because it would harm the record). 'No' should normally be awarded where the information is not provided in the desired format and this does not appear to be sanctioned by the law. A 'partially' score would be rare here but it might be awarded where, even though the information was not provided in the desired format and this does not appear to have been sanctioned by the law, the authority appears to have paid some attention to this issue and made some effort to comply.
4. For the fee, 'yes' should be awarded whether either no fee was charged or any fee was in accordance with the law. 'No' should be awarded where a fee diverges significantly from what the law allows, and 'partially' should be awarded where a fee diverges somewhat from what the law allows. Ultimately, these are judgement calls based on common sense.
5. 'Yes' should be awarded for Information Received (Result 6).
6. 'No' should be awarded for Oral Refusal (Result 1), Mute Refusal (Result 5) and Unable to Submit (Result 9).
7. An Incomplete Answer (Result 7) should get a 'no' where a significant part (i.e. 50% or more) of the information requested was not provided and a 'partially' where a significant part of the information was provided. Ultimately this is again a common sense judgement call.
8. The scoring of the result Written Refusals (Result 2) will depend on an assessment of the legitimacy of the grounds for refusal. Since the methodology calls for requests to relate to information which is not exempt, a 'yes' for this result will be rare and be awarded only where the grounds for the full or partial refusal appear to be legitimate. Where the grounds for the full or partial refusal appear to be somewhat reasonable, even if wrong, 'partially' may be awarded, while unreasonable refusals should earn a 'no'. In case of a partial refusal, where only a small amount of information has been removed, even based on an unreasonable refusal, 'partially' may also be awarded.
9. The scoring of the result Information Not Held (Result 8) will depend, first, on an assessment of whether or not this claim is accurate. If it is not deemed to be accurate – for example because it is simply not credible that the authority does not hold the information or because the authority is required by law to hold it – then a

'no' score should be given. If it is deemed to be quite unlikely to be accurate, 'partially' might be awarded. Even if the claim is correct, 'partially' should be awarded when the authority is supposed to transfer or refer the request to another authority but does not do this (which again involves a judgement call as to whether or not the initial authority should know of another authority which holds the information).

10. The scoring of Transferred (Result 3) and Referred (Result 4) will depend on whether this action was, according to the law, legitimate. Where the underlying grounds for this action (normally that the authority does not have the information (see above) but sometimes also because the information is more closely connected to the work of another authority) are not deemed to be present, a 'no' will normally be appropriate, unless there are some mitigating circumstances which justify a 'partially'. Where the underlying grounds are present, a 'yes' will normally be warranted, unless the law calls for a transfer and a referral was given (which should get a 'partially').

The scores for 'manner of processing' issues and the final result should be calculated separately. An average manner of processing score should be calculated for each request by averaging the four individual processing scores. These should then be averaged among all requests to obtain an overall manner of processing score. Similarly, the result scores should be averaged among all requests to obtain an overall result score. To obtain a final overall score, average the two interim overall scores (one for processing and one for result). Note that this places one-half of the weight on the (single for each request) result score and one-half on the (combined) process scores.

Finally, a colour grade should be assessed based on the overall score as follows:

Red	Yellow	Green
0-33	34-66	67-100

Explanation of Results

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 refusing the request, these should be recorded under comments.

2. Written Refusal (in whole or in part)

This is when a refusal to provide the information, in whole or in part, is given in any written form (e.g. letter, e-mail or fax). Where the refusal is only partial, information may

be blacked-out or “severed” or you are provided with only some of the relevant documents. 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). Once again, any reasons given for not responding directly to the request should be recorded under comments

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 complete or relatively complete is provided.

7. Incomplete Answer

Information is provided but it is incomplete, irrelevant or in some other way unsatisfactory. This is different from a partial refusal 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.

8. 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.

9. Unable to Submit

This is where, for whatever reason, you are simply not able to make the request. This should be extremely rare but it does sometimes happen, for example, that an authority will just not accept a request.

Final Grading

Final grades should be assigned to States and may also be generated for individual public authorities if desired. For a country, there should be three overall colour grades of red, yellow and/or green, one for each assessment area (proactive disclosure, institutional measures and request processing). Similarly, for each individual public authority, three overall colour grades can be calculated, one for each assessment area.

From these three colour grades, the final grades should be allocated as follows:

# of Red	# of Yellow	# of Green	Final Score
3	0	0	Red
2	1	0	Red
2	0	1	Red
1	2	0	Yellow
1	1	1	Yellow
0	3	0	Yellow
0	2	1	Yellow
1	0	2	Green
0	1	2	Green
0	0	3	Green