

Digital Policy Hub – Working Paper

Applying a Tech Lens to the Right to Information: Part 1

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About the Hub

The Digital Policy Hub at CIGI is a collaborative space for emerging scholars and innovative thinkers from the social, natural and applied sciences. It provides opportunities for undergraduate and graduate students and post-doctoral and visiting fellows to share and develop research on the rapid evolution and governance of transformative technologies. The Hub is founded on transdisciplinary approaches that seek to increase understanding of the socio-economic and technological impacts of digitalization and improve the quality and relevance of related research. Core research areas include data, economy and society; artificial intelligence; outer space; digitalization, security and democracy; and the environment and natural resources.

The Digital Policy Hub working papers are the product of research related to the Hub's identified themes prepared by participants during their fellowship.

Partners

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Key Points

- The right to information has been interpreted as referring to access to public information through proactive transparency measures carried out by public authorities and through the adoption of specific processes through which people can request information held by the state.
- This understanding of the right to information is outdated, static and incapable of delivering on the informational needs of citizens in a digital society, especially given a rapidly changing technological landscape.
- The current recognized international standards on the right to information must be expanded to include other crucial dimensions beyond accessibility, such as availability, quality, stability, ethics, cultural appropriateness, agency and usability.
- Together, these additional dimensions will provide not only access to information for rights-holders, but also “information sovereignty.”

Introduction

Every person has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of borders. That is what the Universal Declaration of Human Rights states, in a text adopted more than 70 years ago.¹

Since then, the right to information has been defined and refined both in international and national law.² As a human right protected under international law, it refers to access to public information through proactive transparency measures carried out by public authorities and through the adoption of specific processes through which people can request information held by the state. The formal recognition of the right to information has been in expansion since the late 1990s and early 2000s. Today, 91 percent of the world’s population lives in a country with a right to information law or policy; 126 countries have adopted comprehensive laws, while 36 others have pending bills or related initiatives (ARTICLE 19 2018).

Despite such high numbers of adoption, skeptics have questioned what this declared right to information has actually delivered (Pozen and Schudson 2018); implementation has long been an issue, be it for lack of political will, lack of resources, lack of consciousness or lack of preparedness (Neuman and Calland 2007). This working paper, however, steps away from the common line of inquiry that seeks to understand why the right to information is not delivering by looking at shortfalls in its implementation. It argues that this failure of the right to information to deliver results not only from a deficient process of implementation,

¹ *Universal Declaration of Human Rights*, GA Res 217A(III), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810 (1948).

² This paper focuses on the right to information as a recognized human right under the international legal system, in particular as it is framed under the global governance and conventions adopted after the Second World War with the creation of the United Nations. Earlier origins to the right to information can certainly be found, dating possibly as far back as ancient Greece, but these historical accounts – despite being recognized and important foundations for the current human rights system – are beyond the scope of this working paper.

but also — and mainly — from an intrinsic flaw: contemporary legal standards have taken on an outdated conception of the right to information that is static and incapable of delivering on the informational needs of citizens in a digital society, especially given the rapidly changing technological landscape.

The current recognized international standards on the right to information must move beyond their focus on accessibility and be expanded to include other crucial dimensions, such as availability, quality, stability, ethics, cultural appropriateness, agency and usability. Together, these additional dimensions will provide not only access to information for rights-holders, but also “information sovereignty.”³ The following sections will look at how the right to information has historically been an evolving right, how international standards define the content and reach of this right today and how the central role played by technology in information dissemination requires an expanded definition of this right.

The Right to Information: International Standards and Their Limitations

The right to information is recognized by the major human rights protection systems under the articles that guarantee freedom of expression and opinion.⁴ It is also enshrined in other international rights treaties, such as those protecting the rights of the child and the rights of persons with disabilities, those regulating specific matters such as the environment⁵ and, at the regional level, those concerning access to official documents.⁶ Ensuring public access to information is also a target under the UN Sustainable Development Goals (number 16), adopted as part of the 2030 Agenda for Sustainable Development in 2015 (United Nations 2015).

Human rights standards refer to a right of access to publicly produced or held information, which encompasses both active and passive transparency. Passive transparency — which entails responsiveness to information requests — requires easy, prompt and affordable procedures and safeguards, such as justified denials and the right to appeal. Proactive transparency is subject to a presumption of disclosure, but standards in its regard are much less developed than those relating to passive transparency. All human rights systems apply

3 Information sovereignty exists when people are part of a healthy and culturally appropriate information ecosystem, where quality and diverse information is available, accessible and stable, and where it is collected, stored, managed and disseminated with ethics, meeting peoples' information needs and preferences, for an open and plural public sphere.

4 See, for example, *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171 art 19 (entered into force 23 March 1976); *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, CETS 5 art 10 (entered into force 3 September 1953); *African Charter on Human and Peoples' Rights*, 1 June 1981, ILM 58 art 10 (entered into force 21 October 1986); *American Convention on Human Rights*, 11 November 1969, 1144 UNTS 123 art 13 (entered into force 18 July 1978).

5 See, for example, the Escazú Convention adopted by Latin American countries in 2018; *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*, 4 March, 2018, 3398 UNTS (entered into force 22 April 2021).

6 See, for example, *Council of Europe Convention on Access to Official Documents*, 18 June 2009, CETS 205 (entered into force 1 December 2020).

a strict set of exceptions to the presumption of disclosure, for example, due to the protection of the rights of others and matters of national security (United Nations Educational, Scientific and Cultural Organization 2022).

National legislation on access to information is now common across the globe (United Nations Educational, Scientific and Cultural Organization 2021a). Despite this progress in the formal recognition of access to information as a fundamental right, practitioners and researchers have identified some common challenges that relate, mostly, to poor implementation of the accessibility standards described above, due to lack of political willingness and/or capacity (United Nations Educational, Scientific and Cultural Organization 2021b). This working paper identifies and focuses on challenges that go beyond these implementation deficits, particularly the limited concept and content of the right to information adopted by international human rights standards and often reflected in national laws. The standards described above are outdated and have been irresponsive to changes in the roles of the state and of technology. In an information society, the core of this right to information — namely, the concept of information itself and the place of this information in daily life — has dramatically changed. These changes will be addressed in the following sections of this paper.

The Right to Information: An Evolving Right

Human rights are not static: they evolve alongside human history. What counts as a fundamental human right is both historically contingent and pragmatic. Tacit assumptions of prerogatives, which are experienced as something like “rights,” adhere to “conditions of existence in a time and place” (Zuboff 2022) and only become juridical rights — or are formalized as human rights — when they come under threat in a continuous and systematic manner.

This slow evolution of human rights can be clearly seen in relation to the right to information. Its core — information itself — has been in constant evolution and significantly impacted by advances in technology, in particular the astonishing ongoing progress in the development and applications of information and communication technologies. In a 2010 World Bank working paper, researcher Helen Darbishire identifies four main historical drivers of transparency in relation to public information: “The first is the need to inform the public about laws and decisions and the public’s right to be informed, to know their rights and obligations. The second is the public’s demand for the information needed to hold governments accountable both at and between elections. The third is the demand for information in order to participate actively in decision-making. The fourth is the provision to the public of information needed to access government services, which has expanded significantly in the past decade with growth of electronic access to services or ‘egovernment’” (Darbishire 2010). In tandem with the concept of democracy, the interpretation of the right to information has evolved, incrementally, as a result of the slow recognition that the opening of the state is a matter of democratic consolidation and good governance. Today, however, democratic participation is more broadly framed (Fraser 2021), and the struggle against obscurity in public matters is just one of several issues that the right to information should address.

The Information Society and the Right to Information

Access to Information and Access to Technology

Internet accessibility plays a crucial role in facilitating access to public information and these concepts are interconnected on many levels:

- **Digitalization of public information:** Many public authorities are digitizing their records and making them available online.⁷ This digitalization process enables broader access to public information, as it can be easily accessed and searched via internet-enabled devices.
- **Online portals and databases:** Governments often establish online portals⁸ or databases to centralize and provide access to public information (Organisation for Economic Co-operation and Development 2023).⁹ These portals concentrate and systematize information and serve as a one-stop platform for citizens to access government reports, policies, data sets and other relevant information.
- **Remote access and convenience:** Internet accessibility enables individuals to access public information remotely, without the need to physically visit government offices or libraries.¹⁰ This convenience promotes greater participation, as individuals can access information at their own pace and convenience, fostering informed decision making and engagement with public affairs.
- **Bridging the digital divide:** Efforts to improve internet accessibility, such as expanding broadband infrastructure and promoting affordable internet access, are essential for promoting inclusivity and reducing information disparities.¹¹ Limited internet accessibility, such as slow or unreliable internet connections, can hinder the ability of individuals to access public information effectively. This can create inequities, particularly for individuals from marginalized communities or those who live in remote areas with limited internet infrastructure. Governments need to address these challenges to ensure equitable access to public information for all citizens.

The former UN Special Rapporteur on freedom of expression and opinion, Frank La Rue, has affirmed that the internet has become an enabler of rights, in particular the freedom of expression and information, and that states should develop concrete and effective policies to make the internet widely available, accessible and affordable to all segments of the population (La Rue 2011).

7 See, for example, Government of the City of Buenos Aires (2021).

8 See, for example, the portals of the Government of Mexico (www.plataformadetransparencia.org.mx), the Government of Brazil (<https://portaldatransparencia.gov.br/>) and the Government of Chile (www.portaltransparencia.cl/PortalPdT/).

9 For a global overview, see Organisation for Economic Co-operation and Development (2023).

10 See, for example, the Government of Brazil's website for access to information requests (<https://falabr.cgu.gov.br/web/home>).

11 See, for example, national commitments to the Open Government Partnership concerning digital inclusion: www.opengovpartnership.org/policy-area/digital-inclusion/.

The Impact of Datafication

To datify a phenomenon is to put it in quantifiable form so that it can be tabulated and analyzed (Mayer-Schönberger and Cukier 2013). Data is a key resource in the twenty-first century because it provides “the key inputs to the various modes of analysis that individuals, institutions, businesses and science employ in order to understand and explain the world we live in, which in turn are used to create innovations, products, policies and knowledge that shape how people live their lives” (Kitchin 2014). The proliferation of data is linked to a growing reliance on statistics for decision-making processes in both the public and private sectors.

The ethical and rights considerations related to datafication are many, including those related to privacy, surveillance, inequality, discrimination, information manipulation and disinformation. With datafication, organizations are collecting, storing and analyzing more and more personal information. This can give way to or even facilitate data breaches, identity theft and unauthorized access to sensitive information. Datafication also enables increased surveillance and control over individuals, as data is used to monitor their behaviour and predict their future actions. Digital, biometric and geospatial technologies allow governments and corporations to extensively track the movements of citizens and consumers. The broad reach of these new technologies has arguably created a surveillance society as much as an information society (Schulz and Raman 2020).

Much of this data collection occurs without individuals’ knowledge or consent. This data may also be used to violate privacy concerns when it serves as the basis for actions that seek to intrude into “personal spaces” to shape individuals’ preferences and choices. In their everyday lives, individuals generate colossal quantities of digital data. This data can then be scrutinized using algorithms, artificial intelligence and other digital tools by governments, companies and/or government-hired companies. As a result, people are essentially losing control over their own information (Morey, Forbath and Schoop 2015).

The gradual normalization of datafication is a new worrisome paradigm in science and society (van Dijck 2014). This normalization obscures questions about the responsible use of data, consent and transparency in data collection, and the impact of data-driven technologies on society.

The Concept of Public Information

With these changes in technology and in the role of the state, public information can no longer be considered simply as information produced and in the hands of state bodies and agencies. “Public information,” to which people should be entitled as a human right, should instead refer to “public interest information,” meaning all publicly relevant information that people need to make informed decisions about main areas of their lives, in particular information needed for the exercise of basic human rights.

In addition to adopting this broader concept of public interest information, a renewed interpretation of the right to information needs to better clarify the intrinsic relationship between public, private and personal information. The boundaries between these categories are blurred because in the infosphere human beings are not only consumers and producers of information — they are

themselves information (Floridi 2014). Data protection, privacy and public interest information must be understood and regulated as overlapping categories.

The new relationship between the right to information and privacy is multilevel and complex. One of the foundations for the modern right to information in countries governed by civil law has been referred to as the writ of *habeas data*. This writ can be seen as protecting both individuals' right to privacy as well as their right to information, demonstrating how these rights are correlated and complementary. In many countries, the same public bodies oversee compliance with and enforcement of freedom of information acts and data protection laws.

The Principal Information Holders/Controllers of Today

A considerable amount, if not the majority, of the information produced from the digitalization and datafication of so many aspects of daily life and public institutions is now in the hands of private sector for-profit entities. These companies accumulate this information both by engaging with states in expanding public functions and services, and through their own direct dealings with individuals. In twenty-first-century digital society, data has become a primary asset of companies and is seen as the future of business in the digital economy. The effective capture, representation and delivery of data to inform decision making and action is at the centre of business intelligence today (Lycett 2013), and data exploitation is at the heart of the business models of a number of internet intermediaries. Private companies have become principal information controllers, determining the purposes and means of processing personal data. Yet the information built on the data that they collect, process and analyze can have a significant role in areas such as public health, urban planning, public safety, environmental sustainability and social services, prompting questions such as who has ownership over such data and who has the right to access this information.

The Effects of Information Overload

The problems created by the overwhelming ubiquity and volume of information available tend to be as significant as those created by the lack of access to that information. As argued by Jack M. Balkin, the digital revolution has minimized the costs of distributing information; as a result, "audiences are pummeled with vast amounts of information which they must collate, sort, filter, and block" (Balkin 2004). Sending information has become so inexpensive that the burden of information distribution has shifted from the distributor to the receiver; it is the receiver who has to parse the relevant information out of this data dump. As a result, technology has had an impact on the freedom of information by necessitating the organizing, sorting and filtering of information, which now too often poses a greater problem than the lack of access to information or restrictions imposed on it.

Nowadays, most of the information that is relevant to the general public is not the type of information that governments deliberately seek to keep confidential; rather, it is information that governments would be willing to disclose, but have been failing to do so as a consequence of the sheer volume of information currently generated by the state and the lack of clear strategies for organizing and communicating it to the public.

Conclusion

Recognizing that the right to information is an evolving right means that this right needs a broader definition beyond meaning simply access to publicly held information. A new conceptual framework for the right to information proposes that states, under a human rights framework, should be obliged to provide information sovereignty. A second working paper will further detail this concept and the different dimensions of the right to information of which it is composed. This upcoming paper will also discuss the concept of data sovereignty in relation to Indigenous peoples as a concrete example of how governments could practically promote information sovereignty.

Recommendations

- States should review their laws to include private sector entities among those subject to their right to information acts.
- Public institutions should prioritize the release of relevant and high-quality information proactively, ensuring that the most important and useful data is readily available. Curation efforts can help organize and present information in a more user-friendly manner. They should invest in robust data management systems and processes to ensure the accuracy, consistency and standardization of public information. This includes regular updates, data validation and adherence to data quality standards.
- Privacy and personal data must be protected according to international human rights standards, including through the passing of robust data protection legislation.
- Individuals should be equipped with the necessary skills and knowledge to navigate and critically evaluate public information. Education and media literacy programs can help individuals develop the skills to assess the credibility and reliability of information.
- States should promote meaningful access to the internet, including through the expansion of last-mile connectivity via mainstream and alternative providers and models, including those seeking community-based solutions.

About the Author

Paula Martins is a policy advocacy lead at the Association for Progressive Communications where she follows digital and human rights policy issues at the global level and helps shape the organization's responses to emerging policy trends. As a Digital Policy Hub doctoral fellow, her research will delve into freedom of expression and digital rights. She is also pursuing her doctorate in law at McGill University.

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