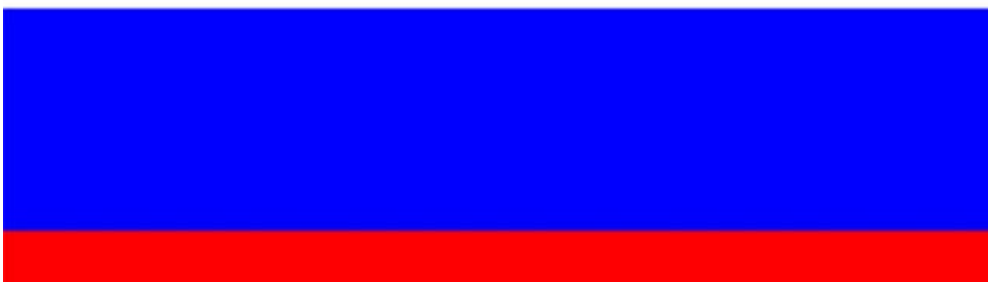


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Russian Federation

International Focus



Background and History

On 21 January 2009, the first Russian FOI law [1] was passed by the Duma – the Federal Law “On providing access to information on the activities of government bodies and bodies of local self-government”. FreedomOfInfo note its distinction as the longest-debated bill in the Duma. It came into force a year later, January 2010. [2]. As of 2010, four regions of Russia also had their own FOI Acts. [3]

Prime Minister Vladimir Putin pledged to the accuracy of what information would be accessible to the public: “The information offered to the people should not differ from the reality of a particular agency everyday operation. Otherwise our project will compromise itself from the very beginning”. [4]

The Institute for Information Freedom Development, based in St Petersburg, published a report in 2008 regarding how accessible information was from various Russia state organisations. The 1993 Russian Constitution, Article 23 “guarantees the right “to freely seek and obtain information about the activities of state organs and organs of local administration.” However, the Institution found this right was very inconsistently applied, and concluded that

“Actual access to the information concerning the governmental bodies operation requires lots of time and efforts, lots of nerves and money. People believe that their right to have access to the information has to be “proved” or that the information needed can be received only through personal relations or with a lot of money, in other words, only through alternative – not necessarily legal – means of influence on the officials.” [5]

The Institute believes “that passing the FOI Law is an important consequence” of its 2008 report, it receiving attention from other NGOs and the media. The Institute also encouraged citizens to write letters to President Medvedev, lobbying the legislators and educating government officials to press for a FOI law. [6]

Hopes were not especially high for the success of the Act, despite its passing: FreedomofInfo noted little coverage of the Act’s passing in the mainstream media, despite the interest of FOI and human rights NGOs. “There is still a great deal of scepticism... due to the historical lax attitude to law among Russian bureaucrats and the prevailing culture of corruption.” [7] Information manipulation is common: During the conflict with Georgia in 2008, Georgian online news media and Georgian government websites were attacked by hackers, linked to Russian state businesses. [8]

A study in 2009 by the International Press Institute [9], used journalists in 12 different countries to assess how government departments provided basic information to media organisations when asked. The requests were limited to ‘informal requests for straightforward information – the kind that should be easily available without recourse to Freedom of Information legislation’. Russia was ranked eighth. The Global Integrity Index of 2010 noted while Russian citizens has a strong constitutional right to information (scoring 90 out of 100), the actual ability of citizens to utilise this right was very limited (scoring only 56/100). [10]

Provisions

The law is significant, “*For the first time in the Russian history, the law positively guarantees the rights of Russian citizens to request and receive information, outlines a procedure for such requests, and determines government responsibility for providing such information.*” The presumption is for openness of government business, with the exception of information classified as state secrets. [11]

The law provides the administrative detail to realise the right given in the Constitution, and includes a legal definition for the term “information about the work of government organs.” [12]

Time frames for requests are 30 days, and a department should transfer the request if it does not hold the information and knows who does.

Refusals and exemptions

Article 19 note the unique exemptions regime of the law: Unlike most other laws, it does not set out in detail the circumstances under which access to information may be refused. Instead, the exemptions are in the remit of already existing legislation: “access ‘shall be limited if such data and records are treated as classified information or confidential information under the Russian Federal legislation.’” Further, for local government, each local government department is required to draw up a list of documents or categories of documents that will be exempt. [13]

There is no public interest override in regards to the exemptions. “The reference to drawing up categories of documents to which the public may have no access implies that requests will not be considered on a case-by-case basis, which is contrary to the whole thrust of the ARTICLE 19 Principles and Council of Europe Recommendation.” [14]

Any refusal to provide information must be notified to the applicant, along with the legal provision relied upon for such refusal (Article 16).

Refusing to provide the information is allowed on the following administrative grounds:

- Contact address and name of requester not provided
- Request does not relate to the organisation in question
- The information is not help
- The information was already provided to the same requester

Appeals

Citizens are not required to show any justification for their requests, and they can sue the government for damages incurred as a result of violations of their right of access: “Decisions and actions (omissions) of bodies... that violate the right to access information... can be appealed to a higher body or to higher official or in court. 2. If as a result of wrongful refusal in access to information... or its untimely granting, or granting of intentionally misleading information or information not corresponding to the content of the request, the information user was caused damages, such damages are subject to compensation according to the civil legislation of the Russian Federation.” (Article 23)

Technology and fees

The law has a proactive publication aspect, instructing government agencies to disseminate information about their activities on the internet – their functions, staff and contact email addresses and telephone numbers. Fees for requests are only applicable where multiple paper copies are requested, postage is involved, or where the scope of the request is very large. [15]

Article 19 looked at the draft law back in 2003, and while applauding the efforts made, recommended changes. It noted while some of the regime’s procedural aspects – time limits, fees etc – were robust, it criticised the regime being restricted to state and local government only. It also criticised the omission of mandatory training for public officials, and the fact the regime exists alongside other secrecy laws, not overriding them. Article 19 also lamented the Act does not created a separate, independent appeals body.

Operation

The Russian FOI law has been criticised for a variety of reasons since it was enacted in 2010 and the IIFD has continued to campaign for improvements. This April, Institute Chairman Ivan Pavlov noted, “as it is often the case in our country, coming into force did not mean that the laws have been actually

obeyed. Governmental agencies pretended not to see the obvious provisions in the text of the laws, continuing to hide any information concerning their operations. Often, even the courts refused to protest the right of Russian citizens to get access to information even though it had been guaranteed by law.” [16]

Pavlov explained the situation by referring to the tension between Russia’s attempts to enter the global community, and the “strong desire to keep unrestricted power based on the accessibility of information.” The fact that so few citizens are aware of the FOI regime also weakens its operation. [17]

There is hope however. The IIFD’s monitoring of government website ‘openness’, has seen a 10 per cent increase in xxx over 2009 levels. The IIFD attribute this less to the FOI law being passed, and more to the change in research methods for the 2010 monitoring. [18]

Developments

The Institute for Information Freedom Development has developed a guidebook to help requesters: ‘how to request information, how to react to information denials, and how to apply to court in order to contest information denial and to bring officials neglecting [sic] their duties to responsibility.’ [19] It is hoped this guidance will spur more use of the law.

There are some other small improvements. Dissenting opinions of judges are now being published online for the first time, and the Moscow City Court is going to publish applications from officials and politicians, in an attempt to ‘eliminate behind-the-scenes influence upon the judicial power branch as well as any pressure on judges, therefore promoting judicial independence.’ [20]

But media and academic freedoms are still at risk. Only last month, Reporters Without Borders condemned the seizure of all 40,000 copies of Izvestia Kaliningrada, a weekly broadsheet published in Russia’s western exclave of Kaliningrad. “It was the latest example of regional governors abusing their power to silence media that annoy them.” [21]

In May 2009, commemorating the anniversary of victory in the Great Patriotic War, Russian President Dmitry Medvedev issued a decree creating a Commission to Counteract Attempts of Falsification of History, which will review textbooks, documentaries, and scholarly publications to judge whether authors treat Russia’s recent history, especially the history of World War II, “correctly.” The Guardian reported the Commission would be made up of FSB intelligence service officers rather than professional historians. Medvedev said the Commission would combat foreign “revisionists”. [22]

In late September 2011, the IIFD published an analytical review of problems with the observance and implementation of archive information access law in Russia. They are advocating a number of amendments to address issues of secrecy and declassification; “in particular, they speak for clear legislative definitions for “administrative”, “personal”, and “family” secret. Up to now, these terms are rather vaguely interpreted by subordinate normative acts and quite often used by officials as explanation for archive information access denial.” The report at this time is only available in Russian. [23]

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