

ARTICLE¹⁹



Opening up Russia: The right to information and the fight for transparency

2018

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EXECUTIVE SUMMARY

Enabling people to access information empowers them. It provides a means to understand and effectively engage with those institutions that hold the power to affect their lives.

This report examines the situation for people in Russia to obtain government held information, the rights they have under international and national law to access such information and the obstacles they face in exercising those rights. It provides recommendations that can be taken by the Russian government as well as other actors, including civil society to improve the exercise of their rights, which can in turn be leveraged to empower citizens in the fulfilment of all their rights.

The right to information (RTI) is a fundamental human right, recognised under international law. The 1993 Russian Constitution enshrined this right domestically, and a series of federal laws have since elaborated how it can be exercised – most notably the 2010 Law *“On Providing Access to Information on the Activities of State Bodies and Bodies of Local Self-Government”* (referred to throughout this report as the 2010 Law on ATI). They provide citizens with the right to request and receive information, setting out a clear procedure for requests and placing responsibilities on governmental bodies and agencies to provide the required information.

However, these laws and those that intersect with them under Russia’s complex and intertwined legal system do not always comply with international standards. Moreover, unfortunately in practice the right to information is often violated by Russian public officials – with information that should be in the public domain withheld or requests for information only partial fulfilled or ignored completely.

As a result people in Russia are deprived of their right to know, limiting the free flow of information, particularly about important topics, including environmental protection, information in archives and libraries, personal data, elections, the income of State officials and the functioning of the judicial system.

Though implementation is often weak, the 2010 Law on ATI’s existence and examples of it being used effectively by journalists and civil society, highlighted in this report, nevertheless holds some hope even in the current, politically hostile, environment.

RECOMMENDATIONS

A comprehensive set of measures is needed to significantly improve the protection and exercise of the right to information (RTI) in Russia. We therefore make the following recommendations:

To the Government of the Russian Federation:

- Improve implementation of RTI by establishing an independent administrative body at a federal level, to:
 - *Receive complaints about failures to provide information, investigate, and to make binding decisions on those complaints;*
 - *Monitor implementation of 2010 Law on ATI, and connected laws, across Russia and to analyse the RTI of members of the public, organisations and the media;*
 - *Collect and analyse statistics on information requests received and their handling by government bodies;*
 - *Identify issues regarding RTI and propose appropriate solutions including guidance and regulations;*
 - *Publish an annual report on the situation for RTI in Russia;*
 - *Provide trainings for public officials and other representatives of bodies subject to RTI laws to ensure they fully understand their obligations under Russian law to proactively disclose information and provide information upon request;*
 - *Provide trainings to members of the public, media and civil society on how to utilise RTI and make RTI requests;*
 - *Provide advice and support for the redress and appropriate processes of appeal of denial of RTI requests;*
 - *Ensure that requestors are not sanctioned or harassed for making requests;*
 - *Create a mechanism of accountability for officials that violate the right to information (e.g. for destroying or modifying information, failing to proactively provide information, violating time limits for responding to requests, refusing to provide copies of requested documents, providing only tokenistic or partial responses or harassing requesters).*

- Sign and/or ratify international agreements and conventions regulating access to information, including:
 - *The UN Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) (1998);*
 - *The 1991 Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention);*
 - *The Council of Europe's Criminal Law Convention on Corruption and the Civil Law Convention on Corruption;*
 - *The Council of Europe's Convention on Access to Official Documents (Tromso Convention)'.*

- Ensure national legislation is in line with international standards on right to information, and meets the requirements set out in the 'Right to Know' principles, by:
 - *Amending the 2006 and 2010 Laws on Access to Information to ensure the principle of 'maximum disclosure' – to ensure that all information held by public bodies is subject to disclosure, and information may only be restricted in very limited circumstances.*
 - *Amending 2010 Law on Access to Information to ensure that any refusal to disclose information is not justified unless the public authority can show that the information meets the strict three-part test. Bodies should then only withhold the specific*

information that is exempted, and should provide redacted versions of the remainder of the material.

- *Ensuring that all withholding of information is subject to a ‘public interest’ test, especially in relation to public officials and archival material.*
- *Limiting the scope of exceptions in 2010 Law on ATI and 1993 Law on State Secrets so that no restriction on the right to information on national security grounds is imposed unless the government can demonstrate that the restriction is (a) prescribed by law; (b) necessary in a democratic society; and (c) protects a legitimate national security interest.*
- *More clearly defining what is meant by ‘personal data’ under 2010 ATI law to limit the possibility for information to be unjustly and/or overly broadly restricted, including on privacy grounds. This includes information about the official activities of public officials and official expenditures.*
- *Ensuring open access to information stored in state archives that is of public interest, including the archives of the Federal Security Service, in accordance with the Tshwane principles on National Security and the Right to Information.*
- *Declassified documents, including those declassified by courts, tribunals or other oversight, ombudsmen, or appeal bodies, should be proactively disclosed or otherwise made publicly accessible (for instance, through harmonization with legislation on national archives or access to information or both).*
- *Amending 2010 Law on ATI to impose an obligation on public authorities to collect and publish statistics about requests for information and how they handle those requests.*
- *Fully implementing the COE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108), to which Russia is party and ratifying the 2018 Protocol to the Convention (CETS 223). Ensure that Russian data protection legislation is amended to reflect 2018 update to Convention 108.*
- *Ensure prompt, full, accessible, and effective scrutiny of the validity of the restriction by an independent oversight authority and full review by the courts.*
- *Amend or repeal federal laws, which negatively and unjustly impact on freedom of expression including:*
 - *Federal Law 149-FZ on Information, IT Technologies and Protection of Information so that the process of blocking websites meets international standards: any website blocking should be undertaken by an independent court and be limited by requirements of necessity and proportionality.*
 - *Repealing Federal Law 327-FZ enabling the General Prosecutor or his/her Deputies to block, without a court order, access to any online resources of a foreign or international non-governmental organisation labelled as ‘undesirable’, ‘information providing methods to access’ any resources banned under the “Lugovoi Law”, including hyper-links to sites with announcements about unapproved rallies.*
 - *Repealing Federal Law 208-FZ requiring search engines to check the truthfulness of public information, and refraining from introducing new legislation imposing liability on search engines for third party content.*
 - *Amend the Right to be Forgotten Law to ensure that information already in the public domain is not removed unless this is strictly necessary to avoid harm and to safeguard against the removal of information in the public interest.*
 - *Cease politically motivated prosecutions of Internet users, including those supposedly “justified” on the grounds of preventing extremism, separatism and offending religious believers, and those administering anonymising services. Immediately and unconditionally release those currently imprisoned on such charges.*
 - *Repeal provisions introduced by the “Yarovaya package” requiring communications providers to store Internet users’ data and grant access to*

security services without a court order, non-compliance for which can lead to blocking of services.

- *Create summary of existing case law with regard to RTI in Russia establishing consistent court practice and eliminating arbitrary implementation of the relevant legislation;*
 - *Adopt a resolution setting out the legal boundaries under the legislation and court decisions on RTI.*
- Improve and promote the use and delivery of RTI requests in particular, by:
- *Promoting the availability of the right of the public to make RTI requests, through public awareness initiatives across Russia (e.g. media campaigns, advertising, town hall meetings);*
 - *Standardising the mechanisms for making RTI requests across all bodies subject to RTI, ensuring these are clearly promoted, easy to use and not subject to technical flaws (such as limited number of characters in an online request form);*
 - *Provide specific education programmes for journalists, civil society actors and other interested individuals regarding how to submit RTI requests, their rights to receive the information under law, and how they can utilise the information in their work;*
 - *Fees for RTI are only used in exceptional circumstances and should be kept to the minimum amount permissible in order to provide the information requested; or to provide another means of accessing the required data that does not incur a cost (e.g. digital rather than hard copy).*
- Demonstrate a commitment to RTI by joining international initiatives linked to RTI and open governance, including the Open Government Partnership and the Extractive Industries Transparency Initiative.

To representatives of the international community:

- *Call on the Russian Federation – through bilateral or multilateral engagement, including at the Council of Europe, Human Rights Council and Committee, UNCAC review process, and the High Level Political Forum (HLPF) – to ratify key international agreements, and implement the above outlined recommendations with regards to the effective implementation and exercise of RTI.*
- *Include as a priority in funding schemes the promotion of RTI as an effective tool for the exercise of all other rights, including by providing funding to train journalists, civil society and other actors on RTI and how to make RTI requests as well as for litigation support.*

To Russian NGOs and independent media outlets:

- Support the promotion and defence of RTI, by:
- *Increasing the use of RTI requests and supporting others to do the same;*
 - *Raising public awareness about freedom of information, and where possible analyse current practice and provide legal support to activists.*

FOREWORD BY IVAN PAVLOV

The right to information (RTI) is of critical importance in Russia. The country's history has been marked by periods during which citizens were denied information on vital matters of public interest, including crimes committed by the government, and even the fates of their nearest and dearest.

Towards the end of the last century, years of repression and terror, on a scale that still cannot be accurately estimated – partly due to government silence – gave way to policies of *perestroika* (rebuilding) and *glasnost* (governmental openness).

At that moment, it seemed that the State was ready to open up to its citizens.

The adoption of freedom of information laws was a natural follow-up to *glasnost*. In 1993, Article 29 of the Russian Constitution introduced the right of everyone to freely seek, receive, transmit, produce and distribute information by any legal means.

On 1 January 2010, the Federal Law “On the Provision of Access to Information on Activities of Government Bodies and Bodies of Local Self-Government” (hereafter 2010 ‘Law on ATI’) came into force. My former organisation the Freedom of Information Foundation played a significant role in its approval. I presented the first national freedom of information (FOI) report to Russia's Public Chamber and State Duma, following which the law – much-needed by the whole country – was approved.

So it seemed that a new era of free information had arrived: the Government and President were quick to approve new laws and decrees, taking into account the opinions of activists and experts. 2011–2012 was the peak of development of RTI in Russia. Progressive acts were approved regarding the disclosure of information on State procurement, officials' income and property declarations, and publication of statistics and information on the activities of government bodies, municipal bodies and courts.

As a result, Russia's RTI legislation has often been described as among the most advanced in the world. This report acknowledges that. However, these observations do not take into account the fact that, in practice, most governmental officials do not observe RTI. Nor is there sufficient recognition that the very term ‘freedom of information’ has lost meaning over recent years, buried under excessive bureaucracy and legal exceptions.

A sharp crackdown on fundamental freedoms began in 2012, and has worsened every year since. Newly-approved acts started to infringe upon RTI and law enforcement agencies started to prosecute people for information they share, particularly online. Many bloggers and activists have been detained for online posts, or even for simple *reposts* or *likes* on social media.

It's painful to witness the initiatives of the early 2000s being systematically dismantled. Officials are now permitted to hide their names in the real estate register, significantly restricting the scope for journalists and activists to investigate corruption. The government has permitted more than a hundred publicly owned companies not to disclose their procurements. The State Duma refuses to respond to journalists' requests on parliamentarians' tax haven accounts. Government bodies ignore citizens' information requests or provide tokenistic, non-substantive responses, fulfilling the formal step of responding the request, but without giving any substantial information. The classification period for a huge volume of archived information on the activities of Soviet security services has been extended for a further 30 years.

On top of this, the wider environment for freedom of expression has become increasingly hostile, with the free flow of information impeded both for access and for dissemination.

In 2014, the Freedom of Information Foundation was forced to dissolve as a result of government pressure on NGOs, which saw many branded as ‘foreign agents’. We re-emerged as Team 29 – a loose coalition of experts including lawyers, researchers, and journalists – and we continue to work to promote RTI in Russia.

There has, however, been a perceptible shift in our work. Previously we had “desk jobs”, conducting audits and studies, composing reports and calculating ratings. Now we work “in the field”: we get people out of prison, people who are detained on accusations related to restrictions on RTI. These include allegations of high treason, unlawful access to or disclosure of State secrets, espionage, or extremism. The number of these cases has grown markedly in recent years, a result of legal norms being formulated quite vaguely, allowing arbitrary application against anyone, whether or not they have committed a crime.

Undoubtedly, we have entered a new and more challenging era for freedom of information in Russia. Yet we know for sure that the 2010 ‘Law on ATI’ can still be used effectively. Its provisions still allow people to access information on a wide range of subjects that affect them personally – from housing to public services and the environment, as well as information about their public officials. Despite the crackdown, journalists and activists can still use RTI to uncover and investigate corruption, and to bring that information into the public awareness.

Thanks to all of this, and despite the recent setbacks, I am very proud that my team and I personally contributed to making this possible.

Looking to the future, we believe the best way to protect RTI in Russia is to ensure that Russian people use it. To that end, as well as providing legal services, we also train journalists, activists as well as other interested individuals on the importance of RTI, what information they should have access to and the best way to get it.

RTI gives Russian citizens a vital opportunity to have oversight over those who govern them. It is as crucial now as it has ever been.

Ivan Pavlov

Human Rights Lawyer and Head of Team 29

10 December 2018, International Human Rights Day

INTRODUCTION

“In contemporary society, because of the social and political role of information, the right of everyone to receive information and ideas has to be carefully protected. This right is not simply a converse of the right to impart information but it is a freedom in its own right.”

- Abid Hussain, the first UN Special Rapporteur on Freedom of Expression, 1995

The free flow of information is the oxygen of democracy. As such, the right to information (RTI) is an integral part of the right to freedom of expression (FOE); it plays an essential enabling role in facilitating and guaranteeing the protection of other human rights.

RTI laws are designed to increase government transparency. They require the authorities to disclose information – both proactively as well as at the request of any person. This ensures that the public, including civil society and independent media, has access to the knowledge required to scrutinise the actions of those in power, and to participate in informed debate on policy decisions affecting all areas of people’s lives.

Despite the adoption of laws and policies requiring public bodies to ensure RTI in over 120 countries,¹ and a growing body of international law protecting and elaborating this right, governments across the world too often treat official information as their property, rather than a public good entrusted to them by the people. National security, public order and the wider public interest are regularly cited as justifications for withholding information, while corrupt officials across the world seek to obstruct access to information.

On paper, Russia’s 2010 Law *“On Providing Access to Information on the Activities of State Bodies and Bodies of Local Self-Government,”* (referred to in this report as 2010 Law on ATI) was considered among the best information laws in the world at the time it was adopted. It provides citizens with the right to request and receive information, setting out a clear procedure for requests and placing responsibilities on governmental bodies and agencies to provide the required information. The introduction of the law in itself offered the promise of a more transparent form of government.

Yet soon after its adoption, the social and political climate in Russia turned more hostile towards the concepts of human rights, RTI and FoE. Over the past few years, civil space has shrunk significantly. The Freedom of Information Foundation, a NGO headed by Ivan Pavlov, that was instrumental to the adoption of the 2010 Law, found itself classified as a ‘foreign agent’ and disbanded. Since the adoption of 2012 ‘Foreign Agent’ law around 80 NGOs have been branded this label, understood to mean ‘traitor’ or ‘spy’, simply for receiving foreign funding and being engaged in loosely defined ‘political activities’, in an attempt to smear their reputations and around 30 closed as a result. Freedom of expression, and other fundamental rights, have, and continue to be, eroded by the introduction of swathes of regressive legislation.

This shift is reflected in the significant weakness in implementation of the 2010 Law on ATI, which deprive the people in Russia of their right to know. Authorities at every level across the country do not always comply with RTI requirements, fail to proactively publish required information and information is often classified without sufficient grounds. RTI requests are often ignored, hindering the work of independent journalists and civil society in a range of spheres.

¹ ARTICLE 19, Open Development, available at <https://www.article19.org/resources/open-development-access-to-information-and-the-sustainable-development-goals/>

Furthermore the volatility of the regulatory environment, conflicting legal norms, the lack of monitoring of the implementation of right to information laws, the failure to include international legal standards into national legislation, the practice of classifying information of public interest, and in particular the widening of the scope of the classification of State secrets, have all contributed the early promise of RTI in Russia failing to reach its intended potential.

Despite this negative trend, the 2010 Law on ATI still stands. It is a positive law that enables rights rather than diminishes them. Its existence provides an opportunity to promote and practice transparency and, as this report highlights, impressive work is being done to strengthen its use and implementation across sectors – from gaining information on public finances to challenging silence, as well as improving understanding of the mechanisms among civil society and government actors.

The aim of this report is to take stock of RTI in Russia today; to clarify the legislative framework, review the current levels of implementation, and lay out the challenges preventing the full enjoyment of the right to information, as well as provide recommendations for its improvement. It is vital to keep the exercise of RTI alive, especially in the light of clear examples of positive change and effective action, which could be built upon through additional resources, education and support. The successful implementation of RTI laws in Russia will continue to be an indicator of hope not just for RTI but the exercise of all rights.

SECTION 1: INTERNATIONAL STANDARDS AND PRINCIPLES ON RTI

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

- Article 19 of the Universal Declaration on Human Rights, 1948

1.1 INTERNATIONAL STANDARDS ON THE RIGHT TO INFORMATION

The right to information (RTI) is a fundamental human right. It stems from the right to freedom of opinion and expression, recognised within Article 19 of the Universal Declaration on Human Rights (UDHR),² adopted by the United Nations (UN) General Assembly in 1948. This Article states that the right to information includes the freedom to seek, receive and impart information and ideas through any media and regardless of frontiers.

Protections for RTI are incorporated in Article 19 of the International Covenant on Civil and Political Rights (ICCPR), one of the main UN human rights treaties. The ICCPR reiterates the protections included in the UDHR and adds that every person has the right to seek, receive and impart information using any media of their choice, either orally, in writing or in print, or in the form of art.

More protections are included in Article 10 of the European Convention on Human Rights (ECHR), the human rights treaty of the Council of Europe. The ECHR includes two particular aspects regarding the scope of RTI: the right to receive, and the right to impart, information and ideas without interference by public authorities, and regardless of frontiers.

Despite the inclusion of RTI in these treaties, the right was not fully recognised or elaborated under international or national law until relatively recently. International human rights bodies, particularly the UN and Council of Europe, have latterly generated increasingly comprehensive standards on the scope of RTI, which States should meet. There is now a clear consensus among international human rights bodies of the importance of RTI, as a component of freedom of expression (FoE), but also to give effect to other rights.

In 2013, Frank La Rue, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (hereafter ‘*UN Special Rapporteur on FoE*’), noted that public authorities do not take decisions by themselves in isolation from society. They act as representatives of the society, enacting the “public good,” and their decisions and actions must therefore be transparent. Secrecy is acceptable only in exceptional cases, when confidentiality may be necessary for ensuring the effectiveness of their work. This determines the need for maximum transparency of the activities of public authorities.³

RTI has also been recognised within a number of specific standards and conventions, including those regarding the environment, sustainable development and anti-corruption.

² Adopted by Resolution 217 A (III) of the UN General Assembly on 10 December 1948

³ E/CN.4/2000/63, para 42

THE ENVIRONMENT

Aside from FoE, RTI has been recognised as a key enabler in environmental protection. In the 1992 Rio Declaration, the world's leaders agreed in Principle 10 that:

*Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.*⁴

RTI is also found in international treaties and agreements relating to pollution⁵ and climate change,⁶ as well as in resolutions of the Human Rights Council on the environment and human rights.⁷

SUSTAINABLE DEVELOPMENT

International law further recognises RTI as essential for achieving many developmental rights, including the right to water,⁸ the right to health,⁹ and the right to education.¹⁰ RTI is also specifically included in the Convention of the Rights of the Child and the Convention on the Rights of Persons with Disabilities. In these conventions, RTI is considered an enabling right, which facilitates the realisation of other rights and more effective participation in public discussions on policy and government activities.

In 2015, the UN agreed to the creation of Sustainable Development Goals, 17 broadly-defined anti-poverty goals, to contribute to the building of a people-centred, inclusive, and development-oriented society. A key element of those goals was the creation of a world where everyone can create, access, utilise and share information and knowledge, enabling individuals, communities, and peoples to achieve their full potential in promoting their sustainable development and improving their quality of life. The Goals are premised on the purposes and principles of the Charter of the United Nations, respecting fully and upholding the Universal Declaration of Human Rights.¹¹

The Goals specifically include a target (16.10) that commits all member States of the UN to ensure access to information and the protection of fundamental freedoms for their citizens by 2030.

ANTI-CORRUPTION

RTI is incorporated in international law relating to anti-corruption. Article 13 of the UN Convention Against Corruption (UNCAC) requires that States should “[ensure] that the public has effective

⁴ Rio Declaration on Environment and Development, 1992

⁵ Stockholm Convention on Persistent Organic Pollutants, 2001; Minamata Convention on Mercury, 2014

⁶ United Nations Framework Convention on Climate Change, 1992

⁷ Resolution 25/21. Human rights and the environment (2014); Resolution 34/20. Human rights and the environment (2017). Also see Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, A/HRC/22/43, 24 December 2012; Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Baskut Tuncak, A/HRC/30/40, 8 July 2015

⁸ Committee on Economic, Social and Cultural Rights, General Comment 15: The Right to Water, 2002

⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000), The right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights); Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mission to Japan, A/HRC/23/41/Add.3, 31 July 2013; Committee on the Elimination of Discrimination against Women, General Recommendation No. 24: Article 12 of the Convention (Women and Health), 1999

¹⁰ Committee on Economic, Social and Cultural Rights, General Comment No. 13 The right to education (Article 13 of the Covenant), 1999

¹¹ UN General Assembly Resolution 70/1. Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015

access to information” and take measures for “[r]especting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.”

Article 10 requires States to “take such measures as may be necessary to enhance transparency in its public administration” including:

“Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organisation, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public.”¹²

1.2. RUSSIA’S OBLIGATIONS UNDER INTERNATIONAL LAW AND FAILURE TO INCLUDE INTERNATIONAL NORMS IN NATIONAL LEGISLATION

Russia has ratified the ICCPR and the ECHR, agreeing to implement the standards elaborated by the various bodies and committees of the UN and Council of Europe (CoE) outlined above. While accepting the basic principles of exercising RTI, Russia is however not party to many of the specialised international agreements regulating the exercise of RTI, adopted by other UN and CoE Member States. These include:

- The 1998 UN Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention). 46 States and the European Union are currently participating, including nearly all countries in Central Asia and the South Caucasus. The Convention establishes the right of the public to receive environmental information from their government, to participate in development of projects with an impact on the environment, and to challenge in court a refusal to provide information or allow participation on environmental matters.
- The 1991 Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention).¹³ Under the Convention, procedures for environmental impact assessment (including public hearings) of potentially harmful planned activities must be held both domestically and in those neighbouring States that may be affected. The assessments must be held early in the planning process. The Convention applies to large facilities with potential environmental impact, such as major oil refineries, thermal power stations, nuclear power stations and other facilities with nuclear reactors, non-ferrous metallurgy and chemical plants, large-scale logging, construction of highways, large-diameter oil and gas pipelines, and other comparable projects. Russia has signed but not ratified the Convention.
- The 2009 CoE Convention on Access to Official Documents (Tromso Convention)¹⁴. This treaty establishes a detailed framework for right of access to information held in member states, including a limited set of exemptions, a public interest test, and an appeal procedure, with a review by an independent body or court. The treaty will enter into force when ratified by 10 countries.

Russia has not ratified the two key COE conventions on corruption, but it is a member of the Group of States Against Corruption (GRECO), which is made up of the 48 CoE Member States and the USA. It has included access to information as a key measure in its implementation questionnaire on the conventions¹⁵ and Russia has undergone four reviews of its anti-corruption efforts.¹⁶ The

¹²UNCAC, available at https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

¹³ Convention on Environmental Impact Assessment in a Transboundary Context. Passed on 25 February 1991; came into effect in 1997. Russia signed the Convention on 6 July 1991, but has not ratified it.

¹⁴ Convention on Access to Official Documents (CETS 205) <http://www.conventions.coe.int/Treaty/en/Treaties/Html/205.htm>

¹⁵ GRECO, First evaluation round (2000-2002), Questionnaire Adopted at the 3rd meeting of GRECO (3-5 May 2000), Part I : Global framework for the fight against corruption (legislation, institutions, mechanisms, prevention); Second Evaluation Round, Questionnaire for the Second Evaluation Round (2003-2005), 30 January 2003 Greco (2002) 28E Final, Question 2 “Transparency in public administration”; 19 October 2012 Greco (2012) 22E, Fourth Evaluation Round, “Transparency of the legislative process”; Recommendation 86 (2000)1 on the financial transparency of political parties and their democratic functioning at regional level

country is also a party to the CoE's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, which requires that States ensure that individuals have a right of access to information about themselves held by public and private bodies.¹⁷ However, Russia does not engage with international initiatives linked to RTI– such as the Open Governance Partnership¹⁸ or the Extractive Industries Transparency Initiative¹⁹ – and thus fails to contribute to the strengthening of international cooperation in this area.

1.3 THE 'RIGHT TO KNOW': FUNDAMENTAL PRINCIPLES

This section presents the primary principles that must guide national legislation, based on international and regional law and standards, in order to genuinely permit access to information. They constitute an abridged version of ARTICLE 19's 'Right to Know' Principles, drawing on those most relevant to legislation in the Russian context.²⁰

PRINCIPLE 1: MAXIMUM DISCLOSURE

Public bodies have an obligation to disclose information, and every member of the public has a corresponding right to receive information. The overriding goal of RTI legislation should be to ensure that all information held by public bodies is subject to disclosure, and information may only be restricted in very limited circumstances (see Principle 4).

The importance of RTI, and the obligation of State bodies to disclose information has been repeatedly reiterated by UN bodies and the CoE. In his 1995 report, Abid Hussain, the first UN Special Rapporteur on FoE, underlined the importance of maximum access to information as a core component of FoE:

“In contemporary society, because of the social and political role of information, the right of everyone to receive information and ideas has to be carefully protected. This right is not simply a converse of the right to impart information but it is a freedom in its own right. The right to seek or have access to information is one of the most essential elements of freedom of speech and expression.

Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked.”²¹

This principle of maximum disclosure was reaffirmed in 2011 by the United Nations Human Rights Committee (UN HRC), in General Comment No. 34,²² regarding implementation of the obligations on freedom of expression deriving from Article 19 of the ICCPR. The UN HRC reiterated that FoE includes the right to access information held by public bodies, and noted that information should be available to any person without need of explanation or justification. They also noted that that information includes “records held by a public body, regardless of the form in which the information is stored, its source and the date of production.”

¹⁶ GRECO Russian Federation evaluations page. <https://www.coe.int/en/web/greco/evaluations/russian-federation>

¹⁷ Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, ETS 108, came into effect on 1 October 1985, came into effect in Russia on 1 September 2013

¹⁸ The Open Government Partnership is a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. More information is available at <https://www.opengovpartnership.org/>

¹⁹ The Extractive Industries Transparency Initiative (EITI) is a voluntary initiative through which countries commit to improve transparency, accountability and good governance in the oil, gas, and mining sectors. The process is managed in each country by a multi-stakeholder group of government, civil society, and company representatives. More information is available at <https://eiti.org/>

²⁰ This section is based on ARTICLE 19's publication 'The Public's Right to Know: Principles on Freedom of Information Legislation', available at https://www.article19.org/data/files/RTI_Principles_Updated_EN.pdf

²¹ Report of the Special Rapporteur, Mr. Abid Hussain, pursuant to Commission on Human Rights resolution 1993/45, E/CN.4/1995/32, 14 December 1994

²² CCPR/C/GC/34

The document further stated that public bodies should be defined broadly and should include the executive, the legislative and the judicial branches of government, as well as local and regional governments.²³

The CoE's Committee of Ministers and Parliamentary Assembly (PACE) have both stressed that information is crucial for the public in a democratic society and for strengthening confidence in public administration. They have also called for States to make the "utmost endeavour... to ensure the fullest possible availability to the public of information held by public authorities," including giving every person the right to obtain information without requiring a specific legal interest, only allowing limited exemptions, responding in a timely manner, and providing an appeals mechanism.²⁴

PRINCIPLE 2: OBLIGATION TO PUBLISH

Public bodies should be under an obligation to publish key information. This means that public bodies not only provide information in response to requests from the public, but that they also proactively publish and disseminate documents of public interest to the greatest extent possible, given accessible resources and capacity.

In General Comment No. 34, the UN HRC stated that, in order to give effect to RTI, it is of primary importance to "proactively put in the public domain Government information of public interest."²⁵

Similarly, in 2002, the CoE's Committee of Ministers published recommendations to Member States, noting that: "A public authority should, at its own initiative and where appropriate, take the necessary measures to make public information which it holds when the provision of such information is in the interest of promoting the transparency of public administration and efficiency within administrations or will encourage informed participation by the public in matters of public interest."²⁶

PRINCIPLE 3: PROMOTION OF OPEN GOVERNMENT

Public bodies must actively promote open government. It is incumbent on them to inform the public of their rights and to promote a culture of openness within government, in order to ensure the goals of right to information legislation are realised.

Experience in various countries shows that a recalcitrant civil service can undermine even the most progressive legislation. Public authorities must counteract this through promotional activities, including training for those responsible for handling public information, in order to tackle the culture of government secrecy; and public awareness raising activities.

In its 2002 recommendation, the CoE's Committee of Ministers provided guidance to States on the obligations of public authorities in this regard, noting that they should:

"Manage their documents efficiently so that they are easily accessible; apply clear and established rules for the preservation and destruction of their documents; [and] as far as

²³ CCPR/C/GC/34, para 7, 18

²⁴ Recommendation No. R(81)19 of the Committee of Ministers to member States on the access to information held by public authorities, 25 November 1981; Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors, 30 April 2014; Parliamentary Assembly of the Council of Europe, Resolution 1954 (2013), National security and access to information; Recommendation Rec(2003)13 of the Committee of Ministers to member States on the provision of information through the media in relation to criminal proceedings

²⁵ CCPR/C/GC/34

²⁶ Recommendation Rec(2002)2 of the Committee of Ministers to member States on access to official documents (Adopted by the Committee of Ministers on 21 February 2002 at the 784th meeting of the Ministers' Deputies)

*possible, make available information on the matters or activities for which they are responsible, for example by drawing up lists or registers of the documents they hold.*²⁷

PRINCIPLE 4: LIMITED SCOPE OF EXCEPTIONS

Exceptions should be clearly and narrowly drawn, and should be subject to strict ‘harm’ and ‘public interest’ tests. All individual requests for information from public bodies should be met unless the public body can show that the information falls within the scope of the limited regime of exceptions.

A refusal to disclose information is not justified unless the public authority can show that the information meets a strict three-part test (see below). Bodies should only withhold the specific information, which is exempted, and should provide redacted versions of the remainder of the material in the relevant documents or records.

Three-part test

Both ICCPR and ECHR set out three-part tests to be applied to any restriction on FOE, ensuring that it is provided by law, necessary, and proportionate and pursues a legitimate aim.

The ECHR recognises that RTI is not absolute,²⁸ and makes clear that restrictions RTI may be introduced in national law by means of “formalities, conditions, restrictions or penalties,” and only under the following conditions:

1. Such restrictions are prescribed by the law;
2. They are necessary in a democratic society;
3. They are introduced in order to achieve one or several “lawful purposes” which can include: in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Restrictions that aim to protect governments from embarrassment of the exposure of wrongdoing can never be justified.

Exceptions

While States may include a list of exceptions from disclosure, this should be narrowly drawn (only including the legitimate aims enumerated above) and should be based on content, rather than the type of a document. Exceptions should also be time-limited: this is highly relevant to archival material, which is an extremely sensitive topic in Russia.

In 2013, the UN Special Rapporteur highlighted that:

“In a number of instances, States continued to limit access to information concerning actions carried out under previous regimes, even when they took place many years ago. In the absence of detailed justification, allegations that information regarding such past violations can affect national security have little credibility. The Special Rapporteur considers that it is difficult to justify a continued public interest in restriction of access to information from former regimes.

As noted, authorities in countries undergoing a process of transitional justice have a particular obligation to proactively ensure the preservation and dissemination of information on serious violations of human rights and humanitarian law that took place in the past.”²⁹

²⁷ Ibid

²⁸ Adopted by Resolution 2200 A (XXI) of the UN General Assembly on 16 December 1966

The 'harm' and 'public interest' tests

It is not sufficient that information simply fall within the scope of a legitimate aim listed in the law. The public body must also show that the disclosure of the information would cause substantial harm to that legitimate aim. In some cases, disclosure may benefit *as well as* harm the aim. For example, the exposure of corruption in the military may at first sight appear to weaken national defence but actually, over time, help to eliminate the corruption and strengthen the armed forces. For non-disclosure to be legitimate in such cases, the *net effect* of disclosure must cause substantial harm to the aim.

Even if it can be shown that disclosure of the information would cause substantial harm to a legitimate aim, the information should still be disclosed if the benefits of disclosure outweigh the harm. For example, certain information may be private in nature but at the same time expose high-level corruption within government. The harm to the legitimate aim must be weighed against the public interest in having the information made public. Where the latter is greater, the law should provide for disclosure of the information.

Other public interest aims include important contributions to an on-going public debate, promotion of public participation in political debate, improving accountability for the running of public affairs in general and the use of public funds in particular; expose serious wrongdoings, including human rights violations, other criminal offences, abuse of public office and deliberate concealment of serious wrongdoing; and benefit public health or safety.

PRINCIPLE 5: RAPID AND FAIR PROCESSES

Requests for information should be processed rapidly and fairly, and an independent review of any refusals should be available.

In General Comment 34, the UN HRC noted that State parties to the Covenant are obliged to “make every effort to ensure easy, prompt and practical access to such information.” States should enact necessary procedures, whereby citizens are able to exercise RTI. Further, the Comment specified that public bodies must give reasons for any refusal to provide information, and that States should put in place a mechanism to process appeals against refusals, as well as against failures to respond to requests.³⁰

An important element of the international standards on the right to information is the requirement for national law to provide the possibility of challenging a refusal to provide information. A process for deciding upon requests for information should be specified at three different levels: within the public body; appeals to an independent administrative body; and appeals to the courts. Such recourse must include a prompt, comprehensive and effective consideration of the legality of such restriction by an independent court or tribunal.

PRINCIPLE 6: REASONABLE COSTS

Individuals should not be deterred from obtaining public information by costs.

The cost of accessing information held by public bodies should not prevent people from demanding information of public interest, given that the whole rationale behind right to information laws is to promote RTI.

General Comment 34 states, “Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information.” The Tromso Convention states that fees

²⁹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of 4 September 2013 #A/68/362; UN General Assembly Resolution of 4 September 2013

³⁰ CCPR/C/GC/34, para 19

should be “reasonable and not exceed the actual costs of reproduction and delivery of the document.”³¹

PRINCIPLE 7: OPEN MEETINGS

Meetings of public bodies should be open to the public.

RTI includes the public’s right to know what the government is doing on its behalf, and to participate in decision-making processes. RTI legislation should therefore establish a presumption that all meetings of governing bodies are open to the public; and that information about the decisions being made at the meeting is made available beforehand so that the public has a chance to engage in an informed manner. In Russia’s case, this would include sessions of the State Duma as well as meetings of other federal as well as local authorities. This is usually done through other national and local legislation.

PRINCIPLE 8: DISCLOSURE TAKES PRECEDENCE

Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed.

The law on RTI should require that other legislation be interpreted in a manner consistent with its provisions, and repealed when necessary.

PRINCIPLE 9: PROTECTION FOR WHISTLEBLOWERS

Individuals who release information on wrongdoing (whistleblowers) must be protected.

Individuals should be protected from any legal, administrative or employment-related sanctions or harms for releasing information on wrongdoing by public or private bodies. This should be established clearly in law. The best practice is for countries to adopt comprehensive laws that apply to all related aspects of criminal, civil, administrative, and labour law.

The right of whistleblowers to publicly reveal cases of abuse or violation of laws has been found by the European Court of Human Rights to be protected under Article 10 as a part of FOE.³² The CoE’s Council of Ministers has proposed that all member States adopt comprehensive protections of whistleblowers.³³ The UNCAC Convention, Article 33 requires protection of whistleblowers who reveal corruption.

³¹ Council of Europe Convention on Access to Official Documents (CETS 205), §7

³² See *Guja v. Moldova* [GC], no. 14277/04, *Heinisch v. Germany*, no. 28274/08, *Marchenko v. Ukraine*, no. 4063/04

³³ Recommendation CM/Rec(2014)7 of the Committee of Ministers to Member States on the protection of whistleblowers

SECTION 2: THE RIGHT TO INFORMATION IN RUSSIA – THE LAW

“RTI gives Russian citizens a vital opportunity to have oversight over those who govern them. It is as crucial now as it has ever been.”

- Ivan Pavlov, Head of Team 29, 2018

2.1. THE LEGAL FRAMEWORK

RTI has been enshrined in the *Constitution of the Russian Federation* since its introduction in 1993³⁴, which establishes the right not just to access information, but also to produce and disseminate information:

- *Article 29(4) provides that “everyone shall have the right to freely seek, receive, transmit, produce and disseminate information in any lawful way. The list of data constituting State secrets shall be determined by federal law.”*
- *Article 24 states that “the collection, keeping, use and dissemination of information concerning the private life of a person shall not be allowed without his or her consent. The bodies of public authority and local self-government, and their officials, shall ensure that everyone is able to have access to documents and materials directly affecting his or her rights and freedoms, unless otherwise provided by law.”*
- *Article 55 provides that these rights may be restricted by federal legislation to the extent necessary to protect the foundations of the constitutional system, the morality, health, rights and other lawful interests of others, and to ensure national defence and security.*³⁵

Aside from the Constitution, the main laws guaranteeing RTI are as follows:

- **2006 Federal Law #149-FZ** on “*Information, Information Technology and Protection of Information*,” (hereafter 2006 ‘*Law on Information*’).³⁶ All other laws in Russia in some way refer to the 2006 ‘*Law on Information*’ as the fundamental law in the sphere of RTI. While it outlines RTI in principle, it does not delineate what information should be made publicly available and through what mechanisms.
- **2010 Federal Law #8-FZ** on “*On the Provision of Access to Information on Activities of Government Bodies and Bodies of Local Self-Government*” (2010 ‘*Law on ATI*’)³⁷. This was the first comprehensive law pertaining to access of information – outlining what information should be made public and by whom, as well as establishing a mechanism for RTI requests. This law applies to all federal bodies, state and local governments.
- **2010 Federal Law #262-FZ** on “*Ensuring Access to Information about the Activities of Courts in the Russian Federation*”³⁸ (2010 ‘*Law on RTI in Courts*’).

The above laws combined define the basis for RTI, establish general principles for the exercise of this right, as well as elaborate the forms and ways to access and receive information. In addition, there are a large number of laws, regulations and instructions currently in effect in Russia that, to

³⁴ Constitution of the Russian Federation approved by national referendum on 12 December 1993, which came into effect on 25 December 1993

³⁵ Article 55, Part 3, Constitution of the Russian Federation.

³⁶ Federal Law of 27 July 2006 #149-FZ “*On Information, Information Technologies and Protection of Information*”, which came into effect on 8 August 2006.

³⁷ Federal Law of July 27 July, 2009 #8-FZ “*On the Provision of Access to Information on Activities of Government Bodies and Bodies of Local Self-Government*”, which came into effect on 1 January 2010.

³⁸ Federal Law of 22 December 2008 #262-FZ “*On Providing “Ensuring Access to Information about the Activities of Courts in the Russian Federation*,” which came into effect on 1 July 2010.

various extents, influence the regulation of RTI. Many of these were inherited from the USSR; however, a number of new laws and regulations have also been enacted in recent years.

2.1.1 VOLATILE LEGISLATIVE ENVIRONMENT

Legislation is often amended in Russia, resulting in changes to the regulatory environment, and the emergence of new judicial practice. Since RTI is regulated by a series of laws and regulations, amendments to one legal instrument entails a change in the implementation of other laws and regulations, as well as changes in court practice.

As a result of this interwoven legal framework, the 2006 'Law on Information' has been amended 31 times during the 12 years of its existence. While such amendments have not affected the principle and purpose of the 2010 Law on ATI, sometimes its principles and those of the 2006 Law on Information are contradicted in other pieces of regulatory legislation. In such instances, the general norms of the 2006 Law on Information should, in theory, take precedent.

Other relevant examples of a volatile legislative environment affecting RTI is the Federal Law on State Secrets, which has been amended 15 times since it was first adopted 23 years ago. Meanwhile, the Decree of the President of the Russian Federation determining the list of information classified as state secrets has been modified 30 times since 1995. (See Section 2.5.3 – State Secrets)

2.1.2 CONFLICTING NORMS

The fact that Russian laws are so interconnected, with the regulation of RTI spread across several laws, has led to the existence of multiple conflicting norms. This applies in a number of areas, but is particularly apparent when it comes to access to environmental information.

The 2002 Federal Law #7-FZ on Environmental Protection³⁹ guarantees each person access to environmental information. Furthermore, the 2006 'Law on Information' stipulates that access to information about the condition of the environment cannot be restricted. However, the 1993 Federal Law #5485-1 on State Secrets⁴⁰ states that information concerning "the condition of the ecology" can be classified as a state secret.

No federal laws define what is meant by the term "ecology". In the Russian language, this term is primarily understood as a branch of science, and not to mean simply 'the condition of the environment'. However, the vagueness of the language has created the conditions for arbitrary regulation of access to environmental information by public authorities (see section 6.1 – Environmental Information).

Under these conditions, it is difficult for lawyers to find their bearings, and even more so for ordinary people, whose RTI is hindered by frequent legislative changes. Unfortunately, it is beyond the scope of this report to be able to cover in detail all of Russia's interconnected legislation, but specific laws are mentioned throughout when relevant. The rest of this section seeks to provide an analysis of the key principles and standards affecting RTI in Russia.⁴¹

2.2. GENERAL PRINCIPLES OF RTI IN RUSSIAN LAW

Generally speaking all information for which there are no existing restrictions on distribution, i.e. restrictions that are already prescribed in Russian law (see section '2.5 - Restrictions and exemptions to disclosure'), should be freely disseminated. This does not mean that all information

³⁹ Federal Law of 10 January 2002 #7-FZ "on Environmental Protection," which came into effect on 12 January 2002

⁴⁰

⁴¹ This section is largely based on the report "Pravo znat', Doklad Komnadyi 29 o dostupe k informatsii v Rossii," ("The Right to Know. Report by Team 29 about Access to Information in Russia") published by Team 29 on 28 September 2018, available at team29.org/knowhow/znat, with additional analysis by ARTICLE 19.

needs to be actively placed in the public domain by the government, but that this information should be available upon request (see sections '2.3 Proactive Publication and 2.4 Requesting Information').

The 2006 'Law on Information' defines information as communications (e.g. messages, data) irrespective of medium. Information is further understood through its classification into different categories under various Russian laws, which in turn also provide various qualifying factors affecting the exercise and regulation of RTI.

While the regulations for handling different types of information can differ, Team 29 proposes⁴² that there are '**Eight Principles of Freedom of Information**', which must be followed in order for RTI to be upheld. These principles, while not explicitly categorised as such within the 2006 'Law on Information', have been derived from Team 29's analysis which finds them articulated across several articles of the Law (most notably [article 4](#) of the 2010 'Law on RTI') and are presented below in order to provide a cohesive and clear list.

Eight Principles of Freedom of Information

- 1) The lawful exercise of the right to information includes the freedom to seek, receive, transmit, produce and disseminate information;
- 2) Restrictions on access to information may be established only by federal law;
- 3) Transparency of information concerning activities of the government and local self-government bodies must be ensured; with free access to such information, except in specific cases defined by law;
- 4) Information must be reliable, and provided in a timely manner (see section 2.4 below);
- 5) The collection, storage, use and dissemination of information about the private life (including personal data) of an individual without their consent is not permitted;
- 6) The languages of the peoples of Russia must have equal status;
- 7) When creating and using informational systems, the security of these systems must be ensured, to maintain the security of the information contained within;
- 8) Giving preference to some technologies over others, unless otherwise provided for by law, is not permitted.

2.3. PROACTIVE PUBLICATION OF INFORMATION

There are some types of information that government agencies are required, under the 2006 'Law on Information', to proactively make publicly available. According to Team 29's analysis, this type of information falls into two main categories:

- 1) Information provided within the framework of contractual relationships (e.g. government contracts with service suppliers). Those party to the contracts are entitled to agree on confidentiality and determine the procedures for access and dissemination;
- 2) Information proscribed under federal law, which mostly includes information that the government or local self-government are under an obligation to provide to the public or to individuals.

The 2006 'Law on Information' lays out the ways that authorities can make information public:

⁴² "Pravo znat'" ("The Right to Know), published by Team 29, September 2018.

- Publication in the media;
- Publication online;
- Making the information available on the premises of public authorities and local self-government bodies and in other specially designated locations, including library and archive collections; and
- Inviting those interested to attend sessions of the relevant public bodies.

Depending on whether information is publicly available or subject to restrictions also affects how, and by whom, it can be utilised:

- Publicly available information, access to which is not restricted, can be freely used by any person. Usually if the information is published online by the relevant authorities, it is given that it falls into this category.
- Restricted information, including for example tax and notarial confidentiality, and attorney-client privilege, is usually reserved for use by specific categories of persons specifically authorised by the government.

2.4. REQUESTING INFORMATION

The right to seek and receive information belongs to both citizens (here understood by Russian legislation to include stateless persons and foreign citizens), and organisations. This right is exercised through a request to the owner of the information (hereafter a RTI request).

The specific means of exercising RTI requests are regulated by a series of specialised laws, including the aforementioned 2010 ‘Law on ATI’⁴³ and 2010 ‘Law on RTI in Courts’⁴⁴, as well as the 2006 Federal Law on the Procedure for Consideration of Appeals by Citizens of the Russian Federation,⁴⁵ (2006 ‘Law on Appeals’) and the 1991 Federal Law on Mass Media⁴⁶ (1991 ‘Law on Mass Media’).

Submission of RTI Requests: There are various procedures for the provision of information depending on the identity of the actor requesting such information. Under Russian law, RTI requests can be made by:

- a member of the public;
- a journalist;
- the editorial board of a mass media outlet; or
- an organisation or any other subject of civil law.

A member of the public may ask for information by means of an “application,” while a journalist may submit an “inquiry.” These can be sent by regular mail or e-mail or submitted in person.

An application for information must contain:

- The name of the government agency,
- The addressee of the request,
- The first name, patronymic and last name of the person requesting information,
- Their regular mail address or e-mail, and

⁴³ 2010 ‘Law on ATI’/FZ

⁴⁴ 2010 ‘Law on Courts’/FZ

⁴⁵ Federal Law of #59-FZ “On”on the Procedure for Consideration of Appeals by Citizens of the Russian Federation” of 2 May 2006,

⁴⁶ Law of 27 December 1991 #2124-1 “On Mass Media.”

- The date of the application.

If the application is submitted in hard copy, it must also be signed. If any of these details are absent, the public authority has the right not to respond.

Registration of RTI requests: Guidelines state that a RTI request from a member of the public or organisation must be registered within three business days of its receipt, and answered within 30 days after registration. In exceptional cases, requests may be answered within a 60-day period. Team 29 notes that these limits are usually kept to in practice.

Review of RTI Requests: Every application must be reviewed within 30 days from the date it is registered with the public authority. In exceptional cases (i.e. if the information relied upon another public body providing documents which were not provided in a timely manner), the time for review may be extended by a further 30 days. The review of applications is concluded by the sending of a response.

2.4.1 PROCEDURES FOR MEDIA OUTLETS

A similar procedure applies to requests for information from any other subject of civil law, with the exception of the media. In Russia, mass media outlets must be registered in a dedicated registry administered by the Federal Service for Supervision in the Sphere of Telecom, Information Technology and Mass Communications ('Roskomnadzor'). A media outlet can function without registration if it is a print media with a print run of less than 1,000 copies and is published at least once a year.

Every media outlet has the right to send inquiries to public authorities in order to obtain information. Considering the high public importance of the media, as well as their role as an intermediary between the authorities and society and as a source of timely and reliable information, Russian legislation stipulates shorter terms for consideration of requests for information from the media. A response must be provided within seven days of the inquiry being received. If a public authority is unable to provide relevant information, within three days after the request has been received the authority must inform the media outlet that the requested information will be provided later, and indicate the projected date of response and the reasons why they were unable to provide the requested information earlier.

2.4.2 COSTS

Article 21 of the 2010 'Law on ATI'⁴⁷ states that the following information must always be provided free of charge:

- Information provided verbally;
- Information concerning activities of public authorities published by them on the Internet;
- Information related to the rights and responsibilities of a person; and
- Other information, defined by the law, regarding the activities of government bodies, including at a local level.

Article 22 of the 2010 'Law on ATI'⁴⁸ stipulates that authorities may charge for information only in certain cases, which are clearly defined, and usually involving a high cost to the authorities –

⁴⁷ Article 21 of 2010 #8-FZ 'Law on ATI'.

⁴⁸ Article 22 of 2010 #8-FZ 'Law on ATI'.

including requests for large volumes of information, a requirement to make hard copies, postage of information to the requester.

- *In accordance with Principle 6 of the 'Right to Know' principles, individuals should not be deterred from obtaining public information by costs. Therefore, all costs levied by the Russian authorities, in accordance with article 22, should be kept to the minimum amount permissible in order to provide the information requested; or to provide another means of accessing the required data that does not incur a cost (e.g. digital rather than hard copy).*

2.5. RESTRICTIONS AND EXEMPTIONS TO RTI

2.5.1 UNRESTRICTED CATEGORIES

There are certain circumstances in which the government cannot refuse to provide information. The prime example is if a member of the public requests information directly related to their rights and freedoms. Similarly, if organisation requests information directly related to its rights and obligations, or the information is necessary for interaction between the organisation and the authorities.

In total, there are five situations in which requested information must be provided without any conditions or restrictions, and the requester – whether a member of the public citizen or an organisation - need not justify how the requested information is relevant to them:

- 1) Laws and regulations regarding the rights and obligations of persons or organisations;
- 2) Environmental information;
- 3) The activities of public authorities and their use of government funds;
- 4) Information accumulated in open collections of libraries, museums and archives, as well as in government, municipal and other information systems, established or intended for the purpose of providing individual members of the public and organisations with such information; and
- 5) Information specifically defined by law as 'not restricted'.⁴⁹

The government cannot refuse to provide such information, unless it constitutes a state secret or access to it is restricted under federal law.

2.5.2 RESTRICTED CATEGORIES

The grounds for restrictions to RTI can only be established under federal law – including the 2006 'Law on Information' and the 2010 'Law on ATI'. The high number of intersecting laws has meant specific restrictions are outlined across multiple laws. Team 29 has calculated that there are well over 50 categories of restrictions, making it difficult to compile a clear list of information subject to restrictions (which is itself problematic for the effective exercise of RTI). However, information subject to restrictions can be understood to broadly encompass the following categories:

- State secrets;
- Official secrets: a category of information exchanged among public authorities in order to perform their functions, but not disclosed to the public;
- Commercial secrets: information related to business activities of citizens and organisations; and

⁴⁹ Article 8 paragraph 4 of the *Law on Information*, available at http://www.consultant.ru/document/cons_doc_LAW_61798/78b773a28f3ad19eb234697b20ab1d48c09f748a/

- Professional secrets: information received by citizens in their professional capacity, or by organisations in the course of conducting of specific activities. This includes information received by notaries, lawyers and tax authorities in the course of their activities.

In theory, some restricted information can in certain circumstances be provided to individuals or organisations when it closely affects the protection of the rights of the person about whom the information pertains (as indicated in the previous section). However, this principle is rarely – if at all – complied with in practice, particularly when it refers to archival information.

- *While restrictions to freedom of information are accepted under international law – these must be narrowly drawn to meet the legitimate aims outlined under the three-part test as outlined in ‘Principle 4: Limited scope of exceptions’ of the Right to Know principles. Furthermore, in accordance with ‘Principle 1: Maximum Disclosure’ – the overriding goal of RTI is to ensure all information held by public bodies is subject to disclosure.*

2.5.3 STATE SECRETS

Under Russian law, in certain circumstances information can be classified, or its dissemination restricted, most notably when information is considered to constitute a state secret. The Federal Law on State Secrets was adopted in 1993,⁵⁰ (hereafter 1993 ‘Law on State Secrets’) and over the 25 years of its existence has been amended 14 times.

The law stipulates that the process of classifying information as a State secret has three stages:

- First, general categories of information that may be classified as a state secret are defined by law;
- Secondly, the President of Russia, mandated by the law and based on proposals by the Interdepartmental Commission for Protecting State Secrets, approves (by Decree) a list of information that may be classified as state secrets,⁵¹ and
- Finally, each government body affirms its own list of information to be classified as state secrets.

Both the Law and Decree issued by the President of the Russian Federation are made publicly available, but internal departmental lists of information that have been classified as State secrets are confidential.

Meanwhile, the law also stipulates information that *cannot* be classified as a state secret:

- Information concerning emergencies, catastrophes, natural disasters, related official forecasts and consequences;
- Information concerning the condition of the environment, public health, sanitation, demography, education, culture, agriculture, and crime;
- Information concerning privileges, compensations, and social guarantees granted by the government to individuals, officials, enterprises, institutions and organisations;
- Information concerning violations of human and civil rights and freedoms;
- Information concerning the size of gold and currency reserves of Russia;
- Information concerning the health of the holders of the highest offices of the Russian Federation; and
- Information concerning violations of the law by public authorities and officials.⁵²

⁵⁰ Law of the Russian Federation of 21 July 1993 #5485-1 “on State Secrets,” which came into effect on 21 September 1993

⁵¹ Decree of the President of the Russian Federation of 30 November 1995 #1203 “on Approving the List of Information Classified as a State secret.”

⁵² Article 7, available at http://www.consultant.ru/document/cons_doc_LAW_2481/7e2c2bd9545ce01674bd18be2514c71fdcaef33f/

In principle, information constituting a state secret cannot be classified for more than 30 years. In exceptional cases, this period may be prolonged by decision of the Interdepartmental Commission for Protecting State Secrets. In 2014, the Commission decided to prolong for another 30 years (i.e. until 2044) restrictions on access to information classified by the Soviet security services (from the Cheka to the KGB) between 1917 and 1991. Consequently, Russian society has once again been deprived access to information about the crimes committed by the Soviet regime. Now these documents will not be declassified until more than half a century after the fall of the USSR. This does not comply with international principles of transparency nor with the requirement for proactive declassification of documents of public interest by the authorities. In 2013, the European court of Human Rights ruled that Russia's system of classification and refusal to provide documents violated the European Convention on Human Rights.⁵³

Secrecy was further increased in May 2015 through amendments introduced by President Vladimir Putin to the Decree establishing a list of information that can be classified as a state secret. According to the updated Decree, information about military casualties during peacetime, held by the Russian Ministry of Defence, is now classified as a state secret. Many public figures connected these amendments with the on-going armed conflict in Ukraine and military operations on the territory of the Donetsk and Luhansk regions.

In response, a group of civil society activists led by human rights lawyer Ivan Pavlov, with the support of Team 29, launched a challenge to these amendments to the Decree, arguing that they violate freedom of information. From the challengers' point of view, President Putin went beyond the remit of his powers in amending the Decree as restrictions to accessing information can only be established by federal law. Moreover, article 7 of the Law "On State Secrets" does not permit information about emergency incidents that threaten the safety and health of citizens and their consequences to be classified as state secrets. Military actions and the conduct of special operations, the consequences of which result in human casualties, would logically come under the description of emergency incidents. Nevertheless, in November 2015, the Supreme Court of the Russian Federation dismissed this challenge and recognised the amendments as lawful.

A year later, in November 2016, the Presidential Decree was amended again to ensure that information about specific government measures to implement key policies in the sphere of military and technical cooperation with foreign states, premature dissemination of which may be detrimental to national security, was also classified as a state secret. This amendment is aimed primarily at the activities of scientific, research and engineering institutions of the military industrial complex.

- *ARTICLE 19 views the successive extension of information that can be classified a state secret under Russian law to be in violation of RTI. Following Principle 4: 'Limited scope of exceptions,' of the Right to Know principles – exceptions to disclosure must be narrowly drawn and should be based on content rather than type of document. Restrictions that aim to protect governments from embarrassment of the exposure of wrongdoing can never be justified.*

2.5.4 PERSONAL DATA

The 2006 *Federal Law on Personal Data* (2006 'Law on Personal Data') regulates issues related to obtaining and using information containing the personal data.⁵⁴ Data defined as 'personal data' can be withheld from those requesting information.

⁵³ Case of Janowiec and Others v. Russia (*Applications nos. 55508/07 and 29520/09*)

⁵⁴ Federal Law "on Personal Data" of 27 July 2006 #152-FZ, which came into effect on 26 January 2007

The notion of “personal data” is defined very widely: “any information pertaining to a particular or identifiable individual (the personal data subject).” Personal data may include the last and first names, the patronymic, date of birth, residence address, and other data that may identify a citizen.

Processing of personal data may be conducted both with the consent of the subject (in this case, the specific situations and time period when personal data may be processed are defined) and without their consent (for the purposes of justice, execution of legal procedures, performance of a contract, protection of life or health of the person concerned, in the course of the professional activities of journalists or the media, and in some other cases).

The processing of such special categories of personal data as race or ethnicity, political views, religious or philosophical persuasions, health and personal life is forbidden, except in circumstances when:

- the person concerned gave their consent in writing for the processing of their personal data;
- the person concerned made their personal data public;
- the processing of the personal data is necessary for the implementation of international readmission agreements of the Russian Federation;
- in the framework of the Russian national census; or
- in other cases defined by the law.

It is also notable that the 2006 Law on Personal Data does not create an independent agency tasked with overseeing the protection of personal data. Russia is one of the few countries in the world without such an agency. It is required by the Council of Europe additional protocol to the CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS 108) signed by Russia in 2006.⁵⁵ In October 2018, Russia signed the newly adopted protocol to the CoE Convention, which substantially updates the Convention, and specifically includes provisions protecting the right to information and freedom of expression and requires an independent supervisory authority.⁵⁶

- *ARTICLE 19 holds that any withholding of personal information should be balanced against the public’s right to know. In accordance to ‘Principle 4: Limited scope of exceptions’ of the Right to Know principles, a refusal to disclose information is not justified unless the public authority can show that the information meets the strict three-part test. Bodies should then only withhold the specific information that is exempted, and should provide redacted versions of the remainder of the material. Restrictions to personal information being made publicly available must pass the ‘public interest’ test, especially in relation to public officials conducting official business or activities relating to the State, such as expenditure, which cannot not be considered personal information.*

⁵⁵ Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows, ETS No.181 , 2001

⁵⁶ Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), ETS No.223. <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/223>

SECTION 3: BARRIERS TO EFFECTIVE IMPLEMENTATION OF RTI IN RUSSIA

“The ever-increasing formality and emptiness of responses to requests lead to an a priori pessimistic answer to the question of whether it is worth making requests for information.”

- Respondent to Team 29’s survey on RTI in Russia, 2017

It is well acknowledged, that the 2010 ‘Law on ATI’ significantly advanced the framework for RTI in Russia. However, the ultimate test is how RTI is implemented in practice – both in terms of the information that is being actively made available by public authorities and how officials respond to direct requests for information across Russia.

A volatile legislative environment and the existence of conflicting norms within Russian laws are notable challenges already highlighted in the previous section. Yet even when Russian legislation clearly delineates certain rights and obligations regarding RTI there can still be a significant gap in how these are implemented in practice through arbitrary implementation, administrative barriers, lack of oversight and education of both the general public filing requests and officials responding to them.

3.1. ARBITRARY IMPLEMENTATION

Russia is a vast country, with thousands of government bodies at federal, regional and local levels, which possess information of public interest. In this context, some government agencies may implement RTI legislation on the basis of expediency or an individual official’s personal interpretation, which does not correspond with the aim of the legislation.

Therefore, the arbitrariness of the application of the legislation – depending on where you are and who you ask - affects the exercise of the RTI in Russia, creating excessive and artificial barriers for the seeking, receiving and disseminating of information.

Since members of the public and organisations do not often resort to the courts to challenge restrictions to RTI, legal precedents with regards to RTI are largely the result of legal challenges made by civic activists, media and NGOs, and to a much lesser extent by general members of the public.

Even then, it is not always helpful in systemising practice as the country’s legal system does not recognise legal precedents as a source of law. In each specific case, the court considering a refusal to provide information applies current legislation to the unique situation in question. The judicial system is sensitive to clarifications provided by higher courts, which can be issued in the form of resolutions of the Plenum of the Supreme Court of the Russian Federation. Such resolutions, along with the laws, are binding for all courts. However, there is no special resolution of the Plenum of the Supreme Court summarising court practice on RTI, which could provide lower courts with clarifications applicable in specific situations.

3.2 ADMINISTRATIVE BARRIERS

Under Russian law, the authorities can refuse to provide information, if:

- The information contains secrets (information protected by law), and the requested information cannot be separated from those;

- The request is formulated in such a way that it is not possible to determine what information is being requested;
- The request does not indicate an address or fax number to which the authorities should send the response;
- The information does not pertain to the activities of the public authority or local self-government body to which the request was sent;
- The information has already been provided to the party making the request; or
- The request involves a legal assessment of acts, or analysis of activities, of a public authority, or other analytical evaluation, calculation, or data-processing which is not immediately related to the protection of the rights of the party making the request.

This last point in particular has resulted in some authorities refusing to provide information, which in principle should be available to the public, for technical reasons. For example, in 2016, an online magazine submitted an inquiry to the authorities of the city of Syktyvkar, requesting information about the number of public protests (locations, routes, dates, durations, and purposes e.g. processions, meetings or demonstrations) that took place in the city between November 2015 and March 2016. The city authorities argued to do so would require analysis of relevant data (i.e. to review all the applications for public events, including processions, meetings, and demonstrations, to collect information on their locations, etc.) and so refused the request. When challenged, the prosecutor's office found no irregularities in the response of the city authorities, though the authorities have would keep a record of such events.

3.3 LACK OF STANDARDISATION AND OVERSIGHT OF IMPLEMENTATION

Under the 2010 'Law on RTI', there is no government body in Russia mandated to analyse or oversee of the implementation of RTI related laws; to gather statistics regarding RTI requests; or make recommendations on best practice for the implementation of RTI.

Based on norms established by law, each government body subject to RTI legislation enacts its own procedures for handling RTI requests, independently registers and reviews the requests it receives, and is responsible for ensuring timely responses to all requests. These procedures may regulate either all forms of correspondence received by a government agency or specific types of correspondence. For instance, the Federal Service for Supervision of Transport enacted a specific 'Procedure for Handling Appeals of Citizens Received by E-mail via the Official Website'.⁵⁷

Current RTI related laws do not impose an obligation on public authorities to collect and publish statistics about the RTI requests they receive and how they handle those requests. Relevant quantitative data may sometimes be found in official reports, but is not sufficient to create a coherent picture of the handling of RTI requests across Russia. There is no established practice of publishing statistics on the correspondence received by public authorities and including the outcomes of requests for information.

With no government agency mandated to analyse or oversee the implementation of RTI, it is hard to get an accurate picture of how well the requirement to actively publish information is being complied with. In this context, its left to independent experts to try to establish how 'open' Russian bodies are in terms of providing the information they should under law. All bodies (including also public entities such as schools, hospitals, state owned business and many others) are required to have their own websites and post the information determined by law on them.

Civil society groups have attempted to address the lack of oversight through their own projects:

⁵⁷ Decree of the Federal Service for Supervision of Transport of 14 June 2007 # ГК-389Фс "on Approving Procedure for Handling Appeals of Citizens Received by E-mail via the Website of the Federal Service for Supervision of Transport."

Infometer.org⁵⁸ – a project run by RTI experts based in Saint Petersburg – rates the compliance of these various public bodies with the requirements to publish specific information on their websites, as well as providing consultations to help them improve the availability and visibility of this information. In their assessment, it is not necessarily a lack of willingness to publish information but rather a lack of awareness or specialised knowledge regarding the requirements each individual body is subject to.

Another project, **Declarator.org**⁵⁹ – run by the Russian branch of Transparency International, based in Moscow with several other Russian partners – is a constantly updated database of declarations on income and property of public officials: deputies, officials, judges, representatives of regional and municipal authorities, other bodies, state corporations and state companies. In accordance with Russia law, this information should be published by more than a million Russian officials or public representatives, however they have found several problems associated with the publication of declarations:

- Each agency does this on its own website;
- There is no single format for the publication of declarations;
- Sometimes information is deleted shortly after publication.⁶⁰

Declarator.org attempts to level these shortcomings by bringing together all declarations into one place and partially translating them into a machine-readable format. This makes declarations by individuals more accessible to the public, through a simple search function and ability to review the information available according to different bodies.

- *ARTICLE 19 views the lack of standardisation and oversight of implementation as detrimental to the promotion of open government (Principle 3, under the ‘Right to Know’ principles). Government monitoring of the exercise of RTI would enable society to assess the effectiveness of the authorities’ actions in ensuring RTI and advancing the provision of this right.*
- *The Russian government should establish a central oversight body at the federal level, which would enforce the law, monitor and assess the state of RTI across Russia, highlight problems and proffer solutions. This would enable society to have an accurate understanding of effectiveness of authorities’ actions in ensuring the right to information, advancing their provision of this right.*

3.4 CHALLENGES FACING THOSE MAKING INFORMATION REQUESTS

The absence of such an oversight body mandated to analyse or oversee the implementation of RTI has an impact in many ways but the lack of official, unified statistics regarding the handing of RTI requests is of particular concern. It makes assessing the main challenges facing those attempting to utilise RTI across Russia extremely difficult.

In an attempt to rectify this information gap, Team 29 developed an online survey to gain insights into how effective RTI requests were in reality for various Russian stakeholders wanting to utilise them, including civil society, media, and academics. Between February and May 2017, more than a hundred people from across Russia responded to this survey regarding their experience of RTI, providing answers to a series of questions covering:

- a) Their knowledge of RTI laws in Russia;

⁵⁸ The Infometer Project is available at www.infometer.org

⁵⁹ The Declarator Project is available at www.declarator.org

⁶⁰ See <https://declarator.org/about/>

- b) Their experience of making RTI requests – including the process of submitting requests as well as the response time and quality of the responses they received;
- c) Whether they disseminated the information they received, and how;
- d) Their suggestions for improving the situation for RTI in Russia.

There was a diversity of respondents; replies came from people located in every Russian federal district, from Kaliningrad in the West to Vladivostok in the Far East and from Murmansk in the North to Sochi in the South. From people residing in different types of communities, ranging from rural areas to cities with populations exceeding one million. The largest number of responses came from journalists or bloggers (50), with a fairly similar amount of replies from civic activists (28) and representatives/staff of NGOs (26). A full list of respondents is included along with the survey questionnaire in *Annex 1* of this report.

Public awareness of RTI: Almost 38% of those surveyed assessed their own knowledge of RTI legislation in Russia as good. While 47% assessed their knowledge as satisfactory and 14.5% of respondents stated that they do not know the relevant legislation well or do not know it at all. Almost three quarters of the survey respondents stated that they need legal advice in the sphere of seeking, receiving and disseminating information in compliance with the legislation. These results confirmed Team 29's existing conclusions that Russian legislation regulating RTI is not always well understood and that more needs to be done to develop public awareness and understanding of how to utilise RTI.

Making RTI requests: Positively, over 94% of those surveyed had made RTI requests in 2016 to various public authorities. The number of requests per respondent varying from one to 100 written requests and up to 500 verbal requests. RTI requests were primarily addressed to federal and local government agencies, and to a lesser extent to regional bodies⁶¹. This situation reflects the degree of influence the federal and local authorities have over the everyday life of citizens and non-governmental organizations in the country: the federal agencies shape policy and initiate various inspections, as well as have at their disposal large amounts of information; meanwhile local authorities tend to deal with routine every day issues.

Negatively, one in four of those surveyed did not understand which government agency to address their specific request to and what it needed to include in order to be considered by the relevant agency. Of particular concern was that 14% of survey participants (whether by members of the public, NGOs or the media) stated they had experienced officials of government agencies refusing to register their requests.

Response time for RTI requests: While it was clear that there is an interest in making RTI requests – the outcome of such efforts is unfortunately less positive. On average, responses were only received to 30–50% of the requests filed by respondents. Of those requests that received a response, only 68% of cases received a response from government bodies within the legal timeframe.

According to the survey respondents, in 2016 the agencies most open to providing information (i.e. giving full responses in a timely manner) were: prosecutorial bodies, the Ministry of Internal Affairs, the Federal State Statistics Service, press-offices of regional executive agencies, and local self-government bodies. Conversely respondents considered the Presidential Administration, federal

⁶¹ Survey participants stated that they had attempted to obtain information from courts, Presidential Administration, State Duma of the Federal Assembly of Russia, General Prosecutor's Office, various prosecutorial bodies Investigative Committee, High Commissioner for Human Rights in the Russian Federation, Central Election Commission, Civic Chamber, Ministry of Internal Affairs, Ministry of Defence, Ministry of Culture, Ministry of Health, Federal Security Service, Federal Archival Agency, Federal Service for Supervision of Consumer Rights Protection and Human Welfare, Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications, Federal Supervisory Natural Resources Management Service, Federal Agency for Ethnic Affairs, State Labour Inspectorate, Federal Penitentiary Service, Federal Antimonopoly Service, regional legislatures and executive agencies, local parliaments, city and district municipal administrations.

and regional parliaments, the Federal Security Service and the Russian State Archival Agency to be the most “closed” in terms of respecting RTI.

Content of responses to RTI requests: Only 4% of survey respondents were fully satisfied with the information provided by public authorities, while 19% were entirely dissatisfied. 42% received only a partial response to their request. 16% reported that the government bodies failed to provide copies of the documents requested.

Over half of those surveyed said that the replies they received were merely a formality, and that they could not use the information obtained from the government bodies. 9% of those surveyed responded that information received from the authorities was generally useful, while 15% said that it was not useful at all.

One survey respondent pointed out a significant issue concerning responses to requests for information: “We are not given clear answers to most of the questions, instead of facts we get bits of quotation from the laws.” Another added, “the ever-increasing formality and emptiness of responses to requests lead to an *a priori* pessimistic answer to the question of whether it is worth making requests for information. Ultimately, requests are more often sent, not with the hope of obtaining information, but for the purpose of protecting ourselves in case of legal action (in these cases even a formal reply is better than no reply).”

As a result, making an official RTI request appears to be for many journalists a means to offer a right of reply, or to show that they made an attempt to get access to specific information, rather than a serious exercise in which they expect to achieve a real result. It is likely that part of this stems from the issues already identified – including a lack of understanding of the law, who to submit the request to, and how best to formulate the request in order to receive the answers they wanted to find.

Key challenges for effective RTI requests: Based on their personal experiences, the survey respondents identified the most pressing issues as:

- Frequent responses of a merely formal nature (which do not contain the requested information);
- Non-disclosure of information by government bodies;
- Violation of time limits for responding to requests;
- Responses with partial information;
- Refusals to provide copies of requested documents;
- The difficulty of obtaining information from public authorities without filing a request;
- Officials’ poor knowledge of the legal obligations public authorities are subject to under RTI laws;
- Lack of knowledge of the law governing RTI among members of the public, journalists, bloggers and representatives of NGOs;
- Institutional barriers to requests for information (for instance, the limited number of characters in an online request form on an agency’s website);
- References to laws which do not meet the criteria of legal certainty but enable officials, for various reasons, to refuse to provide the information requested; and
- Lack of effective accountability of officials who violate RTI.

SECTION 4: CHALLENGING FAILURES OF IMPLEMENTATION

“Freedom will be bereft of all effectiveness if the people have no access to information... The tendency to withhold information from the people at large is therefore to be strongly checked.”

- Abid Hussain, the first UN Special Rapporteur on Freedom of Expression, 1995

In this section we examine first the provisions within the law to appeal against refusals RTI requests and secondly what this looks like in practice through the work of Team 29. Lastly we have included recommendations proposed by representatives of Russian civil society about how to improve implementation of RTI in Russia.

4.1 APPEALING AGAINST REFUSALS TO PROVIDE INFORMATION – THE THEORY

According to the 2010 ‘Law on ATI’ an individual may challenge a refusal to provide information:

- Administratively i.e. through a superior public authority;
- Judicially i.e. through the courts.

There are three actions that can be taken by those denied information access:

- Firstly, a person may complain in writing to the head of the public authority to which the request was addressed, or to the head of a superior authority. Complaints must be considered by the public authority, in accordance with its own established procedure for handing correspondence, and the complainant must receive a substantiated response.
- Secondly, a person may file a complaint with the prosecutor’s office to compel the addressee to respond to the request. The prosecutor’s office may review compliance with the legislation regulating access to information by the public authority or official. If irregularities are found, a notice is issued to the head of the relevant government body demanding that the violations of federal legislation be rectified, or an administrative case opened regarding the refusal to provide requested information.
- Thirdly, a person or an organisation is entitled to take legal action, challenging a refusal to provide information in the courts.

4.2 CHALLENGING REFUSALS FOR INFORMATION – IN PRACTICE

On paper, the legal framework provides the means to compel those who violate RTI to provide either the requested information, or redress the violation by other means. In practice, however, the effectiveness of these methods depends on the skills and efforts of those challenging refusal, and on the discretionary power of the government body considering the alleged violation.

There are lawyers – including those who are a part of Team 29 as well as others – working to support and promote the use of RTI and challenge the refusals. However, this is certainly far from an easy undertaking in country where the separation of powers is weak and rule of law is often not upheld.

Nevertheless, in a positive sign from the results of Team 29’s 2017 survey (outlined in Section 3) almost 70% of the respondents said they were willing to challenge illegal failures to provide information by officials aimed at restricting their right to information. Of those 42% said they would take the matter to a higher public authority or official; 38% would file a complaint with the prosecutor’s office; while only 20% would challenge a refusal in court.

This suggests that courts are not perceived as the best approach for individuals to defend RTI. This perception may relate to the need to engage a lawyer (with few lawyers specialising in RTI in Russia), the fact that the outcomes are uncertain, and that the losing party is obliged to pay legal costs. Furthermore, court hearings can take several months, and, even if the action is won, the information may have lost its relevance by the time it is obtained in the course of the execution of a court judgement.

Team 29 works to uphold the rights of citizens, civic activists, journalists and bloggers in the course of requesting, providing and distributing information, as well as hold to account those liable for those violating the right to information. Given the increasing limits on RTI due to creeping national security and secrecy laws, they are also increasingly defending those unjustly arrested for utilising and sharing information. Below are three examples highlighting how they provide support the different areas of their legal work, including their attempts to push the boundaries of RTI in Russia.

The People versus Public Officials: From 2015 to 2016, a number of the websites of Saint Petersburg municipalities failed to publish information about the incomes of officials and their family members while others published only limited information. Several members of the public, with support from Team 29, took legal action on grounds that the absence of information about the income of officials was a violation of their RTI information. This resulted in the publication of exhaustive information about the incomes of officials and their family members on the websites of the municipalities of Sennoi District and Georgievsky among others. The lack of information about the income and assets of public officials is an area of particular concern in Russia due to high levels of corruption, with RTI being used to expose mismatches in income and assets, indicating other – undeclared – funding streams.

The Media versus Ministries: Team 29 has supported the region media outlet *Horizontal Russia* “7x7” on several cases of non-compliance with RTI requests from Russian ministries, including:

- April 2017, “7x7” made a request to the Russian Minister for Culture for information regarding the eviction of the “Ryazan Kremlin” historical and architectural museum from the Ryazan Kremlin area and transfer of its former premises to the Russian Orthodox Church. As the Minister did not respond within the term defined by law, Team 29 prepared a complaint against his inactivity. In May 2017, “7x7” filed it with the Russian Prosecutor General’s Office, which reacted quickly to the complaint by sending a letter to the Ministry for Culture, demanding that a response be provided to the media outlet. In July 2017, “7x7” received a two-page response from the Ministry of Culture providing the initial information that was sought by their journalists.
- In May 2017, Team 29 again provided legal support to another violation of RTI this time by the Head of the Press Service of the Komi Republic Ministry for Construction, Tariffs, Housing, and Road Facilities. A “7x7” journalist had made an oral request to the Head of the Press Service, on the Ministry’s official phone number, regarding the recent cost increase of transport fares in the city of Syktyvkar and its municipalities. The official simply ignored the oral request and did not provide any information. Initial attempts to get the Prosecutor’s office to hold the Ministry to account failed. However, with further legal advice from Team 29, these attempts finally bore fruit and the “7x7” obtained the information needed and could make it available to the public.

An interview with Pavel Andreev, the Director of Horizontal Russia “7x7”, giving more insights into their use of RTI requests is included in Section 5 of this report.

‘Public Interest’ versus Non-Public Bodies – the case of the Russian Orthodox Church: In September 2016, the Federal Agency for Ethnic Affairs received a request from “7x7” for information about the allocation of federal funds assigned to organizations connected with the Russian Orthodox Church for construction and repair of buildings on Valaam Island, in the Republic of Karelia. These funds also covered the development of a new spiritual and educational centre the creation of which resulted in the eviction of the island residents from their homes and led to public outcry. In December 2016, Team 29 prepared an administrative claim, filed with a

Moscow Court, against the Federal Agency for Ethnic Affairs for not responding to “7x7”’s RTI request. Legal proceedings were however later discontinued on the grounds that the Russian Orthodox Church is not a public body, subject to RTI laws. The Russian State and the Russian Orthodox Church are closely linked and there is a serious lack of transparency around their connections and decisions taken in favour of the Russian Orthodox Church. Undeterred, “7x7” journalist, Gleb Yarovoy, conducted a large-scale investigation on the federal funding of the Russian Orthodox Church activities on Valaam, which was published in five instalments in January and February 2018. While the RTI request itself was unsuccessful – Yarovoy’s investigation drew public attention to opacity of the relationship between the church and the State and how the authorities’ lack of transparency impacts an important public process and ordinary people’s lives. Given the increasing limits on RTI due to creeping national security and secrecy laws, Team 29 is increasingly defending those unjustly arrested for utilising and sharing information (see Section 6).

4.3 Survey of users on measures for improving the situation for RTI in Russia

At the end of the survey conducted by Team 29, outlined in Section 3, the respondents were asked what they believe would improve the situation with regards to RTI. Their collated responses, in no particular order, were as follows:

- *If Russia was to join international conventions (for instance, the Aarhus Convention⁶²);*
- *If the prosecutor's office more effectively implements its oversight functions ensuring the freedom of information in Russia;*
- *If the Russian state would be more democratic;*
- *If mid-level officials learn the legislation, regulating seeking, receiving and disseminating information; if the state applies sanctions to officials for violating the right to information;*
- *If Russian citizens know freedom of information legislation, methods and procedure for obtaining requested information and other measures;*
- *If the legislation regulating access to information is improved;*
- *If collections of state archives (including the archive of the Federal Security Service) and inventory of documents stored in them are published online;*
- *If such federal laws as “Yarovaya's package” or “on offending religious feelings” are overturned*;*
- *If censorship is abolished⁶³;*
- *If the Russian Constitution and legislation was correctly implemented;*
- *If the time for responding to a request was changed from 30 days (as defined by the law) to just a few days;*
- *If those requesting information challenge refusal to provide information in courts; and*
- *If officials violating the right to information are held liable.*

Many of the responses above are in line with the conclusions of this report, based on the analysis provided in sections 1 and 2, and can be seen to be reflected in our recommendations.

**Federal laws mentioned above are explained in more detail in Section 7: Disseminating Information – The wider context.*

⁶² The UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

⁶³ Censorship in Russia is banned by Part 5, Article 29 of the Constitution of the Russian Federation. It is possible that the survey participant draws attention to the *de facto* censorship existing in some media outlets in Russia.

SECTION 5: INFORMATION IS POWER – CASE STUDIES FROM THE FIELD

“[A] benefit of making RTI requests is that they draw the attention of officials... along with public attention and pressure garnered by media reporting, [it] increases the chance of steps being taken to positively resolve issues”

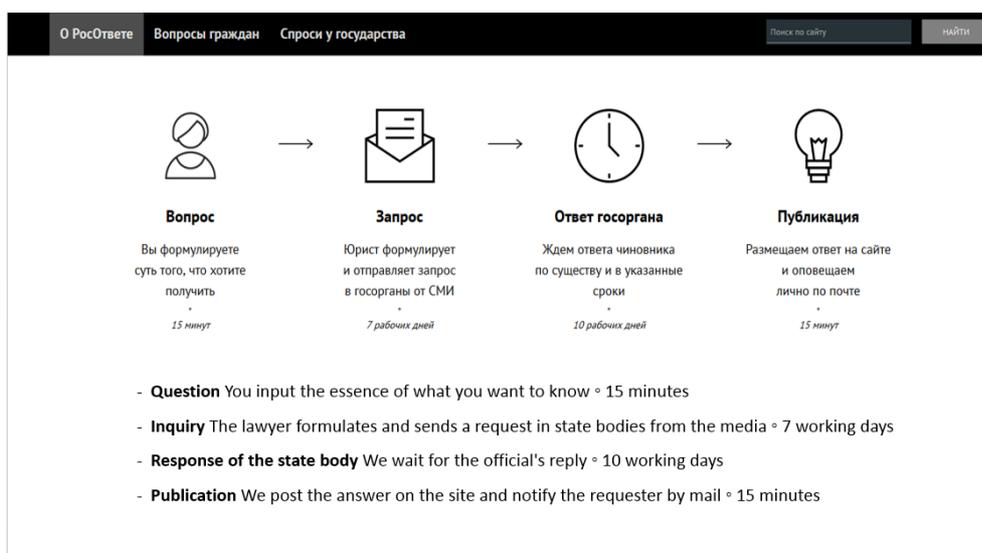
- Pavel Andreev, Director of Horizontal Russia “7x7”, Russian media outlet

Despite the outstanding challenges to RTI in Russia, there remain positive examples of its use. This section highlights what is possible when different actors – whether media or civil society actors – understand the importance of RTI and how to utilise it in their work.

5.1 POPULARISING RTI REQUESTS AS A MEANS TO CHANGE

A key part of protecting RTI, is ensuring that it is utilised. To this end, aside from their work on legal cases, Team 29 also provide trainings to journalists, activists and interested members of the public on the importance of RTI as well as how to make RTI requests. Team 29’s lawyers have trained more than a hundred people across ten regions of Russia on the importance of RTI, and how to use it in their work.

A key tool to underpin this area of work has been the development of ‘RosOtvvet’ – an online portal that provides specialised legal support for the submission of RTI requests.⁶⁴ RosOtvvet, established by Team 29, in 2014, allows anyone to easily submit RTI requests – a user simply submits the essence of what they want to know, a lawyer specialised in RTI formulates the request in the best way to obtain an answer and sends it to the relevant public body. Upon receipt of a response, is posted on the RosOtvvet’s site, and the requester is notified by email and a copy is also posted on the RosOtvvet’s site. Team 29 also publish FAQ and additional guidance based on the responses they receive as a result of these requests.



Left. A screenshot of the RosOtvvet site (with English translation)

Over the course of the last two years, Team 29 usage of RosOtvvet’s website has grown exponentially, with a team of volunteer lawyers to responding to on average 60 RTI requests a month.

⁶⁴ See RosOtvvet, available at <http://rosotvet.ru>

5.2 RTI AS A MEDIA TOOL – EXPERIENCE OF MEDIA OUTLET HORIZONTAL RUSSIA “7x7”

The operating environment for independent media in Russia is notoriously challenging. Traditional media – including TV, radio and print – is dominated by outlets either directly or indirectly controlled by the State. Independent media tends to operate predominately online, with a focus on what is happening in the capital Moscow, St Petersburg, and other major cities.

Horizontal Russia “7x7” has distinguished itself by taking a grassroots approach, uniting journalists and civic activists, and only covering the regions “no one else does.” Established in 2010 in the northern town of Syktyvkar, in the Komi Republic, the outlet now has 12 regional branches covering issues across more than 20 regions.

In 2016–2017, **Horizontal Russia “7x7”** received training from Team 29 on how to utilise RTI and since then, their journalists have increasingly made information requests in relation to their reporting, which has a predominant focus on environmental concerns, corruption, and human rights issues.

Pavel Andreev, Director of Horizontal Russia “7x7”, gives us his insights into RTI, and the impact that it has had on the organisation’s work.

Q: When did you start using RTI requests in your work?

We understood from the beginning that, as a registered media outlet, our journalists have the right, under Russia’s Media Law, to ask for information from our authorities. However, our experience was that representatives of regional authorities were not always inclined to provide the information. The answers we did receive were not particularly informative or helpful. Before 2016, we rarely sent requests and didn’t dedicate time to analysing the responses we received in any systematic way.

Q: So, what changed?

We were trained by Team 29 over the course of 2016 and 2017, which helped our staff significantly improve their understanding of the purpose of RTI, as well as the obligations of the Russian government – at all levels, including the regional one – to provide its people, and us journalists, with access to information in accordance with Russian law.

In particular, Team 29 helped us to write requests in a way that clearly framed the obligation to provide information, making it explicit to the authorities we were addressing. As a result, these requests started to generate responses. There was a real improvement in the quality of responses, and we saw an opportunity to utilise requests in a more systematic way to in order to dig deeper into issues or stories. We began to track stories not just in one particular village, town or region, but started to pick up and tie together the threads of similar stories emerging across the many regions that we cover.

Q: How have you used RTI in your work?

We have published over 200 articles in the last couple of years with the use of RTI, around 20 of them special in-depth investigations. There are a couple of investigations in particular that got a lot of public attention. In October 2017, we uncovered that the chairman of the Mari El State Assembly had taken his grandson to school and picked him up using his official car for many years. Using

RTI requests we were able to verify information we needed as part of our investigation – in which we established his official car was being used for personal use at the taxpayers' expense.

In December 2017, we investigated a far more serious case in the Kirov region in which local government contracts to repair roads in region ended up being awarded to a Moscow-based company. This company then sub-contracted Kirov-based contractors to carry out the bulk of the work at a much lower fee. Under the Russian RTI Law, such contracts must be made publicly available, meaning we were able to examine them and investigate the links between this Moscow based company and those in power in the new government of the Kirov region.

As a result of our reporting, in early 2018, the local administration changed their policy towards contracting and have stated they hope that more local contractors will be successful in such bids moving forward.

Q: What is your current approach to using RTI?

Previously we made about three or four requests a month, we are now averaging around 30 a month. We have developed a system for making high quality requests, monitoring quality, and tracking the responses received. Based on our training, we encourage our journalists to make RTI requests in a way that gives us the best chance of a full and useful response from the authorities. At least 30% of all our articles are now produced with the use of RTI requests, and a special section of our website is dedicated to RTI-based investigations.

It is not just about written requests, but also oral requests to local officials and other authorities – and most importantly, the fact we now know much more clearly what types of information are publicly available (or should be) under Russian law.

Q: How strong is the general public's understanding is of RTI?

On the whole, many people probably still do not know the extent of the RTI which they have under Russian law – yet, at the same time we are seeing more and more public interest in getting access to information. To draw attention to the link between our use of RTI and the articles we publish, we have included a plug-in to Team 29's RosOtvvet service on our website.

This service allows our readers to understand how useful this right is, as well as giving them the ability to immediately request information about themselves. We are also promoting the right to information offline. In 2017, we dedicated one of our Barcamps (a festival of talks and workshops) to the theme of RTI – and more than 200 people attended!

Q: What challenges are left for 7x7 when it comes to RTI?

Of course, we still encounter some problems in getting information. Not everyone responds to our requests. However, we report such cases of non-compliance with the law to Team 29, whose lawyers can challenge the inaction of State bodies through legal processes.

We also face challenges in response to our reporting. The journalist who wrote about Mari El State Assembly's Chairman had his journalistic accreditation rights revoked, and was banned from the local parliament – apparently in retaliation to the investigation. We worked with Team 29 to challenge that and we managed to overturn the ban and get the rights restored.

Q: Lastly, what has the impact been for your readers?

Firstly, we are more able than ever before to inform our readers about the issues, which affect them in their local areas, as we are able to provide more comprehensive information as well as discover entirely new stories and information.

Another added benefit of making RTI requests is that they draw the attention of officials, sometimes repeatedly, to the problems affecting people in their region. Keeping the official attention on problems, along with public attention and pressure garnered by media reporting, increases the chance of steps being taken to positively resolve issues, even human rights violations.

5.2. ENABLING RIGHTS, ENABLING PEOPLE: RTI AS A TOOL FOR CHANGE

NOTHING ABOUT US, WITHOUT US: RTI MAKES INDIGENOUS PEOPLES STRONGER

RTI is a key element of inclusion and preventing marginalisation of minority ethnic and linguistic groups: it is a starting point and a cornerstone right, giving access to a range of other rights, including effective political participation.

Organisations representing the rights of minority ethnic and linguistic groups in Russia are currently working to improve communication with central and regional government bodies, for which information access will be key.

At national and regional level, legislation requires information to be available in the language of the individual requesting it. In particular, Article 10 of Federal Law № 82-FZ of 30 April 1999 “On guarantees of indigenous peoples’ rights in the Russian Federation” guarantees of the rights of small-numbered indigenous peoples of the Russian Federation establishes that the persons belonging to the minority peoples have the right to receive and distribute information in their native languages with a view to preserve and develop their authentic culture.

Research was carried out in the two republics of Karelia and Mordovia, comparing the different levels of access to information for these groups. Many of the problems faced in the two regions are similar: language assimilation, depopulation, urbanisation, lack of participation in decision-making. The two regions significantly differ, however, in terms of territory, infrastructure development, legal frameworks, and institutions.

Interviews and text analysis were carried out, including analysis of congresses of indigenous peoples, media articles, and law enforcement practices. The project revealed particular issues regarding RTI and accessible voting processes, territorial legislation and that barriers of online RTI request services not being available in indigenous languages – and the impact of this lack of access on the community.

The right to access information should be realized by consolidated efforts, including non-governmental organisations, State institutions, and aimed at creating legal, economic and institutional conditions favourable for this right enjoyment, including by indigenous peoples. In view of the digital space development, in particular internet, many regional mass media will have to do much to develop, improve and promote their publications, especially in native languages.

The report – *“The Report on Access to Information by Indigenous Peoples, Examples of the Republic of Karelia and the Republic of Mordovia,”* was published in Russian and English, with press and media coverage in Karelian.⁶⁵ The findings and recommendations are being used by

⁶⁵ The report ‘ The Report on Access to Information by Indigenous Peoples, Available at <http://nuorikarjala.ru/en/motion/research/nichego-o-nas-bez-nas-dostup-k-informatsii-delaet-korennye-narody-silnee/>

the coordinator in his role as an independent UN expert on the rights of indigenous peoples in international advocacy work. This project developed a research methodology for comparative research into what extent indigenous people are able to use RTI legislation, and is planned to serve as a pilot to research the issue in other regions.

INFORMATION IN DETENTION: RAISING AWARENESS AMONG INMATES AND THEIR FAMILIES

Awareness around RTI is being raised in some of Russia's most closed-off institutions: the number of detained individuals without knowledge of their rights strongly demonstrates the need to provide education, to empower individuals to demand information relating to their rights.

There are 56 temporary detention centres in Russia's Kirov region, which house inmates for short sentences, for civil or administrative offences. These detention centres are not open to the public and are often not sufficiently marked on public maps, being located at some distance from towns and villages. Around 20,000 individuals pass through these centres each year, many of which lack education, have low social and economic status, and are unaware of their rights to information, particularly with reference to social welfare and benefits.

Having built a relationship and sufficient trust with the local Ministry of Internal Affairs, a local civil society actor trained by Team 29 was permitted to visit detention centres. Overall, he travelled 1,900km to visit 30 centres, where he met with 136 inmates for private consultations on their right to information.

At the detention centres, the coordinator distributed 4,000 copies of a leaflet on using RTI legislation to get information about social services from relevant government bodies. The leaflet explained:

- What legislation exists to support this right;
- What types of information there is a right of access to;
- How to use the right to information to get information for the government;
- How to formulate an information request; and
- How to deal with absent or insufficient responses;

Additional copies of the leaflet were left with police and detention centre staff for distribution to future inmates, and the coordinator will continue visiting the centres, making further use of the leaflet.

SECTION 6: THEMATIC EXPLORATION OF RTI

This section takes a more in depth look at specific thematic areas of RTI under Russian law. These themes – the environment, archival material, activities of the judiciary, and the obligation for public officials to declare their income – are some of the most contentious themes in Russian politics today.

As a result, we have witnessed a worrying trend to restrict or close off access to information in these areas, significantly undermining RTI. Remarkably, one area that appears to have undergone some positive traction is RTI in relation to access to footage of ballot stations during elections.

6.1 ENVIRONMENTAL INFORMATION

The right to environmental information is protected under *the Federal Law #7-FZ “On Environmental Protection”*⁶⁶. It establishes, as one of the main principles of environmental protection, the right of every citizen to obtain reliable information concerning the condition of the environment, as well as participation by citizens in decision-making related to their right to a safe environment.

The law guarantees the right of every citizen to file requests for information with public authorities, organisations, and officials, concerning the condition of the environment nearby their homes and existing environmental protection measures. The holders of such information do not have the right to classify, or limit access to, such information, and the information provided must be timely, exhaustive and reliable.

As well as requests, every citizen may file complaints, appeals and suggestions with public authorities, organisations and officials, regarding issues pertaining to environmental protection or that will have an adverse impact on the environment. They are entitled to receive timely and substantiated responses.

The government gathers information about the pollution of the environment, including pollution and radiation levels of the air, land, animal life, forests, subsoil assets and bodies of water. In a separate programme, the authorities monitor the unique eco-system of Lake Baikal.

Environmental information is collected and stored by the government in the framework of a unified system of state environmental monitoring (State Monitoring of the Environment). Monitoring activities include regular observations of the condition of the environment, including environmental processes, phenomena and changes. The information obtained is stored, processed and analysed. According to the law, this information must be used to mitigate environmental risks and to advance environmental education.

Access to information about planned economic activities that may have an adverse effect on the environment is the most problematic issue. Access to such information is often restricted, and the public are unable to obtain complete and reliable information concerning the projected scope of environmental impacts on the quality of human life.

If environmental changes taking place in one State (for example, near the State border) affect the environment in another, the States should exchange information regarding the potential environmental impacts of planned activities, in order to assess the threats faced.

⁶⁶ Federal Law of 10 January 2002 #7-FZ “on Environmental Protection,” which came into effect on 12 January 2002

To this end, on 6 June 1991, Russia signed the UNECE Convention on Environmental Impact Assessment in a Transboundary Context (UNECE Espoo (EIA) Convention).⁶⁷ However, Russia has yet to ratify the Convention, and therefore its provisions do not have direct application in Russia.

RTI in Action: Building and planning documents

Team 29 worked with a group of activists fighting for forest preservation in Sertolovo settlement (Leningrad Region) to gain access to environmental and town-planning information. A forest area near Sertolovo was sold by local authorities to a private real estate developer, who planned to cut the forest down in order to build a car park.

Suspecting that the land plot was unlawfully given, local activists tried to obtain corresponding documents. From October 2016 till March 2017, Team 29 lawyers helped Larisa Petrova, coordinator of a grassroots group, to compose more than 15 requests for information to government bodies.

As a result, governmental officials invited the activists to a government building to see different versions of the land plan (a document of more than two thousand pages with maps, rather difficult for copying). This case was successful, since officials provided an opportunity for civil society to get familiar with the information and activists were able to explain their concerns.

ENVIRONMENTAL IMPACT ASSESSMENT

In 1995, the Federal Law #174-FZ “On Environmental Impact Assessment,” came to effect, introducing environmental impact assessment as an additional measure to ensure public access to environmental information, the monitoring of public opinion and its consideration in planning and implementation of projects that can adversely impact the environment.⁶⁸

These assessments are valuable both in terms of the preliminary assessment of the anticipated impact on the environment, and in that they ensure public access to information about possible environmental impacts.

Projects that may adversely affect the environment are subject to compulsory environmental impact assessments. Assessments by public authorities are carried out by the agencies responsible for environmental protection: the agency organises a commission of experts who give a preliminary assessment of the project in terms of environmental impact. The experts’ findings, once approved by the government agency, must be taken into account when the decision is taken as to whether to permit the projects in question to go ahead. The findings of the assessments may be challenged in court.

When an environmental impact assessment by the authorities is obligatory, an independent public environmental impact assessment is also conducted before the final findings of the government assessment are announced – this may be initiated by members of the public, NGOs or local self-government bodies. The government’s assessment is obliged to review and consider the findings of any independent assessment.

⁶⁷ Convention on Environmental Impact Assessment in a Transboundary Context. Espoo, Finland, 25 February 1991

⁶⁸ Federal Law of 23 November 1995 #174-FZ “on Environmental Impact Assessment,” which came into effect on 30 November 1995

In an independent environmental impact assessment, the project initiator is obliged to inform the public about the project by publishing a short summary of the projected impact, and inviting suggestions and comments. The initiator must subsequently present the summary and feedback to the committee performing the authorities' environmental impact assessment. The project initiator must ensure that all interested parties have access to a description of the project.

Public discussion of the project might be held in the form of a public hearing, with the project initiator having the discretionary power to call such a meeting depending on the potential environmental impact of the planned activities, the degree of uncertainty, and the level of public interest.

According to the law, the initiator of a project which may have an adverse environmental impact must provide all relevant materials to the independent assessment committee upon request, but this provision of the law is often not supported by any effective mechanisms that would ensure access to the requisite information, or the support of the authorities.

Since its adoption, the 1995 "Law on Environmental Impact Assessment," has been amended 30 times and the list of projects which are subject to undergo an environmental impact assessment at the planning stage has been shortened. This considerably limits the guarantees of a safe environment for the public.

Currently, obligatory environmental impact assessment at **federal** level is required only for:

- Drafts of normative and technical guidelines and procedures in the sphere of environmental protection approved by Russian State authorities;
- Plans of federal special-purpose programs, which include construction and use of facilities which impact the environment, but only in terms of location of such facilities;
- Comprehensive environmental surveys of territories with regard to the creation of nature reserves, national parks and other specially-protected natural areas, as well as the recognition of specific territories as environmental disaster or emergency zones;
- Planning documentation for construction or reconstruction of buildings within the Baikal protected zone; and
- Certain other planning documents.

At the **regional** level, environmental impact assessments by government are required in the following cases:

- The drafting of normative and technical guidelines and procedures in the sphere of environmental protection to be adopted approved for adoption by regional authorities;
- Comprehensive environmental surveys of territories with regard to the creation of wildlife sanctuaries, nature reserves and other protected areas;
- Certain other planning documents.

RTI in action: Information for preservation

In 2016, an official environmental impact assessment held in St. Petersburg approved proposals to change the boundaries of a specially-protected nature reserve which was used as nesting grounds and a migration resting place by water fowl and wetland birds.

Members of the public in St. Petersburg, with support from Team 29, challenged the findings of the government's environmental impact assessment in court.

The first instance court dismissed the challenge. However, St. Petersburg City Court took the side of the civic activists.

6.2 INFORMATION IN ARCHIVES

Access to information held in State archives is a serious issue in Russia. The authorities interpret the right to access archival information in a narrow manner, in disregard of international standards. This leads to an intensification of the culture of secrecy in cases where maintaining the regime of secrecy can no longer be justified by considerations of national security because of the time elapsed.

The *Federal Law on Archiving in the Russian Federation*⁶⁹ stipulates that all documents considered of value for storage must be transferred to archives; such documents are an integral part of the archive collections of Russia. All documents considered valuable should be transferred for permanent storage to government or municipal archives.

In a number of situations, the Law permits, by agreement, the temporary storage of documents from archival collections by the government agencies or organisations. Periods of storage may vary from three to 100 years.

Any person may request an archive to provide unrestricted access to any documents.

Access to archival documents may be provided in the following ways:

- Electronic documents or use of information services;
- Copies or original documents;
- Online, with a facility to copy or print documents.

However, according to the law, access to archival documents may be restricted:

- If required by the law;
- If such a decision was taken by the owner of privately owned documents;
- If documents contain secrets protected by law.

The law specifically provides that access to archival information containing a person's personal or family secrets, information about their private life, and information which poses a danger to their security, is restricted for 75 years from the day the documents were created. When the 75-year time limit is up, any archive-user may obtain access to any document containing private information, unless the document contains a state secret. Before the 75-year time limit has lapsed, access to a document of this kind may be permitted by the person to whom they pertain and, after their death, by their heirs.

The user of archival documents has the right to use, transmit, and disseminate information contained in the archival documents to which they have access, as well as copies of archival documents, for any lawful purposes and in any lawful way.

A history of secrecy: personal data and public interest information: Mikhail Suprun, a historian from Arkhangelsk, worked in the local archive of the Ministry of Internal Affairs where he

⁶⁹ Federal Law "on Archiving in the Russian Federation" of 22 October 2004 #125-FZ, which came into effect on 27 October 2004

copied 5,000 personal files of German prisoners of war during and after the World War II, using them as a source for a reference book he published. Subsequently, a criminal case was opened against him on charges of illegal collection or dissemination of data about people's private lives that constituted personal or family secrets without their consent. Suprun's defence insisted that the information collected by the historian is of public interest, which is why he had the right to obtain such information. The trial ended without a verdict due to the expiration of the statute of limitation, but Suprun has made an application to the European Court of Human Rights, which has been communicated.⁷⁰

RTI in action: A history of secrets

Alexander Kolchak was head of the White movement during the Civil War in Russia, the Supreme Governor of Russia and the Supreme Commander-in-Chief of the Russian Army. On February 7, 1920, he was shot on the order of the Irkutsk Military Revolutionary Committee. He has not been pardoned, and his case file remains classified and unavailable to the public.

Dmitry Ostryakov, an activist interested in history, applied to government bodies with an application regarding the pardon of Admiral Kolchak, but difficulties arose when he tried to get an archive copy of the judgement of the Trans-Baikal Military District military court from the re-examination of Kolchak's archive files, after which they refused to rehabilitate him.

Team 29 then filed a request to the Central Archive of the FSB via the RosOtvet service, asking for that verdict. In June, Team 29 filed another request to the Central Archive of the FSB for information on whether the refusal to rehabilitate A.V. Kolchak was secret, and if so, to provide legal reasons for its classification. The archive stated in response that there was no classification mark on the document, but they could not provide a copy of it, because the law did not suppose provision of document copies from non-rehabilitated persons' criminal files.

On August 23 2017, lawyers filed a complaint to the Prosecutor General's Office against the refusal to provide a copy of the document. However, the complaint was transferred to the FSB, who once more refused to provide information. A complaint was made to the Prosecutor General's Office, this time against actions of the public prosecution official who had unlawfully transferred the first complaint to the FSB.

The second complaint was rejected, so the Team 29 lawyers requested from the FSB Central Archive some additional documents from Kolchak's archive files (having no classification mark). The lawyers are waiting for a response, in order to build a further strategy for the case. Up to this point, the refusal was being contested through pre-court litigation, but there is a further plan to begin judicial proceedings. This work has been in pursuit of challenging systematic denials of access to archive documents concerning persons who have not been officially pardoned.

THE COST OF ACCESSING ARCHIVAL INFORMATION

⁷⁰ Application no. 58029/12

The *Federal Law on Archiving in the Russian Federation* stipulates that government and municipal archives, museums, libraries and scientific organisations may, along with reference and research facilities, provide paid information services to users of archival documents.

An unorthodox interpretation of this legal norm by some archives and libraries has led them to permit, for a compulsory fee, the “independent copying of documents from the archival collection by users with their own cameras.” In essence, this practice establishes a system of paying to make copies or photograph the archive collection and unfortunately the practice has become widespread throughout the country.

In some regions, the local public prosecutor’s office and courts have ruled that such compulsory paid services are illegal, obliging archives and libraries to permit the photographing of documents free of charge. However there has been no action on the federal level to redress this problem.

Regional practice: the cost of information

In 2015, B. V. Shishkin filed a lawsuit against the State Historical Archive in the Republic of Chuvashia. He demanded the return of money he been charged by the Archive for a service – “the independent copying of documents by a user.” The documents contained information concerning his genealogy. The court declared imposition of a fee by the Archive to be illegal.⁷¹ In this particular case, therefore, the user was able to defend his right to free access to archival information.

A resident of the Republic of Tuva faced a similar situation. In 2016, he requested documents at a local archive and planned to independently copy the documents using a digital camera. The archive demanded payment. The individual filed a complaint, as a result of which the prosecutor’s office recognised the archive had violated federal law and ruled the head of the archive should rectify the violation.

6.3: ANTI-CORRUPTION AND INFORMATION ON INCOME OF PUBLIC OFFICIALS

Corruption remains rampant in Russia. Transparency International ranks Russia 135st out of 176 countries in its 2017 Corruption Perceptions Index.⁷² It is key to ensure the public has access to government-held information: it will be a critical step in ensuring the country’s economic and political development.

According to the *Federal Law on Preventing Corruption*,⁷³ the heads of public authorities must annually submit information about their income, property and property-related obligations (for example, mortgage, rental income, interest on deposits, savings, inheritance, etc) to the government and municipality, as well as information on the income, property and property-related obligations of their spouse and children. This information must be published on the official website of the relevant government agency or local self-government body.

⁷¹ Ruling of the Magistrate of Judicial Sub-District #3 of the Nizhny Novgorod Judicial District on case 2-2001/2015.

⁷² Transparency International’s Corruption Perceptions Index, available at https://www.transparency.org/news/feature/corruption_perceptions_index_2017

⁷³ Federal Law of 25 December 2008 #273-FZ “on Preventing Corruption,” which came into effect on 10 January 2009

The *Federal Law on Municipal Service in the Russian Federation*⁷⁴ stipulates that citizens seeking appointment to positions within the municipal service and municipal officials occupying relevant positions, are under obligation to disclose the information listed above.

Regions can adopt their own regional legislation building upon the federal anti-corruption legislation. For example, according to the *St. Petersburg Law on State Civil Service of St. Petersburg*,⁷⁵ citizens seeking appointment to civil service positions, and civil servants of the city of St. Petersburg, must disclose information on their income, property and property-related obligations according to the *St. Petersburg Law* and requirements of the federal legislation.

The Decree of the President of the Russian Federation of 8 July 2013 #613, "Issues Related to Prevention of Corruption," established a procedure for the publication of information about the income, expenses, property and property-related obligations of specific categories of persons and their family members on the official websites of federal government agencies, government agencies of the Russian regions, and organisations, as well as for the provision of this information to national media for publication. According to paragraph 2 of the procedure for publication of information, information on income, expenses, property and property-related obligations of officials, their spouses and underage children is to be published on official websites and provided to the national media.

RTI in action: Grassroots success to oversee municipal budgets

Team 29 lawyers have helped activists from the civic project Munitsipal'naya pila ("Municipal Saw") to perform civic investigations in the field of municipal procurements and municipal budget expenditure control in St Petersburg. In 2015, Dmitry Sukharev, project lead at Munitsipal'naya pila, submitted a number of requests to municipalities of St Petersburg asking for information on volumes of works performed within specific municipal contracts. Several municipalities denied Sukharev of the information. With assistance of the Team 29 lawyers, three court cases were initiated in order to contest municipalities' refusals to provide information on volumes of works on improvement of municipal units' territories performed within specific municipal contracts. On October 20, 2015, the Nevsky district court of St.-Petersburg rejected D. Sukharev's claim against the municipal unit administration's refusal to provide information. In March 2016, the Team 29 lawyers filed an appeal against the district court decision. On June 6, 2016, the appeal was reviewed by the St.-Petersburg City Court. As a result of the hearing session, the Court asked the defendant municipal unit administration to provide additional documents. On July 20, 2016, at the hearings in the St. Petersburg City Court, the defendant provided the information requested upon demand from the court so that we withdrew our demands to provide the information and demanded only to consider unlawful the initial refusal of the municipal unit to provide the information. The court satisfied the demand and found the municipal officials' actions unlawful. This group of cases is of specific importance since they are aimed to defend interest of grassroots activists implementing their rights to information for anti-corruption research. A victory in one of the cases made a positive precedent that can be of further support for activists and the public.

⁷⁴ Federal Law of 2 March 2007 #25-FZ "on Municipal Service in the Russian Federation," which came into effect on 1 June 2007

⁷⁵ St. Petersburg Law of 1 July 2005 #399-39 "on State Civil Service of Saint-Petersburg," which came into effect on 16 July 2005

6.4: INFORMATION ABOUT THE JUDICIARY

The *Federal Law on Providing Access to Information about the Activities of Courts in the Russian Federation* lays down current procedures for the exercise of the right to information.⁷⁶ In addition, a series of procedural codes (Code of Civil Procedure of the Russian Federation, Code of Administrative Procedure of the Russian Federation, Code of the Russian Federation on Administrative Offences, Code of Criminal Procedure of the Russian Federation) determine procedures for obtaining information about the course of court hearings, depending on the type of judicial proceeding, during the interim period until a case has been transferred to the court archives. These norms jointly regulate public access to information about the activities of courts in Russia.

One of the founding principles for the exercise by citizens of their right to information about activities of the courts is non-interference with the administration of justice.

RTI concerning the activities of courts is ensured through:

- The presence of members of the public at open court hearings;
- Disclosure (publication) of information concerning the activities of courts in the media;
- Publication of information on the Internet;
- Publication of information inside court premises;
- Access to information on activities of the courts that is stored in archival collections;
- Provision of information about court activities upon request.

Where court hearings are closed (for example, to avoid disclosure of information pertaining to personal or family secrets, or in other cases defined by law), citizens not party to the case cannot be present in the courtroom.

The courts publish information about cases heard, dates and participants of hearings, and the texts of court decisions on their websites.

The texts of all court rulings, except sentencing, are published online after their adoption, while sentences are published after they have taken effect. The personal data of participants in legal proceedings are excluded from texts published on the Internet. In place of the personal data which has been removed, initials, pseudonyms or other designations that do not allow identification are used.

If a court ruling which is to be published on the Internet contains information pertaining to state secrets, or other secrets protected by law, such information is excluded from the text.

Court rulings related to the following issues are *not* published on the Internet:

- National security;
- Adoption of a child, and other cases related to the rights and lawful interests of underage children;
- Crimes against the sexual integrity and sexual freedom of individuals;
- Compulsory commitment to psychiatric treatment facilities and compulsory psychiatric evaluation; and
- Certain other cases with regard to which access to information is restricted by law.

⁷⁶ Federal Law of 22 December 2008 #262-FZ "on Providing Access to Information about the Activities of Courts in the Russian Federation," which came into effect on 1 July 2010.

Seeking justice in information: Personal Data and Search Engines

In July 2016, Roskomnadzor, Russia's communications regulator, issued a warning to the owner of the website *sudebnyereshenia.rf* (судебные решения.рф) – a search engine for information on court cases – concerning publication of information containing personal data.⁷⁷ What can be classified as personal data under Russian law is unclear, and the limits of the use of personal information are poorly defined and do not ensure the right to freedom of expression and RTI.

The website owner, Pavel Netupsky, challenged the warning in court, indicating that information published on the website had been taken verbatim from official court websites.

If information has been made generally available to the public, by whatever means, whether or not lawful, any effort to try to stop further publication of the information in the form in which it already is in the public domain is presumptively invalid (see Tshwane Principles).

In addition, if the precedent stands, it may enable the restriction of legal search engines, which would reduce the availability, and ease of access, to key information on court decisions and judicial processes.

6.5 VIDEO RECORDING OF ELECTIONS

Video recording of voting in ballot stations is becoming an increasingly common practice. In August 2016 the Central Electoral Commission ruled that if a regional electoral commission decides to film the election process in ballot stations, then that commission will be obliged to store the recording, and release it upon request.

This brought significant new content under the remit of information requests, and was particularly significant in relation to public oversight of electoral processes: already violations have been recorded on tape – from ballot box stuffing to altered final result protocols. The Election Commission subsequently confirmed two cases of ballot-stuffing in Moscow and the Moscow region.⁷⁸

The retention period for the video materials is at least three months from the date of the election. However, regions may set a longer retention period. In the Republic of Karelia, video materials are stored for six months; in St. Petersburg the period is one year.

Regional electoral commissions may set their own requirements for access to the materials and the period for consideration of a request for access. Refusal to provide video materials can be challenged by appeal to a higher electoral commission, the prosecutor's office, or the courts.

⁷⁷ See <http://www.rbc.ru/rbcfreenews/577aa9df9a7947743afd5165>.

⁷⁸ Oliver Carroll, Russia election: Video appears to show ballot box stuffing in Moscow polling booth, The Independent, 19 March 2018, available at <https://www.independent.co.uk/news/world/europe/russia-election-latest-ballot-box-stuffing-video-moscow-polling-booth-putin-votes-a8263596.html>

Elections on film

After the State Duma elections on 18 September 2016, Alexey Alpatov a resident of Moscow Region, filed a RTI request to gain access to video recordings made by monitoring cameras at a Moscow voting station. In his opinion, there had been law offenses within the election procedures at that voting station, and he requested video records in order to check this. His request was forwarded to the electoral commission of the Moscow Region, which refused to provide a video recording of election procedures on the grounds that he had not explained how his electoral rights had been violated. Team 29 continued to consult Alpatov and gave him advice on how to submit a clarifying request, which was also denied. Having studied government bodies' responses and lawyers' comments, the applicant decided not to defend his abused rights in court. However, the case revealed problems of access to video materials on voting processes in regions. Team 29's journalists have since prepared outreach materials on procedures for implementation of the rights to access such footage.

6.6 PUBLIC MONITORING COMMISSIONS

According to Russian law, a Public Monitoring Commission (PMC) is a unique institution for public control of human rights observance in facilities of forced detention (including temporary detention facilities under the Ministry for the Interior, including pre-trial detention centres and penal colonies). In fact, it is the members of PMCs that are charged with the monitoring of human rights observance in detention facilities as well as of provision of the public and government bodies with reliable information on facts regarding human rights abuse in order to prevent or counter the root causes of such abuse. According to the law, PMCs have a wide range of competences allowing them to realize public control functions, including: visits to detention facilities, photo and video recording there, acquisition of information on law enforcement and penitentiary bodies' activities upon requests from the wide public. Unfortunately, rights of PMC members are often unlawfully restricted in practice.

Team 29's lawyers work in a number of cases of members of PMCs aimed to protect their lawful interests. In 2017, Team 29 successfully defended rights of a member of the Saint Petersburg PMC, Yana Teplitskaya, who filed an administrative claim against a ban for her to bring photo- and video recording equipment to the Penal Colony #6 of St. Petersburg (federal public institution of the Federal Penitentiary Service Department for St. Petersburg and Leningrad Region). She had planned to use the equipment to document law abuses in the penal colony (i.e. to implement her competence provide by law to a PMC member) but the colony top management had forbidden her to bring it. In November 2017, the court decision was found in favour of Ms Teplitskaya. Such cases have special importance for growth of informational openness in the penitentiary system that now uses various possibilities for restriction of access to information on prisoners' state and position in colonies. Unfortunately, the court decision in favour of Ms Teplitskaya was overturned in appeal, which is now being challenged by Team 29.

SECTION 7: DISSEMINATING INFORMATION – THE WIDER CONTEXT

Restrictions to RTI, through legal impediments or failures in implementation, are compounded by an environment in which people are censored and afraid to speak out. The free flow of information is often impeded. Even when information can be accessed, there are stringent restrictions on individuals' ability to share and discuss that information: in recent years, the Russian government has enacted a series of restrictive laws and pursued policies that gravely violate the right to freedom of expression and right to information online and offline, particularly targeting political opposition and civil society.

There was a notable downturn after Vladimir Putin returned to the Presidency in 2012, and the subsequent influx of regressive legislation was seen as a response to a rise in civil society actions and protests criticising the Russian authorities during 2011 and 2012. Further clampdowns came after the annexation of Crimea in 2014, with the introduction of a ban on any calls seen to question the territorial integrity of the Russian Federation; as well as bans on the justification of terrorism or the rehabilitation of Nazism. Much of this has been justified in the defence of national security, public health or morals. However these laws go far beyond what is permissible under international law and in their application demonstrate intentional misuse.

Russia's poorly defined anti-extremism legislation in particular has been frequently and arbitrarily applied against critical voices – with convictions for “extremist” expression online steadily increasing since 2010. Significantly, in July 2016, stringent amendments known as the “Yarovaya Package” were introduced, consisting of two Federal Laws amending over 21 existing laws. Justified on the grounds of “countering extremism”, the amendments, worded in a similarly broad way, severely undermine the exercise of the rights to freedom of expression, privacy and freedom of religion or belief.

The current government has demonstrated an increasing tendency to hide socially significant information from society and has also presided over a flourishing culture of secrecy. In 2016, a new ‘Information Security Doctrine’ was approved by the President which highlighted the government's intention to limit the Russian Internet (commonly referred to as the Runet) and to expand the list of information constituting state secrets, hinting at the growth of so-called ‘spy mania’.

7.1 LAWS RESTRICTING FREEDOM OF EXPRESSION

Numerous vaguely worded provisions in the Russian Criminal Code, which do not comply with Article 19(3) of the ICCPR, are routinely applied against dissenting voices, in particular online. Half of these have been introduced since 2013, and are actively used to restrict free expression and in turn freedom of information:

- Convictions for public “extremist” expression (under Articles 280, 280.1, 282, 205.2 and 354.1) have steadily increased since 2010. In 2017 about 95% of these convictions concerned online expression, with sentences varying from prison terms, suspended sentences and fines.
- Convictions simply for criticising the government's actions, (including under Articles 280 and 280.1) particularly regarding Russian activity in Ukraine.
- Provisions prohibiting ‘insulting religious feelings’ (parts 1 and 2, Article 148 of the Criminal Code), have been applied at least 17 times since 2013, securing at least 15 convictions, with punishments ranging from fines to suspended sentences.
- Provisions relating to libel (Article 128.1), slander against a judge or prosecutor (Article 298.1) and insulting the authorities (Article 319) remain in the Criminal Code and cast a chilling effect on freedom of expression.

The Federal Law 114-FZ “On Combating Extremist Activities” mandates the Ministry of Information to maintain a list of “extremist materials”, labelled as such by a court order, whose circulation is

prohibited under threat of administrative sanctions. As of 2018, the list contained about 4,400 materials, many of which would not pass the threshold of incitement, under Article 20(2) of the ICCPR.

Under the 2016 so-called 'Yarovaya Package', communications providers and internet operators were obliged to store metadata about their users' communications activities, to disclose decryption keys at the security services' request, and to use only encryption methods approved by the Russian government – in practical terms, to create a backdoor for Russia's security agents to access internet users' data, traffic, and communications.

In October 2017, a magistrate found the instant messaging service Telegram guilty, under Yarovaya, of an administrative offense for failing to provide decryption keys to the Russian authorities – which the company states it cannot do due to Telegram's use of end-to-end encryption. The company was fined 800,000 rubles (approx. 11,000 EUR). Telegram lost an appeal against the administrative charge in March 2018, giving the Russian authorities formal grounds to block Telegram in Russia. The actions taken by the Russian authorities to restrict access to Telegram caused mass Internet disruption. Between 16 and 18 April 2018, almost 20 million Internet Protocol (IP) addresses were ordered to be blocked by Roskomnadzor as it attempted to restrict access to Telegram. The majority of the blocked addresses were owned by international Internet companies, including Google, Amazon and Microsoft. This mass blocking of IP addresses has had a detrimental effect on a wide range of web-based services that have nothing to do with Telegram, including, but not limited to, online banking and booking sites, shopping, and flight reservations. At least six online media outlets (Petersburg Diary, Coda Story, FlashNord, FlashSiberia, Tayga.info, and 7×7) found access to their websites was temporarily blocked.

7.2 ONLINE BLOCKING OF INFORMATION

Since 2012, the authorities have significantly expanded their powers to block websites without judicial oversight, increasing the number of agencies authorised to block content, and the permitted grounds for blocking. A 'blacklist' of online content is administered by the government regulatory agency Roskomnadzor, and all Internet service providers (ISPs) based in Russia are required to immediately block content added to the blacklist. Roskomnadzor is also responsible for blocking content included in an official list of 'extremist materials' maintained by the Ministry of Justice. Though a court order is required, there is no requirement that website owners are notified of cases brought by regional prosecutors, preventing them from challenging decisions, which means all cases have therefore been found in favour of the State.

A lack of transparency on the blocking process enables arbitrary blocking: neither the General Prosecutor nor Roskomnadzor are required to justify blocking decisions, except in cases concerning 'extremist materials', which requires only the relevant article of Federal Law 114-FZ to be cited. In 2017, Federal Law 327-FZ made amendments to the 'Lugovoi Law' (Federal Law FZ-398, 2014) that gave the General Prosecutor or his/her Deputies a right to block access to any online resource of a foreign or international NGOs designated 'undesirable'; and, to 'information providing methods to access' the resources enumerated in the 'Lugovoi Law', i.e. including hyperlinks to old announcements on public rallies not approved by local authorities. Roskomnadzor blocks content using IP addresses, rather than specific URLs, which results in 'collateral blocking': restricting access to websites that share the same IP. Since these restrictions were first introduced, the law has been increasingly applied to ban political dissent. In March 2018, Roskomnadzor ordered ISPs to block more than 13 million IP addresses, with the apparent aim to prevent access to Zello, an online radio app used by Russian long-haul truckers in 2017 to coordinate protests against increases to road tax. Though the lack of transparency impedes

tracking of the number of affected websites, as of December 2018, it's estimated that over 120 thousand sites and 4 million pages are blocked⁷⁹. Notably, Grani.ru and Eg.ru (online newspapers) and Kasparov.ru (the website of opposition politician Gary Kasparov), remain blocked since 2014 on the order of the Prosecutor General who alleged their coverage of mass protests in Moscow's Bolotnaya Square in May 2012 and criticism of Russian actions in Crimea contained "calls for mass disorders, extremist activities, participation in unauthorised mass gatherings".

Two other laws regarding restrictions to access to information online are also of concern. In January 2017 Federal Law 208-FZ, required news aggregators (including search engines) with more than one million daily users to check the 'truthfulness' of 'publicly important' information before dissemination. Non-compliance attracts harsh financial penalties, and is likely to encourage prior censorship: there is already evidence that aggregators are excluding information from civil society websites. Russia's so-called "right to be forgotten" law, which entered into force in January 2016, enables Russian citizens to request de-listing of links about them that violate Russian law, are inaccurate, out of date, or irrelevant. The legislation fails to establish exceptions in cases where the information at issue is in the public interest and/or concerns public figures and has been used by public officials to remove content addressing their misconduct and/or corruption. Most notably, convictions for 'extremist expression' online are increasing, and a huge majority of convictions are for online expression, with sentences varying from prison terms and correctional labour to compulsory medical treatment.

7.3 WIDER CONTEXT FOR CIVIL SOCIETY

Russian remains one of the most challenging places for journalists. The government has failed to respond to violence against journalists, including murders, physical attacks and threats, creating a climate of impunity that encourages further attacks. Since 1992, 58 journalists have been murdered, with total or partial impunity in 33 of those cases⁸⁰. Journalists are also imprisoned on politically motivated charges, and the media landscape is largely controlled directly or indirectly by the State, with most media outlets owned by the state or their close affiliates. A few independent media outlets remain, broadcasting online or publishing to minority audiences. Others have moved abroad, or have been forced to close or change ownership and/or editorial position. In 2016, the authorities introduced a law to limit foreign ownership of media outlets to 20%. In November 2017, the State Duma passed a law, which would see foreign media broadcasting in Russia labeled as 'foreign agents'.

The ever-changing legal environment also places independent media under immense pressure. Russia's media law means that outlets can face disproportionately heavy sanctions if they are found to violate aspects of the Criminal Code – which is made more likely when the wording is vaguely defined. Major concerns remain around freedom of expression in Russian occupied territory of Crimea, an area which has posed particular difficulties in terms of the flow of information: following the annexation of Crimea by the Russian Federation in March 2014, Russian authorities and the *de facto* Crimean authorities have pursued a crackdown on independent media, opposition politicians and activists. Crimean Tatars have been particularly targeted. According to the Ministry of Information Policy of Ukraine, 60 Ukraine online media outlets are currently blocked in Crimea.

⁷⁹ Statistics provided by Roskomsvoboda - <https://reestr.rublacklist.net/visual/>

⁸⁰ Committee to Protect Journalists – Russia <https://cpj.org/data/killed/europe/russia/>

Restrictions on the operating environment for NGOs and peaceful assembly are also strict, further restricting the capacity of individuals and groups to speak out, engage in journalistic activity, or share and discuss information. In 2012, Russia introduced “the Foreign Agents Law”, which requires all Russian NGOs receiving foreign funding and engaged in loosely defined “political activities” to register as “foreign agents”, a term understood to mean ‘traitor’ or ‘spy’. NGOs must indicate their “foreign agent” status in publications, which diminishes their credibility, subjects them to onerous reporting requirements, special inspection orders, and restrictions on the activities they may undertake. Criminal and administrative sanctions for non-compliance includes, inter alia, fines of up to 500,000 roubles (\$16,000) or imprisonment of up to two years. Approximately 30 NGOs closed to avoid the stigmatising label.

In May 2015, a Federal Law on ‘undesirable organisations’ was adopted, allowing the government to ban any foreign or international NGO, whose activities undermine Russia’s “national security”, “defence capabilities” or “constitutional order”. As of September 2017, 88 organisations were formally listed as “foreign agents” while 11 entities are listed as “undesirable organisations”, primarily US-based granting organisations and Ukrainian NGOs.

7.4 ‘SPY MANIA’ AND THE ‘SECURITY DOCTRINE’

In December 2016, President Vladimir Putin approved the Information Security Doctrine of the Russian Federation (‘the Doctrine’),⁸¹ which stated, “*This Doctrine constitutes a system of official views on how to ensure the national security of the Russian Federation in the information sphere.*”⁸²

The Doctrine lays out the information environment in Russia, and projected threats to information security, and sets out potential responses by the government. The Doctrine serves as the foundation for strategic planning by public authorities in the sphere of information security, policy-making and the development of relations between the authorities and the general public.

Formally, the doctrine is not a document that establishes a direct restriction on the right to access information nor is it legally binding. But it is an important document. The doctrine underscores and strengthens the negative trend towards tightening restrictions on the right to access to information. The text of the document testifies to Russia’s progressive closure, the restriction of access to information, the search for enemies, and the attempts to combat them.

The Doctrine’s authors argue that one of the main issues facing Russia is the lack of control over cross-border transmission of information. The need for such control is justified in the interest of national security, and the need to combat terrorism and extremism. In order to resolve these issues, the Russian government proposes, among other measures, the development of a national system for the management of the Russian segment of the Internet and suppression of activities detrimental to the national security of the Russian Federation carried out by the special services of foreign states, as well as by individuals.

This approach, enshrined in the Doctrine, allows the imposition of restrictions on the right to information, including the seeking, receiving, transmitting, producing and disseminating of information in Russia.

The increase in the number of criminal cases on disclosure of state secrets, treason and espionage is an indicator of the implementation of state policy. Russian criminal law establishes responsibility for state treason – extradition to a foreign state or foreign organization of information

⁸¹ Approved by Decree of the President of the Russian Federation of 5 December 2016 #646

⁸² Paragraph 1, Clause 1, Doctrine of the Information Security of the Russian Federation

constituting a state secret, assistance to a foreign state, an international or foreign organisation in activities directed against the security of the Russian Federation.

7.5 FROM EXPERIENCE: DISSEMINATING INFORMATION

As part of Team 29's 2017 survey, respondents were asked if they shared information received from public authorities among family members, friends and social networks: 82% said yes.

However, given the increased number of administrative and criminal prosecutions initiated in connection with the dissemination of information via the Internet, Team 29 asked survey participants if they are concerned about publishing information publicly on the Internet (for example, on social media): 37% said that they were.

Survey respondents expressed concern about the possibility of being suspected by the authorities of extremism and dissemination of defamatory materials. Survey participants noted there had been a considerable number of criminal prosecutions brought in relation to publications, and even reposts, on social media, and there is a danger of "being sentenced to jail time for dissemination of information on the Internet."

Survey participants said, "I am afraid, they will come for me," talking about "fear of criminal liability for my words." One said, "Any reference to government agencies, even on a personal page, is viewed by the authorities as political activity," while another responded that "It is not always clear what is permitted, and what is not." One participant said, "Working in a government-funded organisation, it is not possible to disseminate information concerning theft within government bodies without risk of being fired."

Another respondent described "excessive government control over practically the entire Internet, and excessive interest in finding fault with posts and reposts on social media." 12% of the respondents reported that they had actually been put under pressure *not* to disseminate information obtained from public authorities. Pressure was reported to have been exerted by government officials, army conscription committees, the courts, and law enforcement agencies, often in the form of vague verbal threats from officials.



CONCLUSIONS

As this report has sought to highlight, there are negative and positive trends with regards to the implementation of RTI in Russia. Though Russia's legal framework contains the potential for progress and work on transparency in Russia, implementation fails to ensure that RTI is fully enjoyed by Russian people. Furthermore, the current political climate has created an environment in which rights are being eroded and people are fearful of expressing themselves openly.

The key obstacles to effective implementation are rooted both in the specific behaviour of the government agencies, and to the information environment in Russia more generally. Implementation is inconsistent, with no standardised practice across agencies and sectors. The lack of monitoring and assessment is also problematic: no thorough data actually exists about requests and responses, and there is no mandated body to develop, observe and enforce standards around information access. Underpinning patchy implementation and arbitrary decision-making is a legal framework which shifts constantly, with laws regularly amended and lists of exceptions perpetually expanding.

Government agencies are routinely failing to provide adequate information in response to requests, with incomplete information, simple quotes from law, or no response of any kind. These relate to three major factors, the first of which is a lack of oversight; the second a lack of understanding of the requirements of the law; and the third being vaguely-worded and overbroad exceptions to the right, which are open to abuse as well as confusion. However, these failures can be successfully challenged and, though many people are reluctant to take an information appeal to court, the courts have often encouraged the provision of information, and have even declared withholding certain information illegal.

There also appears to be a lack of understanding of how the laws work, and a lack of knowledge that the right even exists in some parts of society. Trainings and information campaigns have been proven to be an effective means to counteract this issue, with a strong appetite for education among individuals, and even interest in cooperation among officials and agencies.

The environment for information-access and -dissemination in Russia is becoming increasingly hostile, with a creeping culture of State secrecy, as well as an increasingly prevalent narrative of national security and paranoia around espionage. An increasing number of criminal prosecutions of communicators are indicative of this, as well as deterring others from requesting and disseminating information. Many of those surveyed by Team 29, referred to throughout this report, had been pressured not to share information they had obtained, and an even higher number were afraid to do so: self-censorship is a particularly insidious form of silence, and prevents the public from knowing important details of government activity.

The effects of this lack of transparency affect all sectors of public life, but particularly prevent citizens in Russia from full knowledge of government spending, official pay, environmental information, and even understanding of shared and recent history.

Nevertheless, the existence of the 2010 Law on ATI continues to provide an opportunity to promote and practice transparency. It is vital to keep it active, especially in the light of clear examples of positive change and effective action.

ANNEX 1: TEAM 29 SURVEY – QUESTIONS AND RESPONDENTS

Answers to Team 29’s survey were provided by journalists, civic activists and academics.

The Right to Freedom of Information in Russia – A Survey

Hello! Team 29 is conducting a survey on the right to freedom of information in Russia. We are interested in your experience: to what extent you are able to request and receive documents and information from the government and distribute these.

The following questionnaire contains different types of questions: - open; - closed (multiple choice);’ open-closed (multiple-choice with clarification). The questionnaire will take no more than 10 minutes to complete.

* *Required*

Tell us about yourself

1. I am:*

- a civil activist
- a journalist / blogger
- an employee, volunteer, member (e.g. participant, founder) in a non-profit organisation

2. I live:*

- in a city with a population of more than 3 million people
- in a city with a population of 1,000,000 to 3,000,000 people
- in a city with a population of 500 001 to 1 000 000 people
- in a city with a population of 100 001 to 500 000 people
- in a city with a population of 100,000 or less people
- in the countryside

3. In which area of Russia do you live?:*

- North-West
- Central
- South
- Siberia
- Far East
- North-Caucasus
- Volga
- Urals

Access to information (requesting and receiving information and documents):

4. In 2016, did you send any freedom of information requests to any national state bodies or local government?*

- Yes
- No

4.1. How many such requests did you send in 2016?*

.....

4.2. In 2016, how many requests (approximately) did you send in 2016 to central government bodies?*

.....

4.3. In 2016, how many requests (approximately) did you send in 2016 to regional government bodies?*

.....

4.4. In 2016, how many requests (approximately) did you send to local government bodies?*

.....

4.5. Which authorities (central, regional, local) did you contact? (please specify)*

.....
5. In 2016, how many responses did you receive to your requests?*

.....
6. On average, how long did it take the authorities to respond? (By law, authorities should respond to citizens within 30 days of the request being submitted and within 7 days for journalists)*

- Generally within the appropriate time period
- Generally NOT within the appropriate time period (if you chose this option, please indicate below any reasons given by the authorities for their delayed response

.....
7. How satisfied are you (on average) with the information / documents provided to you by the authorities?*

- 100% (generally satisfied)
- 75% (more satisfied than dissatisfied)
- 50% (only some information / documents provided)
- 25% (more dissatisfied than satisfied)
- 0% (generally dissatisfied)

8. What problems did you encounter when requesting information?*

- Lack of an online request form / request from template; lack of understanding of how to correctly formulate a request
- Being unsure as to which authority you should send the request
- Refusal of government officials to register your request
- Other:

9. What problems did you have in connection with obtaining information?*

- No problems
- Information was only provided in part
- Copies of the documents requested were not provided
- Authorities refused to respond or responded evasively
- Other:

10. Was the information you received useful? Were you able to use it (for example: to defend your own rights; to defend someone else's rights; or for your own personal information)?*

- 100% (generally useful)
- 75% (more useful than not)
- 50% (neutral)
- 25% (not very useful)
- 0% (not useful at all)

11. Which authorities did you contact with freedom of information requests in 2016? (please list)*

.....
12. Which authority to which you applied for information in 2016 turned out to be the most open (in your opinion), both in terms of timeliness and the quality and quantity of information provided?*

.....
13. What do you consider to be most problematic about access to information legislation and practice in Russia?*

.....
Sharing information

14. Have you shared the information received from the authorities with your family, friends or other social groups?*

- Yes
- No

15. Has anyone forbidden you / asked you not to disseminate information received from authorities?*

- Yes
- No

16. If you answered yes to the last question, please indicate who exactly (i.e. the name and position of the person)?

.....

17. Are you afraid to disseminate information on the Internet (for example, on social networks)?*

Yes

No

18. If you answered yes to the last question, please indicate why

Knowledge of freedom of information legislation

19. How familiar are you with the legislation which governs requesting, receiving and sharing information in the public interest?*

Very familiar

Quite familiar

Aware

Not very familiar

Not at all familiar

20. Do you need legal support to request, receive and share information?*

Yes

No

21. You have been denied information: would you appeal against this information to a higher state body, prosecutor's office or court if your right to request, receive and share information has been violated?*

Yes

No

22. If you answered yes to the last question, please indicate which bodies you would contact (i.e. because you believe they would effectively resolve the situation)*

Higher state body, representative

Prosecutor's Office

Court

Conclusion

23. In your opinion, what measures should be taken to improve the situation with regards to freedom of information in Russia? *

.....

24. Please indicate which region of Russia you live in*

.....

25. Please indicate your city of residence*

.....

26. Please provide the name of any organisation (media organisation, NGO) or blog you are associated with (see question 1)*

.....

27. Please provide any additional information about your experience of using access to information legislation not otherwise covered by this survey

.....

Thank you for participating in the survey!

ANNEX 2: TABLE OF ACRONYMS

ATI – Access to Information
ECHR – European Convention on Human Rights
FOI – Freedom of information
FSB - Federal Security Service of the Russian Federation
GRECO – Group of States against Corruption
ICCPR – International Covenant on Civil and Political Rights
KGB - Committee for State Security
NGO – Non-governmental Organisation
UDHR – Universal Declaration of Human Rights
UN – United Nations
UNCAC – UN Convention Against Corruption
UN HRC – UN Human Rights Committee
USSR - Union of Soviet Socialist Republics

ARTICLE 19