



## Access to Information in the Republic of Moldova:

### Recommendations for Legal Reform

Access Info Europe & Lawyers for Human Rights

November 2024

## About Access Info Europe

Access Info Europe is a human rights organisation established in Madrid in 2006 and dedicated to promoting and protecting the right of access to information. Access Info runs a range of projects designed to leverage the right to information in order to increase participation and accountability, to defend human rights, and to advance democracy.

## About Lawyers for Human Rights

Lawyers for Human Rights is a non-governmental organisation founded with the aim of promoting international standards in the field of human rights in the Republic of Moldova. The activity of the organisation is mainly oriented towards the implementation of the European Convention on Human Rights in the Republic of Moldova.

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# Executive Summary

## Legal Framework

The right of access to information is a constitutional right under Article 34(1) of the Constitution of the Republic of Moldova and is regulated under Law No. LP148/2023 on Access to Information of Public Interest. This law was adopted by the Parliament of the Republic of Moldova on 9 June 2023, replacing the Law no. 982/2000 on access to information. Moldova also ratified the Council of Europe Convention on Access to Official Documents (Tromsø Convention) in 2013, and it entered into force in early 2020.

## Methodology & Results

Access Info has created a detailed methodology to analyse national legal frameworks on access to information against the Tromsø Convention and international best practices. This methodology has ten sections, with each section focusing on one of the first ten Articles of the Convention. Each section contains various questions that award either positive or negative points, with a total maximum score of 300 points.

Access Info Europe, with the support of Lawyers for Human Rights, has applied this methodology to analyse Moldova's Law No. LP148/2023 of 09.06.2023 on Access to Information of Public Interest.

In total the Moldovan law scored 211 points out of 300.

The full analysis can be accessed [here](#)

Article of the Tromsø Convention	Elements	Positive points	Negative Points	Scores
1. Article 1 - General Provisions	Definition Information/Documents, Public Bodies covered	45	-19	25
2. Article 2 - Right of access to official documents	Who has the right to request	25	0	25
3. Article 3 - Possible limitations to access to official documents	Exceptions, and harm and public interest tests	50	-11	30
4. Article 4 - Requests for access to official documents	How requesters submit requests	20	-6	12
5. Article 5 - Processing of requests for access to official documents	Processing of Requests	30	-13	28
6. Article 6 - Forms of access to official documents	In which formats can information/documents be accessed	10	-2	10
7. Article 7 - Charges for access to official documents	Fees and Charges	20	-8	17
8. Article 8 - Review procedure	External Appeal Procedure	65	-3	51
9. Article 9 - Complementary measures	Education on the Right	15	0	1
10. Article 10 - Documents made public at the initiative of the public authority	Proactive Publication re right of access to information	20	0	12
<b>Total score</b>		<b>300</b>	<b>-62</b>	<b>211</b>

The main areas of concern with this law are:

- Any other law can stipulate that its own rules and procedures trump the Access to Information of Public Interest;
- Some exceptions under the law are absolute, therefore they are not subject to a public interest test;
- The law does not contain a strong clause on training of public officials and educating the public on the right to information;
- The People's Advocate lacks strong powers to ensure efficient oversight;

Based on this analysis, Access Info and Lawyers for Human Rights have produced legal recommendations on how to bring Law No. LP148/2023 of 09.06.2023 on Access to Information of Public Interest further into line with international best practices.

# Legal Recommendations

## 1. The Access to Public Information Law should apply to all information held by public authorities and should override conflicting laws

International standards, including the Tromsø Convention, state that all official documents – the definition being all information in any format held by public bodies – are in principle public and can be withheld subject only to the exceptions laid out in the law. These principles are assessed in the [Right To Information Rating](#):

- **Indicator 2:** assesses if the legal framework establishes a presumption of access to all public information, with only narrowly defined exceptions. For example, Latvia's law specifies: “Information shall be accessible to the public in all cases, unless this Law indicates otherwise” (Section 2(3)).
- **Indicator 28:** examines whether the access to information law supersedes any other legal provisions that restrict information disclosure. Turkey’s law exemplifies this principle by stating: “Other legal regulations incompatible with this Act shall cease to be applicable upon its enactment” (Article 5(2)).

The Moldovan law on Access to Information of Public Interest goes against these principles. Any other law can stipulate that its own rules and procedures trump the Access to Information of Public Interest Law, as Article 1(2) states that this law:

does not affect the special regulations regarding access to information of public interest, which are contained in other laws.

Additionally, not all information falls under this law, as it states in Article 1(3) that

Access to environmental information is carried out in the manner established by the Government.

Ideally, all information held by public bodies should be accessible to the public, subject only to internationally accepted exceptions contained within the law. Stating that access to environmental information will be regulated “in the manner established by Government” creates a system where exceptions not in line with international standards could be applied to this category of information.

### **Recommendation:**

- In the case of a conflict, the Access to Information of Public Interest Law should not be trumped by other laws.
- All information held by all public bodies should fall under the scope of the Access to Information of Public Interest Law.

## 2. A harm and public interest test must be applied to all exceptions

Article 8(1) of the Access to Information of Public Interest Law provides for the following exceptions to access:

- a. public safety;
- b. international relations;
- c. preventing or discovering crimes or misdemeanors;
- d. carrying out the criminal investigation;
- e. carrying out the administrative or judicial procedure;
- f. protection of personal data;
- g. intellectual property rights;
- h. commercial secret.

These recommendations are subject to a public interest test under Article 9(1):

- (1) In the case provided for in art. 8 para. (1), access to information of public interest is limited only if the following cumulative conditions are met:
  - a) disclosure of the information will prejudice one of the legitimate purposes provided for in art. 8 para.(1)
  - b) the damage that will be caused by the disclosure of the information prevails in relation to public interest in accessing information.

This is in line with the Tromsø Convention, as the law presents internationally accepted standards that are subject to a harm and a public interest test. What is out of line, however, is that the exceptions under Article 8(2) are absolute exceptions as they are not subject to the harm and public interest test under Article 9:

8 (2) Access to information of public interest is limited even when the restriction is expressly provided by law, including in the case of information that constitutes state, banking or medical secrets.

This means that the exceptions concerning state, banking and medical secrets are absolute, and therefore not subject to a public interest test.

This is more restrictive than the exceptions in the previous Law No. 982/2000, which had a public interest test for all exceptions under Article 7(4):

No restrictions may be imposed on the freedom of information, unless the information provider can successfully prove that such a restriction is regulated by an organic law and is necessary in a democratic society for the protection of rights and legitimate interests of the person or national security, and that the damage to **those interests would be larger than the public interest for that kind of information.**

Not having a public interest test to all exceptions goes against the right to guarantee access to official information as enshrined in the Constitution of the Republic of Moldova under Art. 34. In interpreting this provision, the Constitution Court, in Decision No.19/2015<sup>1</sup> stated:

the right to information can be restricted provided only it is based on the real and justified purpose of protecting a legitimate interest in protection of citizens or national security, **unless there is an overriding public interest in disclosure;**

The Tromsø Convention contains a list of internationally accepted exceptions. These exceptions, however, are all subject to the following harm and public interest test under Article 3(2):

Access to information contained in an official document may be refused if its disclosure would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure.

Therefore, whilst certain limitations are permitted to the right of access to information, all limitations must ensure that disclosure of information is only refused if it would or would be likely to cause harm to a protected interest, and in all cases the application of the exception must be balanced against a public interest test.

### **Recommendation**

- The Access to Information of Public Interest Law must contain a clear harm and public interest test that is applied to each exception.

## **3. Minimal collection of personal details of the requester**

The Law on Access to Information of Public Interest states that in order to submit a request, the requester must submit name, surname, postal address and email address:

Article 16. Content of the request

1. The application contains the following mandatory elements:
  - a) the applicant's name and surname;
  - b) the postal address of the applicant, as well as the address of the electronic mail if a response is requested in this way;

According to international standards, the identity of the requester should not impact upon the request. Therefore, a requester should not have to give an excessive amount of personal details when submitting a request.

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<sup>1</sup> Decision No. 19/2015 of the Constitutional Court for the interpretation of Art. 34(3) of the Constitution of the Republic of Moldova (access to information)  
[https://www.legis.md/cautare/getResults?doc\\_id=89709&lang=ro](https://www.legis.md/cautare/getResults?doc_id=89709&lang=ro)

The Tromsø Convention offers the option to allow requesters to remain anonymous, and states that formalities for requests shall not exceed what is essential. Article 4 of the Tromsø Convention states:

Parties may give applicants the right to remain anonymous except when disclosure of identity is essential in order to process the request.

Formalities for requests shall not exceed what is essential in order to process the request.

Indicator 14 of the RTI rating analyses whether national access to information laws only require requesters to provide the details necessary for identifying and delivering the information (i.e. some form of address for delivery). We see that in Estonia, a requester must give their name and one form address so that the requester can be contacted:

14. A request for information shall set out the following information orally or in writing: 1) the given name and surname of the person making the request for information; 2) the name of the legal person or agency in the case of a request for information made on behalf of an agency or legal person; 3) the details of the person making the request for information (postal or electronic mail address, or fax or telephone number), through which the holder of information could release the information or contact the person making the request for information;

Requiring that a requester submits both a postal address and an email address is excessive and not necessary to process the request.

#### **Recommendation:**

- It should be clearly stated that the requester should only have to give minimal personal details, only those required to process the request (i.e. name and email or postal address).
- The option for the requester to remain anonymous should also be available.

## **4. More education and awareness raising on the right**

The Access to Information of Public Interest Law does not put in place specific measures for training of public officials and awareness raising amongst the public on the right of access to information. The Law simply makes reference to the principle of promoting a culture of transparency and promoting the right:

Article 3. Principles of access to information of public interest

Ensuring access to information of public interest is based on the following principles:

c) the principle of promoting open government, public authorities must promote a culture of transparency and openness among public agents and promote the right to information among the population;



The Tromsø Convention specifically calls on the Parties to inform the public about its right of access to official documents and to educate public officials on how the right should be implemented.

Article 9 on Complementary measures states:

The Parties shall inform the public about its right of access to official documents and how that right may be exercised. They shall also take appropriate measures to:

- a) educate public authorities in their duties and obligations with respect to the implementation of this right;
- b) provide information on the matters or activities for which they are responsible;
- c) manage their documents efficiently so that they are easily accessible; and
- d) apply clear and established rules for the preservation and destruction of their documents.

The Serbian access to information law is a good example of a legal framework that contains clauses on the training of officials on the right by public bodies (Article 42) and the public awareness raising efforts by the Commissioner (Article 37):

**Article 42** With the aim of effectively implementing this Law, a state body shall train its staff and instruct its employees on their obligations regarding the rights regulated by this Law. The staff training in Para 1 of this Article shall notably include: the content, scope and importance of the right to access information of public importance, the procedure for exercising those rights, the procedure for administering, maintaining, and safeguarding information mediums, and types of data which the state body is obliged to publish.

**Article 37** The commissioner shall, without delay, issue and update a manual with practical instructions for the effective exercise of the rights regulated by this law, in the Serbian language and in the languages that, in accordance with the law, are designated as languages in official use ... It is the duty of the Commissioner to inform the public about the content of the manual from paragraph 1 of this article through the press, electronic media, the Internet, public forums and other means.

The Moldovan legal framework would benefit from enhanced provisions for the training of public officials. One effective measure could be the establishment of an Information Officer role within public bodies, tasked specifically with ensuring that officials responsible for implementing the law receive regular training on their legal obligations. Additionally, public authorities and/or the designated oversight body should be accountable for raising public awareness of these rights and obligations, thereby fostering a more informed and transparent public environment.

### **Recommendation**

- Public authorities should be required to appoint dedicated officials (information officers) or units with a responsibility for ensuring that they comply with their information disclosure obligations.

- Public awareness-raising efforts should be required to be undertaken by public authorities and/or the dedicated oversight body.

## 5. Creation of an Information Commissioner with strong powers of oversight

If a requester's right to information is violated, according to international standards, they should have access to an effective review procedure. Article 8 of the Tromsø Convention states: An applicant shall always have access to an expeditious and inexpensive review procedure

In Moldova it is possible for a requester to take a complaint to the administrative court, under Article 25 of the Access to Information of Public Interest law. This however can be a lengthy process. There is also an option for the requester to turn to the People's Advocate Office, which is an Ombudsman style body that has a mandate to ensure the protection of all human rights and freedoms by public authorities, organisations and companies. This body receives and reviews complaints on the violation of human rights and freedoms and makes decisions based on the complaint.

Article 31 of the Law on Access to Information of Public Interest specifically states that the mandate of the People's Advocate includes access to information:

The People's Advocate ensures compliance with the right to access information of public interest in accordance with Law no. 52/2014 regarding the People's Advocate (Ombudsman).

Accordingly, requesters are able to submit complaints to the People's Advocate if they feel that their right of access to information has been violated. This body however does not have strong powers needed to enforce compliance with the law, such as binding decisions, sanctioning powers, and ability to declassify documents.

To ensure that members of the public can defend their right of access to information easily, speedily, and at low cost, countries are increasingly setting up an independent oversight body, sometimes combined with the role of overseeing personal data protection.

Key elements of the mandates, powers, and functioning of an independent oversight body as per the best practices and emerging standards in the European region include:

- Issues binding decisions and can impose sanctions;
- Has oversight of all aspects of the access to information law, not just the request process;
- Can mediate, and issue recommendations;
- Has powers of inspection and can review the contested information;
- Is able to review the classification of information or recommend a reclassification to the appropriate body;

- Can initiate ex-officio investigations without the need to receive complaints or to investigate systemic breaches identified through complaints;
- Is able to issue guidance to public bodies and training to public officials;
- Is mandated to raise public awareness about the right of access to information;
- Can issue guidance and criteria for interpreting the access to information law and other relevant legislation;
- Is able to make recommendations on existing and new legislation;
- Regularly collects data from public bodies on the implementation of the access to information law;
- Conducts additional data collection, including surveys and public opinion polls;
- Issues reports to Parliament at least annually and reports regularly to the public on its activity, decisions, and on the data gathered from public authorities.

### **Recommendation**

- An Information Commissioner with a specific mandate of ensuring the promotion and protection of the right of access to information should be created. This Information Commissioner should have the power to review appeals and have strong powers such as binding decisions, ability to impose sanctions and review/declassify classified documents.

## **6. Proactive publication of requests and complaints**

The Law on Access to Information of Public Interest contains strong proactive publication provisions under Article 10. It does not, however, require the proactive publication of the request process. The law also does not require the People's Advocate to publish all complaints received and subsequent decisions taken.

To facilitate access to this information, all requests, documents and complaints could be published on one singular public portal. This should include not only the requests submitted by requesters, but the answers from the public bodies and the documents released upon request.

### **Recommendations**

- There should be proactive publication of all requests, answers and documents released upon request by public authorities or by the People's Advocate on a singular public portal.

# Strategic Litigation Regarding Application of the Law

Law No. LP148/2023 on Access to Information of Public Interest is a relatively new law, having been adopted by the Parliament of the Republic of Moldova on 9 June 2023. Lawyers for Human Rights is now monitoring its implementation and is bringing strategic litigation in response to misapplication.

## 1. First Case against Pre-Vetting Commission

The Independent Evaluation Commission for assessing the integrity of the candidates for the position of member in the self-governing bodies of judges and prosecutors, also known as the Pre-Vetting Commission, is an independent, collegial body, mandated to evaluate the integrity of judges and prosecutors from the Republic of Moldova, who aim to become members of The Superior Council of Magistracy, the Superior Council of Prosecutors or their specialised bodies.

Following public debate with respect to apparent excessive secrecy as regards the members of the Registry of the Pre-Vetting Commission,<sup>2</sup> an access to information request was submitted with this authority, through the VreauInfo.md's Platform, seeking to obtain the respective information.<sup>3</sup> The Pre-Vetting Commission refused to provide this information arguing, inter alia, that the Law on Access to Information of Public Interest is not applicable, because this authority is not public one.

An appeal has been filed with the Chisinau District Court, seeking annulment of the refusal and to oblige the Pre-Vetting Commission to provide the respective information. At the time of writing this report, the lawsuit is pending before the Court of First Instance.

## 2. Second Case against Pre-Vetting Commission

Following some rumours with respect to the integrity of the Chairman of the Pre-Vetting Commission<sup>4</sup>, a request was submitted, through the VreauInfo.md's Platform, seeking to obtain information held regarding the professional career of this person.<sup>5</sup> The authority refused to provide this information, arguing that the Law on access to information is not applicable, because this authority is not a public one. Accordingly, the crucial element of the respective lawsuit, like the one above, is the applicability of the Law on access to information to some specific entities

Afterwards, a lawsuit was filed with the Chisinau District Court, seeking annulment of the refusal and to oblige the Pre-Vetting Commission to provide the respective information. At the time of writing this report, the case is still pending.

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<sup>2</sup> <https://stiri.md/article/politica/ce-secrete-ascunde-comisia-pre-vetting-cine-sunt-membrii-acesteia/>

<sup>3</sup> [https://www.vreauinfo.md/ro/request/membrii\\_secretariatului\\_comisiei\\_2#incoming-1088](https://www.vreauinfo.md/ro/request/membrii_secretariatului_comisiei_2#incoming-1088).

<sup>4</sup> <https://anticoruptie.md/en/investigations/integrity/herman-von-hebels-hybrid-integrity>,

<sup>5</sup> [https://www.vreauinfo.md/ro/request/dosarul\\_personal\\_a\\_lui\\_herman\\_vo#incoming-1180](https://www.vreauinfo.md/ro/request/dosarul_personal_a_lui_herman_vo#incoming-1180).

## Conclusion

The adoption of Law No. LP148/2023 on Access to Information of Public Interest, and the signing of the Tromsø Convention represent significant steps forward in strengthening the legal framework for access to public information in Moldova. However, despite its alignment with some international standards, the law still presents several shortcomings on paper and in practice that undermine its effectiveness and restrict public access to information. Ongoing strategic litigation efforts emphasise problems with the interpretation and implementation of the current law. To uphold and protect the constitutional right to information in Moldova, and to ensure the law meets international best practices and aligns fully with the Tromsø Convention, several policy and legal reforms are necessary.