

# The Right to Access Information in Jordan

## Legislative Analysis of Amendments

### Introduction

In March 2024, the parliament passed the amendments to Law No. 47 of 2007, known as the Law on Guarantee of Access to Information, to ensure the right to access information. Prior amendments were made to this law in 2012 and 2019 but were later postponed.

During its sessions in December 2023 and January 2024, the Parliament concluded the discussions which consisted of revision to the existing 20 articles and inclusion of 7 new articles.

The effectiveness of the existing 2007 Access to Information law in fostering a culture of transparency and the right to access information has been heavily criticized by national and international actors. While authorities have emphasized that the recent amendments align with international standards and seek to bolster transparency, integrity, and anti-corruption efforts, a legal examination of the amendments highlights fundamental deficiencies in the law and its procedural mechanisms.

On February 5th, ARDD organized a session featuring a panel of experts aimed at fostering a public discussion on the law and its amendments. Dr. Sawsan Al Majali led the panel, which also included Khaled Khalifat, a lawyer specializing in media and cybercrime, and Member of Parliament, Omar Al-Ayasrah.

### Background

According to UNESCO, access to information encompasses the right to request, obtain, and share information held by public entities. This right is a fundamental aspect of freedom of expression, as enshrined in Article 19 of the Universal Declaration of Human Rights (1948), which guarantees the freedom "to seek, receive and impart information and ideas through any media and regardless of frontiers." The International Covenant on Civil and Political Rights (ICCPR) further reinforces this right in Article 19, along with various other international legal instruments such as the European Convention on Human Rights (ECHR), as detailed in Article 10; the African Charter on Human and Peoples' Rights, as stated in Article 9; and the American Convention on Human Rights, as outlined in Article 13.

Beyond being a human right, access to information is crucial for promoting accountability, empowering citizens, and combating corruption. By increasing the availability of government information to the public, transparency is enhanced.

The Open Government Partnership (OGP), launched in 2011 during the US presidency of Barack Obama, is an international initiative aimed at advancing transparency, accountability, and citizen participation in governance. A key focus area of the OGP is access to information, with member countries committing to improving access through the enactment or strengthening of freedom of

information laws, the establishment of mechanisms for proactive disclosure of government data, and the promotion of transparency in decision-making processes.

Jordan has been actively engaged with the Open Government Partnership since its inception in 2011, making commitments to promote transparency, accountability, and citizen participation in governance. Notably, Jordan has pledged to enhance access to information, working to enact laws and policies facilitating access to government information. This includes efforts to strengthen the implementation of the Access to Information Law, enacted in 2007, and to establish mechanisms for proactive disclosure of government data.

Under the guidance of the Ministry of Planning and International Cooperation (MOPIC), Jordan's fifth national plan (2021-2026) within the framework of the Open Government Partnership outlines key objectives and strategies to advance open government principles and practices. These include strengthening access to information, promoting civic participation, enhancing government accountability, combating corruption, building institutional capacity, enhancing digital governance, ensuring inclusivity and equity, and implementing monitoring and evaluation mechanisms to uphold the OGP's goals.

### Jordan and the Right to Access Information

Constitutional guarantees regarding the right to access information rely on two main articles: Article 15 emphasizes the right to opinion and freedom, while Article 17 states that Jordanians have the right to address public authorities on personal or public matters, subject to conditions set by law.

On May 15, 2007, the Government of Jordan enacted Law No. 47 (2007), ensuring access to information. Article 7 of this law grants Jordanian citizens the right to obtain information if they have a lawful interest or legitimate reason, as specified by the law. Article 8 mandates officials to facilitate access to information and ensure its disclosure promptly and according to the law.

The law also establishes an Information Council responsible for overseeing information provision, with a processing period of up to 30 days. Comprising officials from various government bodies, including the Army, Ministry of Interior, Ministry of Justice, and the Human Rights Commission, the council addresses complaints from individuals denied requested information. However, its decisions on complaints are not legally binding.

Upon joining the Open Government Partnership (OGP) in 2011, Jordan committed to amending the 2007 law. Amendments were proposed in 2012 and 2019, aiming to shorten response times for information requests to 15 days and eliminate the need to demonstrate a legitimate interest. The 2019 amendments also proposed including representatives from the Journalists and Lawyers' Syndicates in the Information Council, alongside civil society representatives, to ensure diverse perspectives. Additionally, the amendments aimed to mandate proactive disclosure policies for government agencies and ministries

## Challenges facing the Right to Access Information under the current Law

According to the Right to Information Rating (RTI), a global tool for evaluating the effectiveness of national legal frameworks governing access to public information, the 2007 law received a notably low overall rating of 56 out of a maximum of 150 points. This rating is based on an assessment of seven criteria, including the right to information, scope, requesting procedures, exceptions and refusals, appeals, sanctions and protections, and promotional measures. The scoring report highlights several key points: scope receives a high score for its comprehensiveness, but this is offset by excessively broad exceptions that allow other legislation to exempt certain types of information from disclosure. Moreover, the exceptions do not include a provision for public interest override. Another area of weakness is the appeals structure, which lacks an internal appeals process, necessitating that all appeals either go through the judiciary or a weak oversight body that is overtly political and lacks sufficient independence safeguards. Additionally, the law suffers from a lack of procedural detail and does not establish a clear system for sanctions.

In addition to the RTI Rating, the Law No. 47 of 2007 has undergone scrutiny over the past years regarding four areas:

1. **Diminished Right to Information:** Article 7 of the 2007 Law granted every Jordanian the right to access information under certain conditions, requiring a "legitimate interest or reason" for the request. However, this provision raises two concerns. Firstly, it conflicts with the principle that access to information is a basic human right, suggesting that individuals should not need to justify their request. Secondly, it places an extra burden on officials to assess the legitimacy of requests, potentially leading to arbitrary denials. Thus, it is argued that such conditions should not be imposed on information requests.
2. **Absence of a Clear Mechanism for Information Classification:** The law lacked a clear mechanism for classifying information, leading to ambiguity and a lack of definitive guidelines and responsibilities in determining what constitutes "classified information." Article 13 of the 2007 listed exemptions, such as classified information concerning foreign relations, state secrets, and correspondence between governmental entities and foreign entities. Information related to pending investigations, intellectual property rights, and sensitive records like banking and medical records were also exempt from disclosure.

Furthermore, the law failed to define the scope of "classified" information, leaving it open to interpretation and discretion of government officials. Information previously unclassified can be classified in response to an information request. The law empowered state employees to determine the classification of requested information without judicial or administrative oversight. Additionally, certain information can be classified under the Protection of the State's Secrets and Documents Law No. 50 of 1971, which deems any information having a negative impact on public morale, defaming an official figure, or abusing the state's status as classified.

3. **Missing Implementation Strategy:** The process for requesting information is cumbersome, resulting in frustration among those who request it due to mixed implementation among

different agencies. The government has not invested in the necessary infrastructure and resources to facilitate proper implementation of the law. Some agencies have refused to create forms, designate officers, or establish a suitable website, further hindering the process.

4. Diminished Independence of the Information Council: Criticism has been directed at the composition of the Information Council. Although resorting to administrative courts is an option, it is a lengthy and costly process, dissuading individuals from exercising their right to information.

Moreover, the Report on the Implementation of the Right to Access Information for the years 2020-2019, released in accordance with Article 4/h of Law No. 47 of 2007 by the Information Council, identified several procedural obstacles:

1. Government institutions showed a weak response to the Prime Minister's directive to furnish statistics to the council regarding information requests submitted to them. Out of 124 government ministries, departments, and agencies contacted, only 54 responded in 2019 and 37 in 2020, with response rates of 43% and 30%, respectively.
2. Certain government entities informed the council that they had not received any information requests, despite complaints received by the council regarding failure to provide requested information. This suggests a lack of coordination among different departments within these entities concerning information access or informing information officers about requests received by spokespersons in ministries, institutions, or their legal advisors.
3. Many institutions failed to provide a request form for accessing information, whether in paper format or electronically.

### Description of Most Relevant Amendments

1. According to Article 14 of the draft law, "Each department is required to index and organize information and documents in accordance with professional and technical standards, and classify what should be considered confidential and protected, according to prevailing legislation, using a classification and indexing mechanism and deadlines determined by a system issued for this purpose."
2. According to Article 12, "Officials are prohibited from disclosing information related to documents obtained from another state and agreed to remain confidential by both parties. This includes information that may harm national defense, state security, or foreign policy, as well as information containing analyses, recommendations, proposals, or consultations presented to officials before decisions are made, and information and personal files related to educational, medical, employment records, accounts, bank transfers, and professional secrets."
3. According to the law, "Information is any written data, records, statistics, written or photographed documents, or electronically stored, or by any means, under the management or jurisdiction of the official or his authority."

4. Under the amended law, a council called the "Information Council" is formed, chaired by the Minister of Culture, and includes the Information Commissioner as Vice President, and the Secretaries-General of the Ministries of Justice and Interior, the Directors-General of the Department of General Statistics, moral guidance in the Jordanian Armed Forces, the General Commissioner for Human Rights, the Presidents of the Journalists' and Lawyers' Syndicates, and representatives from specialized civil society organizations appointed by the Prime Minister for a term of two years. The council is responsible for ensuring the provision of information to applicants in accordance with the provisions of this law, developing the necessary plans to ensure the right to access information and the council's workflow, promoting the culture of the right to knowledge and access to information, adopting information request forms, reviewing objections submitted by information seekers, approving the annual report on the council's activities, submitting the annual report to the Prime Minister and the Parliament, publishing it on the council's website, and proposing draft laws, regulations, and instructions.
5. Article 8, as amended, stipulates that, according to the law, "the department is required to periodically publish information related to the following:
  - The organizational structure of the department, its tasks, and work mechanisms, and related legislation.
  - Information related to the department's budget, details, items, and distribution mechanisms.
  - Audit of the department's accounts, expenses, deficits if any, and reasons, as well as any financial surplus.
  - Services provided to the public and their conditions.
  - Annual and periodic reports.
  - Tenders issued by the department.
  - Agreements related to the department's work.
  - Any information deemed important by the council.

The law requires each department to appoint a specialized employee to receive and follow up on information requests.

6. As per the amended law, a department is defined as "a ministry, department, authority, or any public or general official institution, or a company managing a public facility, as well as unions, parties, or any entity receiving partial or full funding from the state budget or from any foreign party."
7. The amended law allows for the publication of information related to the department's programs, plans, and projects, with the exception of the Jordanian Armed Forces, General Intelligence Directorate, and General Security, exempt from the application of the provisions of this article.

8. According to Article 9 of the amended law, "The department appoints a person responsible for receiving and processing information requests. The request for information must be submitted in writing or electronically according to the approved form, including the name, nationality, and place of residence for natural persons, and the headquarters for legal persons, and the subject of the requested information. The designated person must immediately provide a receipt notification to the applicant upon receiving the request, and the official must respond to or reject the request within 15 working days from the day following its submission. This period may be extended by an additional 10 days only once for justified reasons."

In case of rejection, the decision must be justified, and failure to respond within the specified period is considered a rejection. If the requested information is unavailable or has been destroyed over time, this must be stated to the applicant. The designated information officer must provide necessary accommodations for persons with disabilities, illiterates, and the elderly.

9. The amended law also includes a requirement for government departments responsible for the proactive disclosure principle, one of the global standards, where departments are required to disclose information through publication, including organizational structures, plans, tasks, and annual reports.

## Analysis of Legal Gaps in the Current Amended Law

### 1- Ambiguity regarding the concept of "legitimate reason"

Article (7) of the draft law continues to stipulate that every natural or legal person has the right to access information if they have a legitimate interest or a legitimate reason. However, the amended law has not revised nor defined the concept of legitimate interest or legitimate reason. Consequently, this provision continues to be vague and cannot be regulated, as the criteria for legitimacy, if not clearly and explicitly stated, will vary from person to person. What one person may see as a legitimate reason, another may see differently, leading to differences of opinion that could hinder the implementation of the law.

### 2- Breaching the Constitutional Right to Confidentiality and (Unnecessary) Burden

It is noted that Article 8 of the law obliges associations funded by non-governmental sources to disclose several pieces of information, including "agreements related to the association's work, any information deemed important by the council." This contradicts the principles of confidentiality and privacy, especially if the contracts involve consultants and employees. Therefore, what is stated in Article 8 is constitutionally invalid, especially in light of Article 7 of the Jordanian Constitution, which stipulates:

- Personal freedom is inviolable.
- Any assault on the public rights and freedoms or the privacy of the lives of Jordanians is a crime punishable by law.

Additionally, the same article grants absolute powers to the council (Information Council) to determine any information it deems necessary for disclosure. This also contradicts principles of privacy and confidentiality, and these powers needed to be specified rather than left open-ended.

### **3- (Unnecessary) Burden on Civil Society Organizations**

Furthermore, the information mentioned in Article 8, especially regarding disclosures about tenders, and annual and financial reports, is already required to be disclosed by law, under the Associations Law and the Income Tax Law. This information is officially announced and available for public access through relevant authorities and ministries. Therefore, reiterating these provisions in Article 8 is unjustified and imposes an additional burden on civil society organizations.

### **4- Diminished Right to Disclosure of Information**

**Article (9/h)** of the law states that in case of refusal to respond to a request for information, it is considered a rejection. This provision contradicts the constitution, principles of administrative jurisprudence, and the precedents of the Supreme Administrative Court, as the presumption is in favor of disclosure. Therefore, unless there is a legal reason for refusal, the request for information should be considered approved. This is a fundamental principle of administrative decisions, as decisions should always be justified, as the reason is a cornerstone of administrative decisions. Thus, basing a decision on an incorrect reason renders it non-compliant with the law and devoid of legitimacy, as established by the precedents of the Supreme Administrative Court in many of its decisions, including Decision No. 125/2009. The government administration must explicitly disclose its intentions, and silence implies consent, according to the jurisprudence of administrative law.

### **Recommendations:**

While the law has just been approved by Parliament, in light of the persistent legal gaps, ARDD recommends:

#### **1- A comprehensive legal review of the amended law's provisions to ensure that it does not hinder the right to access information and does not create further challenges in its implementation.**

Particular emphasis should be paid to:

- The law must adhere to the international standards set by the United Nations regarding information disclosure.
- The amended law conflicts with other laws that stipulate the confidentiality of information.
- Therefore, it is necessary to reconcile them clearly and explicitly to avoid ambiguity and legal contradictions.
- The amended law still lacks the principles and standards related to the representation of civil society institutions and organizations. Therefore, it is recommended to include further provision in this regard.

- The amended law does not specify the penalties for refusing to provide information if the request complies with the provisions of the law. Therefore, it is recommended that penalties be included.
- The president or vice president of the council is the sole member designated to conduct meetings. If either the president or vice president is absent, there are no specified rules or arrangements for other council members to hold meetings in their absence. It is recommended that a more flexible mechanism to convene meetings is included in the law.
- The law is silent on other appeal mechanisms except for the Administrative Court in case the service provider refuses to disclose information. It also does not indicate any penalties related to this refusal. In accordance with the general presumption of disclosure upheld by the constitution, principles of administrative jurisprudence, and the precedents of the Supreme Administrative Court, it is recommended that the law includes mechanisms for appeal and/or penalties in case the service provider refuses to arbitrarily disclose information.

**2- The provision of ongoing support to civil society organizations to enable them to continue monitoring the implementation of the amended law** and its impact on the Right to Access Information. This sustained support is crucial for empowering civil society actors to actively observe and assess how the revised legislation is being enforced and to evaluate its implications for ensuring access to information for all individuals.

**3- Enabling and fostering collaboration between civil society, government agencies, and other stakeholders to facilitate constructive dialogue and problem-solving mechanisms** aimed at addressing any challenges or shortcomings identified during the monitoring process.



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