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Freedom of Information Laws in a Rapidly Changing Cyber Environment

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Internet: Challenges to Peace and Freedom

Freedom of Information Laws




in the rapidly
changing cyber
environment

“Freedom of Information” or “Sunshine” Laws

What
Are
They?

- Allow public access to documents and data held by governments

Why Do
We Need
Them?



“...an assembly elected by the people, and renewed from time to time, publicity is absolutely necessary to enable the electors to act from knowledge” (Jeremy Bentham Essays, 1837)



“Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants...” (United States Supreme Court Justice Louis Brandeis, 1914)

Which Countries Have Adopted Such Laws?

95 countries have some form of Freedom of Information Law - even those with little tradition of democratic values.

- *SWEDEN*: Freedom of Press Act granted the press access to public documents in 1766 (oldest law)
- *USA*: Freedom Of Information Act (FOIA) adopted in 1966 applies to Federal agencies, but all states in U.S. have similar and often broader statutes
- *CANADA*: Access to Information Act 1983 allows citizen access to Federal records, enforced by an Information Commissioner of Canada. Similar laws at provincial level.

Which Countries Have Adopted Such Laws?

— *EUROPE:*

- Article 10 European Convention on Human Rights “freedom...to receive...information”
- Art 42 CFR and Art 15 TFEU “any citizen....right of access to documents of institutions... whatever their medium”
- Regulation (EC) No. 1049/2001 of European Parliament further defines the right of access and remedies for denial.

— *AUSTRALIA:* Freedom of Information Act of 1982 with similar legislation adopted by states and territories during the past decades.

— *INDIA:* Right to Information Act 2005 requires each Governmental Agency to designate a Public Information Officer to insure requested information is disclosed within 30 days.

Which Countries Have Adopted Such Laws?

- **CHINA:** FOI acts largely at sub-national level and enacted by provincial governments
 - Hong Kong – Code on Access to Government Information 1995
 - Shanghai 2004 – generally the model for other provinces
 - Chongqing 2004
 - Guangdong 2005
 - Hubei 2004
 - Etc.
- Legal emphasis on proactive disclosure of administrative and planning regulations.
- Pre-decisional access by citizens

Common Exceptions to Disclosure

- Drafts of documents
- National security information
 - “official secrets”
- Legally privileged information
 - Depends on judicial system
- Law enforcement information
- Personal/medical information; trade secrets
- Decisional or deliberative information
 - Applies to judicial legislative and executive decision making
- Catch-all for information disclosure of which is not in the public interest
 - The “harm” standard



Form of Government Data, Documents, Information

- Written documents
- Audio and video tapes and similar media
- Archived documents (e.g. microfilm, memory cards and sticks, etc.)
- Electronic information
- Metadata



Issues with Electronic Information

Converting electronic documents to PDF

Use of personal devices for official communications

Searchability



Encryption and redaction

Use of Metadata

Retention of electronic messages, texts, tweets, Instagram

Conversion of Electronic Documents to PDF

PDF (portable document format)



A file format used to present documents in a manner independent of application software, hardware or operating system.



Freedom of Information problems with PDF

- ⊗ PDF created by scanning documents
= photograph with no metadata or searchability or useability
- ⊗ Accessibility for auditory, visually disabled persons
- ⊗ Transmission of Virus
- ⊗ Encryption or embedded copy restrictions

Use of Metadata

- Definition
 - Electronic version of the card catalogue
 - Data that provides information about other data
- Two Types
 - *Structural*: data about the containers of data
 - *Descriptive*: individual instances of application of data



Use of Metadata

Shows Critical Information Under FOI:



DIGITAL ID

What tools and language were used to create it?

How is it organized?

Who created it, when and how?

What are the archiving methods?

Where do you find more data about the subject?

What computer was used to create it, standards used, file size?

Use of Metadata

- Why should we care about metadata?
 - Inferences
 - Assumptions
 - Patterns, edits
 - Circulation



Is Metadata Part of the Public Record?

Most public records
are born electronically.

If the public
record was born
electronically,

then everything
associated with
that “birth” is a
public record.

Therefore, the
metadata is part
of the record
under FOI laws.

Searchability Issues

What is the obligation to provide the ability to search electronic documents?

What good is data without the ability to search electronically?

Most FOI laws do not require a mechanism for database or keyword searching.

Retention of Electronic Data and Use of Personal Devices

If official information is not retained, then how can it be produced under FOI?

- Deleted electronic texts, tweets, Instagrams
- Use of personal devices versus government issued
- Use of private email server by government officials



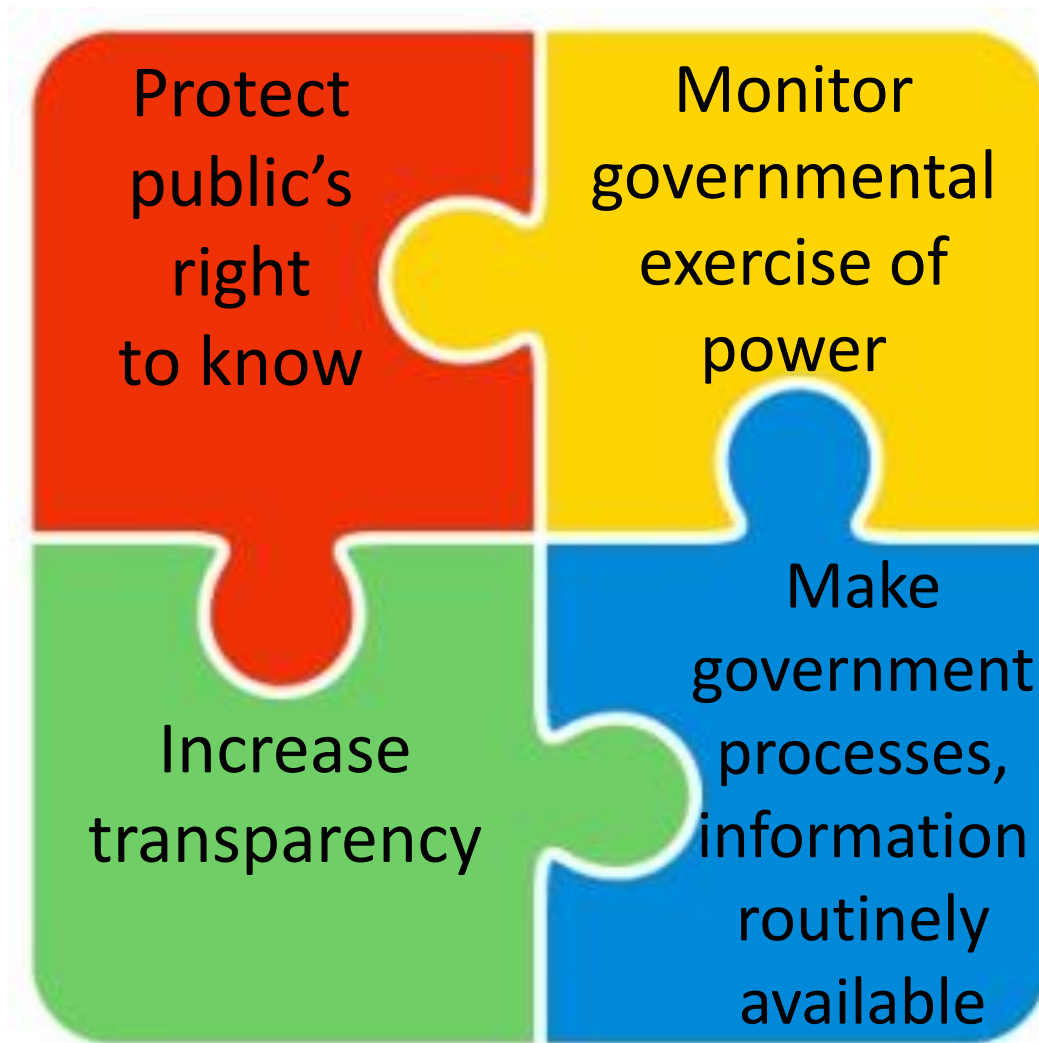
Encrypted Data and Redactions

Under FOI what is the obligation to provide decrypt keys?



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Goals of FOI



Freedom of Information Laws in a Cyber Environment

