The Right of Access to Information in Lebanon:

Between Absolute and Relative Exceptions

TRANSPARENCY INTERNATIONAL LEBANON - NO CORRUPTION

The Right of Access to Information in Lebanon: Between Absolute and Relative Exceptions

THE EXTENT TO WHICH ARTICLE 5 FROM THE RIGHT OF ACCESS TO INFORMATION LAW IS PURSUANT TO THE LEBANESE CONSTITUTION AND THE INTERNATIONAL OBLIGATIONS OF THE LEBANESE GOVERNMENT

Authors:

Sarah Rammal

Judge at the Lebanese State Consultative Council

Mohamed Ali Almghabbat

Legal Advisor for the Lebanese Transparency Association – No Corruption

Reviewed by:

Adam Foldes

Legal Advisor at Transparency International

Translated from Arabic to English by:

Rana Saleh Azzam

English Editor:

Rana Baghdadi

This Paper is published under the “Ensuring Transparency and Accountability in the Beirut Explosion Recovery and Reconstruction Efforts” (OSF) project funded by the Open Society Foundations.

Table of Contents

Introduction

Alberto Gonzales claims that "while the access to information and the freedom to access it seems like a fundamental right, some consider, whether wrongfully or rightfully, that there is some benefit to withholding them". However, to what extent can one presume that personal, public or professional interests supersede the right of access to information, given the intersectionality of the latter with other fundamental freedoms and rights, including the right to freedom of opinion and expression, and the right to privacy, among others. With the advancements of society in the fields of information and the internet, access to information has become a cornerstone for the advancement of transparency and principles of accountability on all levels. In Lebanon, for instance, the people are the source of the three powers of the state, according to Paragraph D of the Preamble of the Constitution; therefore, they need information to periodically monitor institutional performance; not in the sense of a collective right, as the right of access to information is an individual right that any individual has the right to exercise it. This is crucial as the access to, and analysis of information provide a comprehensive brief of their advantages and drawbacks to society. Additionally, on the one hand, public scrutiny of this information can steer voters' choices of representatives in the parliament, and on the other, reinforce the principles of good governance and administration.

The right of access to information first emerged in 1766 with the adoption of the Freedom of Print Act in Sweden[1], and was progressively adopted in multiple international and regional conventions, namely: the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights, the American Convention on Human Rights, the European Convention on Human Rights, the Arab Charter on Human Rights[2], to name a few.

The basic principles of the right of access to information adopted in these conventions constitute general rules that must be duly adopted in the drafting of any law tied to this right, particularly when these principles are specified in a convention or treaty binding the signatory state adopting the Law. Among these principles are the principle of maximum disclosure of information, the principle of limited scope of exceptions, the principle of process facilitation to information access, and the principle of free access to information[3].

In Lebanon, these nine principles are anchored in the Preamble of the Constitution, more specifically in Paragraph B which gives constitutional value to the United Nations Conventions adopted by the Lebanese State (including Article 19 of the ICCPR on which the nine principles are based) and the UDHR. Furthermore, Article 2 of the Lebanese Civil Procedure Law, amended in 1983, sets the rule of precedence within the Lebanese legal system, which gives primacy to international conventions over national legislations when contradicts arise.

The Constitutional Council confirmed in its decision 1/1997[4] that the Preamble of the Constitution has the same constitutional value as any of its embedded rulings, which means that all legislations must be compliant not only with the provisions of the constitution itself, but also with its Preamble. Furthermore, the Constitutional Council asserts that the "general principles stated in the UDHR {such as the principles related to the right of access to information} in article 8 has become an integral part of the Lebanese Constitution"[5]. Therefore, any law regulating the right to access to information in Lebanon must fall within the principles enshrined within the UDHR and the ICCPR.

The Law on the Right of Access to Information in Lebanon (Law No. 28 adopted on 10 February 2017) includes many of these principles. However, it also includes some legal gaps resulting from compromised and obscure drafting[6] inconsistent with the most basic international standards relating to the principle of limited scope of exceptions which requires sufficient knowledge of the nature of private, confidential, and critical information, especially since the disclosure of such information may not necessarily lead to significant harm to legally preserved interests. On the contrary, it may contribute to public interest. Hence, a balance between both interests requires a case-by-case study as will be presented in this paper.

As previously presented, the right of access to information is subject to multiple international principles, such that the rule is to always make information available with exceptions that should be precisely, clearly, and explicitly defined, allowing no room any ambiguity when reading relevant legal texts. These exceptions must also be justifiable, legitimate, temporary, and balanced. Therefore, exercising this right is contingent upon the legal texts governing and regulating it, firstly under texts stated, for instance, in the penal law, the law on Espionage, the land registry law, and the radio/TV broadcasting law, and secondly, under a distinct legal text, which is the right of access to information law.

As such, are the exceptions stated in the Law on Access to Information, particularly in Article 5, of an absolute or relative nature? To which extent can this article be considered compliant with international principles, notably the Limited Scope of Exceptions Principle? Is the jurisdiction of the administration concerned with the disclosure of information or lack thereof a discretionary or restricted authority? What if the specialized administration can

perform the three-pronged test (the public interest test which will be tackled in detail thereafter) on the required information falling under the exceptions mentioned in Article 5 of the Law?

Would this possibility contribute to the reinforcement of the principle of disclosure of information in a well-thought-out manner, or would it allow the specialized administration to exercise its discretionary power in an arbitrary and selective manner that may harm society every time it is mistaken in the execution of this test, disclosing information which otherwise would have better remained undisclosed, or refraining from disclosing information, which, for the greater good, would have better been revealed?

Before answering these questions, it is necessary to note that the Lebanese Transparency Association (LTA) had previously recommended amendments[7] to the Law on Access to Information, including amendments to Article 5, which sanctions exceptions to the right of access, in such a way that these exceptions are consistent, beyond any doubt, with the Limited Scope of Exceptions Principle, allowing administrations to apply the Public Interest test.

The Administration and Justice Committee within the Lebanese parliament has endorsed this amendment and referred it to the General Assembly to adopt it. However, the Ministry of Justice had expressed concerns regarding this amendment, leading the parliament to refrain from adopting it. For this reason, this paper addresses the details of the exceptions on the right of access to information and their consistency with the Lebanese Constitution and the international obligations of the Lebanese State, which, in this regard, manifests in the commitment to the Limited Scope of Exceptions Principle.

Thus, the Right of Access to Information legal framework is Lebanon is the Right of Access to Information Law No. 28/2017, its Amendment Law No. 233/2021, and its Implementation Decree No. 6940/2020.

The Nature of the Exceptions to the Right of access to information

It should be noted, first and foremost, that the State Consultative Council (the administrative court in Lebanon) was a pioneer in consecrating the right to knowledge before the adoption of the Law no. 28/2017 on the right of access to information. In the Preliminary Decision no.420 issued on 4 March 2014, the governing body concluded that the plaintiff had the right to receive a copy of the entire investigation file of the official Commission of Inquiry looking into the fate of all the kidnapped and missing persons. The grounds for this decision were that "the right of the families of the missing persons to know their fate is a natural right which stems from an individual's right to life, to a dignified life, a decent burial; the rights of the family to respect its values and to its reunification; and the right of children to familial and emotional care as well as a stable life. These rights are stated in the international laws and charters of which Lebanon is a member, and they include the right of the families to know the fate of their disappeared loved ones. That is a right which cannot be constrained, diminished, or exempted, unless explicitly stated otherwise, which is not the case in the case hereto"[8].

Indeed, with the adoption of the Law no. 28/2017 on the Right of access to information (as amended by Law no.233/2021) which binds the Administration to implement the Law on a large scope, Article 5 defined a set of

7 See study in footnote no. 3.

8 State Consultative Council, decision no. 420 of 4 March 2014, Committee of the Families of the Kidnapped and Disappeared of Lebanon/the Lebanese State – The Prime Ministry, Justice Gazette, 2014, issue no. 2, page 662.

exceptions as follows[9]:

"The information that shall not be disclosed:

a. **The Administration shall refrain from disclosing the requested information if they touch upon the following matters:**

1. National defense, national security and public safety secrets.
2. International state affairs of confidential nature.
3. Personal lives and mental and physical health of individuals.
4. Secrets protected by Law such as professional secrets.

The confidentiality clauses of contracts signed by the administration do not preclude the right to access them, subject to the provisions of Article 5 of the Law.

b. **The following documents shall not be consulted:**

1. Findings of investigations prior to their recounting in a public hearing, secret trials, and proceedings pertinent to personal status and minors. The contents of the files, cases, and judicial recourses are not available for consultation except under the relevant procedural laws.
2. The minutes of secret sessions of the Parliament and Parliamentary Committees unless otherwise decided.
3. The deliberations of the Council of Ministers if given a confidential nature.
4. Preparatory documents and unfinalized administrative documents.
5. Opinions issued by the State Consultative Council unless it is the persons concerned within a judicial proceeding".

It is concluded from the text of the above-cited Article 5 that the exceptions stipulated upon by the legislator include information linked to legitimate personal interests and public interests, including sensitive, confidential, private, health related and institutional information. In what follows is an analytical reading of the contents of this Article leading up to the definition of the nature of the exceptions to the Right of Access to Information.

On terms used by the legislator

The legislator has used expressions such as "the Administration shall refrain from" and "shall not be consulted" which means that the prohibition is absolute and comes by power of law. Therefore, the Administration may not disclose the information whenever it is found that such required information/document falls under one of the exceptions expressly determined under the text. The principle stated in Law 28/2017 is the Access to Information with due regard to some exceptions stipulated upon by the legislator in Article 5 of the Law hitherto. The authority of the Administration to disclose or refrain from disclosing the requested information remains tied in either case to the Law.

9 Article 5 of the Law no. 28/2017 was amended (along with other articles) in virtue of Law no.233 of 16 July 2021. The title of this Article was changed from "The Documents that shall not be consulted" to "the Information that shall not be disclosed". By comparing the text of this Article before and after the amendment, we conclude that:

- Paragraph A stipulates that "The Administration is prohibited from disclosing the requested information if it touches upon the following matters" while previously stipulating that "Information touching upon […] shall not be consulted". Paragraph B now stipulates that "It is prohibited to consult the following documents" while previously stipulating that "it is not possible to consult the following documents".

- Clause A (3) was repealed (prior to the amendment); it prohibited the access to information that "may undermine the financial and economic interest of the State and the safety of the national currency".

- The "professional secret" was revoked from the list of examples mentioned in clause A (5) of the present Article, and the following paragraph was added: "Confidentiality clauses in the contracts signed by the Administration shall not prevent the access hitherto, in compliance with the provisions of Article 5 of the Law hereto".

- The following paragraph was added to Clause B (1): "However, the content of the judicial files, cases, and proceedings shall only be available for consultation under the Laws on the relevant proceedings."

On clauses which the absolute nature of exceptions applies

Article 5 of Law no.28/2017 lists eight (8) clauses detailing the nature of information that the Administration is prohibited from disclosing. They are as follows:

1. National defense, national security and public safety secrets.
2. State international affairs management of confidential nature.
3. Personal lives and mental and physical health of individuals.
4. Secrets protected by Law such as professional secrets.
5. Secret trials.
6. Proceedings pertinent to minors and personal status.
7. The deliberations of the Council of Ministers if given a confidential nature.
8. Preparatory documents and unfinalized administrative documents.

On clauses which the relative nature of exceptions applies

Article 5 of Law no.28/2017 stipulates a number of relative exceptions under which the concerned person may consult information that falls within the provisions of the Article hitherto upon the end of the prohibition grounds either due to its importance, or due to the timing of the access request, or due to its compliance with the legal processes and proceedings, or due to its necessary availability to the persons concerned within a judicial proceeding.

This information includes:

1. Confidentiality clauses included in contracts signed by the Administration in the event that they do not contradict any of the clauses of Article 5 of the Law hitherto.
2. The findings of investigations if disclosed upon their reading during a public hearing and not prior.
3. The contents of files, cases and judicial proceedings if consulted in compliance with the specialized trial laws.
4. The minutes of secret sessions held by Parliament and parliamentary committees if the approval of the disclosure is given by the Members of Parliament or by the Members of the committees, or if the Law stipulates the obligation to disclose them, for instance.
5. Opinions issued by the State Consultative Council unless it is the persons concerned within a judicial proceeding.

Exceptions to protect State interests and to ensure the efficiency of the Government

Article 5 of the Law no.28/2017 tackles multiple exceptions related to the interests of the State as follows:

- National defense, national security, and public safety secrets.
- State international affairs management of confidential nature.
- Findings of investigations prior to their recounting in a public hearing, secret trials, and proceedings pertinent to minors and personal status.
- The minutes of secret sessions held by Parliament and Parliamentary Commissions unless otherwise decided.
- The deliberations of the Council of Ministers if given a confidential nature.

With regards to confidentiality, it shall be noted that it covers information that shall be known to a small circle. The concept of confidentiality includes military, political, diplomatic, economic, and industrial information, as well as objects, writings, papers, documents, drawings, maps, designs and pictures, among others, which, for matters of national defense, shall only be known to the parties entrusted with their safekeeping and use. In addition, news and information related to the armed forces and their movements, equipment, ammunition and generally anything that touches upon military and strategic affairs fall within the same context, unless a written authorization to publish or disclose them is issued by the armed forces. Moreover, state international affairs with other States, as well as state management fall under the exceptions. This includes confidential information related to war, peace, security and intelligence, as well as other sensitive matters to which the access should not be provided to the public.

As for news and information related to the measures and procedures taken to uncover, investigate or prosecute crimes, the Court looking into the matter shall not allow the disclosure of its proceedings pursuant to the principle of secrecy of the investigation. For instance, the disclosure of information related to an ongoing criminal investigation may impede the arrest of the suspect. In this case there is benefit to the non-disclosure of the information as there is a constant possibility of certain or potential damage to an interest specified in advance by law. However, nothing prevents the disclosure, in some cases, at the end of the investigation, and after the arrest of the culprit, of relevant information, and even before the end of the investigation, without obstructing the course of justice, in cases of public interest such as the investigation conducted around the Beirut Port explosion in Lebanon information can be published. Nonetheless, the suspects benefit from the presumption of innocence until proven guilty by a non-appealable judgment. Once the authorities notify the suspect of the suspicion/charges it is true that the disclosure of the fact of the investigation can't harm the interest of the investigation anymore, but there can be other competing rights and interests that have to be balanced with the right of access to information. For example, the right to privacy/protection of family life can be such right that can limit the disclosure to some extent.

With regards to the deliberations of the Council of Ministers or the minutes of the Parliamentary sessions which are of confidential nature, said deliberations and minutes, which are being discussed or set before a final decision is taken, are considered as "an exception for room of consideration" within the principle of disclosure of information. This is also linked to the exception that will be addressed further within the paper as these deliberations and minutes are not at the level of finalized or complete documents.

Exceptions to protect private interests, human rights, and other rights

The right of access to information faces the right to privacy, the respect of private life and personal information. The latter is considered one of the most highly respected civil rights and is a manifestation of human dignity. Within this context and from this right emerges the necessity to respect medical secrets, banking secrets, professional and trade secrets as well as the capacity to efficiently compete in the market[10].

In this context, it is necessary to note that the text of Article 4 of Law no.28/2017 pertinent to the documents of a personal nature allows exclusively for the person concerned to access personal information and any report related to a person referred to by name, serial number, symbol or any other identification means such as fingerprints, eyeball recognition, voice or picture. The same Article hitherto allows the person concerned to apply to complete, correct,

10 In France, Articles L311-5 and L311-6 of the Code on the Relations between the Public and the Administration stipulate the following:

... "The following are not communicable:

1° The opinions of the Council of State and the administrative jurisdictions, the documents of the Court

2° The other administrative documents whose consultation or communication would undermine:

(a) The secrecy of the deliberations of the Government and the responsible authorities under the executive power

(b) The secrecy of national defense

(c) The conduct of France's foreign policy.

(d) State security, public safety, personal safety, or the security of government information systems.

(e) Money and public credit.

(f) The conduct of proceedings before the courts or of operations preliminary to such proceedings, unless authorized by the competent authority.

"Administrative documents may only be communicated to the interested party if their communication could infringe on the protection of privacy, medical secrecy and business secrecy, which includes the secrecy of processes, economic and financial information and commercial or industrial strategies and shall be assessed taking into account, where appropriate, the fact that the public service mission of the administration..."

update or erase information that is incorrect, incomplete, vague or which is forbidden from being collected, used, exchanged or kept.

The content of this article indicates that there is contradiction with the absolute prohibition stipulated in Article 5 of the same law. Article 4 allows the person concerned to consult administrative documents pertinent to information of personal nature. However, Article 5 prevents the Administration from disclosing information pertinent to the private lives and mental and physical health of the individual. The logical explanation that coincides with both aforementioned articles is dependent on a number of aspects such as[11]:

- Risk of serious harm to any individual
- Identification of the identity of the individual requesting certain information by virtue of the law
- Identification of the identity of the individual providing information, whether explicitly or implicitly, if it appears that it would be better to maintain their anonymity
- If there is a law or judicial decision prohibiting the disclosure of the information to the person concerned
- If the personal information was collected under an ongoing legal proceeding,

Despite this, the right of access to information of the person concerned is upheld with regards to all remaining personal information when the information to which the exception is applicable may be crossed out or revised. In other words, the concerned person reserves the right to access personal information that can be "reasonably" levied from the relevant administrative document, which the person concerned does not have the right to access.

It shall be specifically noted that the right to protect the environment is the right that was not stipulated upon in Law no.28/2017, despite its importance. For this reason, this right requires special attention as it falls automatically within some exceptions stipulated upon in Article 5 of the Law hitherto, such as professional secrets, which if undisclosed may threaten the environment in specific cases, whether directly or indirectly, for instance, by refraining from disclosing any chemicals used in the production of a specific substance despite the great damages caused to the environment.

Exceptions linked to incomplete documents and non-harmful documents

The Law on the Right of access to information deals only with completed documents, without touching upon documents that are incomplete or still under study. It also does not deal with consultations done prior to the issuance of the effective administrative decision, even if the consultation is binding.

Conclusion

When reading the amendment of the Right of Access to Information Law, it becomes clear that the term "prohibition" is highlighted whereby the Administration's authority is restricted and not discretionary through the explicit expressions used by the Legislator, such as "the Administration shall refrain from" and "shall not be consulted". The contents of some paragraphs of Article 5 fall under the relative exceptions either because they contradict other texts of the same Law, because of ambiguous sentence structure which allows for different interpretations, or because the exception is by nature tied to a specific timeframe. The relative exception here is an "exception to the exception."

Due course is to guarantee the right of access to information[12], and in some cases there must be exceptions linked to a number of norms and indicators compliant with the requirements of social interest emanating from the non-disclosure of the requested information. Public interest requires that the public be informed of the information that the Administration possesses in most cases in order to reinforce trust between the citizens and the government, and to facilitate accountability.

11 Information and privacy commissioner of Ontario, the Part X guide, Access to record of personal information, Access Exception https://www.ipc.on.ca/part-x-cyfsa/access-to-records-of-personal-information/individuals-right-of-access/access-exceptions/

12 The State Consultative Council underlines in one of its decisions that "the Administration does not have any discretionary authority with regards to the right of access to information. Its competence, as advanced, is restricted to the obligation to provide the applicant with the requested documents should the conditions governed by Law be met as stipulated upon in Article 14 of the law hitherto, and as represented by the submission of the written application to obtain information from the relevant authority beholding the information. The application shall include sufficient details allowing the employee to extract the information with a simple effort. In addition, the applicant shall provide a place of residence of which the Administration shall be informed upon submission of the application." Decision of the State Consultative Council no. 234/2020-2021, Edmond Emile Chammas/Municipality of Chekka, unpublished. In the same sense, decision no. 192/2021-2022 shall also be consulted, Khodr Mahmoud Karout/Municipality of Mays El Jabal, unpublished.

Although the Lebanese legislator has mentioned the exception in an exclusive, clear and explicit manner, their sentence structure was not adequate when they wrote that prohibiting the access to exempted information is absolute and restricted, thus contravening international and regional standards and good practices which allow the competent authority to overturn the prohibition whenever it concludes that disclosing information is more beneficial than withholding it.

In Tunisia, for instance, Article 24 of the Law on the Right of Access to Information stipulates that:

"The relevant body may only deny access to information when doing so may be detrimental to national security or defense, relevant international affairs, or the rights of the third party to privacy, personal data and intellectual property.

These areas are not considered absolute exceptions to the right of access to information. They are subject to damage assessment, provided that the damage is serious, whether concurrent or consequential. They are also subject to the public interest test for accessibility or inaccessibility to information in relation to each request, and the proportionality between the interests to be protected and the purpose for the access request shall be taken into consideration.

In case of refusal, the requester shall be informed with a justified letter. The effect of the refusal ends with the expiration of the reasons expressed in the answer to the access request."

The Tunisian Legislator goes beyond this to guarantee the right of access to information as a basic Human Right when they provide an "exception to the exception" in Article 26 of the Law hitherto, which excludes from the scope of exceptions the information necessary to disclose to uncover gross violations of Human Rights, war crimes, and the prosecution of their perpetrators[13].

In addition, the exceptions set forth in Article 5 of the Law on the Right of access to information in Lebanon indicate that some exceptions are unjustified, such as the prohibition of accessing consultative opinions issued by the State Consultative Council unless within a judicial proceeding and exclusively by the persons concerned. This exception has no legal or reasonable grounds, given that many countries, such as France, publish these opinions and put them at the disposal of the public, namely researchers and academics.

Conversely, the exception of the state financial and economic interests and the stability of the national currency in Article 5 prior to its amendment, was removed by the legislator when amending the law without cause. However, at the same time, this information should not be totally excluded from the exceptions as it may be used to harm the supreme interests of the State, and thus, society. Exceptions on information linked to these interests must be relative, whereby their disclosure must be consistent with public interest as it allows the identification of weaknesses at the level of the state and provides insight on the management of public funds.

Compatibility of Article 5 with the Limited Scope of Exceptions Principle and the Applicability of the three-pronged test (Public Interest Test) under the Current Amended Text of Article 5

The United Nations Special Rapporteur for Freedom of Opinion and Expression drafted and submitted a report to the Human Rights Commission in 2000, recommending nine basic principles to be observed upon the adoption of a national law governing the right of access to information. These principles are: maximum disclosure, commitment to publish, promotion of open government, limited scope of exceptions, processes to facilitate access to information, costs, open meetings, precedence of disclosure, protection of informants/whistleblowers[14].

Our focus is on the Limited Scope of Exceptions Principle specifically as it is linked to the topic and objectives of the paper hitherto. It is one of the principles inspired from International Law and conventions which tackle the right of access to information.

The Limited Scope of Exceptions Principle requires specific and clear exceptions on the right of access to information,

13 Organic Law no. 22/2016, of 24 March 2016, on the Right of Access to Information. Geneva Center for Security Sector Governance. Available on the following link: https://legislation-securite.tn/ar/law/45656

14 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; United Nations Economic and Social Council; Annex II: The Public's Right to Know: Principles on Freedom of Information Legislation, pages 56 to 63. E/CN.4/2000/63. Available in English on the following link: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G00/102/59/PDF/G0010259.pdf?OpenElement

which are subject to the three-pronged test known as the "Harm vs. Public Interest Test," executed precisely under the Administration's discretion to disclose or withhold information for each individual case. This allows the Administration to withhold the requested information if necessary[15].

To implement this principle, the nature of the information and the content, rather than the title, form, or type, of the requested documents must be contemplated; and the consistency of the exceptions with the Public Interest Test must be verified. In other words, the withholding of information falling within the scope of exceptions obligates the authority concerned with disclosing information to verify that the following conditions are collectively met as per the Special Rapporteur's report:

1. The exception is linked to legitimate interests protected by Law and specified within a timeframe that may be extended or reduced, depending on the case, whereby the objective of withholding the information ends at the expiration of this timeframe. The disclosure of this previously concealed information becomes legally permitted.
2. The exception contributes to the prevention of serious harm that may irreparably affect or threaten the existence of these interests.
3. Preventing harm to these legitimate interests every time such harm is so sever as to require greater protection, is given more weight at the expense of the right of access to information, whereby the damages are greater than the public interest emanating from the disclosure of this information; in such case, public interest lies in the non-disclosure of the required information.

With this in mind and based on the fact that the Limited Scope of Exceptions Principle requires a discretionary authority that allows the Administration to perform the Public Interest Test, it must be noted that the concept of discretionary authority contradicts with the concept of restricted authority in regard to the administration's positive or negative decision on a given matter. While discretionary authority gives the Administration the freedom to take the decision which it deems adequate for each individual case and situation, restricted authority compels the decision-making Administration to follow a path governed by Law without the freedom to choose to fulfil or refrain from fulfilling a given task.

The oversight of the Administrative Judge cannot address the consistency factor every time the Administration's authority is discretionary. The Administrative Judge cannot discuss the Administration's decision as if they were its hierarchical manager. Their role is restricted to overseeing the legality of the decision and the extent to which it observes the rules of validity and form. They also look into the validity of its grounds, its pursuit of public interest and the objective set by the Legislator. However, when the Administration's authority is restricted by Law, the consistency factor is among the administrative legality components overseen by the Administrative Judge, who, in this case, verifies the circumstances and facts that must be met to make an administrative decision[16].

In the context of Article 5 of the Law no.28/2017 restricting the Administration's authority, it must be noted that the Administration does not perform the Public Interest Test, whether for clauses falling under relative or absolute exception. This Article does not allow the Administration to study each application individually to decide on the disclosure of information falling within its scope. It allows the Administration, however, to implicitly elaborate on the content of this article and refrain from disclosing information under the pretense that it falls within any of the exceptions contained within. The only recourse of the person concerned then is to refer to the competent authorities to oversee the Administration's authority which is restricted in this respect.

It must also be noted that the oversight of the Administrative Judge on the Administration decision not to disclose information is limited to setting whether the refusal concerns any of the matters that the administration is prohibited from disclosing. In other words, the Judge's authority to overturn the decision to withhold may only be exercised if the Administration acted arbitrarily or mis-concluded that the requested information falls within the provisions of this Article.

The difficulty faced by the Administrative Judge in the context of this oversight resides in cases in which the Administration is not required to justify non-organizational administrative decisions in compliance with the provisions of Article 12 of the Law thereof, including the explicit or tacit decision to withhold the information mentioned in Article 5, given that it is incumbent on the Administration to demonstrate that the requested information falls under

15 See General Comment No. 34 by the Human Rights Committee on Article 19 of the ICCPR for further elaboration on necessity and proportionality when applying the "Harm vs. Public Test". Available at: https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf

16 The late Judge Dr. Youssef Saadallah Al-Khoury, Public Administrative Law, Part I, Administrative Organization, Affairs and Administrative contracts, Fourth Edition, 2007, starting page 299.

any of the exceptions mentioned in Article 5. In any case, the Administration cannot plead to confidentiality to prevent the Administrative Judge from exercising his oversight.

This matter was stated before the adoption of Law no. 28/2017 by a few years, when the governmental commissary to the Lebanese State Consultative Council, in his reading of decision no. 719 of 31 October 1962 (Varoujian Torossian v/s the State), stated that "…The State Consultative Council does not accept that the Administration invoke, in a discretionary manner, secrets that may be of interest to national defense and, therefore, refrain from disclosing the case file or required queries. In this case, the Council cannot discuss such refusal. However, in order to compile the elements of its conviction, the Council may request the competent authorities to provide all necessary clarifications, particularly regarding "the nature of the disqualified documents and the grounds of disqualification…"[17].

In decision no. 903 of 15 May 1967, the State Consultative Council referred to the list of the defendants as it considered that all publications issued by the Watch Tower Society in any given language and in any given country, are banned from the Lebanese Territory for they may disseminate Zionist propaganda, weaken national sentiments and disturb the peace. The grounds of this decision are based on Article 50 of the Law on Publications which stipulates the seizing of all foreign publications by virtue of a decision of the Minister of Press and Guidance if they affect public security or weaken national sentiments. The present Article constraints this measure to conditions related to the facts upon which it is based, noting that these facts lead to destabilizing public security or weakening national sentiments. For this reason, and given its authority to ensure that these conditions are met, the Council insists on "the need to ensure that the condition pertinent to the weakening of national sentiments or destabilizing public security is searched for in the entirety of the publications and the principles followed by the author or party publishing them, in addition to any paragraph or phrase that may bear a different meaning in order to withhold the real objectives and facilitate the dissemination of these objectives within the consumers and the communities where they are banned"[18].

It is, therefore, possible to say that the amendment of Article 5 of the Law no. 28/2017 with the aim to grant the competent administration the discretionary authority to perform the Public Interest Test prior to accepting or denying the disclosure of the requested information, allows the Administrative Judge to verify the validity of the reason upon which the Administration has reached the conclusion of great potential harm in the event that this information has been made public. In this case, Judicial and administrative oversight represented by the National Anti-Corruption Commission (in the context of mandatory prior administrative recourse) is considered a guarantee against any arbitrary decisions made by the Administration within the exercise of its discretionary competence.

For this reason, it is necessary to amend the abovementioned Article 5 in compliance with the Lebanese Constitution and the international obligations of the Lebanese State which are embodied in the Limited Scope of Exceptions Principle, to ensure the best practices in the right of access to information, and to provide a case-by-case study, while taking into account the following[19]:

Frivolous, petty, or malicious requests

A request shall be considered frivolous or petty if it falls under a pattern of behavior that may be perceived as misuse of the right of access to information such as the submission of an excessive number of requests for an objective other than obtaining information, to cause annoyance or put pre-meditated additional work load on the competent administration. Hence, the Law no.28/2017 aims to guarantee the right of access to information provided that the exercise of this right is not arbitrary. Under this concept fall the request to obtain documents of which the object and date are not clearly defined, the request to obtain specific documents in large numbers, and the request to obtain information that would be otherwise easily accessible by any other means through its publication in the Official

17 Governmental Commissary to the State Consultative Council, Decision no. 719 of 31 October 1962, Varoujian Torossian v/s the State. Available on the following link: http://www.legallaw.ul.edu.lb/RulingFile.aspx?RulilD=59586&type=list Conseil d'État, Section, 11 mars 1955, Secrétaire d'État à la guerre/ Sieur Coulon, Légifrance
Conseil d'État, Assemblée, 6 novembre 2002 Moon Soon Myung, Légifrance

18 State Consultative Council, Decision no. 903 of 15 May 1967, available on the following link: http://www.legallaw.ul.edu.lb/RulingFile.aspx?RulilD=53750&type=list In the same sense: The Canadian Court of Appeals, the Canadian Minister of Environment/the Canadian commissioner for information, Decision issued on 14 December 2007, Paragraph 23. Available in English on the following link: https://www.right2info.org/resources/publications/case-pdfs/canada_canada-minister-of-environment-v.-canada-information-commissioner

19 Alberta, Freedom of Information and Protection of Privacy, FOIP Guidelines and Practices (2009), Chapter 4: Exceptions to the Right of Access, p. 95. Available at:https://www.servicealberta.ca/foip/documents/chapter4.pdf

Gazette or any other platform that is accessible to the public without disrupting the business of the administration[20].

In the case submitted to the State Consultative Council in an appeal rejecting the denial of two requests for information submitted to the Ministry of Interior and Municipalities and the Traffic Management Organization[21], the governing body considered that "the legislator did not draw clear limits to the framework of execution of the right of access to information stated in the law in an attempt to establish and promote the principle of transparency in the work of the Administration. However, the jurisdiction of this Council, which seeks to reconcile the citizen's right to closely follow the work of the Administration by consulting the information that is important to them and that is available from the Administration, on the one hand, and the right of the latter to manage its affairs without distractions and delays in achieving public interest, on the other, determines, according to its vision, remedies for similar topics to be consulted, while noting its understanding of the conditions that the person concerned must meet and its definition of the arbitrary use of this right. The Council thus sees that the person concerned must clearly define the decisions required by identifying their number, their date of adoption, the period during which they were adopted, provided that it is reasonable, or their object. This request must not, however, exhaust the employees of the administration concerned and hinder the administrative public facility and its work[22]. This, however, could lead to the arbitrary use by administrations, which is why it is necessary that statistics on refused information requests, in accordance with the above, should be available to the public, preferably within the National Anti-Corruption Commission's annual report to act as a preventive measure to administration not to excessively use this decision by the State Consultative Council to reject information requests.

Partial access to information not falling under the exceptions

In this case, the competent authority shall withhold personal, sensitive, or confidential information by removing or deleting it from the requested document, even as a soft copy. It is necessary to inform the person concerned of such deletion and a mark should be put in its stead. A detailed explanation shall also be added to justify the need to delete the information. Indeed, Article 17 of the Law stipulates that "if the request is accepted, the employee entrusted with the task shall allow the applicant to obtain the requested documents mentioned in the application. If the application requires to consult more than one piece of information, the employee entrusted with the task may allow the applicant to access a part of the information if the rest of the requested information falls under the exceptions specified in the Law hereto with due regards to the rights of intellectual property."

The Damage Test

This test is applicable upon examining the extent to which the second condition from the Public Interest Test, which was previously addressed in this paper and under which the damage caused from the disclosure of the information subject to the exception, is great and not average. The Prejudice Test allows the refusal of access to the requested document either entirely or partially if its disclosure is expected within reason to cause harm to a given public or private interest. This test requires the following conditions to be met collectively[23]:

- The damage must be real and can be projected or expected.

20 Article 2 of the executive decree no. 2940/2020 on the Right of access to information, issued under Council of Ministers resolution no. 17 of 28 July 2020 stipulates the following: ("a) Must be considered as misuse of the right any application that is repetitive or systemic and unjustified, and any application aiming to obtain or consult information or documents that are unspecified, unclear, from undefined or excessively extended periods, aiming to disrupt the works of the Administration and the public facility. Also must be considered misuse of the right is the applicant's failure to provide the clarifications required by the Administration within the legal time limit in accordance with Article 14 of the Law hereto, or the applicant's refusal to pay the fees applicable to former requests for information that have been responded to. (b) The exercise of the right of access to information in compliance with the provisions of the Law does not prevent the applicant's recourse to other methods and means governed by Laws and regulations to obtain information."

21 Each of the two requests comprises 21 requests, most of which are common to both requests, including requests to obtain copies of Laws, Decrees, Consultations, Minutes of Meetings and Sessions of which neither the period, date or topic were specified, as well as entire administrative files related to a specific topic, in addition to unclear requests and sub-requests.

22 State Consultative Council, Decision no. 76/2020-2021, Hussein Toufic Ghandour/ The State, The Traffic Management Organization, unpublished. The decision noted that, "Since the requests of the applicant as submitted to the concerned authorities are not consistent with the legal rules set forth for the right of access to information, notably the ones stipulated upon in Article 1 of the Law, i.e., not misusing the exercise of the right, as the response to the application, given the amount of requested information and variety of topics requested for consultation, may drown the employees of the Administration in bureaucracy and hamper their work. Therefore, Hussein is hampering the sound operations of the public facility, which falls far from the objective set by the Legislator through the Law on the Right of access to information. In any case, the opportunity given to persons concerned to access information of interest in full transparency shall not become a burden to the administration to individually inform every citizen of any decision made. Therefore, the request of the applicant, in form and in substance, and under the understanding and the jurisdiction of the State Consultative Council on this matter, is in clear bypassing of the right of access to information for it has strayed away from reason and logic. For this reason, the recourse has been returned for not occurring within the correct legal framework." Article 1 of the Law hitherto was amended by virtue of Law no. 233/2021, and explicitly states that the status and interest to request information are not required, thus contradicting the above jurisprudence of the State Consultative Council.

23 Exceptions to the Right of Access. Freedom of Information Guidelines and Practices. 2009. Harm Test. Pg. 99. Available at: https://www.servicealberta.ca/foip/documents/chapter4.pdf

- The damage must be certain, whether in the present or the future and not simply an unjustified preemptive measure.
- The damage must exceed a given threshold and must be great rather than a mere disturbance.
- A causality must exist between the disclosure of the requested information and the expected damage in that there must be a threat or direct and clear damage resulting from the disclosure of the requested information.

The Public Interest Test

This test is a conciliation between the damage that can be caused if the information is disclosed, and the interest generated from said disclosure. In this sense, if the interest to disclose the information is greater than the interest to withhold, the request of the applicant shall be accepted, and the person concerned shall be given access to the requested information.

It is therefore possible to say that the success of this test relies on the critical examination of the case submitted to the competent administration regarding its compliance with any of the exceptions governed by Law, to, consequently, investigate the possibility of publishing the requested information, and the extent to which there is benefit in the person concerned or the public in accessing this information. This test is an exception to the exception as, in some cases, sensitive or confidential information must be disclosed and published to reinforce the principles of transparency and accountability in order to facilitate liability. For example, if the financial clauses of an agreement between a public entity and a private contractor are disclosed, the latter may incur damages in the negotiation for a better price with other agents in the future in exchange of the same service. However, the necessity to oversee ministerial work and public expenditure binds the competent authority to disclose this information to the taxpayers particularly and the public more generally since their interest to know how public funds are spent is greater than the interest of the contractor[24].

In a case raised to the British Supreme Court in which a request of information related to the allocations of the Members of the House of Commons was in question, the Supreme Court concluded at the time on the differentiation between the right to privacy and protection of personal data, and the right of access to information. It considered that legitimate public interest requires the disclosure of this information since the allocations are paid by taxpayers. The public would therefore have the right to know how its money was spent[25].

In another case raised to the Court of Justice of the European Union upon the refusal of the European Commission to disclose information related to a specific type of pesticides used in the European markets under pretext that the required information are considered as an integral part of trade secrecy and intellectual property of one of the companies, and that the disclosure of such information may allow competing companies to copy production methods, the Court held in its ruling that greater public interest falls in the disclosure of the information whenever the request is related to information on environmental emissions based on the Aarhus Convention[26], even if said disclosure undermines the commercial interests and rights to intellectual property of a person, whether natural or legal[27].

Conclusion

The amendment of Article 5 of the Law on the Right of access to information requires consistency with international standards and the Limited Scope of Exceptions Principle, such that discretionary authority is instated in the stead of restricted authority, given that discretionary authority is not absolute and shall be limited to the results of the Public Interest Test. This aims to reinforce the standards of the Rule of Law which binds authorities and administrations to respect the Checks and Balances, to give due consideration to Public Interest and place it at the core of their administrative decisions, especially in a country like Lebanon where corruption is widespread and conflicts of

24 Access Info Europe, Defending and promoting the Right of access to information in Europe, Exceptions. Available at: https://www.access-info.org/2009-08-21/exceptions/

25 Ruling of the United Kingdom Supreme Court, (Corporate Officer) in the House of Commons v/s The Information Commissioner, Heather Brooke, Ben Leapman, & Mike Ungoed-Thomas, 16 May 2008, Paragraph 15, Available in English through the following link: http://www.bailii.org/ew/cases/EWHC/Admin/2008/1084.html

26 Ruling of the Court of Justice of the European Union, "Stichting Greenpeace Nederland v Pesticide Action Network Europe v/s European Commission", 8 November 2013, Paragraph 37. Available in English through the following link: http://curia.europa.eu/juris/document/document.jsf?text=&docid=142701&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=223010

27 Idem, Paragraph 38

interests are high, giving primacy to personal interests over the public interest in most cases.

The standards and principles that the Administration must adopt and commit to are the following:

- Object of the Law
- The interests that the Law aims to protect and balance
- The nature and importance of the document
- The possibility to omit private, sensitive, or confidential information from the requested document
- National and international precedents and jurisprudence on the disclosure of similar information in similar cases
- Public trust in the relevant administration
- The date and seniority (age) of the document
- The purpose for the disclosure of the document

In many cases, the right of access to information falling under the scope of exceptions is necessary:

- To uncover and investigate grave violations of human rights or war crimes
- When protected interests are harmed due to a serious threat to health, safety, the environment, a criminal act
- Upon the expiration of a specific time at the end of which the damage also expires
- Upon the absence of great harm when there is an interest in the disclosure of information (Test of Public Interest), i.e., when the interest to disclose the information is bigger and more important than the interest requiring protection.

On the prior Oversight of the Decisions of the Administrations related Information Requests Falling under the Exceptions Stipulated in Article 5 of the Law

The practice of a discretionary authority is not a mere formality. The competent authority is obligated to prove its review of the requested documents and demonstrate the norms and indicators upon which the approval or refusal decision has been made, in addition to the relevant rationale in regards to the request of information falling under the scope of exceptions stipulated upon in Article 5 of the Law hitherto. This decision shall be overseen by a competent body prior to its entry into force.

In other words, if the Administration approves or denies the disclosure of a piece of information included in the exceptions, the decision itself shall not enter into force unless approved by an independent oversight body exercising its direct oversight on the legal and realistic circumstances leading the Administration to take its decision in light of the Test of Public Interest. This approval shall come in the form of a Decision. Consequently, the decision of this Body shall be the only applicable one under the oversight of the competent Court. This method contributes to the promotion of the guarantees and regulations preventing and/or limiting the Administration's capacity to exercise its discretionary authority in an arbitrary way, or the limits the risk of erroneous decisions by the Administration. Indeed, it is one of the concerns that has pushed the Lebanese Ministry of Justice to request the Parliament to revoke the previous amendment, even if it had already been submitted to the General assembly of the Parliament for adoption, as it included a clause that allowed the right to perform the Public Interest Test. The Parliament then adopted the Law no. 233/2021, thus amending the Law on the Right of access to information, without giving the Administration a discretionary authority allowing it to perform the Public Interest Test, at the behest of the Ministry of Justice.

In Canada, for instance, Paragraph 1 of Article 6 of the Canadian Law on the Right of access to information stipulates that "with the written approval of the Information Commissioner, the director of a governmental institution may, prior to granting or refusing to grant the right to access a given record to a person, refuse to act upon the request of the person, if the Director of the Institution finds that the request is petty or malicious, or that it constitutes misuse of the right to access records"[28]. In this case, the Canadian Law transferred to another official body the power to decide on the request of information to ensure that the Administration exercises its powers in a non-arbitrary way.

In Lebanon, this body may be the "National Anti-Corruption Commission" which was entrusted by the Legislator, in the Law on the Right of access to information, to ensure its due application, in addition to a set of competences

28 The Canadian Access to Information Act, Article 16. Available in English through the following link: https://laws-lois.justice.gc.ca/PDF/A-1.pdf

including the reception of mandatory prior administrative appeals before resorting to the Administrative Courts, noting that the creation of this Body was delayed by three years following the adoption of the Law on the Right of Access to Information. It was finally created in virtue of Law no. 175 of 8 May 2020[29], and its members were appointed by the Council of Ministers in early 2021.

In the same sense, any administrative decision on disclosing or withholding a document that falls under the exceptions stipulated upon in Article 5 hitherto shall not enter into force unless a relevant decision is taken by the "National Anti-Corruption Commission" which is tasked, by virtue of this Law, to safeguard the best practices to promote the right of access to information. This oversight is subject to the "mandatory and binding" nature of the Commission's decision towards the administration issuing the first decision, to avoid the disclosure of sensitive, confidential and private information which shall not be disclosed in the event that the Administration has made a wrong estimation upon performing the Public Interest Test.

The oversight of data is therefore dual and allows for a re-examination of the positive or negative decision issued by the competent authority to limit the Administration's arbitrary concessions to the person concerned, which may have a negative impact on the greater good should the information remain concealed from the public. It also guarantees due practice of the Administration's discretionary authority, with the objective of serving the Law, and ensures that the Administration's estimations were not incorrect. This dual oversight prevents the Administration from achieving personal gains that are contradictory with the greater good.

In this case, the independent administrative body specified in the Law on the "Creation of National Anti-Corruption Commission" is the sole authority capable of taking a final decision that is binding to the Administration in regard to the request of information falling under the exceptions and which are bound to fall under its oversight. Consequently, this Commission can decide on the matter in terms of both legality and consistency. Therefore, the decision of the National Anti-Corruption Commission inevitably supersedes the preliminary decision issued by the Administration, whether it agrees with the Administration's decision to withhold information or binds it to disclose this information; the Commission's decision remains subject to the oversight of the State Consultative Council which is the administrative court in Lebanon.

The importance of this mechanism resides in the promotion and reinforcement of the role of the "National Anti-Corruption Commission" to include the exempted information by Law. The Commission therefore exercises its pertinent oversight on the Administration's performance of the Public Interest Test prior to the enforcement of its decision. This final decision shall only be enforced if it is compliant with the Commission's decision. It shall be noted that the exclusion of the prior oversight of the Commission, such as tying the competent administration's decision to the prior consultation of the Commission, does not achieve the objective of this oversight, mainly since the consultation, whether optional or mandatory, is not binding in its conclusions, whereby the competent Administration may still choose not to adopt its views.

Among the powers of the National Anti-Corruption Commission, as stipulated by Article 22 of the Law no. 28/2017, we cite the following:

Receiving, investigating, and issuing decisions related to the complaints made on the implementation of the provisions of Article 23 of the same Law.

1. Providing counsel for the competent authorities with regards to any issue pertinent to the implementation of the provisions of the Law on the Right of access to information
2. Drafting a yearly report that includes the main difficulties hampering the persons' access to information with regards to the different types of documents, and special reports on

29 The Law on the Fight against Corruption in the Public Sector and the Creation of a National Anti-Corruption Commission, Law no. 175 of 8 May 2020, published in the Official Gazette number 20, on 14 May 2020.

important matters when necessary.

3. Participating in citizen awareness and education regarding the importance and practice of the right of access to information, and contributing to the training of employees and officials in the Administration on the method and importance of empowering individuals to access information

This Article reveals that the Commission handles, in addition to deciding on complaints, consultation, legislative and educational tasks. This underlines its active and efficient role in ensuring the sound implementation of this Law.

As for time-periods, nothing prevents the setting of short timeframes for the Commission different from the ones stipulated upon in the Law in relation to information and documents that do not fall under the provisions of Article 5 of the Law hitherto. In any case, the decisions of the Commission must be revisable by the State Consultative Council which shall follow due course[30] in this regard.

Conclusions and recommendations

The aim of the implementation of the Limited Scope of Exceptions Principle is to set the necessary limits to prevent the Administration from exercising its authority in an arbitrary manner and to ensure the largest access to information by the public in order to achieve accountability out of respect for the right of access to information as a basic human right stated in the Constitution. These regulations take into account objective matters with regards to the Public Interest Test as well as procedural matters such as the referral of the Administration's decision to the National Anti-Corruption Commission. This falls under the respect of the Rule of Law in any democratic society. The absolute power of any given authority or administration contradicts the basic principles of democratic systems which are based on accountability. It would not be possible to hold any authority or administration accountable for its acts without the existence of the necessary regulations to limit its absolute competences.

Article 5 of the Law on the Right of Access to Information in its current text does not give due consideration to the legal basis on which relies the Limited Scope of Exceptions Principle and does not allow the Administration to apply the Public Interest Test on the applications submitted to it. It is to be noted that this Test aims to provide wide disclosure of information and limit the abuse of power whenever the Administration refrains from disclosing information under the pretext that it falls under any of the exceptions stipulated upon in the Law. Therefore, it is possible to say the text of Article 5 hitherto contradicts the constitutional guarantee of the right of access to information and the international obligations of the Lebanese State in this regard. For this reason, it is recommended to amend Article 5 in a way that allows the Administration to apply the Public Interest Test, provided it is done under the oversight of the National Anti-Corruption Commission, the decisions of which remain subject to review of appeal before the Lebanese State Consultative Council in order to limit the concerns of official authorities regarding any mistakes/ arbitrary decisions made by the Administration in the disclosure of information bringing prejudice to public interest. Furthermore, the amendment of Article 5 must go hand in hand with the amendment of Article 12 of the same Law which exempts the Administration from the obligation for justification in matters falling under exceptions in order to avoid contradictions with the methodology of applying the Public Interest Test and its significance as a guarantee to reinforce the Rule of Law.

30 Article 103 of the Internal Regulations of the Lebanese State Consultative Council stipulates that upon the implementation of the procedural law, ordinary due process is applicable with the exception of the following:

- Individuals can submit their petitions without prior decisions by the administration. Their summoning exempts them from the appointment of a lawyer.
- The clerk of the court is required to verify the details of the request as soon as possible. Their decisions cannot be appealed. The time limit for the submission of the defense or the reply of the opposing parties is no less than 8 days and no more than 15 days. An answer to the defense may not be submitted, and the related authorization may only be granted by decision of the body.
- The clerk of the court shall draw up a short report and submit it together with the file to the Government Commissioner. The latter shall submit it within eight days to the president with their observations, and to the opposing parties, who shall be invited to submit their remarks on the clerk's report and the government commissioner's observations within five days from the date of notification. The petition shall be ruled upon with no delay.

The suggested amendment of Articles 5 and 12 of the Law on the Right of access to information:

Current text	Revised text

Article 5: Information that shall not be disclosed a. The Administration shall refrain from disclosing the requested information if it touches upon the following matters: 1. National defense, national security, and public safety secrets. 2. Management of international state affairs of confidential nature. 3. Private lives and mental and physical health of individuals. 4. Secrets protected by Law such as professional secrets. The confidentiality clauses of agreements signed by the administration do not preclude the right to access them, subject to the provisions of Article 5 of the Law. b. The following documents shall not be consulted: 1. Findings of investigations prior to their recounting in a public hearing, secret trials, and proceedings pertinent to minors and personal status. The contents of the files, cases, and judicial recourses are not available for consultation except under the Laws on the relevant proceedings. 2. The minutes of secret sessions of the Parliament and Parliamentary Commissions unless otherwise decided. 3. The deliberations of the Council of Ministers if given a confidential nature. 4. Preparatory documents and unfinalized administrative documents. 5. Opinions issued by the State Consultative Council unless it is the persons concerned within a judicial proceeding".	Article 5: The information subject to the Public Interest Test prior to its disclosure: a. The Administration may refrain from disclosing the requested information if they touch upon the following matters: 1. National defense, national security, and public safety secrets. 2. Management of international state affairs of confidential nature. 3. Private lives and mental and physical health of individuals. 4. Secrets protected by Law such as professional secrets. 5. Matters that may weaken the financial and economic interests of the State and the security of the national currency. The confidentiality clauses of agreements signed by the administration do not preclude the right to access them, subject to the provisions of Article 5 of the Law. b. The Administration may prevent access to following documents: 1. Findings of investigations prior to their recounting in a public hearing, secret trials, and proceedings pertinent to minors and personal status. The contents of the files, cases, and judicial recourses are not available for consultation except under the Laws on the relevant proceedings. 2. The minutes of secret sessions of the Parliament and Parliamentary Commissions unless otherwise decided. 3. The deliberations of the Council of Ministers if given a confidential nature. 4. Preparatory documents and unfinalized administrative documents Except for the requests of information falling under paragraph (b - 1) hitherto, the Administration deciding on the request of information falling within the scope of this Article hitherto shall estimate the substantial harm incurred and public interest gained from the disclosure of the required information. Its decision, whether positive or negative, shall be justified and limited in time. The Administration's decision in itself shall not be executable. The Administration shall refer its explicit decision, whether positive or negative, to the National Anti-Corruption Commission within three days of its adoption. This Commission shall decide within a month following the reception of the referral. The Commission shall approve or deny the request for disclosure, while its silence shall be considered as implicit approval of the content of the referred decision. The decision of the Commission may be appealed for revocation on the grounds of abuse of authority within thirty days from the notification date, or upon certain knowledge by third parties. The State Consultative Council shall act in simplified procedures.

Article 12: Exemption from explanation a. The administration is exempted from the obligation to justify non-regulatory administrative decisions in the following cases: 1. During the state of emergency. 2. Exceptional circumstances posing constant threat to the function of the institutions. 3. National defense, national security, or public security secrets. 4. The management of the state's confidential foreign relations. 5. Any matter that undermines the state's financial or economic interests or the security of the national currency. 6. Individuals' private lives or their mental and physical health. 7. Secrets protected by law, such as professional or trade secrets. b. If the grounds for exempting the administration from providing justification cease to exist or in the case of a tacit decision to deny the request, the person concerned shall have the right, within the timeframe for judicial review, to request to be informed of the reasons for the decision. The authority concerned shall provide them without delay. If the administration remains silent about the request for a period of two months, its silence is considered a tacit decision to deny the request, appealable before the State Consultative Council.	Article 12: Exemption from explanation a. The administration is exempt from the obligation to justify non-regulatory administrative decisions in the following cases: 1. During the state of emergency. 2. Exceptional circumstances posing constant threat to the function of the administrations. b. If the grounds for exempting the administration from providing justification cease to exist or in the case of a tacit decision to deny the request, the person concerned shall have the right, within the timeframe for judicial review, to request to be informed of the reasons for the decision. The authority concerned shall provide them without delay. If the administration remains silent about the request for a period of two months, its silence is considered a tacit decision to deny the request, appealable before the State Consultative Council.