

Freedom of Information Act: a Comparative Analysis

This report presents the results of a comparative analysis among eight countries under the topic of Freedom of Information Act (FOIA). All of them have some kind of access to information law, but with different rankings at international level.

The choice of these countries was made according to:

3 countries from the top 10 in Right to Information Rating: Serbia, India and Slovenia

2 countries from the bottom 10: Germany and Italy

2 countries from the top 5 in Open Data Index: United Kingdom and United States

1 country from the top 5 in the CPI, and first to have passed a FOIA: Sweden

This paper aims to show different types of FOIA with different results in terms of openness and transparency, as its objective is to be able to draft an Italian FOIA. According to the FOIA of each country, one can compare at first the principles adopted in the law; the procedures; and the exceptions. And finally, looking at the similarities and differences we will try to understand their rankings and results in terms of:

Right to Information rating (RTI) which is limited to measuring the legal framework, and does not measure quality of implementation

Corruption Perception Index (CPI) which measures the perceived levels of public sector corruption in the country

Freedom on the Net (FoN) which assesses the degree of internet and digital media freedom around the world

The CIVICUS Civil Society Index (CSI) which will show the impact of CSO's involvement

Economic Freedom Index and GDP per capita

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Principles

Fundamental Right

The Freedom of Information is a right which falls out of the fundamental democratic right of Freedom of Expression. Sweden's constitution based on the Freedom of the Press Act recognizes this right in Chapter 2 On the public nature of official documents, Art. 1. "**Every Swedish citizen shall be entitled to have free access to official documents, in order to encourage the free exchange of opinion and the availability of comprehensive information.**"

Country	Sweden	UK	US	India	Serbia	Slovenia	Germany	Italy
Constitution Protection	Protected	Not protected	Not protected	Not protected	Protected	Protected	Not protected	Not protected
Legislation	Freedom of the Press Act 1766	FOI Act 2000	FOI Act 1966	RTI 2005	FOI Act 2003	API Act 2003	FOI Act 2005	AAD 1990
Right of Access	Not limited by nationality or residence ¹	Not limited by nationality or	Not limited by nati. or resi. But with	Limited only to citizen ⁴	Not limited by nationality or residence ⁵	Not limited by nationality or residence ⁶	Not limited by nat. or residence ⁷	Limited only to citizen ⁸

¹ Freedom of the Press Act: Chapter 2, Article 1 "In order to encourage the free interchange of opinion and the enlightenment of the public, every Swedish subject shall have free access to official documents."

⁴ Right to Information Act: Article 6 – (1) "A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed."

		residence ²	exception ³					
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2¹ Freedom of Information Act: Section 1 – (1) “Any person making a request for information to a public authority is entitled— (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and (b) if that is the case, to have that information communicated to him.”

3¹ Freedom of Information Act: Article 3 – (a) “Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.”

5¹ Law on Free Access to Information of Public Importance: Article 5 – (1) “Everyone shall have the right to be informed whether a public authority holds specific information of public importance, i.e. whether it is otherwise accessible.” Article 6: “Everyone shall be able to exercise the rights in this Law under equal conditions, notwithstanding their citizenship, temporary or permanent residence, i.e. seat, or personal attribute such as race, confession, nationality, ethnicity, gender, et al.”

6¹ Access to Public Information Act: Article 5 – (1) “Legal entities or natural persons (hereinafter referred to as “the applicants”) have free access to public information.”

7¹ Freedom of Information Act: Section 1 – (1) “Everyone is entitled to official information from the authorities of the Federal Government in accordance with the provisions of this Act. This Act shall apply to other Federal bodies and institutions insofar as they discharge administrative tasks under public law. For the purposes of these provisions, a natural or legal person shall be treated as equivalent to an authority where an authority avails itself of such a person in discharging its duties under public law.”

8¹ Law on Administrative Procedure: Article 22 – 1b) ““interested”, all private parties, including those of public or common carriers, who have a direct interest, real and current, corresponding to a situation legally protected and attached to the document to which access is requested”.

Right to Access

Country	Sweden	UK	US	India	Serbia	Slovenia	Germany	Italy
Procedural Guarantees	Identification Documents ⁹	ID +Details of Info required ¹⁰	ID + Details of Info required	Identification Document ¹¹	Identification Documents ¹²	Identification Document ¹³	No specific provisions ¹⁴	Provide justification ¹⁵

Furthermore, this right should not be limited to citizens only but opened to every person and with no justifications required, and so respecting their privacy and freedom of opinion. This issue is clearly mentioned in both Serbian and Indian Laws, respectively: Law on Free Access to Information of Public Importance: Article 6: **“Everyone shall be able to exercise the rights in this Law under equal conditions, notwithstanding their citizenship, temporary or permanent**

⁹ Freedom of the Press: Article 14 – (1) “An application for access to an official document is made to the public authority which keeps the document. (2) The application shall be examined and approval granted by the aforementioned authority. However, where special reasons so warrant, it may be laid down in a provision of the nature referred to in Article 2 (2) that in applying that provision, examination and approval shall rest with another authority. In the case of a document of key importance for the security of the Realm it may also be prescribed by statutory order that only a particular authority shall be entitled to examine and approve questions relating to access to the document. In the cases under reference, the application must be submitted at once to the competent authority. (3) No public authority may inquire into a person’s identity on account of his request for access to an official document, or inquire as to the purpose of his request, except insofar as such inquiry is necessary in order to enable the authority to ascertain whether or not any obstacle exists to prevent the release of the document.”

¹⁰ Freedom of Information Act: Section 8 – (1) “In this Act any reference to a “request for information” is a reference to such a request which—(a) is in writing, (b) states the name of the applicant and an address for correspondence, and (c) describes the information requested.”

¹¹ Right to Information Act: Article 6 – (2) “An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.”

¹² Law on Free Access to Information of Public Importance: Article 15 – (4) “An applicant shall not be required to specify the reasons for a request.”

¹³ Access to Public Information Act: Article 17 – (3) “The applicant is not required to give the legal grounds for the request or expressly characterize it as a request for the access to public information.”

*residence, i.e. seat, or personal attribute such as race, confession, **nationality**, ethnicity, gender, et al.”* ; and Right to Information Act: Article 6 – (2) *“An applicant making request for information **shall not be required to give any reason** for requesting the information or any other personal details except those that may be necessary for contacting him.”*

Procedure Guarantees

An applicant, who desires to obtain any information under the Act, should submit an application to the Public Information Officer of the concerned public authority. The application should be precise and specific with identification documents of the applicant – keeping in mind that no justification and no fees should be asked for according to best practices –. A timeline must exist to facilitated the procedure and insure transparency of bureaucracy. Depending on the countries, the deadlines differ, however Serbia has one of the best texts dealing with this. The Law separates between normal and important procedures depending on the topic.

The applicant sends a request to the PIO and waits for a positive or negative reply within 15 days for normal procedures and 48 hours for matters of life, health etc. If the public authority needs more time to provide the information, it has 40 more days. If a public authority fails to comply with the specified time limit, or refuses to provide the specific information, the applicant could appeal to the Commissioner, an independent authority which will deal with it within 30 days. Furthermore, the public authority should inform the applicant on date, time and place of delivery. The Serbian law refers to a reimbursable cost, although information should be free¹⁶.

Since access to information should be a “universal” right not linked to citizenship and nationality, procedures must be available in more than the local language as mentioned in the Indian law Right to Information Act: Article 6 – (1) *“A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in **English** or **Hindi** or in the **official language of the area** in which the application is being made, accompanying such fee as may be prescribed.”*

14¹ Freedom of Information Act: Section 7 – (1) *“The authority which is authorized to dispose of the requested information decides on the application for access to information. In the case of Section 1 (1), sentence 3 the application is to be filed with the authority which avails itself of the natural or legal person under private law in discharging its duties under public law. Pertinent reasons must be stated for applications concerning third parties within the meaning of Section 5 (1) and (2) or Section 6.”*

15¹ Law on Administrative Procedure: Article 3 – (1) *“Every administrative measure, including those relating to the administrative organization, the conduct of public competitions and staff, must be justified, except in the cases provided for in paragraph 2.”*

16¹ Law on Free Access to Information of Public Importance: Article 15,16,17,18

Situation	Sweden	Serbia	Slovenia	India	UK	US	Germany
Normal Procedure	No specific timeline	15 days	20 working days	30 days	20 working days	20 working days	1 month
Matter of life, health	No specific timeline	48 hours	No specific provision	48 hours	No specific Provision	No specific provision	No specific provision
Extended deadline	No specific timeline	40 days	30 working days	No specific provision	No specific provision	20 working days	No specific provision
Appeal to	Ombudsman Court of law	Commissioner	Commissioner for Access to Public Information	Public Information Officer	Commissioner	Head of the Agency Attorney General	Federal Commissioner for Freedom of Information
Delivery	No specific provision	Public authority informs the applicant (date, time, place and cost)	No specific provision	No specific provision	No specific provision	No specific provision	No specific provision
Refusal	No specific provision	15 days	20 working days	No specific provision	20 working days	No specific provision	1 month
Fees	Free	Free/Reimbursable	Free	Not free	Fee should be paid within 3 months	It depends	It depends

Duty to Publish

Country	Sweden	UK	US	India	Serbia	Slovenia	Germany	Italy
Duty to Publish	No specific provision	Partially mentioned ¹⁷	Certain info published ¹⁸	Proactive publication and regular update ¹⁹	Partially mentioned ²⁰	Partially mentioned ²¹	Partially obliged ²²	No specific provision

In order to facilitate the access of information, public authorities must publish information and make them available on all means of communication. Rare are the FOIA respecting this clause,

17¹ Freedom of Information Act: Article 1 “It shall be the duty of every public authority— (a) to adopt and maintain a scheme which relates to the publication of information by the authority and is approved by the Commissioner (in this Act referred to as a “publication scheme”), (b) to publish information in accordance with its publication scheme, and (c) from time to time to review its publication scheme.”

18¹ Freedom of Information Act: Article 1 “Each agency shall separately state and currently publish in the Federal Register for the guidance of the public.” Article 2 “Each agency, in accordance with published rules, shall make available for public inspection and copying.”

19¹ Right to Information Act: Article 4 – (1) “Every public authority shall—(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such records is facilitated.”

20¹ Law on Free Access to Information of Public Importance: Article 10 – (2) “In cases referred to in paragraph 1 of this Article, a public authority shall instruct the applicant in its response on the information medium (number of an official medium, title of a publication, etc.) containing such information and indicate where and when the requested information was published, unless such information is common knowledge.”

21¹ Access to Public Information Act: Article 5 – (4) “The body shall make its public information available through electronic means where possible and appropriate though this shall not imply an obligation, for the purpose of the re-use of information, to provide transformation of one form into other or provide extracts from documents, where this would involve disproportionate effort, going beyond a simple operation, nor continue with the provision of certain information only for the purpose of re-use by other bodies or other persons.”

even the “best” democracies do not mention it. In comparison with countries analyzed here, India has the more flexible text in terms of publication Right to Information Act: Article 4 – (1) **“Every public authority shall—(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, *computerized and connected through a network all over the country* on different systems so that access to such records is facilitated.”**

In most cases, the information is not published, especially on the internet; therefore bureaucracy becomes the principle obstacle of accessing official documents. Not only it will slow down the procedure but human contact will unfortunately increase corruption and bribery. The duty of publication is one of the most important clauses that FOIA should cover.

Privileges

The Freedom of Information Act should also be a legal framework to protect and promote the role of all sorts of Media (journalists, reports etc.). However there is no specific provision that states any privilege for journalists in terms of access to information but in terms of fee whenever it is requires. The Freedom of Information Act in the United States of America gives special treatment to scholars, researchers and representatives of the news media, Freedom of Information Act: (II) **“fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an *educational* or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a *representative of the news media*.”** Moreover the Swedish law Freedom of the Press protects the role of journalists in its very first Chapter Art. 1. **“The freedom of the press is understood to mean *the right* of every Swedish citizen *to publish* written matter, *without prior hindrance by a public authority* or other public body, and not to be prosecuted thereafter on grounds of its content other than before a lawful court, or punished therefore other than because the content contravenes an express provision of law, enacted to preserve public order without suppressing information to the public.”**

22) Freedom of Information Act: Section 11 – (1) **“The authorities should keep directories identifying the available information resources and the purposes of the collected information.”** (2) **“Organizational and filing plans without any reference to personal data shall be made generally accessible in accordance with the provisions of this Act.”** (3) **“The authorities should make the plans and directories stated in sub-sections 1 and 2 and other appropriate information generally accessible in electronic form.”**

Exceptions

At last, the FOIA enumerates the types of information(s) that are exempted from disclosure. Depending on the country, many official documents are not covered by the law. These documents are summarized in the table below. This could be justified by matter of:

- National security and sovereignty
- Economic and commercial secrecy
- Scientific and military cooperation
- Public order (investigation and prosecution)
- Foreign relations
- Information forbidden by Court of Law
- Information that would harm Parliament or State Legislature
- Intellectual Property
- Third party confidential info
- Cabinet papers

Then, a country may adopt a FOIA but exclude many documents or even entities (political parties, agencies, President, Prime Minister and Parliament) from it. Or it could even adopt a Secrecy Act that would exempts many documents (public budget, treaties etc.) from any other law. Therefore even if a country has a well-structured FOIA, if the exemption clause covers many document or does not specify a clear timeline for the end of exclusion, its implementation would not have a good impact on society and good governance.

Exception Score	Sweden	UK	US	India	Serbia	Slovenia	Germany	Italy
Over 30 days :	17	12	16	26	26	25	11	5

Countries at a Glance

Indicator	Sweden	UK	US	India	Serbia	Slovenia	Germany	Italy
Year of Adoption	1766	2000	1966	2005	2003	2003	2005	1990
RTI Rating /150 (in 2013) ²³	92	99	89	130	135	129	52	57
CPI Scores /100 (in 2013) ²⁴	89	76	73	36	42	57	78	43
World Press Freedom Index (1 as good) (in 2014) ²⁵	8.98	19.93	23.49	40.34	25.05	20.38	10.23	23.75
Open Data Index (in 2013) ²⁶	670	940	855	215	440	485	410	515
Freedom on the Net (1 as good)(in 2013) ²⁷	N/A	24	17	47	N/A	N/A	17	23
Freedom Net Status (in 2013) ²⁸	N/A	Free	Free	Partly Free	N/A	N/A	Free	Free
Civil Society Index /3 (impact) (2003-2006) ²⁹	N/A	N/A	N/A	1.2	1.5	1.5	2.6	2.3

²³ <http://www.rti-rating.org/index.php>

²⁴ <http://cpi.transparency.org/cpi2013/results/>

²⁵ <http://rsf.org/index2014/en-index2014.php>

²⁶ <https://index.okfn.org/country/>

²⁷ <http://www.freedomhouse.org/report-types/freedom-net#.U6GmQ5SSxqX>

²⁸ <http://www.freedomhouse.org/report-types/freedom-net#.U6GmQ5SSxqX>

Economic Freedom / 100 (in 2014)³⁰	73.1	74.9	75.5	55.7	59.4	62.7	73.4	60.9
GDP per capita PPP (constant 2011 International \$) (in 2012)³¹	41,840	34,694	50,859	5,050	11,587	27,394	41,966	33,668

The table above reveals that even though all the countries “provide” access to official documents, not all of them have the same results. The Open Data Index in particular shows:

Top 10 countries in RTI Rating lack openness especially concerning government budget and spending

Germany and Italy lack in government spending and company registers index, they also score low in RTI Rating

29 ²⁹ <http://civicus.org/index.php/en/>

30 ³⁰ <http://www.heritage.org/index/about>

31 ³¹ <http://data.worldbank.org/indicator>

Table 1 shows that there is no direct correlation between the quality of the law and corruption. It is also a matter of implementation and political will.

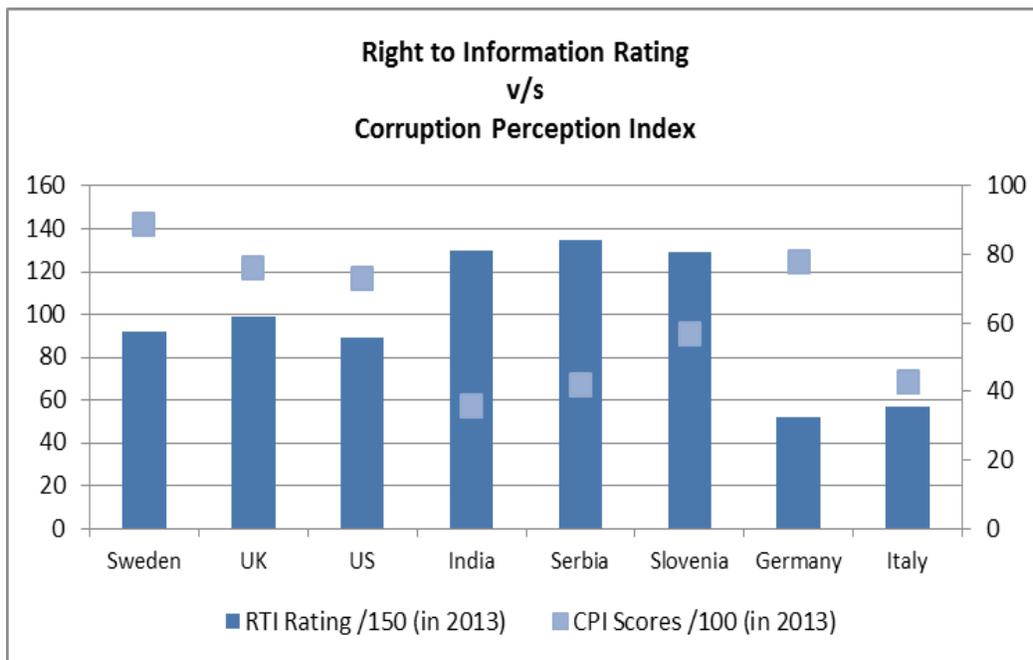


Table 2 shows that in countries with “good” laws the level of openness is low, which means that it is not only a matter of legislation but government’s commitment.

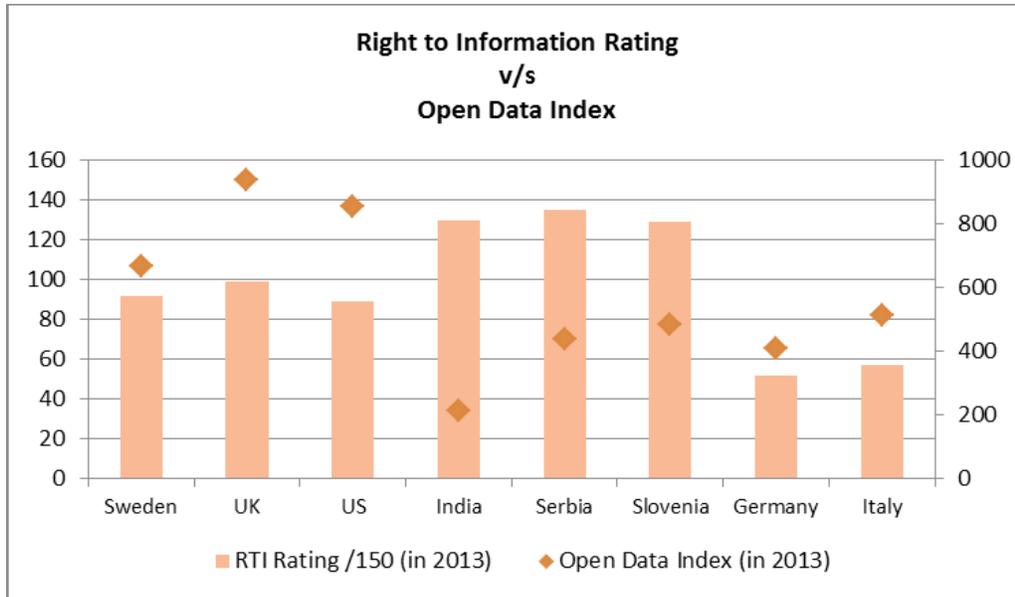
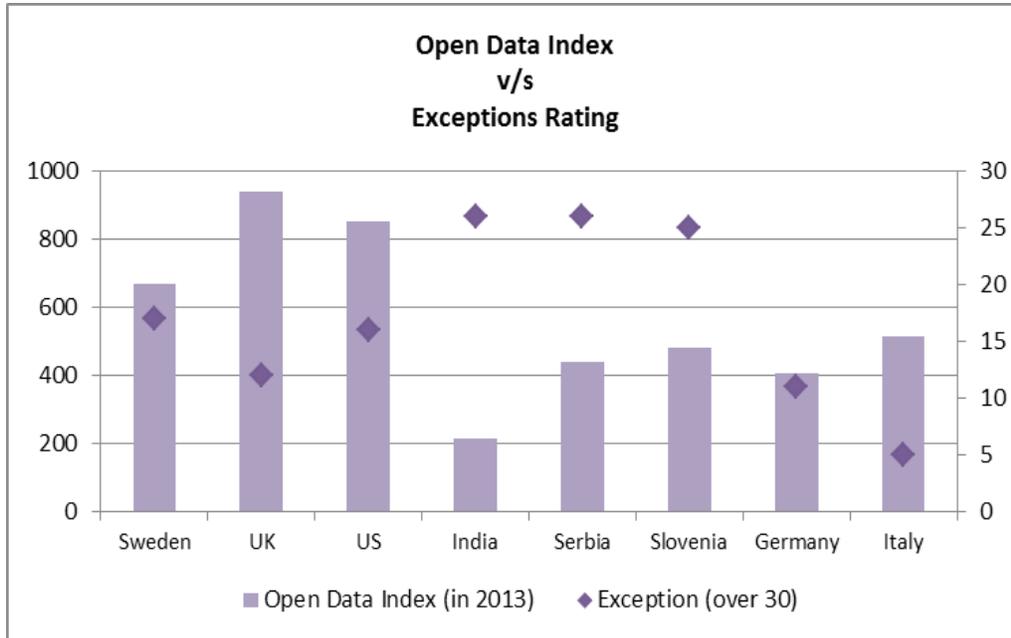


Table 3 confirms previous statements because even though India, Serbia and Slovenia score better in terms of “Exceptions”, their level of openness is still low. This could be because of low level of freedom of press, low level in internet penetration and strong bureaucracy.



Recommendations for Italy

	Freedom of Information Act	Law on Administrative Procedure	Text
Protection	FOIA should protect the right	N/A	"Every citizen shall be entitled to have free access to official documents"
Right of Access	Not limited to citizen	"'interested', all private parties, including those of public or common carriers, who have a direct interest, real and current, corresponding to a situation legally protected and attached to the document to which access is requested" ³²	"Everyone shall be able to exercise the rights in this Law under equal conditions, notwithstanding their citizenship, temporary or permanent residence
Public Information	Administrative documents	"Administrative Document" means any graphical representation, electromagnetic or any other species of the content of documents, including internal or not related to a specific procedure, held by a public administration and related activities in the public interest, regardless of the nature the public or private their fundamental" ³³	"Information of public importance, within the meaning of this Law, is information held by a public authority body, created during or relating to the operation of a public authority body, which is contained in a document and concerns anything the public has a justified interest to know."
Scope	Public institutions, state-owned companies, private companies with	"Public administrations, businesses and special autonomous, public bodies and providers of public services." ³⁴	Should mention private companies providing public services; and State-owned companies.

³² Article 22

³³ Article 22

	public services	“The provisions of this Act shall apply to the state and national public bodies. The provisions of this Act shall apply also to companies with total or majority interest, limited to the exercise of administrative functions.” ³⁵	
Procedural Guarantees	No justification needed	“Every administrative measure, including those relating to the administrative organization, the conduct of public competitions and staff, must be justified.” ³⁶	“An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.”
Duty to Publish	Obligation to publish	“Shall also be published, in the manner aforesaid, the Commission's annual reports referred to in Article 27 and, in general, is given maximum publicity to all the provisions implementing this law and all initiatives to clarify and to make effective the right of access.” ³⁷	“Every public authority shall maintain all its records, computerize and connect through a network all over the country on different systems so that access to such records is facilitated.”
Appeal	Freedom of Information Commissioner	Long and not clear procedure Appeal body is not independent form	“An applicant may lodge a complaint with the Commissioner”

³⁴ Article 23

³⁵ Article 29

³⁶ Article 3

³⁷ Article 26

		the government ³⁸	
Privilege	Easy access to Media	N/A	“fees shall be limited when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media”
Procedure	E-government - Less bureaucracy - Free of charge	“A request for access to documents must be substantiated. It must be directed to the administration that produced the document or which holds permanent.” ³⁹	“Every public authority shall maintain all its records, computerize and connect through a network all over the country on different systems so that access to such records is facilitated.” “Every citizen shall be entitled to have free access to official documents”
Exception	International Standards – No Secrecy Law	Long list of exception ⁴⁰	N/A

Amendments to the actual law are related to:

Right of Access

Definition of Public Information

Scope

Procedural Guarantees

Duty to Publish

³⁸ Article 25

³⁹ Article 25

⁴⁰ Article 24

Independent Instance to Appeal

Privilege to Media

Procedure

Decrease exception

Opportunity to Move Forward

Italy has the opportunity to move forward and adopt a proper Freedom of Information Act under international standards. On March 20th 2013, the legislative decree March 14 2013, n. 33⁴¹ came into force. The government aimed at revising the provisions regarding obligations of disclosure, transparency and dissemination of documents and information by the Public Administration on their website. Therefore FOIA activists can take advantage of this law, which should have been implemented once published in the Official Gazette:

General Principle: Article 1 – (2): “Transparency, in accordance with the provisions of state secrecy, of secrecy, statistical confidentiality and protection of personal data, contributes to the implementation of the principle of democracy and the constitutional principles of equality, impartiality, good performance, responsibility, effectiveness and efficiency in the use of public resources, integrity and loyalty in service to the nation. Its condition guarantees individual and collective freedom, as well as civil, political and social rights, integrates the right to good administration and contributes to the completion of an administration opened to serve the citizens.”

Free Access: Article 3: “All documents, information and data subject to mandatory disclosure under the current regulations are public and anyone has the right to know, of using it for free, and use and reuse within the meaning of Article 7.”

Obligation to publish and to update: Article 5 – (1): “The obligation imposed by law on the part of public authorities to publish documents, information or data includes the right of everyone to request the same, in cases where the publication has been omitted.” Article 5 – (3): “Administration, within thirty days, shall publish on the website of the document, the information or the requested data and transmits the same to the applicant or notify the same, once published, indicating the hyperlink as required. If the document, information or data requested are already published in compliance with current legislation, the administration shall notify the applicant on its Hyperlink.” Article 8 – (1): “Documents containing the acts being mandatory disclosure under the current regulations are published immediately on the institutional site of administration.” Article 8 – (2): “Documents containing data and other information subject to mandatory disclosure under the current regulations are published and kept up to date under the provisions of this Decree.”

Free and not justified Access: Article 5 – (2): “A request for “access to civic” and not subject to any limitation as to the legitimacy of the subjective applicant must not be motivated and free of charge and should be submitted to the head of transparency in the administration referred to in paragraph 1, which shall act on the same.”

41 <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2013-03-14;33>

Right to appeal: Article 5 – (4): “In cases of delay or failure to reply, the applicant can appeal to the holder of replacement power referred to in Article 2, paragraph 9 bis of the Law of 7 August 1990, n. 241, as amended.”

Publication concerning the organization and activities of public administrations:
Chapter 2

Publication concerning the use of public resources: Chapter 3

Promotional measures: Article 3: “Three-year program for the transparency and integrity.” Article 3 – (1): “Every administration, after hearing the associations represented in the National Council of Consumers and Users, adopt a three-year program for the transparency and integrity to be updated annually.”

At last, the production of a FOIA should not start from zero, but it can either be based on this decree or amendments could be added to the already existing Law on Administrative Procedures, that should cover financial and non-financial data, available to all and for free, in hard and soft copy, and involving public and private organizations providing public services. An then, it will all depend on the list of exceptions, because as mentioned previously, even with a well-written text, excluded data make the difference.

About the author fo this paper

Alexandre Salha, a graduate in Economics and Political Studies at the University Saint-Joseph (Beirut – Lebanon), and currently a Master student in International Cooperation and Development at Università Cattolica del Sacro Cuore (Milan – Italy), worked as a Project Coordinator for the Institut Européen de Coopération et de Développement in the technical and vocational sector. He then worked as Project Manager at the Lebanese chapter of Transparency International, the Lebanese Transparency Association – No Corruption, focused on governance, transparency and fight against corruption. He has carried out a project to promote Access to Information in Lebanon.