MASTER’S THESIS

NGUYEN LAN HUONG

Legislating for the Right of Access to Public Information in Swedish and Vietnamese Law

SUPERVISORS:
Dr. Bengt Lundell
Assoc. Prof. Dr. Nguyen Cuu Viet

Ho Chi Minh City, February 2009
Preface and Acknowledgements

The right of access to information held by public authorities is considered not only a human right but also an important tool to exercise and protect the other rights. As a citizen and a university teacher of Administrative Law, I am particularly intrigued in examining this right, expecting to give answers to the questions, whether the right of access to public information exists in Vietnam and if it does, how well it is legislated in Vietnamese Law in comparison with the relevant matter in a foreign law.

My Swedish professors have given me extensive knowledge on Swedish law, and Sweden is the first nation in the world that passed legislation on the right of access to public information in 1766. For these reasons, Swedish law was chosen as the foreign law for my legal comparative work.

I started my research with obstacles, but ended it with growth, both academically and personally. Initially, little Vietnamese law literature on the right of access to public information was found, so it seemed very hard for me, as a researcher, to make a comparative law on legislating for the right of access to public information between Swedish and Vietnamese law. Fortunately, my supervisors gave me careful guidance and on-going encouragement on how to fulfil my research. I learnt to be caring for others and responsible for myself from them.

I would like to thank my Vietnamese and Swedish supervisors, Professor Nguyen Cuu Viet and Professor Bengt Lundell, for their valuable instructions and comments on my master thesis. I owe them a life-long admiration and gratitude.

I wish to send my deep acknowledgment to the other Vietnamese, Swedish, and American professors, particularly Dr. Christoffer Wong, who devotedly provided us with professional knowledge and research methodology during their lectures. I also thank the administrative staff of Vietnam and Sweden Joint Master’s Program, Ho Chi Minh City University of Law, Ha Noi Law University and Lund University Faculty of Law for their kindness and assistance in organising my accommodation and study inside Vietnam and in Sweden. My thanks also go to Sida for funding the Joint Master’s Program that I attended.

My family substantively supported me all the time I worked on my thesis. I am grateful to my mother-in-law for her dedication on my little daughter, and my beloved husband for his ongoing assistance and encouragement that have helped me to overcome difficulties to pursue my higher education. I hope my dear daughter forgive me for the lack of time playing with her. I am indebted to my sister for her reading and corrections to my draft thesis. Also, I wish to thank my colleagues who have shared my work during the time I have taken my course away.

My supervisors gave me the best instruction. If there are some mistakes in my thesis, they are truly my own faults.
# Table of Content

Preface and Acknowledgements ............................................................................. 1
Table of Content ........................................................................................................ 2
Abbreviations .............................................................................................................. 4
Executive Summary ................................................................................................. 5
1. Introduction ........................................................................................................... 6
   1.1 Rationale ........................................................................................................ 6
   1.2 Purpose and delimitation ............................................................................... 9
   1.3 Methodology and material .......................................................................... 9
   1.4 Disposition ................................................................................................. 10
2. Right of access to public information and the principles of legislating for the right .............................................................................. 11
   2.1 Right of access to public information ....................................................... 11
      2.1.1 The concept of the right .................................................................... 11
      2.1.2 Benefits of the right to the State and individuals .......................... 14
   2.2 The principles of legislating for the right ............................................... 17
      2.2.1 Maximum of disclosure .................................................................... 18
      2.2.2 Limited scope of exceptions .............................................................. 19
      2.2.3 Process to facilitate access ................................................................. 20
3. Scope of the right in Swedish and Vietnamese Law ......................................... 22
   3.1 Terminology and the concept of information subject to the right ................ 22
      3.1.1 Terminology and the concept of information subject to the right in Swedish Law ................................................................. 22
      3.1.2 Terminology and the concept of information subject to the right in Vietnamese Law .......................................................... 23
   3.2 The scope of accessible public information .............................................. 23
      3.2.1 The scope of accessible public information in Swedish Law .......... 23
      3.2.2 The scope of accessible public information in Vietnamese Law .......... 28
   3.3 Restrictions to the right ............................................................................. 30
      3.3.1 Restrictions to the right in Swedish Law ........................................ 30
      3.3.2 Restrictions to the right in Vietnamese Law ...................................... 32
   3.4 Comparative analysis and recommendations to legislating for the scope of the right in Vietnam ......................................................... 33
      3.4.1 Terminology and concept of information subject to the right ............ 33
      3.4.2 What public information can be accessible under the right? ........ 33
      3.4.3 What public information cannot be accessible under the right? ........ 34
4. The process of gaining the right in Swedish and Vietnamese Law ............... 36
   4.1 Requirements for a request for public information ................................ 36
      4.1.1 Form of request .................................................................................. 36
      4.1.2 Content of request .......................................................................... 37
4.2 The release of the requested information ..................................................... 38
  4.2.1 Determination of the release of the requested information .................. 38
  4.2.2 Form of release of requested information ........................................... 39
  4.2.3 Time for response to the request ......................................................... 40
  4.2.4 Fees for releasing the requested information ....................................... 41

4.3 Refusal to the release of the requested information .................................... 42
  4.3.1 Authorities to refusal to the release of the requested information ........... 42
  4.3.2 Grounds for the refusal ....................................................................... 43
  4.3.3 Procedure of the refusal ..................................................................... 44

4.4 Appeals to the refusal ................................................................................ 44
  4.4.1 Cases permissible to appeals ............................................................... 44
  4.4.2 Authorities to settle the appeals ............................................................ 45
  4.4.3 Procedure to lodge the appeals ............................................................ 46

4.5 Comparative analysis and recommendations to legislating for the process of
  gaining access to public information in Vietnam ............................................ 48
  4.5.1 Requirements of the request for information ....................................... 48
  4.5.2 Requirements of releasing the requested information .......................... 49
  4.5.3 Refusal of releasing of the requested information .................................. 51
  4.5.4 Appeals ............................................................................................... 52

5. Conclusion ................................................................................................... 54

Table of Statutes and other Legal Instruments .................................................. 56

  International Treaties and Conventions .......................................................... 56
  Council of Europe Recommendations ............................................................. 56
  National Legislations .......................................................................................... 56

  Sweden 56
  Vietnam 57

Bibliography ....................................................................................................... 58

Official Reports and other Documents ............................................................... 58
Monographs .......................................................................................................... 58
Articles in Journals, Anthologies etc. ................................................................. 59
## Abbreviations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADC</td>
<td>Asociación por los Derechos Civiles</td>
</tr>
<tr>
<td>FPA</td>
<td>Swedish Freedom of Press Act (SFS 1949:105)</td>
</tr>
<tr>
<td>FOI</td>
<td>Freedom of information</td>
</tr>
<tr>
<td>GPR</td>
<td>Government Publications Review</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>IG</td>
<td>Instrument of Government (SFS 1974:152)</td>
</tr>
<tr>
<td>NA</td>
<td>National Assembly</td>
</tr>
<tr>
<td>OUP</td>
<td>Oxford University Press</td>
</tr>
<tr>
<td>SA</td>
<td>Swedish Secrecy Act (SFS 1980:100)</td>
</tr>
<tr>
<td>SFS</td>
<td>Swedish Code of Statutes</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
</tbody>
</table>
Executive Summary

In a democratic society, the relationship between a state and its citizens is intricate and close. The State has a duty to inform the citizens of its official activities and citizens have a right of access to the official information held by the State, in order for them to know what and how the State acts on their behalf and also what the State requires its individual citizens to do to support the State. The communication between the State and its citizens is a prerequisite for a democratic society and the right of access to public information is one of effective means to attain this communication.

In order to meet the demands of an informed society, legislating for the right of access to public information has become an important goal for democratic nations all over the world. More and more states have been drafting and adopting laws on access to public information. Vietnam, as a nation and a part of the world, is following this global trend. Actually, the right of access to public information has already been recognized and provided for in the 1992 Vietnamese Constitution (article 69), and this right has been provided for in detail by some Acts of Parliament. However, these statutory provisions are scattered and not systematized. They have not been codified, which means that sufficient and effective legal measures to guarantee this right in reality have not existed. Therefore, developing a comprehensive law about access to public information is necessary for Vietnam for the present time.

My thesis aims to study two of the basic features of the legislation on access to public information in Sweden and in Vietnam within a comparative law framework. They are the scope of information this legislation makes accessible and the process of access that is established by it. In terms of scope, I will look only at information held by administrative authorities, not by the legislative and judicial branches of government. Based on the result of the comparative work, I give recommendations to legislating for the right in Vietnam, particularly in respect of the scope of the right and process to gain the right.

1 ‘The citizen shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed, and the right to assemble, form associations and hold demonstrations in accordance with the provisions of the law.’ (emphasis added)
1. Introduction

1.1 Rationale

During the establishment and development of the democracy in Vietnam, the State always upholds the fundamental rights, and these rights have been recognized very early in the first constitutions. However, due to obstacles caused by war, illiteracy, poor economy management, culture of secrecy, etc some of the constitutional rights are weakly protected in practice and among those rights is the right to be informed or right of access to public information.\(^2\)

After an amendment of the Constitution in 2001, making Vietnam become a state of law was realised in the Constitution as well as in reality. This trend required a sufficient legal system and transparency of government in order to support a democratic society. The fundamental human rights have been increasingly guaranteed in law and in practice. The right of access to public information has been recognized as a constitutional right in Vietnam since the adoption of the present Constitution of 1992. The article 69 of the Constitution states, ‘The citizen shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed, and the right to assemble, form associations and hold demonstrations in accordance with the provisions of the law.’ (emphasis added)

In addition to the Constitution, Vietnam has adopted several laws concerning the right to be informed, for example the Press Act 1989 (article 4(1)), Law on Promulgation of Legal Instruments 1996\(^3\) (article 10), Law on Promulgation of Legal Instruments of Local Governments 2004 (article 8), the Publishing Act 2004 (article 5), the Audit Act 2005 (articles 15, 58, and 59), etc.\(^4\) These laws also require transparency in state management and state duty to publish information regarding public bodies’ organisation, policies and activities. The duty to publish information is considered the passive aspect of the right; but the other true and active aspect of the

\(^2\) Cao Đức Thảo, ‘Quan điểm – Chủ trương – Chính sách của Đảng và Nhà nước ta về quyền được thông tin của công dân trong thời kỳ đổi mới’ (Vietnamese Communist Party and State Views and Policies concerning the right to be informed in the innovatory age) in Quyền tiếp cận thông tin (The Right of Access to Information) (Institute of Human Rights, Ho Chi Minh Politics and Administration Academy, Ha Noi 2008) p. 23.

\(^3\) This law was replaced by a new law in 2008 which will come into force on 1 January 2009.

right, that is the right of individual to directly make a request for information held by the State, has been received little regulation.

However, the right of individual access to public information upon request was not regulated in law until 2005, when a new Anti-corruption Act (hereinafter referred to as Anti-corruption Act) was adopted. Accordingly, an individual is entitled to make a request for access to information held by a working body for which he works or information held by a local government where he lives. By such provisions, an individual’s right to request the information held by public authorities is limited; not all information held by a body is subject to the right but only the information concerning the body’s activities and policies. On supplementing the Anti-corruption Act, the Government passed a decree concerning guidelines the procedure to access to information. However, the procedures specified by this decree are ineffective to protect the exercise of the right.

Moreover, in practice, the right to request information held by public bodies is seldom taken by individuals because it is not guaranteed effectively by law and well-known to the public. Though it is already provided for in the Anti-corruption Act and some other acts, these provisions are very scattered and unclearly defined. Some principles of guaranteeing the right have even been ignored or violated. Besides, it is generally believed that the right of access to public information is subject only to anti-corruption activities since it is mainly provided for in the Anti-corruption Act. Therefore, this right has been not very authentic and practical in Vietnam.

The National Assembly (Vietnamese Parliament), session 2007 - 2011, has approved a schedule of agenda where the new laws are planned to be made within its session and a law on access to public information is included in this schedule. On

---

5 Vietnamese Anti-corruption Act, art. 32.

6 The right of individual’s access to information related to local government is also specified in Ordinance on Implementation of Democracy at Grassroots Level 2007 (art. 6, point 2).

7 Vũ Công Giao, ‘Co chế bảo đảm quyền tiếp cận thông tin của các cơ quan nhà nước ở Việt Nam’ (Measure on protecting the right of access to information held by a public authority) in Quyền tiếp cận thông tin (The Right of Access to Information) (Institute of Human Rights, Ho Chi Minh Politics and Administration Academy, Hà Nội 2008) p. 80.

8 Ibid p. 85.

9 See List 1 of Resolution No. 11/2007/QH12 on Legislative Programme for Legislature XII and Year 2008 which was approved by the NA on 21 November 2007. According to Resolution No. 27/2008/QH12 on Legislative Programme for Year 2009 which was approved by the NA on 15 November 2008, a law on access to information was planned to be introduced to the NA for its first reading on October 2009.
preparation of making such a law, the Government and other agencies have made theoretical and practical studies of access to information legislation.

Aiming to contribute a reference to this preparatory work, I concentrate on studying the right of access to public information as well as legislating for the right. In addition, for Vietnamese legislation on the right to be objectively evaluated, there is a need to compare it with a foreign one. I chose the Swedish legislation on access to public information to be compared with the Vietnamese one for the following reasons:

(i) Sweden is regarded as the first country in the world where access to information held by public authorities is guaranteed by the highest legal instrument, the Constitution. As a result of the Age of Liberty, since 1766 the right of access to public information (as called right of access to official documents in Sweden) has been firstly recognized in the Swedish Freedom of Press Act,\(^\text{10}\) one of four instruments constituting the Swedish Constitution.\(^\text{11}\) Thanks to its long tradition and development, the Swedish legislation on access to public information has been consulted and relied on for theoretical and practical development of legislating for the right by the Council of Europe and other non-governmental organisations.

(ii) Being a graduate student of Joint Master’s Program between Sweden and Vietnam, I have had a good chance to gain useful knowledge of Swedish legal system and society from my Swedish experienced professors. This knowledge is beneficiary to a legal comparative work which I will carry out.

(iii) Finally, one of my supervisors is a Swedish professor who must have been a qualified expert on his own Swedish law. As a result of this benefit, my supervisor can give me the most accurate information related to my study, which is very important to comparative law.

\(^{10}\) The right of access to public information has been fully provided for in chapter two of the Freedom of Press Act which was first adopted in 1766 and replaced in 1949. The current version of the Act was amended in 1976, 1998 and 2002. As regards the historical development of FPA, see Ray Bradfield (tr.), *The Constitution of Sweden: The Fundamental Laws and the Riksdag Act* (Sveriges Riksdag, Stockholm 2004) pp. 11-19 and 52-54.

\(^{11}\) The Swedish Constitution consists of four fundamental laws: the Instrument of Government, the Freedom of the Press Act, the Fundamental Law on Freedom of Expression, and the Act of Succession (IG 1:3).
1.2 Purpose and delimitation

The purpose of this study is to analyse the principles for legislating for the right of access to public information and compare Swedish and Vietnamese statutes which govern the right of access to public information. Moreover, based on the result of the comparative work, some recommendations to improve the Vietnamese legislation on access to public information will, where it is appropriate and possible, be made.

Within the delimitation of my thesis, two matters concerning right of access to public information regime will be clarified, namely the scope of the right (in respect to the scope of information accessible and not accessible under the right) and the process to gain the gain provided for in Swedish and Vietnamese Law. Besides, in my work, I will focus on the statutes on access to public information, not the implementation thereof, although I hope I will have chance to come back to the interesting practical topic.

In Swedish and Vietnamese law, the thesis will focus on just the right of individual access to public information, not such a right taken by the press or other organs. According to Vietnamese law, the right of access to public information is subject to individuals in two different positions. As an employee of a working organization, an individual can access to information within the activities of his working entity, and as a resident of a local government, an individual can access to information concerning the activities of the local government where he lives. Therefore, when I mention the right under Vietnamese law, the right is referred to as the individual right of access to information within activities of an administrative agency, not that of a working organization.

The term “public information” implies information held by a public authority and a public authority is limited to a body with administrative function. Access to information held by either a legislative or judicial body will not be studied in the thesis. Moreover, to make the thesis cohesive, the term “right of access to information held by a public authority” will be referred to as “right of access to public information” or “the right”.

1.3 Methodology and material

For the aforementioned study goals to be fulfilled, traditional legal methods will be applied to analyse and interpret statutes and legal instruments. Importantly, the method of comparative law is given a priority. Accordingly, a description of Swedish and Vietnamese law on the scope of the right and process to gain the right will be presented, then these matters will be analysed in a comparative perspective, and finally recommendations for legislating for the studied matters in Vietnam will be shown.
In my thesis, statutory materials and guidance are mostly focused on due to the limitation of reference sources which are available in English and the purpose of the thesis that is to study legal provisions only, not the implementation of the law.

1.4 Disposition

In accordance with the purpose as well as the delimitation set forth, the thesis will be structured as follows:

Chapter 1 will give an introduction to the study. The introduction will state the background and rationale, purpose and delimitation, method and material, and disposition of the thesis.

Chapter 2 will analyse the general theory on right of access to public information and the basic principles for legislation for the right. This chapter is to give the readers basic knowledge concerning the right such as the concept of the right, the benefits of the right to the State and individuals, and the principles of access to public information law. The principles of legislating for the right will serve as criteria for the evaluation of the legal provisions of both laws.

Chapter 3 and 4 will be taken in the same way of comparative law method. The Swedish and Vietnamese provisions on the scope of the right and process to gain the right will be described respectively, and then their comparative analysis will be taken in order to figure out the differences and similarities between the two laws. Finally, on the ground of the comparative analysis results, recommendations to legislating for the matters on scope of the right and process to gain the right in Vietnamese law will be given.

Chapter 5, as the last one, will be a concluding chapter for what has been presented in the other chapters and it will give a general conclusion of the study.
2. Right of access to public information and the principles of legislating for the right

2.1 Right of access to public information

Right of access to official documents held by public authorities has been recognized as a fundamental right in Swedish Constitution since 1766. However, the right which is now commonly known as right of access to public information has been widely accepted and guaranteed by international and national laws in the last ten years.

More and more nations have legislated for a law on access to public information, and according to David Banisar’s report, until December 2006 there are about seventy countries adopting such a law and fifty have been preparing the establishment of law on freedom of information. This flourishing adoption of freedom of information legislation all over the world is an increasing recognition of the importance of right of access to public information to enhancement of democracy and human right protection.

In this part of the thesis, the concept of the right and its benefits to State and individuals will be demonstrated so that we can have a general knowledge of what the right means and why the right is so important and meaningful to our life and needs to be protected by law.

2.1.1 The concept of the right

There are several terminologies used to indicate the right of access to public information, namely right to freedom of information, right to information, right to know, right of access to official documents, right of access to official documents held by public authorities and right of access to information held by the State. All these terms in spite of different words are meant ‘right to seek, receive and impart information’ as stated in article 19 of the UDHR. Freedom of information is recognized formally in the UDHR but in this important international document, the

---


13 Freedom of information is another term to refer to the right.


15 Adopted by the United Nations General Assembly in 1948.
right to freedom of information is part of the right to freedom of opinion and expression:

Everyone has the right to opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, impart information and ideas through any media and regardless of frontiers.\textsuperscript{16}

Although the phrase ‘to seek, receive, impart information through any media and regardless of frontiers’ clearly conveys the meaning of the right to freedom of information and this phrase was also repeated by article 19 of the International Covenant on Civil and Political Rights passed by the UN General Assembly in 1966, the true understanding of the phrase is not explicitly defined and explained in those documents. In 1998, the precise content of the phrase was explained clearly by the UN Special Rapporteur on Freedom of Opinion and Expression.\textsuperscript{17} As stated in the 1998 Annual Report of the Special Rapporteur, ‘the right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems’.\textsuperscript{18} The mentioned statement of the Special Rapporteur explicitly shows that ‘the right to freedom of expression includes the right to access information held by the State’.\textsuperscript{19}

Beside the UN recognition of right to freedom of information as part of right to freedom of expression and particularly as right of access to information held by the State, right of access to information held by the State or in short right of access to public information is upheld strongly and practically by many other international as well as regional instruments.

The Commonwealth Law Ministers adopted a set of principles and guidelines on freedom of information, which is named the Commonwealth Freedom of Information Principles.\textsuperscript{20} The Inter-American Commission on Human Rights, in 2000, approved the Inter-American Declaration of Principles on Freedom of Expression in which

\textsuperscript{16} The article 19 of the UDHR.

\textsuperscript{17} Established by the UN Commission on Human Rights in 1993 and one of its main duty is to give clarification to the content of the right to freedom of opinion and expression.


\textsuperscript{20} ibid pp. 4-5.
freedom of information including the right to access information held by the State is recognized as a fundamental human right.\(^\text{21}\)

In 1981, the Council of Europe had an important document specifically regarding right of access to information held by public authorities, it is Recommendation No. R (81)19 on access to information held by public authorities.\(^\text{22}\) In this document, the right of access to information held by public authorities is defined clearly and it is stated that right of access to information held by public authorities is right to obtain, on request, information held by the public authorities other than legislative bodies and judicial authorities. It means that everybody is entitled to obtain public information by sending his/her request about such information and the information is only under the authority of administrative bodies.

Additionally, by adoption of Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents,\(^\text{23}\) the Council of Europe has strongly enshrined the right of freedom of information, especially right of access to public information. The concept of the right of access to public information can be drawn out through the Recommendation, it is ‘the right of everyone to have access, on request, to official documents held by public authorities’.\(^\text{24}\)

The concept of right of access to information held by public authorities which is employed explicitly in its term is seldom discussed. The meaning of the right is clearly comprehensive by the wordings of the term, right of access to information held by public authorities. Therefore, it seems that there is no need to give any further clarification or definition to the concept of the right where its term can fully manifest its meaning.

At present, the great concern regarding the right no longer lies in its concept but is related to issue of guarantee of the right in practice, i.e. how to protect the right ef-


\(^\text{24}\) This recommends, “Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including national origin.”
fectively without violating the principles of privacy and State security. To meet this requirement, many international standards on access to public information legislation have been developed.25

2.1.2 Benefits of the right to the State and individuals

It is not surprising to say that in an open government information is significantly necessary to the State’s function as an public administrator who maintains the society in order and guarantee human rights; however, information held by the State is not for itself but for public interest and the State in this case hold the information on behalf of the people.26 The right to information, therefore, is a prerequisite to guarantee a government democratic and particularly, right of access to public information is not only a fundamental human right which is required to be protected but also an effective tool to keep the information move freely between the State and the individuals. As a tool of guarantee of the free flow of information in an open government, the right of access to public information brings benefits to both the State and the people.

2.1.2.1 To the State

In a democratic government, the participation of the people in the State’s work is highly required,27 and it is the most essential base for a democratic government to be established on. This is because a democratic government is ‘a government of the people, from the people, and for the people’.28

Without the participation of the people in the public activities such as voting for representatives in public bodies, especially the highest authority, Parliament, undertaking the state policies, etc, the government cannot work and fulfill its functions. By informing the people about which State activities the State requires them to participate in, the people in general and particularly individuals know what they are re-

25 This part will be mentioned in detail in 2.2 below.


28 This phrase is extracted from the article 2 of the Vietnamese Constitution of 1992.
quired to do and how they are entitled to act in accordance with the State’s requirements so that the State can serve them well.\textsuperscript{29}

Most of information regarding the State policies is drawn up not for the sake of the State but for the public interest and the State does not work primarily for its own interest but for gathering and directing the society (a large number of people) how to act in order to keep the society in order and individual human rights respected by the others. Consequently, public access to information held by the State is a practical way to inform the public and activate the public participation in the State’s activities.\textsuperscript{30}

The participation of the people can help the State’s policies work as well as give feedback on how the State’s policies work so that the State administration is more effective and anti-corruption is enhanced.\textsuperscript{31} This is also beneficial to the individuals who live in such an open and effective government.

Besides that right of access to public information can ensure the democratic participation of the public into the execution of state’s policies, this right can strengthen State officials’ accountability.\textsuperscript{32} Being informed about the functions and activities of public authorities, the people can watch over the state officials’ work and give complaints on the wrongdoings of the officials. It is one of the best ways to let the individuals supervise the public work besides the supervision of the State over its bodies. This is because the people are directly affected by the State policies and they directly contact the State officials in certain cases regarding State administration.

Moreover, the public participation in the State decision-making process at early stage makes the State more responsible in making decisions relating to the public interest and this can prevent the State from violating the civil rights.\textsuperscript{33} Additionally, the right of access to public information can give more transparency in government administration when public servants get more responsible for their work and this increases the public confidence on the State.\textsuperscript{34}


\textsuperscript{30} ibid.

\textsuperscript{31} Nguyễn Đức Thùy, ‘Khái quát chung về quyền con người, quyền tiếp cận thông tin trong hệ thống quyền con người’ (The Overview of human rights, the right of access to information in relation with human right system) in Quyền tiếp cận thông tin (The Right of Access to Information) (Institute of Human Rights, Ho Chi Minh Politics and Administration Academy, Ha Noi 2008) pp. 17-18.

\textsuperscript{32} ibid.


2.1.2.2 To individuals

The right of access to public information is not only an individual fundamental right but also a tool to protect other civil rights.\(^{35}\) The principle of the right ensures the individuals to be informed about the State decisions and then to be entitled to give their opinions on the state decisions as to prevent the State from making decisions violating the individual civil rights. Whenever individuals are informed, they will have knowledge of what the State does and they will know which of the state’s activities causes or may cause harm to their legitimate rights and they can lodge appropriate complaints on a certain state’s activity as to protect their legitimate rights. For example, in the case of the child victims of melamine contaminated milk powder causing bad effect to health in China, an individual can make a request for the information regarding the test of the contaminated milk powder sample taken by the competent authority and then he/she can make claim on the harm caused by the milk powder to his/her child against the milk powder companies.

Furthermore, an individual exercises his right to access, on request, the piece of information held by public bodies, he has a chance to have more understanding of what the State requires him to do, what rights he is entitled by the law, and as a result of this understanding, he can act in accordance with the law and protect his legitimate rights. This benefit of the right to information is greatly meaningful to individuals when they live in a society where a government is no longer a ruler of the society but a service provider to the society. The people nowadays in a modern society increasingly take part in the State decision-making processes, which is the most significant feature of an open government.

Finally, as mentioned by Toby Mendel (2003), besides the political aspect of the right, it is practically beneficiary to individual life and business.\(^{36}\) A person has right to access to his/her own medical records and he/she can have information on his/her health situation and then he/she can make his/her autonomous choice of treatments which are suitable for his/her situation. Moreover, the State holds a plenty of information related to business and economy, and this may facilitate one’s business. Thus, the public access to information held by a public authority is a real demand of all people who wish to have an autonomous life.

\(^{35}\) ADC and ARTICLE 19 (2007) (n 27) p. 17.

2.2 The principles of legislating for the right

In the last ten years, legislating for the right of access to public information have swept over the world. Several international organisations have been working hard to campaing for adoption of law on access to public information as well as formulate principles or standards for access to public information legislation.\(^{37}\)

The right of access to public information has been widely recognized in many national constitutions and importantly the right is guaranteed practically by passing detailed legal provisions on access to public information. This way, the right is not only recognized as a fundamental human right but also guaranteed by law in practice.

There are not much scientific theories on the right, but the basic standards for measure of guarantee of the right has been defined fairly sufficiently through some international documents such as the ARTICLE 19’s Principles on Freedom of Information Legislation,\(^{38}\) the Recommendation No. R (81)19 of Ministers of the Council of Europe on Access to Information Held by Public Authorities, the Recommendation Rec.(2002)2 of Ministers of the Council of Europe on Access to Official Documents, the Aarhus Convention,\(^{39}\) the Inter-American Declaration of Principles on Freedom of Expression,\(^{40}\) the Declaration of Principles on Freedom of Expression in Africa,\(^{41}\) the UN Report on Promotion and Protection of the right to freedom of opinion and expression.\(^{42}\)

In spite of those principles presented in different international instruments, they convey the common basic principles for making law on access to information held by public authorities. Generally speaking, they have been prescribed basically the same contents. Among these instruments, ARTICLE 19’s Principles on Freedom of Information Legislation clearly and sufficiently covered most of the principles essential to making a law on access to public information.


\(^{38}\) ARTICLE 19, an international human rights non-governmental organization located in London.


\(^{40}\) Approved by the Inter-American Commission on Human rights at its 108th Regular Session, 19 October 2000.

\(^{41}\) Adopted by the African Commission on Human and People’s rights at its 32nd Ordinary Session, 17-23 October 2002, Banjul, the Gambia.

For the above reason, in my thesis, I concentrate on the introduction of the basic principles for legislating for the right listed in ARTICLE 19’s Principles on Freedom of Information Legislation. Additionally, among those principles mentioned in the ARTICLE 19’s Principles on Freedom of Information Legislation, I focus on clarification of those principles significantly relevant to my thesis objectives, namely principles on scope of the right, exceptions of the right, and process to facilitate the right, due to the page limitation of my thesis. The other principles are also described shortly in the thesis and relevant reference will be noted for further information.

According to the ARTICLE 19’s Principles on Freedom of Information Legislation, access to public information or freedom of information law should be conformed on the following set of principles:

- **Principle 1. Maximum disclose**: Freedom of information should be guided by the principle of maximum disclosure.
- **Principle 2. Obligation to publish**: Public bodies should be under an obligation to publish key information.
- **Principle 3. Promotion of open government**: Public bodies must actively promote open government.
- **Principle 4. Limited scope of exceptions**: Exceptions should be clearly and narrowly drawn and subject to strict “harm” and “public interest” tests.\(^43\)
- **Principle 5. Process to facilitate access**: Request for information should be processed rapidly and fairly and an independent review should be available.
- **Principle 6. Costs**: Individuals should not be deterred from making request for information by excessive costs.
- **Principle 7. Open meetings**: Meeting of public bodies should be open to the public.
- **Principle 8. Disclosure takes precedence**: Laws which are not consistent with the principle of maximum disclosure should be amended or repealed.
- **Principle 9. Protection for whistleblowers**: Individuals who release information on wrongdoing – whistleblowers – must be protected.

### 2.2.1 Maximum of disclosure

According to Toby Mendel,\(^44\) the person drafting the ARTICLE 19’s Principles of Freedom of Information Legislation, the maximum principle has three aspects.

---

\(^43\) This is the test whether or not disclosure of information in question may cause any harm to a protected interest (test of harm) and if disclosure of classified information to the public prevails over its protected interests, it must be released (test of interest balance).

Firstly, any bodies which give refusal to request of information must be responsible for justifying that the refusal is legitimate. Secondly, the scope of the right should be defined as broadly as possible, i.e. everyone whether or not the citizens or nationals should have right to request for information held by public bodies without showing any certain interest for such request. Additionally, the second aspect of the principle is meant that information should be defined broadly to include all information held by public bodies, regardless of form, date of creation, which created it and whether or not it has been classified as secret. The third aspect of this principle is that bodies which have duties to release the information should be all public bodies keeping information serving for public interest (including administrative, legislative and judicial authorities).

2.2.2 Limited scope of exceptions

In his Principles of Freedom of Information Legislation, Toby Mendel has analysed the contents of the principle concerning limited scope of exceptions. Accordingly, on establishing provisions on exemptions to the right of access, there are three basic matters to be necessarily observed. Non-disclosure of information (exceptions to the right) must be satisfied a strict three-part test. All public bodies (including legislative and judicial branches of government) and functions of government (for example, functions of security and defense agencies) should be subject to the law on access to public information. A comprehensive list of protected interests which are the grounds for refusal to disclosure of information are required to be clearly defined by law. Toby Mendel also gave a clear description of the aforementioned three contents in his Principles of Freedom of Information Legislation.

As regards a strict three-part test, it is suggested by Toby Mendel (2003) that ‘a refusal to disclose information is not justified unless the public authority can show that the information meets a strict three-part test including: the information must relate to a legitimate aim listed in the law; disclosure must threaten to cause substantial harm to that aim; and the harm to the aim must be greater than the public interest in having the information’.

In addition to the requirement of the three-part test, it is suggested that a complete list of the legitimate aims which may justify non-disclosure should be provided in the law. This list should include only interests which constitute legitimate grounds for refusing to disclose documents and should be limited to matters such as law enforcement, privacy, national security, commercial and other confidentiality, public or individual safety, and the effectiveness and integrity of government decision-making processes. Furthermore, exceptions should be narrowly drawn so as to avoid including material which does not harm the legitimate interest and they should be based on
2.2.3 Process to facilitate access

According to Toby Mendel, a process for deciding upon requests for information should be specified at three different levels: within the public body; appeals to an independent administrative body; and appeals to the courts. These issues have been explained comprehensively as demonstrated below.

Where necessary, provision should be made to ensure full access to information for certain groups, for example those who cannot read or write, those who do not speak the language of the record, or those who suffer from disabilities such as blindness.

All public bodies should be required to establish open, accessible internal systems for ensuring the public’s right to receive information. Generally, bodies should designate an individual who is responsible for processing such requests and for ensuring compliance with the law. Public bodies should also be required to assist applicants whose requests relate to published information, or are unclear, excessively broad or otherwise in need of reformulation. On the other hand, public bodies should be able to refuse completely vague or annoying requests. Public bodies should not have to provide individuals with information that is contained in a publication, but in such cases the body should direct the applicant to the published source.

The law should provide for strict time limits for the processing of requests and require that any refusals be accompanied by substantive written reasons. Toby Mendel did not suggest a specific time limit. However, as suggested in “A Model of Freedom of Information Law”, such a time limit may be 20 working days of receipt of the request and an extension of 20 working days to a special case, but if the request is reasonably necessary to protect one’s life or liberty, such request must be responded within 48 hours (article 9(1-2)).

Moreover, Toby Mendel also suggested that wherever practical, provision should be made for an internal appeal to a designated higher authority within the public authority who can review the original decision. In all cases, the law should provide for an individual right of appeal to an independent administrative body from a refusal by a public body to disclose information. This may be either an existing body, such as

---


an Ombudsman or Human Rights Commission, or one specially established for this purpose. In either case, the body must meet certain standards and have certain powers which ensure its independence.

The procedure by which the administrative body processes appeals over requests for information which have been refused should be designed to operate rapidly and cost as little as is reasonably possible. Moreover, the administrative body should be granted full powers to investigate any appeal, and the power to dismiss the appeal, to require the public body to disclose the information, etc. 47 Both the applicant and the public body should be able to appeal to the courts against decisions of the administrative body. Such appeals should include full power to review the case on its merits and not be limited to the question of whether the administrative body has acted reasonably.

3. **Scope of the right in Swedish and Vietnamese Law**

3.1 **Terminology and the concept of information subject to the right**

As regards part of the right of freedom of information, the right of access to public information uses the term ‘information’ as the object of the access. In fact, however, there are two main ideas on the terminology to construe the object of the access. The first tendency favors to refer ‘information’ as the real object of the access. By using such a term, the right is more comprehensive to a normal person and such term can convey the meaning of information stored in any form provided that the information can be comprehensive by usual technical aids. In contrast, the other tends to use the term ‘document’ instead. It is argued that a person has right to access to a document which has already existed, not to pieces of information shown on a document; therefore, the public authority which is requested to release a document is not obliged to extract or rearrange the information shown on the document in such a way to meet the request or to create new information to meet the request.

3.1.1 **Terminology and the concept of information subject to the right in Swedish Law**

In Sweden, the right of access to public information is referred to as right of access to official documents (FPA 2:1-2). As stated in chapter 2 article 3 of the FPA, a document is a presentation in writing or images or a recording that one can read, listen to or comprehend in another way only by means of technical aids. As such, the term document refers to more meanings than its own word, for example a tape recording or data stored electronically. It is, therefore, said that a document in Swedish Law is an object containing information of some kind.48

Nowadays, since the increasingly growing movement of adoption of freedom of information legislation spreading over the world, the term document used in respect with the right of access to official documents initiated by Sweden is commonly replaced by the term information. This replacement in terminology makes the right more comprehensive to the public simply by looking at the term itself. Moreover, the term information precisely conveys the true object which the right of access wants to reach and accomplish while the term document conveys only the presentation of the

---

object of the right. An applicant for a document held by a public body does not request for such document but for the information contained in such document.

In conclusion, according to the definition of documents in Swedish Law, it is noted that the object of the right of access in Swedish Law is the same as the commonly accepted object of the right, it is all information stored in writing, images and recording which can be read, listened to or comprehended in another way only by using technical aids such as tape recorders or computers, etc.

3.1.2 Terminology and the concept of information subject to the right in Vietnamese Law

In contrast to Swedish law, the Vietnamese law only states that an individual has a right to access to information and there is no further legal provisions defining a certain materialized form of information.

Using the term information instead of document, as argued above, may make the right more comprehensive to the public but in fact, it should be defined, especially the materialized forms in which information is contained should be specified in law. Accordingly, such materialized forms of information should be defined broadly including a document, a case, a dossier, a register, a record or other documentary material which can be comprehensive by technical aids.

3.2 The scope of accessible public information

It is commonly accepted that any person, in principle, is entitled to access to any public information. However, it does not mean that all public information is accessible publicly.\textsuperscript{49} The arising question on the matter of scope of the right is that what public information is allowed to public access. To deal with this question, two issues should be clarified; the nature of public information and scope of public information. These issues will be demonstrated through Swedish and Vietnamese law.

3.2.1 The scope of accessible public information in Swedish Law

The principle which has been recognized as a constitutional fundamental right in chapter 2 article 1 of the Swedish FPA importantly provides that all Swedish citizens and aliens have right to read the documents/information held by public authorities. However, as aforementioned, the right to access to public information is not an absolute right, that is not all information held by public bodies is subject to the right

\textsuperscript{49} ICCPR, art 19.
of access. The right of access in Sweden is limited in two ways regarding the nature of the information and harm to public interests caused by disclosure of the information.

As regards its nature, in Sweden information under the right of access must be official. The FPA gave an effort to define what an official document is. ‘...A document is official if it is held by a public authority, and it can be deemed in Article 6 or 7 to have received or drawn up by such an authority’ (FPA 2:3). Accordingly, information is official if it satisfies two requirements, held by a public authority and regarded as received or created by such an authority according to articles 6 and 7 of chapter 2 of the Act.

3.2.1.1 The official nature of information held by public authority

For the purpose of public access, information held by public authority firstly must be official by nature. To be official, public information, according to Swedish Law, are required to be held by a public authority and according to certain provisions as drawn up or received by such public authority.50 It is, therefore, concluded that in Swedish law, information is deemed official (subject to the right of access) if such information is held by a public authority and to be considered as held by a public authority, the information must be either created or received by such public authority in certain circumstances set forth in law.

(i) Held by a public authority

A public authority covered by the right of access to public information has not been defined in the Swedish FPA, except that the Riksdag and local government assembly are equated as public authorities (FPA 2:5). According to Håkan Strömberg and Bengt Lundell,51 public authorities under the right consist of government, courts, and administrative authorities (including state and municipal level), and state owned entities whenever such entities exercise public power.

To conclude that a document consisting of paper with writing is held by a certain authority is not difficult, but it is quite confusing to give such conclusion to a document like ‘recording’. To deal with this matter, the Swedish FPA set out some rules.

A document which falls into the category of recording is only deemed to be held by a public authority if that public authority can use its own technical facilities (eg a computer) to make such document available in a comprehensive way (FPA 2:3, para 2). “Thus, a ‘document’ created in electronic form is an ‘official’ document if the


authority in question has and uses the software for displaying that document, but not otherwise. This is so whether or not the public authority holds that document on its own computer systems or has access to it through some form of computer connection.\textsuperscript{52}

However, the above rule shall not apply to a compilation of information taken from material recorded for automatic data processing which contains personal information which the authority has no legitimate power to disclose such personal information (FPA 2:3, paragraph 3). In this context, personal information is defined as “any information which can be referred back directly or indirectly to a private person.” (FPA 2:3, paragraph 3). In addition to this exception, if a public authority has the sole function of technically processing or storing the electronic data processing record on behalf of another public authority or on behalf of an individual, such a record is not considered to be an official document held by the public authority because that authority only has a technical function in this respect (FPA 2:10).

(ii) \textit{Received by a public authority}

A document is considered official if it has been received by a public authority under some certain circumstances. In general, document is deemed to be received by a public authority when the document has arrived at the authority or is in the hands of a competent official such as the officer dealing with the matter to which the document refers (FPA 2:6, paragraph 1). However, to avoid obvious problem of commercial confidentiality, competition, tender documents or the likes delivered under sealed cover are not deemed received before the time appointed for their opening.\textsuperscript{53}

A recording is deemed to be received if it can be transferred from another authority and the receiving authority can use its routine means to make such recording available (FPA 2:6, paragraph 1). This means if the recording needs a special technical aid but not available at the receiving authority, this recording is not deemed to be received by the authority.

Moreover, the FPA contains a special rule concerning letters and other messages which are not addressed to the public authority directly but to one of the officers of the authority. If such a message relates to the authority’s activities, it is an official document even though it has been addressed to a specific person at the authority (FPA 2:4).

There is one exception to the above rule which is also presented in FPA 2:4. The letter or message said above will not be considered official when the officer, the di-


\textsuperscript{53} ibid, ch 25, para 25.241.
rect addressee of the message, receives such message in holding another position other than his own position as a state official. This is usually applied to an official who is also elected or politically-nominated official within his parties or organizations. For example, when a municipal councillor acts in his public capacity, the documents sent to him are public, but he may also be the chairman of the local party organisation of a party (e.g. Social democrats, Liberal party etc) and when he receives information in that capacity, the document is not public.

(iii) **Drawn up by a public authority**

The FPA set out many rules relating to when a document is considered to have been drawn up (created) by a public authority. The principle may be said to be that a document which is created at a public authority is an official document when it is dispatched or it is finally used for a decision or obtained for a final form (FPA 2:7, paragraph 1).

A document is considered to be drawn up when an authority sends it out (dispatches it). A document which is not dispatched is drawn up when the matter to which it relates is finally settled by the authority. If the document does not belong to a specific matter, it is drawn up when it has been finally checked and approved by the authority or has otherwise received its final form. This rule does not apply to records of Riksdag committees, auditors of local authorities, official commissions of inquiry or local authorities where they relate to a matter dealt with solely in order to prepare the matter for decision (FPA 2:7, paragraph 3).

For certain kinds of documents other rules apply concerning when they are drawn up (FPA 2:7, paragraph 2). Thus, for example, a diary, a journal or similar document that is kept on a continuing basis is considered to be drawn up as soon as the document is completed so as to be ready for use. Judgments and other decisions with their associated records are drawn up when the ruling or decision has been pronounced or dispatched. Other records and similar documents are generally drawn up when the authority has finally checked them or approved them by other means.

Preliminary outlines and drafts (for example, of a decision of an authority) and memoranda (notes) are not official documents if they have not been retained for filing and registration (FPA 2:9). By ‘memorandum’ is meant an aide-mémoire or other notation made for the preparation of a case or matter and which has not introduced any new factual information.

However, it should be noted that a document which is created for the purpose of transferring it to another authority within the same organization is not deemed to be received or drawn up except these authority act as independent bodies in relation one to the other (FPA 2:8). This means that the documents used solely for internal trans-
actions among the bodies within a public authority are not considered official documents.

(iv) List of documents not regarded official

To make clear the provisions on official nature of document held by a public authority, the FPA also listed out the documents which shall not be considered official. These documents are created or received solely for the purpose of internal communications for forwarding a message, its own periodical publication, safe keeping or for research.

These documents are expressly shown in the FPA 2:11 as follows:

- letters, telegrams, and other such documents delivered to or drawn up by a public authority solely for the purpose of forwarding a communication;
- notices or other documents delivered to or drawn up by a public authority solely for the purpose of publication in a periodical published under the auspices of the authority;
- printed matter, recordings of sound or pictures, or other documents forming part of a library or deposited by a private person in a public archive solely for the purpose of care and safe keeping, or for research and study purposes, and private letters, written matter or recordings otherwise transferred to a public authority solely for the purposes referred to above;
- recordings of the contents of documents as mentioned above, if such recordings are held by a public authority, where the original document would not be deemed to be an official document.

3.2.1.2 Not classified as secret information

In principle, any information is held by public authority not for interest of the public authority but for the public. The public, hence, is entitled to access such information as the real owner of the public information. However, disclosure of public information can not cause harm or damage to other rights or interests which are protected by law such as privacy or national security.

In Swedish law, although the principle of public access to information held by public authority has been upheld with a long tradition, there are certain pieces of public information, even though they are official, may not be disclosed to the public if their disclosure may be harmful to the protected interests as set forth in the Swedish Constitution. Chapter 2 of the FPA provides for the principles of restrictions to the right of access to public information and these principles are required to be supplemented by an act of law (FPA 2:3). In fact, it is the Secrecy Act of 1980 where which public information is classified is defined clearly. The right is restricted only if the disclosure of information may damage or harm the legitimate interests (FPA 2:2).
3.2.2 The scope of accessible public information in Vietnamese Law

According to Vietnamese law, any information related to the activities of a public authority which fall into the areas applied the principle of transparency must be made available. Therefore, the information subject to the right to information is rather broad, covering most of the essential areas related to the activities of a public authority such as legal instruments, state’s policies, and the implementation thereof and the other activities. As regards the individual right of access to public information, there are at least ten areas directly concerning the activities of the local governments at communal level which fall into the principle of transparency as required by law.

Generally speaking, under Vietnamese law, information accessible to the public is required to be public in nature. The following issues will demonstrate the type of information subject to the right of individual access to public information in Vietnamese law.

3.2.2.1 The official nature of information held by public authority

In Vietnamese law, the concept of information held by public authority is not mentioned in law. All legal instruments relating to the right of access to information refer to information which falls within the activities of public bodies as the object of

54 The principle of transparency requires that information related to certain public activities and policies (except for state secrets and other information specified by the Government) must be made available. According to article 11 of the Anti-corruption Act, these areas covers many fields of state management such as financial matters, audit results, health care, education, law enforcement, land use planning, etc.

55 Anti-corruption Act, art. 11.

56 According to article 5 of Ordinance on Implementation of Democracy at communes, wards, and township (No. 34/2007/PL-UBTVQH11 of 20 April 2007), the activities of the local government shall be made public are legal provisions on administrative procedures for settlement of matters related to people, which are carried out directly by communal-level administrations; plans on socio-economic development; schemes on economic restructuring and annual budget estimates and settlement of the communal level; detailed land use plans and adjustment schemes and planning on population quarters in communal-level localities; tasks and powers of communal-level officials and public servants, who directly handle the people's affairs; the management and use of assorted funds, investments, financial aids under programs or projects for communal level; contributions mobilized from people, etc.

57 It is worthy to be noted that in the thesis only the right of individual access to public information of local government will be studied, not the right of the press and an legal entity nor the right of employee to access the working entity’s information.
the right of access. These activities are specified by law, but it is still very vague in practice and ambiguous to the public because there is no certain basis for an individual to check whether or not the information he/she needs to access to falls within the activities of a public authority. Furthermore, the term ‘public authority’ covers only the lowest local administrative bodies in Vietnam. Therefore, the information subject to access is extremely restricted, only within the information related to activities of the lowest local administrative authorities.

Additionally, the Government’s Decree No.120/2006/ND-CP of 20 October 2006 on detailing and guiding the implementation of the Anti-corruption Act (hereinafter referred to as Decree No.120/2006/ND-CP) clarified that a request for access will be satisfied if the content of the requested information meets the following conditions:

- Falling within the scope of publicity\(^{58}\) as provided for in the Anti-corruption Act and its decree;
- Falling within the scope of activities of the public authority in question;
- Having not yet been published on mass media, in distributed publications, or publicly posted up.

By the virtue of these requirements, it is not clear that information which is just “internal information” which also concerns the activities of a public body is subject to public access. Besides it is very hard to determine what information is regarded as ‘falling within the scope of activities of the public body’ when an individual is just an “ordinary person” and has a little knowledge of the information he/she wishes to access. If the information in question has been already made public (through some certain means), the request cannot be satisfied; the requester must seek the information by himself and with his own facilities though the public authority in question knows where the information is located or held and has possibility to access such information by itself. In such case, the authority is obliged to direct the requester to the source of the information (article 7, point 2, paragraph c of Decree No.120/2006/ND-CP).

3.2.2.2 Not classified as secret information

According to the Vietnamese Anti-corruption Act and its implementation guiding decree, individual access may be taken only to the information concerning the areas to which publicity and transparency requirements apply and not concerning state secrets. This also means that an individual, in principle, can not make access to state secrets provided for in law and in the name list of classified documents published by a public body.

\(^{58}\) The areas within the scope of publicity are specified in articles 13-30, Anti-corruption Act.
Moreover, the decree on guiding the implementation of the Anti-corruption Act provides that an application for access to information which has already been published shall be refused. It is treated the same way as the application for access to information which is not related to the activities of the authority in question (article 7, point 1, paragraph c). This is not a restriction to the right but a technical way to reduce pressure to public authority; the right to access to public information remains but the duty of public authority shifts from duty to release the requested information to duty to instruct the requester to seek the source of the information. It is argued that it is also considered ‘facilitate the right’ as set forth by the Principles of Freedom of Information legislation.

### 3.3 Restrictions to the right

#### 3.3.1 Restrictions to the right in Swedish Law

Right of access to public information is not an absolute right and obviously there are public information exempting from public access. Swedish law, like other legislations on access to public information and in accordance to the theory on the right of access, provided for restrictions to the right. The restrictions to the right, as provided for in the FPA 2:2, are only established if necessary and regarding to a limited list of seven important interests as follows:

1. The security of the Realm or its relations with another state or an international organisation;
2. The central fiscal, monetary or currency policy of the Realm;
3. The inspection, control or other supervisory activities of a public authority;
4. The interest of preventing or prosecuting crime;
5. The economic interest of the public institutions;
6. The protection of the personal or economic circumstances of private subjects;
7. The preservation of animal or plant species.

The Freedom of Press Act also states that official documents may not be kept secret in order to protect interests other than those listed above and which documents are secret shall be carefully stated in a special statute, i.e. the Secrecy Act.

However, according to FPA 2:2 it is permitted to include provisions concerning secrecy in other enactments provided that the Secrecy Act makes a reference to them. In other words, the Secrecy Act shall indicate all the instances when official documents are secret. The Government may not decide on which documents are secret; this is normally an exclusive right of the Riksdag. However, in a number of provisions of the Secrecy Act, the Government is given the right to make
supplementary regulations and in fact, these regulations are contained in the Secrecy Ordinance.\textsuperscript{59}

The most important principle set forth in the Secrecy Act is related to the test of harm in disclosure of public information. As analysed by Lundvik, this principle can be demonstrated as follows:

In general, secrecy depends on the predictable risk or ensuing damage or harm if the document is released. The presumption, in most cases, is for publicity: secrecy prevails only if there is a reasonable risk that damage or harm will follow if the information is disclosed. In some cases, however, the inverse rule applies: information may be disclosed only if there is little or no risk of damage or harm in so doing. The presumption in these cases is for secrecy. The general tendency is that publicity shall prevail when the exercise of public authority is at issue, while the presumption for secrecy prevails in cases where the privacy of the individual is concerned.\textsuperscript{60}

Furthermore, secret information can, in some cases, be released upon certain conditions which would minimize the risk associated with its dissemination, this is called reservations. For instance, the condition that information will be used only for statistical or scientific purposes, would prohibit it from being shown to anybody else, etc.\textsuperscript{61}

Following the above rule, the Act gave a clear definition of secrecy. Secrecy is meant prohibitions against disclosing information either orally or in writing, or by making public information available, or in any other way.\textsuperscript{62} Within this definition, secrecy in Swedish Law conveys two meanings: it restricts the right of access to certain public information and it prevents public officials from making such information available.\textsuperscript{63}

Moreover, in the Act, the scope of secrecy is expressly specified. In general, secrecy is provided to apply to certain information within a certain public authority. For example, secrecy will apply within the Government and within Sweden’s Mission abroad to any information concerning Sweden’s relations to a foreign state, an international organization, or an authority, a citizen, or a legal person in a foreign state, or a person without nationality (SA 2:1, paragraph 1).


\textsuperscript{62} SA 1:1, para. 2.

The time limit for secrecy is also provided for in law. Public information does not maintain secret forever, but it shall be made public after a period of two to seventy years of keeping secret. Additionally, the Secrecy Act requires the secrecy should be reexamined and it shall be repealed if the risk of disclosure of information no longer exists. These rules will limit the State’s power in preventing secret information from public access for good and guarantee simultaneously the true spirit of the right of access to public information.

3.3.2 Restrictions to the right in Vietnamese Law

The Anti-corruption Act and its decree provide that principle of publicity and transparency in activities of public bodies shall not apply to state secrets and other contents as specified by the Government. The Act lists eighteen public areas to which the principle of publicity and transparency shall apply, for instance state expenditure on public facilities and construction, public construction projects, public finance and budget, mobilization and use of public funds, law enforcement, state audit, education, etc. The Act also lists out the certain issues within the ambit of each area where the publicity and transparency principle will apply.

Article 1 of the Ordinance on Protection of State Secrets 2000 provides:

State secrets shall be information on cases, affairs, documents, objects, locations, time, words with important contents relating to political issues, national defence and security, external issues, science, technology and other fields which will not be published or have not been published by the State and, if they are so disclosed, will harm the Socialist Republic of Vietnam. (emphasis added)

In the virtue of the above provision, state secrets may cover all areas, and the Government has its own discretion to specify more areas to which state secrets apply. Furthermore, state secrets may remain without any certain time limits and the decision to repeal the state secrets lies on the hand of the Government. Each public authority shall classify its own information and present this classification to a competent authority for approval, and this classification shall be made available except some contents. There are three levels of state secrets: top secret, secret, and confidential; and secret information must be classified into a relevant level of secret and marked with a notation. Access to state secret documents must be approved by a competent authority, and a person wishing to access to state secret documents is re-

---

64 Articles 10 and 11 of the Ordinance on Protection of State Secrets 2000.
65 ibid art. 12, point 3.
quired to identify himself (by showing his identity card) and a letter of recommenda-

It is also worthy to notice that in the above provision, state secrets are defined un-

clearly; the provision said that secret is information on [...] which will not be or has

not been disclosed and if disclosed, it will harm the nation security. It implies that

secret is prohibition to disclose information which is very important to national secu-

rity but the wording is very vague. Moreover, the Ordinance applies to the State in-

formation only, not to private information. In Vietnam, there are few legal provisions

regulating personal data protection. Therefore, to facilitate the right of access to in-

formation, such a law on protection of private information should be considered and

established.

3.4 Comparative analysis and recommendations to legis-

lating for the scope of the right in Vietnam

3.4.1 Terminology and concept of information subject to the

right

Swedish law gives a clear definition of information subject to the right of public

access and it is information held by a public authority while Vietnamese law

provides that information subject to public access shall be information concerning

the activities of the body. To guarantee the right of access to public information, the

term ‘information’ should be defined as broad as possible and it should cover all

information held by a public authority in any kind of materialized forms and a public

authority should cover all public bodies including all branches of government or at

least it is required to cover all administrative agencies, not only the local

administrative bodies at the grassroots level as presently provided for in Vietnamese

law. Moreover, the provision that an employee has right to access to his working

entity’s information concerning its activities should remain in Vietnamese law

because such provision will guarantee the right to information of employees who

work for private entities.

3.4.2 What public information can be accessible under the

right?

On legislating for which public information is publicly accessible upon private

requests, it should be paid much attention to give a comprehensive and clear

definition of public information, i.e. which information held by public bodies is

relevant to access. As regards types of information accessible, it is neccessary to give

67 Decree No. 33/2002/ND-CP, art. 18.
a clear cut on types of public bodies covered by the law (legislative, administrative, and judicial authorities) and it is recommended that in addition to a general definition of public bodies, it is necessary to prescribe a comprehensive list of public bodies covered in the law.

Moreover, the most important issue that needs a careful consideration on is the question of clarification of the official nature of public information held by a public authority. In Vietnam, it is not explicitly specified in law that information subject to public access must be official but in the virtue of the transparency principle, certain information concerning activities of a public authority is required in law to be made public, and only such information shall be possibly accessible to the public. In practice, the information subject to transparency requirements is considered ‘official’ in nature. However, to make the law comprehensive, the requirement of official nature of information should be provided for clearly in law. It is suggested that information subject to the right be information held by a public authority and it is considered received or drawn up as provided for in a certain circumstance. It is required to specify the official nature of information for public access, information just in preparation should be excluded from the scope of the right due to its using purpose for only internal work of the public authority.

In addition to clarification of types of public information accessible to the public, disclosure of secret information should be provided for in law, both Swedish and Vietnamese law allow access to secrets in some special cases. However, Vietnamese law limits the subject who may access to state secrets to individuals working for an entity because it is required that a person wishing to examine a secret must show an recommendation of his authority. This requirement should be repealed. The law should specify in which circumstances secret information may be disclosed, for example in the case of scientific research. Moreover, it is essential to give a clear regulation on the matter of partial access to a secret document containing some information which is not classified.

3.4.3 What public information cannot be accessible under the right?

Both Swedish and Vietnamese law provide that disclosure of public information may not cause harm to certain legitimate interests such as national security. While Swedish law constitutionally prescribes a limited list of such protected interests, Vietnamese law specifies those protected interests rather voluntarily because in addition to state secrets as listed out in law, the Government has power to add more to such list and each public agency has its own list of secrets provided that this list is in accordance to the law and approved by a competent authority. Thus, restrictions to the right should be codified in one legal instrument and observe the principle of
maximum disclosure and limited scope of restrictions; no interests other than those prescribed by law will be the ground for a restriction to the right of access to public information.

As required by maximum of disclosure and limited scope of exception principle, restrictions to the right should follow a harm test and test of interest balance. Only restrictions which are necessary to protect certain interests provided for in law may restrict the right of access. These interests should be national security, personal privacy ... as provided for in Swedish law. Additionally, there should be an independent law that will provide for these restrictions in detail, and it may be named ‘Official Secrecy Act’. In this law, not only state secrets but also the other secrets relating to private entities (such as personal data, commercial information, health information, etc.) shall be stipulated.

Furthermore, time limit for keeping public information secret should be provided for in Vietnamese law. It is provided in Vietnamese law that confidentiality of state secrets shall be re-examined periodically and confidentiality of state secrets shall be repealed if no longer necessary. However, such provision is rather loose and may lead to misuse of authority in classification of public information, especially in the case of disclosure of information which may compromise state interest or private interest of a leader. According to Swedish law, personal information may be kept secret longer (20-70 years) than the others.

In addition to clear – cut provisions on types of public information inaccessible by the public, the question of disclosure of public information with a reservation is recommended to be regulated in law. The disclosure of secret information with a restriction to the use or publication of information should be taken into account in Vietnamese law in order to meet the demand of access to public information for purpose of scientific research.
4. The process of gaining the right in Swedish and Vietnamese Law

4.1 Requirements for a request for public information

4.1.1 Form of request

4.1.1.1 Form of request in Swedish Law

The form of a request for access to information held by a public authority is neither regulated in chapter 2 of the FPA, a part of Swedish Constitution, nor in the Secrecy Act, a special law. However, this is regulated by the 1986 Administrative Procedure Act. The article 5 of the Act provides, ‘The authorities shall receive visits and accept telephone calls from people. […] The authorities shall also ensure that people are able to contact them by telefax and electronic mail, and that they can reply in the same way’. Accordingly, a request for information can be made in oral or writing. Such a provision is very flexible, convenient and fair especially for those who cannot write or read or physically abnormal because they can choose a suitable form of request.

Moreover, to adapt to the Age of high technology, the aforementioned article 5 of the Act which was already amended in 2003 provides that a request for access to public information is considered legal in form if it is made through electronic network. To make such a provision practical, it is required that any public authority shall have electronic mail address for public access to information. For example, a public authority formulates a form of request of access and posts it up in its own office website, and a requester simply fills in such electronic form of request and sends it to the public authority held the information requested. By an electronic form, a request for access is more convenient and effective, and importantly, electronic requests and electronic denials of the requests are explicitly an express proof for appeals.

4.1.1.2 Form of request in Vietnamese Law

As provided for in article 9 of Decree No.120/2006/ND-CP, a request for access to public information shall be in writing or data messege and transmitted directly, sent by post or electronic transactions to the requested agencies, organizations, units or

68 ‘Data message is information created, transmitted, received, and stored by electronic means.’ (art. 4, point 12 of Vietnamese Electronic Transactions Law No. 51/2005/QH11).
individuals. In fact, public authorities at grassroots level in Vietnam has just been encouraged to build up its own electronic web site instead of being required to as to those in provincial level. By the virtue of this provision, the request is only valid if it is in writing.

4.1.2 Content of request

4.1.2.1 Content of request in Swedish Law

In addition to the flexible forms of requests, those who request for public information are not, in general, required to describe the information precisely, for example state its date or registration number of the information. However, authorities are not liable to make extensive inquiries in order to release the information for the requester if the requester cannot give the authorities the further details of the information. It is meant that the requester should provide the authority with the content of the information in question as detailed as the authority can identify what information is requested and so the authority can determine whether such information can be made available to the requester and whether the information released meets the request. In practice, an applicant for public information can use a computer located in the authority office to search for the needed information in a computerized register of official information.

Moreover, unlike the form of a request, provisions on the content of a request are clearly set out in the FPA. FPA 2:14 provides that public authorities cannot require the requester to identify himself and to state the purpose of using requested information. However, in case that the requested information falls in secrecy under the Secrecy Act, the authority can ask the requester to identify himself and state what the information is used for so that the authority can determine whether such information can be released. In the case of the requested information being used for scientific research or statistics, such information may be accessed.

4.1.2.2 Content of request in Vietnamese Law

As required in article 6, point 2 of Decree No.120/2006/ND-CP, requesters are obliged to clearly state their full names, addresses and reasons for requesting the information supply in their written requests. As such, a requester has duty to identify himself and give reason for access the requested information.

---

69 According to Swedish Secrecy Act, generally all official documents must be registered.

4.2 The release of the requested information

4.2.1 Determination of the release of the requested information

4.2.1.1 Determination of the release of the requested information in Swedish Law

When a request for access to public information reaches the public authority held the requested information, that authority is obliged to examine and decide such request, except that the request is beyond the competence of the authority in question.

An officer in charge of dealing with access to public information in the public authority is responsible to respond to such request. This officer is to examine the request in question and if the request is related to his competence, he will then consider whether such requested information is allowed to be available to the requester. Otherwise, if the request is related to another public authority, he will then transfer it to the relevant authority and inform the requester about this transfer.

Moreover, in case that the requested information is held in his office but the information is classified in law, the officer will rest the examination and approval to release the information to another public authority that has competence over the matter. For example, SA 2:3 on secrecy primarily concerning the safety of the Realm or its foreign relations, provides that if decision on making the secrecy importantly relating to safety of the Realm available to a private subject must be only decided by a particular authority. This provision is additionally clarified by by SA 15:3, paragraph 2 that secret information must be affixed a notation indicating which particular authority is competent to decide the question of making the document/information available. FPA 2:16 notices for obstacle to release the information as aforementioned must be give relevant provisions applying to it.

In the first case where the requested information is under the officer’s competence, he is liable to reply the request in the way the request addressed to him. If the request is received orally, he must reply it orally and if in writing, he must respond it in writing. Where pursuant to a work schedule or a special decision a certain officer within an authority is responsible for keeping information, it shall in the first instance rest with him to decide the question of making the information available to a private subject.71 He shall, if in doubt, refer the question to the authority, if this can be done without causing any delay. Should he refuse to make the document/information available or should he make it available with a restriction, which limits the applicant’s right to disclose the contents thereof or otherwise use the document, he shall, if the applicant so requests, refer the question to the authority.

71 SA 15:6, para. 2.
4.2.1.2 Determination of the release of the requested information in Vietnamese Law

In Vietnam, the law provides that the head of the body is responsible for organization and direction of information supply in his body.\(^{72}\) In respect with individual access to public information within the scope of activities of people’s committee at commune, ward, or township (the lowest level of administrative agency in Vietnam), the Chairman of the Communal level People’s Committee is responsible for dealing with the request for access information.\(^{73}\) In practice, the Chairman will assign an officer in the Committee to directly deal with a request for access to public information but according to the law, the Chairman has the power to determine on supplying the requested information.

4.2.2 Form of release of requested information

4.2.2.1 Form of release of requested information in Swedish Law

Chapter 2, article 12 of FPA provides that information requested is made available in any way which can give access to the information. This is meant that a requester for information can read, listen to, or otherwise comprehend it. This can be made at the place where the information is held or by giving a transcript or a copy of the information as the requester wishes to obtain. It is very convenient for requesters for access to choose which form of information release he wishes to obtain.

In practice, a requester for access can write to the public authority where the information needed is held and he can, if the requested information may be released to him, receive it by mail or otherwise without coming to the location of the public authority.

There is no obligation to make public information available at the place where it is held if this presents serious difficulty or in respect of a recording, the applicant can access to such recording at a near public authority without serious inconvenience (FPA 2:12, paragraph 2). If part of information is classified and the disclosure of such information may lead such part available, the information will be produced into a transcript or a copy excluding the secret part of information before it is made available to the requester (FPA 2:12, paragraph 1).

\(^{72}\) Decree No. 120/2005/ND-CP, art. 8.

\(^{73}\) Anti-corruption Act, art. 32, point 2.
4.2.2.2  Form of release of requested information in Vietnamese Law

If the content of the requested information meets three conditions as required in law, this provision does not mention the individual access to the requested information on the spot, but imposes a duty on the authority in question to supply the requested information in written form. It seems that the authority may create a document containing information requested, not give the requester a chance to access to original of the document containing the requested information or to obtain a copy of such document. As such, the meaning of the right of access and this provision of supply of information will not meet together. Therefore, it should be clearly provided for in law that access to public information can be taken to original source of the information by accessing on the spot or obtaining a copy or transcript of the original. Such provision really guarantees the true meaning of the right of access to public information, that is the right to access existing information held by a public authority.

4.2.3  Time for response to the request

4.2.3.1  Time for response to the request in Swedish Law

In principle, public information which can be accessed by the public must be made available immediately, directly and without delay (FPA 2:12). The specific cases where delays may be allowed are not provided for in law but in fact, some cases which the delay may happen. For example, the authority needs time to consider whether the requested information falls in secrecy or whether the power to consider the request for access rests in another authority instead of the authority held such information. However, there is no fixed time for respond to a request for access to public information provided in Swedish law. This may lead to delay in response to access to public information.

4.2.3.2  Time for response to the request in Vietnamese Law

Article 32, point 3 of the Anti-corruption Act and article 10, point 1 of Decree No.120/2006/ND-CP provide that within 10 working days since the day of receiving the request for information the competent authority shall respond to the request. The time limit can not be extended.

---

74 See 3.2.2.1 above.
75 Decree No.120/2006/ND-CP, art. 7, point 2, para. a.
76 For example, the requested information is classified, so it must be sent to a relevant authority (such as the Government) for the purpose of deciding whether or not it will be disclosed. (chapter 11, SA)
The aforementioned provisions also clearly provide for the content of the reply to the application for information. If the requested information meets certain conditions as required in law, the information will be released in writing. Otherwise, a written reply with a clear reason of the refusal will be sent to the requester. In the case that the information has already been published on the mass media, in distributed publications or publicly posted up, the authority may refuse to supply the information but it shall give guidance on access to information in a written reply. It is noted that in all three cases, the respond must be in writing because the request is also required to be in writing.

4.2.4 Fees for releasing the requested information

4.2.4.1 *Fees for releasing the requested information in Swedish Law*

If access to public information is taken at the place where the requested information is held, there is no fee or charge for such access. However, a copy or transcript of requested information which is requested by the applicant to access to the information is to be charged with fixed fee (FPA 2:13). Provisions concerning fee for obtaining transcript or copy of the requested information is provided for in a seperate instrument, particurlarly the ordinance on fees will generally regulate all things related to fee matters.

Fee for obtaining the accessed information is not much and its purport is to cover the expense for making a transcript or a copy of the requested information and/or send it to the applicant. In fact, it is provided that the fee for obtaining information is only charged for a transcript or copy consisting of more than nine pages. It is meant that a request for a transcript or copy of the information which is under ten pages is free of charge. A ten page copy costs 50 SEK (around 150,000 VND) and an additional page costs 2 SEK per page (around 6,000 VND). It is a fixed fee for all kinds of transcripts and copies and this is very comprehensive to everyone and it is a little cost which is acceptable and reasonable.

4.2.4.2 *Fees for releasing the requested information in Vietnamese Law*

There is no provision in the Anti-corruption Act and its guiding decree which requires the requester for access to public information to pay for his access. I think

---

77 See 3.2.2.1 above.


79 SEK is the Swedish currency.

80 This information was provided by Dr. Bengt Lundell, a law professor at Lund University, Sweden.
there is no such a provision because the law makers have not thought of the right to obtain a copy of the requested information and the supply of information looks like a “reply” to a “question” for information, the authority will not provide any documents containing the requested information to the requester.

4.3 **Refusal to the release of the requested information**

4.3.1 Authorities to refusal to the release of the requested information

4.3.1.1 *Authorities to refusal to the release of the requested information in Swedish Law*

As aforementioned, a certain officer in a public authority who is in charge of keeping public information is competent to refuse a request for access to public information or to release the information with a restriction if there is a reason so warrant such as secrecy, serious difficulty, harm, etc. If the request is out of the officer’s competence, it can be referred to the authority and the power to give a denial to access rests with that authority.81 It is meant that the authority or competent person who has power to decide the availability of public information is also empowered to give refusal to access to public authority.

4.3.1.2 *Authorities to refusal to the release of the requested information in Vietnamese Law*

In Vietnamese law, the head of the body or the chairman of the people’s committee has responsible for supply of requested information, so he is also competent to decide a refusal of releasing of the requested information. This provision is the same as the Swedish one, that is the person who has competence to deal with the request shall have authority to refuse disclosure of information. Such a provision is practically acceptable because the person who deals with the request will have enough legal knowledge as well as good experience to determine whether such a request is possible to be satisfied in accordance to laws.

---

81 In principle, the classified information is to be marked “secrecy” and notation of which authorities have power to decide the disclosure of such information. In cases that the Government has the competence to grant a waiver from secrecy for such information, the decision on releasing such classified information rests with the Government. This means that the Government has competence over the matters, not the authority holding the information. In the cases where the Government or the Riksdag denies the application for access to the information, such decisions cannot be appealed.
4.3.2 Grounds for the refusal

4.3.2.1 Grounds for the refusal in Swedish Law

The grounds for refusal to access to public information or release with a restriction are set forth in the FPA and the SA. In principle, a refusal may be based on such grounds as the requested information falling within secrecy (FPA 2:2 and SA 1:1); the examination of the requested information at the place where it is held causing a serious difficulty for the normal work of the authority in question (FPA 2:12, paragraph 2 and SA 15:4); or, as regards a request for a recording, the applicant’s convinience to access to this record held by another authority nearby (FPA 2:12, paragraph 2). In addition, the information which is not considered as official information may be another ground for the refusal.82

Moreover, it should be worthy to note that it is a Swedish principle that a decision on refusal of disclosure of the information in question or on its disclosure with a restriction shall be based on the test of harm and the test of interest balance. Secrecy is considered as only a criterion for the two tests, not the only and primary ground for the refusal of disclosure of the requested information. The authority cannot respond the application for access to public information by simply saying that such public information in question is classified. Secrecy may be released to the requester who wishes to examine this secrecy in some special cases where the disclosure of information will not cause any harm or damage to a protected interest.

The principle of test of harm and test of interest balance is specified clearly in most of the Swedish secrecy provisions.83 For example, if the disclosure of the health information of a certain person (e.g. HIV result) may cause harm to either him or his relatives, such information shall be classified and it is not allowed to release such information to another (SA 7:6).

4.3.2.2 Grounds for the refusal in Vietnamese Law

In Vietnamese law, a refusal of releasing of requested information is not based on the ground of test of harm or test of interest balance as used by Sweden. A refusal of supply of information is due to the ground set forth in article 10, point 2 of Decree No.120/2006/ND-CP. Accordingly, the content of the requested information fails to meet the conditions prescribed in point 1 of article 10 of the Decree.

As provided for in the above provision, a written refusal will be made to respond to the request if the content of the requested information (i) is classified, or (ii) falls beyond the activities of the authority in question, or (iii) falls beyond the scope of

82 The conditions for information to be official are demonstrated in 3.2.1.1 above.

activities subject to the principle of publicity and transparency as provided for in the Anti-corruption Act, or (iv) has already been published. As such, a request will be denied if the requested information is state secret and other contents specified by the Government. If the requested information is not state secret, but it is not related to activities of the administrative agency, the request cannot be satisfied. Additionally, if the information is not classified and it is related to the administrative agency’s activities, but it has been published on mass media, in distributed publications, or publicly posted up, such request is also refused.

4.3.3 Procedure of the refusal

4.3.3.1 Procedure of the refusal in Swedish Law

The refusal to access to information is made directly to the application for access to information by the competent official orally or in writing respectively according to the form of request. If the applicant so requests, a written decision on the refusal of access is made and given to the applicant. Accordingly, the applicant can show this written decision upon his appeal to such decision.

4.3.3.2 Procedure of the refusal in Vietnamese Law

According to article 10, point 2 of Decree No.120/2006/ND-CP, a refusal must be made in writing and sent to the requester. In this written refusal, the reason for denial of the request shall be stated clearly so that the requester knows why his request has been refused and if he finds it is not a legitimate reason, he has right to object such a refusal. If he complains on the refusal, he must attach this written refusal to the complaiting file as a written proof for appeal.

4.4 Appeals to the refusal

4.4.1 Cases permissible to appeals

4.4.1.1 Cases permissible to appeals in Swedish Law

A refusal to release the information or release with restrictions can be deemed as permissible cases to appeals (FPA 2:15, paragraph 1 and SA 15:7). According to article 22 of the 1986 Swedish Administrative Procedure Act, an administrative decision by a public authority may be appealed by any subject who is affected adversely by such a decision. As such, a refusal to release the information or release with restrictions can be deemed as permissible cases to appeals under the Administrative Procedure Act. However, a refusal to release the information or

release with restrictions which is made by the Riksdag or the Government can not be appealed (FPA 2:15), and the SA adds two more agencies to this exception, they are the decisions by the Supreme Court and the Supreme Administrative Court (SA 15:7, paragraph 3).

### 4.4.1.2 Cases permissible to appeals in Vietnamese Law

In Vietnam, there are a few provisions which define grounds for appeals. A refusal to supply information or the incomplete supply of information may be appealed internally (article 11, point 1 of Decree No.120/2006/ND-CP). It is worthy to be noted that unlike Swedish law, in Vietnam, such an appeal can not be submitted to a court of law, it is only dealt with by competent administrative authorities in accordance to administrative procedures.

### 4.4.2 Authorities to settle the appeals

#### 4.4.2.1 Authorities to settle the appeals in Swedish Law

The competence to settle the appeals lies in the hand of either a court of law or the Government (FPA 2:15, paragraph 1 and SA 15:7). According to the FPA, ‘...An appeal against a decision by a minister shall be lodged with the Government, and an appeal against a decision by another authority shall be lodged with a court of law’.

If a decision concerning a refusal to access information or access with a restriction made by a court of law, the appeal will be lodged with a superior court of law of the same kind (SA 15:7, paragraph 2). The Swedish court system consists of two kinds, general courts and administrative courts. For example, if the decision delivered by a District Court, the appeal will be lodged with the Court of Appeal and the decision by the Court of Appeal will be lodged with the Supreme Court. This rule also applies to decisions on refusal to release of information or release with a restriction made by a public authority to another public authority’s request for information, except for the decisions made by the Riksdag, the Government, the Supreme Court, or the Supreme Administrative Court (SA 15:8, paragraph 2).

If a decision is made by a member/minister of the Government, the appeal must be lodged with the Government (FPA 2:15, paragraph 1). Additionally, the Government has competence to settle an appeal to a decision made by a state authority which refuses the request for access applied by another state authority (SA 15:8, paragraph 1). It is meant that an appeal lodged by a state authority against another

---

state authority which also belongs to the Government will be determined by the Government, it is considered an “internal review”. In this case, the Government is the first instance as well as the last instance jurisdiction over such an appeal.

An appeal against the authority’s decision not aforementioned will be lodged with the Administrative Court of Appeal or the Supreme Administrative Court (as regards a decision made by the Administrative Court of Appeal). By such a provision, most of the decisions on the refusal to release information and release with a restriction are treated as administrative decisions and let administrative courts settle them.

4.4.2.2 Authorities to settle the appeals in Vietnamese Law

Like Swedish law, appeals to decisions to refuse the release of requested information is stipulated in Vietnamese law. As provided for in SA, refusal of disclosure of information in question may be reviewed by the authority held the information. A review made by the authority held the information in question is an internal review. This review is the same as provided in Vietnamese law.

According to article 11, point 2 of Decree No. 120/2006/ND-CP, an appeal to a decision of refusal of release of requested information shall be stipulated by an independent legal instrument; it is Law on Complaints and Denunciations. Being unsatisfied with an administrative decision and having grounds to believe that such decision has contravened laws and infringed upon his legitimate rights and interests, a person is entitled to lodge his complaint to the authority which made such a decision (article 1 of the Act). As such, a complaint on refusal of information supply or incomplete supply of information shall be lodged to the person who made such a decision. The complaint cannot be given to a court of law in Vietnam because a complaint on access to public information goes beyond the scope of jurisdiction of a court of law.86

Furthermore, in Vietnam, if the decision is taken by persons who are appointed by the Prime Minister or are heads of the central bodies of socio-political organizations, the complaints shall be lodged with the head of the Central Steering Committee for Corruption Prevention and Fighting, that is the Prime Minister (article 11, point 3 of Decree No. 120/2006/ND-CP).

4.4.3 Procedure to lodge the appeals

4.4.3.1 Procedure to lodge the appeals in Swedish Law

The SA does not provide the procedure to lodge an appeal. However, in principle, a separate rule of law must be treated consistently with its own legal system. It is

86 Article 11 of Ordinance on procedures for settlement of administrative cases shall list out the areas within the jurisdiction of a court.
understood that the procedure to lodge the appeals will be regulated by the corresponding rules of law prescribed in relevant laws governing the respective jurisdiction. As such a jurisdiction must rely on a certain procedural law suitable to its competence when dealing with an appeal, e.g. the 1986 Administrative Procedure Act, the 1971 Administrative Court Procedure Act and the 1942 Code of Judicial Procedure, etc.

In general, the procedure for an administrative appeal will be demonstrated as follows. An administrative appeal will be submitted to the authority which made the decision within three weeks from the date the appellant received the decision and such authority has duty to reconsider the decision and if it cannot or will not change or amend the decision in a way as requested by the appellant, it must forward the appeal and all documents related to the appeal to a relevant jurisdiction (a court of law or the Government as mentioned above) if the appeal received in a good time.\textsuperscript{87}

The procedure to lodge an appeal against a decision that refuses access to public information or release information with a restriction is generally the same as one to lodge an administrative appeal above-mentioned. However, as regards the appeals against the decisions by the Administrative Court of Appeal and a Court of Appeal, there is no appeal permit or leave to appeal required (SA 15:7).

4.4.3.2 Procedure to lodge the appeals in Vietnamese Law

As analysed above, an appeal against a decision on non-disclosure of requested information shall be dealt with internally. If an administrative decision unsatisfies a person who is directly affected by such decision, that person has right to lodge a complaint against such decision to the authority or competent person who made such decision or act within 90 days after receiving the decision or having knowledge of the act. The complaint must be in writing.\textsuperscript{88}

The Vietnamese procedure for settlement of an administrative appeal, in general, is prescribed as follows.\textsuperscript{89} Should the complaint meet the conditions set forth in law, within 10 days after receiving a written complaint, it shall be replied in writing whether it is accepted for settlement or not. If accepted to be dealt with, the com-


\textsuperscript{88} Law on Complaints and Denunciations 1998 (amended in 2004 and 2005), art. 33. Accordingly, the appellant can make an appeal orally but the officer in charge must either direct him/her to file a written appeal or write down the content of the oral appeal with the appellant’s signature. Thus, for all cases the complaint must be in a writing form.

\textsuperscript{89} ibid articles 30, 31, 34, and 36.
plaint shall be dealt with within not more than 30 days after its acceptance of settlement. The person who is competent to deal with the complaint is required to have a direct contact with the complainant for a mutual communication. The decision on settlement of the complaint must be in writing and given to the complainant and related persons. This stage is regarded as the first settlement of the complaint.

If the complainant is still not satisfied with the decision of the first settlement of complaint, he can appeal it either to the superior authority of the authority having the decision appealed (this is referred to as the second settlement of complaint) or to a court of law. However, a court of law only settles those cases falling within scope of cases permissible to appeal to the court as prescribed in an ordinance on procedures for settlement of administrative cases. The right of access to public information is beyond such a scope of administrative cases. Therefore, appeals regarding the right of access are settled only by the administrative system.

In respect with the second settlement of the complaint, the procedures are rather the same as those of the first settlement. The decision of the second settlement is considered the final judgement and it cannot be appealed further.

### 4.5 Comparative analysis and recommendations to legislating for the process of gaining access to public information in Vietnam

#### 4.5.1 Requirements of the request for information

To guarantee the exercise of the right in practice, it is necessary to regulate the form and content of a request for information in law. Both Swedish and Vietnamese law specify some requirements for these matters but there are some similarities and differences between them due to the different practices and conditions of each country.

As regards the form of the request, both countries accept a written request sent through post or electronically. This provision is beneficiary to the State as well as individuals because a written form will be a record of request for information which may prove to be of value subsequently, especially in the event of no reply to the request or for the demand of statistics for the proactive publication of the most frequently requested information.\(^90\) However, besides a written request, Swedish law provides for an oral request (made directly or through a phone call) while this form is not a valid form of request for information in Vietnam. With respect to the aforemen-

tioned benefits of a written request, it is preferable to provide for a request in writing. However, Vietnamese law should supplement an oral request for information which will facilitate the group of people who can not write due to illiteracy or disability. Those people can make such a request orally.

Moreover, Vietnamese law allows a request to be sent through electronic mails. However, in fact, there is no provision forcing a local administrative authority to set up a web site in order to facilitate the right of access to public information. In fact, there are some local authorities establishing a web site for posting up their own activities and policies, but until now, there are a few of such web sites. Therefore, it should be required by law that a state agency or state funded unit shall establish its own web site to post up its activities and policies and to facilitate access to public information.

In respect of the content of the request, Swedish law is very consistent to provide that the requester shall not be required to identify and state the purpose of access while such requirements are obliged in Vietnamese law. Identification is a traditional practice in Vietnamese administration but as analysed in the theory of the right of access to public information, the holder of the right is also the true owner of public information, and it is unnecessary to identify such a requester, except for the case the authority examines whether or not the disclosure of information will cause harm to the protected interests. In addition to the identification requirement, purpose of access is not necessary in such a case. In conclusion, there should no requirements of identification and statement of purpose of access applied for access to public information in a case without concerning secret information.

4.5.2 Requirements of releasing the requested information

Releasing of requested information must meet some requirements set forth in law such as requirements for the competence, the form, time-limit and fee for disclosure of the requested information.

Both countries have the same principle that a public authority which holds the information in question has competence to decide whether or not the information in question will be released. In Sweden, generally an officer of the public authority shall be assigned to deal with a request for information. Such a provision ensures a professional work for access to public information which is very important to a democratic society. In Vietnam, there is one similar provision that each public authority shall be appoint one official to be “official spokesman” for the authority. Therefore, this officer should be in charge with a request for information sent to his authority.

91 Regulation on making of statements and supply of information to the press (promulgated together with the Prime Minister’s Decision No. 77/2007/QD-TTg of 28 May 2007), art. 2.
For the event that a request is submitted to a wrong address or it goes beyond the competence of the authority which receives it, Swedish law solves this matter by providing for such an authority to promptly transfer the request to an appropriate authority (except when it has no knowledge of such authority). This provision enhances the state’s accountability in assistance for public access to information. Thus, this duty to transfer a request should be counted on in Vietnamese law, and to make this transfer effective, it should, like Swedish law, be required to add a notation to a secret saying that which certain authority has power to decide the availability of the secret.

Both countries provide a process to release the requested information convenient to the requester. However, Vietnamese regulations still limit the access of the requester. For example, it is provided that the requester will receive a written reply to his request specifying whether or not his request can be satisfied but not specifying how the requester can access to the information in question. In contrast to this provision, Swedish law provides that the requester may access to the requested information on the spot or obtain a copy of the requested information. In Vietnamese law, such provision has not been set forth in law. Therefore, to completely facilitate the right of access to public information, a provision on how access of public information is made should be examined. It is suggested that access to public information be made on the spot and obtaining a copy of document or record containing the requested information be possible if so requested.

In Swedish law, there is no time limit for respond for a request but the request must be responded forthwith; it is very hard for the public authority and it may lead to the delay on purpose made by the authority to release the information. In Vietnamese law, time limit for respond to the request is ten working days. It is a good regulation to raise the authority’s accountability and it is also in accordance to the common principles. However, such time limit is rather short and not enough time for the authority in question to consider a complicated request, seek for the information, prepare the copy thereof, and the like. Therefore, such time limit should be longer for a complicated request, and the time limit for this is not more than a double normal time-limit.

Furthermore, unlike Swedish law, Vietnamese law did not regulate the fee for access to public information. It is because ‘access’ to public information under Vietnamese law does not include ‘obtaining’ a copy of information and whenever it is not a matter of producing a copy of the requested information, the matter of charge will not mentioned. The principle is that a person who is entitled to access to public information shall have an additional right to have a copy or transcript of a materialized

\[92\] A Model of FOI Law suggested that such time-limit should be not more than 20 days.
form containing such information and if so requested, such a person must pay for the authority a fixed fee. Sweden is a well developed country and the State budget is supported to a large extent by its citizens, so the provision that a request for a copy of more than nine page document will be paid for a fixed fee is reasonable. However, in Vietnam, there is a practice that the State and the people should share expenses. Thus, a request for obtaining one copy of the document containing the requested information should be paid at a fixed fee for the first to the last page of the document. This fee should be small and reasonable on the ground that such fee is sufficient to afford the real cost for seeking and making copies, and it is not so expensive that it prevents public access to public information. Additionally, such fee should be provided for in a special law, for example a law on fees.

4.5.3 Refusal of releasing of the requested information

Swedish and Vietnamese law both provide that a request for access to public information may be denied by a competent authority if such a request does not meet a certain requirements set forth in law. Such a provision is necessary in order to protect public information concerning national security and personal privacy. However, a refusal, under Swedish law, is required to be based on the principle of a three-part test and a test of balance; a public authority can not refuse a request simply on the ground that the information in question is classified. The authority must test whether or not the disclosure of information may cause harm or damage to any legitimate interest and whether a public interest in disclosing the information prevails such protected interest. In contrast, Vietnamese law provides that a state secret is one of grounds for refusal of releasing the information. Such provision is inflexible and should be changed in a way like Swedish law.

As regards the grounds for the refusal, unlike Swedish law, it is expressly prescribed in law that a request for information which has been published or publicly posted up will be refused and the authority shall be obliged to direct the requester to the source of such information. As mentioned above, such provision imposes no limitation to the right, but it is a ‘technical’ way to shift the duty to supply the information to the duty to publish information, and it is also a good way to reduce work load for the authority and save time and money. However, to make this provision more effective, there should be a supplementary provision that a wrong instruction shall be appealed.

Furthermore, in respect to the form of the refusal, both Swedish and Vietnamese law use a written form which will be a proof for appeal. However, Swedish law provides that the refusal may be made orally, and in writing if so requested; this means that the refusal can, in priority, be made orally to the requester, and a written refusal is issued if so requested by the requester. This will save time and money for the au-
Legislating for the right of access to public information in Swedish and Vietnamese Law

thority to issue a written refusal only if such refusal satisfies the requester. As a result of such benefit, such a priority should be provided for in Vietnamese law instead of providing only one form of the refusal.

4.5.4 Appeals

Both Swedish and Vietnamese law provide that refusal of release of requested information shall be reviewed or appealed, but each system has its own procedures to deal with such review.

Swedish law chooses a combined review system including an internal review and an independent judicial review. It is said that this Swedish way to deal with appeals to administrative decisions is very distinctive. By such system, settlement of appeals concerning right of access is very quick and economical.

In Vietnam, it is a practice that some certain categories of administrative decisions or acts may be appealed to a court of law. In general, most complaints of administrative decisions and acts will be internally reviewed by an administrative agency at two instances. The first instance rests with the authority which initiated the administrative decision appealed against, and the second rests with the internally superior authority to the first authority. An appeal against a decision on access to public information shall not be re-examined by a court of law.

Access to public information is not only a constitutionalized civil right but also an effective means of control of state administration. Therefore, it is necessary to guarantee this right both internal and judicial review; especially this right is regarded as a ‘conditional’ right which its execution depends on an administrative decision made by a public authority, not by the person holding the right. In theory access to public information is a human right, but in practice a person is entitled only to lodge an application to a competent body which will decide whether such person can access to the requested information. An internal review is not so fair and strong enough to protect such a sensitive right. Consequently, a refusal of disclosure of information or a disclosure of information with reservations should be provided for in law to be appealed to a court of law because in comparison with the other kinds of legal cases, an administrative case costs less due to its sole examination of documentary.

As regards appeal to a court of law, it is recommended that an independent review of the refusal of releasing of information or release with a restriction should be quick.


and cost not much. An appeal in Swedish way is a quick and economical measure to deal with the refusal as recommended in the principle of freedom of information legislation; that is the appeal will be lodged to the authority which made the refusal and if it can or will not change its decision as required by the appellant, the authority is obliged to send the appeal and all related documentary to the court of appeal (normally the administrative court of appeal). It is a good experience for Vietnam in establishing an effective review of administrative decisions appealed.

Moreover, in respect to an independent review of the refusal, in Sweden, Parliament Ombudsmen are competent to deal with such a refusal. In Vietnam, if the complained persons are appointed by the Prime Minister or are heads of the central bodies of socio-political organizations, the complaints shall be lodged with the head of the Central Steering Committee for Corruption Prevention and Fighting, that is the Prime Minister (article 11, point 3 of Decree No. 120/2006/ND-CP). This means that there is a practice that an ‘independent’ organ will deal with complaints against an administrative decision regarding supply of information although such provision does not apply to the refusal to individual access to public information. Therefore, in the case the judicial system has not so changed to adapt to the new judicial review system as suggested above, it is necessary to assign an independent organ (not a court of law) to have power to review such refusal. This organ may be the Central Steering Committee for Corruption Prevention and Fighting which has already been established and directly headed by the Prime Minister (although this organ is not absolutely ‘independent’).

Furthermore, in Vietnam, the power to respond to the request to individual access to public information rests in the lowest level of administrative authority; it is the local administrative body at the grassroots level in Vietnam. As a result of this, there is no provision on cases that cannot be appealed. On the contrary, in Sweden, the Riksdag and the Government also have authority to make a decision on release of information, and their decisions shall not be appealed. It is presumed that in Sweden, Riksdag and the Government are the highest bodies respectively in the legislative and executive branch of government and furthermore they have competence to specify which public information is kept secret, so their decisions will be the final ones and unnecessarily reviewed further. In respect with extension of public authorities covered by the law on access to public information, Vietnamese legislators should pay attention to give a solution to the question of appeals to the NA and the Government’s decisions on denial of disclosure of information. It is recommended that such a provision should be the same as the Swedish one.
5. Conclusion

The right of access to public information has been increasingly upheld and recognized in a number of international instruments as well as national legislations. This right is not only a fundamental right but also an important tool of democratic society where the transparency of state administration is highly required. For this significant benefit of the right to the society, it is necessary to protect the right of access to public information in practice by passing a law on access to public information.

In Vietnam, the right which is popular under the term of right to be informed has been recognized in the constitution and, to some extent, it is legislated in detail in some acts. Most of the Vietnamese legislation on the right has been focused on regulating the duty of public authorities to initiately inform the people about their activities and policies through mass media. However, this duty is just one aspect of the right, that is the indirect access to public information. The other true aspect, i.e. the direct access to public information, is the duty of public authorities to release a certain piece of public information to anyone who wishes to examine such information.

To deal with the problem as aforementioned, in 2005, the second aspect of the right, namely the right of individual access to public information, has been firstly provided for in Anti-corruption Act and has been specified fairly clearly in its guiding decree. However, those provisions did not effectively guarantee the exercise of the right in practice, and there is an urgent demand for introducing a comprehensive law on access to public information.

In respond to such a demand, many discussions on legislating for the right has been held in Vietnam. This thesis is expected to give one more reference to such a trend by demonstrating a legal comparison between Vietnamese and Swedish legislations concerning the right. In respect with the outcome of comparative work, the true expectation is to give Vietnamese legislators some justified recommendations for legislating for the two basic features of the right, the scope of the public information subject to the right of access and the formalities of exercise of the right.

As regards the result of the comparative work, it can be concluded that the scope of the right and the process to gain the right as provided for in Vietnamese law should be modified in accordance to the common recommendations of the principles for freedom of information legislation which have been demonstrated clearly in the relevant Swedish provisions as analysed in the thesis. These recommendations can be summarized as follows:
On the scope of the right:

- The concept of the information subject to the right should be defined clearly in Vietnamese law. This definition should cover all materialized forms of storing information held by a public authority provided that the information can be comprehended with technical aids available at the public body. Moreover, the official and public nature of the information should be clarified in law. Accordingly, it is suggested that only official public information should be accessible upon an individual request, not preparatory or internal information.

- The scope of accessible information should cover all information held by public authorities, and the restrictions to the access must be limited in law and in accordance to a strict three-part test. Besides, Vietnamese law should provide a time limit of secrets.

On the procedures for exercising the right:

- To facilitate the exercise of the right, the statement of identification and reason of access (except for some special cases) should be eliminated in Vietnamese law. In addition, to protect the disadvantaged groups, it is suggested that an oral request for public information will be as legal as a written one.

- The forms of access to the requested information need to be more diversified to help fit individual situations. Also, information supply fee should be fixed as reasonably as possible by law to facilitate the exercise of the right in practice.

- Refusals as well as any decisions made by a public authority concerning information disclosure need to be appealed to a court of law (or at least by an independent body) besides the administrative appeal.

In addition to a comprehensive law on access to public information, the implementation of the law in practice is more significant. Therefore, to make the right of access to information held by public authorities comes true in Vietnam, there are a plenty of hard work for the legislators as well as the experts on this matter to take into account. Hopefully, with the high effort of the State and the increasing demand of an open society, such a comprehensive law will be introduced soon in Vietnam.
Table of Statutes and other Legal Instruments

**International Treaties and Conventions**

Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art. 19

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art. 19

Inter-American Declaration of Principles on Freedom of Expression approved by the Inter-American Commission on Human rights at its 108th Regular Session, 19 October 2000


Declaration of Principles on Freedom of Expression in Africa adopted by the African Commission on Human and People’s rights at its 32nd Ordinary Session, 17-23 October 2002, Banjul, the Gambia

**Council of Europe Recommendations**


**National Legislations**

*Sweden*

Except the Secrecy Act, the other Swedish national legislations mentioned in the thesis has been translated into English and published by Swedish Ministry of Justice and they are available at <www.regeringen.se> (the web site of Swedish Ministry of Justice)

SFS 1942:740 Code of Judicial Procedure

SFS 1949:105 Freedom of Press Act

SFS 1971:291 Administrative Court Procedure Act

SFS 1974:152 Instrument of Government
SFS 1980:100 Secrecy Act
SFS 1986:223 Administrative Procedure Act

Vietnam

All Vietnamese legislations are accessed in Vietnamese language and some of these legislations in English versions may be accessed at the web site of Vietnamese Ministry of Justice (http://vbqpl.moj.gov.vn/law/en/lawdocument_search_form)


Law on Promulgation of Legal Instruments of 12 November 1996


Publishing Act (No. 30/2004/QH11 of 3 December 2004)

Press Act (No. 33/2005/QH11 of 14 June 2005)

Audit Act (No. 37/2005/QH11 of 14 June 2005)


Anti-corruption Act (No. 55/2005/QH11 of 29 November 2005)

Law on Promulgation of Legal Instruments (No. 17/2008/QH12 of 3 June 2008)

Ordinance on procedures for settlement of administrative cases of 21 May 1996

Ordinance on Protection of State Secrets (No. 30/2000/PL-UBTVQH10 of 28 December 2000)


Resolution No. 11/2007/QH12 on Legislative Programme for Legislature XII and Year 2008 which was approved by the NA on 21 November 2007

Resolution No. 27/2008/QH12 on Legislative Programme for Year 2009 which was approved by the NA on 15 November 2008

Government’s Decree No. 33/2002/ND-CP of 03/28/2002 on guidelines on the implementation of Ordinance on Protection of State Secrets

Government’s Decree No.120/2006/ND-CP of 20 October 2006 on detailing and guiding the implementation of the Anti-corruption Act

Regulation on making of statements and supply of information to the press (promulgated together with the Prime Minister’s Decision No. 77/2007/QD-TTg of 28 May 2007)
Bibliography

Unless otherwise stated, all Internet links shown in this bibliography have been assessed on 10 May 2008.

Official Reports and other Documents


Monographs

In Vietnamese

Nguyễn Cự Việt, Giáo trình Luật Hành chính Việt Nam (Textbook on Vietnamese Administrative Law) (Hanoi National University Press, Hanoi 2008) p. 499

In English


Håkan Strömberg and Bengt Lundell, Handlingsoffentlighet och sekretess (Lund: Studentlitteratur 2007) pp. 18-20 (translated into English by Bengt Lundell)


**Articles in Journals, Anthologies etc.**

**In Vietnamese**

Vũ Công Giao, ‘Co chế bảo đảm quyền tiếp cận thông tin của các cơ quan nhà nước ở Việt Nam’ (Measure on protecting the right of access to information held by a public authority) in Quyền tiếp cận thông tin (*The Right of Access to Information*) (Institute of Human Rights, Ho Chi Minh Politics and Administration Academy, Ha Noi 2008) pp. 80, 85


Cao Đức Thái, ‘Quan điểm – Chử trọng – Chính sách của Đảng và Nhà nước ta về quyền được thông tin của công dân trong thời kỳ đổi mới’ (Vietnamese Communist Party and State Views and Policies concerning the right to be informed in the innovatory age), in Quyền tiếp cận thông tin (*The Right of Access to Information*) (Institute of Human Rights, Ho Chi Minh Politics and Administration Academy, Ha Noi 2008) p. 23

Nguyễn Đức Thùy, ‘Khái quát chung về quyền con người, quyền tiếp cận thông tin trong hệ thống quyền con người’ (The Overview of human rights, the right of access to information in relation with human right system) in Quyền tiếp cận thông tin (*The Right of Access to Information*) (Institute of Human Rights, Ho Chi Minh Politics and Administration Academy, Ha Noi 2008) pp. 17-18

**In English**

