



OPEN SOCIETY  
FOUNDATIONS



**General Comment of the United Nations Human Rights Committee:**  
**The Right of Access to Public Information**

(March, 2013)

Date: 6 March, 2013

Author: Nino Tsukhishvili

IDFI Legal Expert/ Recipient of the Open Society  
Human Rights Internship 2013

International Covenant on Civil and Political Rights, which was adopted on December 16, 1966 by the United Nations General Assembly, **guarantees the right of access to public information in all States parties.** Georgia ratified the International Covenant on Civil and Political Rights on May 3, 1994 and took obligations under the Covenant, **including providing the right of access to public information.** The implementation of the Covenant by States parties is monitored by the Human Rights Committee, which is an independent expert's body. The Human Rights Committee is entitled to consider inter-state and individual complaints with regard to alleged violations of the Covenant by States parties as well as to examine state reports concerning the implementation of the Covenant on a national level. The Human Rights Committee also prepares and publishes its interpretation of the content of human rights provisions, known as general comments on thematic issues, which presents essential guidelines for States parties on the implementation process.

Article 19 of the International Covenant on Civil and political rights regulates the right to receive information in states parties, which defines that "**Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print,**

**in the form of art, or through any other media of his choice.”** Accordingly to the Covenant, the right to receive information is not absolute and may be restricted by law and if it is necessary for respect of the rights of reputations of others, for the protection of national security or of public order or of public health or morals.

The Human Rights Committee published the General Comment #34 on September 12, 2011 concerning the interpretation of Article 19 of ICCPR<sup>1</sup> where the states’ obligations in the implementation of the Covenant on national level are defined. The General Comment contains issues relating the right of access to public information and personal data protection, interprets the grounds and boundaries of restrictions and represents recommendations for effective implementation of the right.

In accordance to the General Comment, the Human Rights Committee interpreted that the right of access to public information is essential for the realization of the transparency and accountability of public organs and promotes protection of human rights from arbitrary interference by the state.<sup>2</sup> The Committee pointed out that all branches of the State (legislative, executive, and judiciary) and other public authorities at a national, regional or local level are obliged to provide effective exercise of the right to receive information.<sup>3</sup> According to the General Comment, other bodies carrying out public functions also have obligations to provide access to public information.<sup>4</sup> The Committee defined that States parties are required to ensure implementation of Article 19 on national level, which implies adopting relevant domestic legal rules, administrative practices and judicial decisions as well as relevant state policy for achieving transparency of public organs.<sup>5</sup> The states parties should provide remedies in cases of violation of the right of access to public information.

The Human Rights Committee interpreted that **the right of access to public information means access to records held by a public body, regardless of its form, source and the date of production.** Furthermore, it includes the right of media to have access to information on public affairs which the society has the right to receive.<sup>6</sup> The Committee pointed out that the right of access to information held by public authorities means that any person has the right

---

<sup>1</sup> Human Rights Committee, General Comment #34, September 12, 2011, available online at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>

<sup>2</sup> Human Rights Committee, General Comment #34, September 12, 2011, p. 3.

<sup>3</sup> Human Rights Committee, General Comment #34, September 12, 2011, p. 7.

<sup>4</sup> Human Rights Committee, General Comment #34, September 12, 2011, p. 18.

<sup>5</sup> Human Rights Committee, General Comment #34, September 12, 2011, p. 8.

<sup>6</sup> Human Rights Committee, General Comment #34, September 12, 2011, p. 18.

to access personal information stored in state organs and the reasons of its collection.<sup>7</sup> If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request its correction.

The Human Rights Committee pointed out that the restrictions imposed on the right of access to public information may not put in jeopardy the right itself and interpreted that the relation between the right and restrictions as well as between norm and exception must not be reversed.<sup>8</sup> The restrictions must be provided by law and must conform to the strict test of necessity and proportionality. States parties should put in place effective measures to protect persons and organizations engaging in the gathering and analysis of information on the human rights situations. **The Committee interpreted that States parties must pay particular attention to legislative provisions restricting access to public information on the ground of national security because they should prevent secrecy of information that does not harm national security.**<sup>9</sup> The Committee pointed out that the States parties should exercise strict monitoring of legislative provisions relating commercial and banking secrets.<sup>10</sup>

The Human Rights Committee interpreted that State Parties should exercise the following activities for effective implementation of the Covenant:<sup>11</sup>

- Creating an effective mechanism of access to public information;
- Ensuring easy, prompt, effective and practical access to public information;
- Enacting procedural guarantees for access to public information by means of freedom of information legislation;
- Defining reasonable fees for requested information which do not constitute an impediment to access to information;
- Providing well-founded reasons for refusal of access to information;
- Ensuring an effective appeal mechanism in the court system.

Georgia, as one of the States parties of the International Covenant on Civil and Political Rights, should ensure that the national legislation, administrative practice and courts' decisions should be in compliance to the standards established by Article 19. The problems of Georgia regarding the access to public information first of all relates to access to information stored in agencies which are not public organs, but delegated public functions and/or

---

<sup>7</sup> Human Rights Committee, General Comment #34, September 12, 2011, p. 18.

<sup>8</sup> Human Rights Committee, General Comment #34, September 12, 2011, p. 21.

<sup>9</sup> Human Rights Committee, General Comment #34, September 12, 2011, p. 30.

<sup>10</sup> Human Rights Committee, General Comment #34, September 12, 2011, p. 30.

<sup>11</sup> Human Rights Committee, General Comment #34, September 12, 2011, p. 19.

finances by public authorities. In most cases, access to this information is restricted on the ground of protection of a commercial secret, which is not in compliance with the established standards of the Human Rights Committee. **Georgian legislation that regulates state and commercial secrets needs improvements**, namely implementing the public interest test and providing a proper balance between the restrictions and protection of the right. Furthermore, Georgian legislation does not define any exceptions for paying fees for requested information, such as little number of copies or special groups that may receive requested information free of charge based on their professional activities (journalists, NGOs) or financial conditions.

The practice established by state organs does not comply with the requirement of easy, prompt, effective and practical access to public information, because state organs usually used the 10 days period for delivering information in spite of its necessity; furthermore, **public organs do not present well-founded grounds in cases of a refusal of access to information and only indicate legislative provisions, which do not describe the administrative organ's position clearly**. It should be considered that state excise for administrative complaints creates an unreasonable impediment in the process of protection of the right through the court.

In conclusion, analysis of the Georgian legislation and its implementation in compliance with the standards of the Human Rights Committee shows that Georgia should improve legislative framework as well as administrative and court practices to provide transparency of public authorities and to be evaluated positively by the Human Rights Committee in the process of exercising obligations under the International Covenant on Civil and Political Rights.

**The presented article was prepared in the framework of the Open Society Human Rights Internship Grant 2013.**

**IDFI (Institute for Development of Freedom of Information) is responsible for the ideas given in the article and they should not necessarily reflect the position of the Open Society Foundations (OSF).**