



ARTICLE 19



# NAVIGATING THE ITU

Roadblocks to accessing information

/ November 2019

---

## ARTICLE 19

Free Word Centre  
60 Farringdon Road  
London,  
EC1R 3GA  
United Kingdom

-

**T:** +44 20 7324 2500

**F:** +44 20 7490 0566

**E:** [info@article19.org](mailto:info@article19.org)

**W:** [www.article19.org](http://www.article19.org)

**Tw:** [@article19org](https://twitter.com/article19org)

**Fb:** [facebook.com/article19org](https://facebook.com/article19org)

---

This work is provided under the Creative Commons Attribution-Non-Commercial-ShareAlike 2.5 licence. You are free to copy, distribute and display this work and to make derivative works, provided you:

- 1) give credit to ARTICLE 19;
- 2) do not use this work for commercial purposes;
- 3) distribute any works derived from this publication under a licence identical to this one.

To access the full legal text of this licence, please visit:  
<http://creativecommons.org/licenses/by-nc-sa/2.5/legalcode>.

ARTICLE 19 would appreciate receiving a copy of any materials in which information from this report is used. Please send them to [digital@article19.org](mailto:digital@article19.org).

ARTICLE 19 bears the sole responsibility for the content of the document.



## Why do we need access to information?

Every individual has the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers” as part of their right to freedom of expression, which is affirmed in Article 19 of the Universal Declaration of Human Rights (UDHR) and further articulated in Article 19 of the International Covenant on Civil and Political Rights (ICCPR). The right to information enables individuals to access information—including records and data—held by public bodies and international organizations, without the need for justification.

Access to information empowers the public and civil society to hold accountable the institutions that comprise our governance systems. Prompt, effective, and practical mechanisms for obtaining this information are necessary to credibly evaluate decision-making in these powerful institutions to ensure that decisions are made in the interest of the people whose lives are impacted by them. The transparency engendered through robust access to information allows people to make well-informed choices. As a result, the right to information not only enables the exercise of other human rights, such as the rights to political participation, due process, and access to health and education; it underpins the economic and social empowerment of all members of society.

## What does access to information look like in the ITU?

There is no question that states are obliged to uphold the right to information under international law. International organizations—including United Nations (UN) bodies and specialized agencies—also perform public functions, and make decisions which directly impact people’s daily lives, on issues that range from health to humanitarian aid. Therefore, to ensure true accountability and good governance, these spaces should be transparent to public scrutiny to the same extent that states are obliged to be and states’ obligations to uphold the right to information should be fully applicable to their participation in them.

The applicability of the right to information to international organizations has already been explored and supported by international human rights experts:

- ◊ **Maina Kiai, former UN Special Rapporteur on freedom of assembly and association**, called for greater access to information in his [2014 report on public participation in intergovernmental organizations](#).
- ◊ **David Kaye, UN Special Rapporteur on freedom of opinion and expression**, asserted that UN agencies are impeding the public’s right to information due to a systemic lack of transparency in his [2017 report on access to information in international organizations](#).

While no UN-wide access to information policy currently exists, approximately half of the bodies within the UN system have already implemented their own, including the [United Nations Development Programme \(UNDP\)](#), the [United Nations Educational, Scientific and Cultural Organization \(UNESCO\)](#), and the [World Bank](#). Several regional intergovernmental organizations such as the [Organization of American States \(OAS\)](#) have also recognized the importance of access to information and implemented relevant policies.

**The International Telecommunication Union (ITU) is a specialized agency within the UN system that's mandated to address aspects of transnational telecommunication infrastructure. The ITU's decision-making power has a direct impact on anyone that holds a stake in information and communication technologies (ICTs): civil society, businesses, media, and—most importantly—people. The standards and policy-related outputs of the ITU are championed by its Member States and adopted by industry actors. As such, they fundamentally influence the global Internet architecture, with implications for how information moves across networks and how individuals can access it.**

At the 2014 Plenipotentiary Conference, the ITU's membership decided to begin work on formalizing an agency-wide document access policy to submit to the subsequent 2018 Plenipotentiary Conference for a final decision. The ITU publicly launched its [Information/Document Access Policy](#), to operate on a provisional basis, in January 2017. This policy established a channel through which the public can request access to information and set out general parameters for disclosure. The provisional policy was approved to enter into full force at the 2018 Plenipotentiary Conference.

As we've noted in the [previous installment of the ITU Briefing Series](#), the ITU suffers from a systemic lack of openness and transparency that hampers civil society's ability to advocate for the public interest in ITU standards and policy development. The opportunity to request access to documents and other information is therefore a rare tool for civil society to better understand the positions of Member States, trace the developments that underpin national ICT policy implementation, and advocate for the public interest in a more nuanced and effective way. Ostensibly, then, the 2018 Plenipotentiary decision should have been welcomed by civil society and the public. However, the ITU's policy fails to engender meaningful transparency or accountability, both of which are necessary to protect the public interest.

**The current policy should not be the final word on access to information at the ITU. Civil society must continue to urge the ITU Council and wider membership to improve it, and advocacy for more meaningful access must remain a significant part of civil society's agenda at the ITU, alongside substantive issues such as cybersecurity and connectivity. Here, we provide an overview of three major concerns we have with the current policy and outline key recommendations for revision that ITU Members should adopt.**



# 1 THE EXEMPTIONS TO DISCLOSURE ARE OVERLY BROAD



The right to information framework set out in international law permits public bodies, in limited circumstances, to withhold information that would cause harm if made public; nevertheless, these exemptions:

1. Must be limited to a clearly defined and narrow set of circumstances; and
2. Must not override the public interest.

The ITU Information/Document Access Policy fails to set clear limits on exemptions to public access. The policy broadly states that information can be withheld in cases where “disclosure might cause potential harm to a legitimate private or public interest”, including personal information, information related to legal, disciplinary, or investigative matters, information that would compromise safety and security, and commercial and financial information. However, these categories are not exclusive—the policy clearly states that these cases only serve as examples, or “instances”. Effectively, there are no real limitations on what information can be withheld from the public, as the ITU reserves the power to extend non-disclosure to information beyond the policy’s specifications.

Further, the examples listed are not actually defined in specific and restrictive terms. For example, the ITU policy sets out an exemption in cases where disclosure may violate an individual’s rights or “invade [their] privacy”. The need to protect an individual’s right to privacy is certainly legitimate. However, the policy interprets this exemption to blanket entire categories of documents that may pose little to no infringement on the right to privacy, such as any information related to staff selection and appointment processes. As such, the policy takes a sweeping approach instead of establishing incisive standards that facilitate targeted redaction of specific information that could incur harm, such as personally identifiable information.

At the same time, the ITU policy does not prioritize the public interest. The right to information framework recognizes that the importance of disclosing information held by public bodies is defined by the benefit that it has to the interests of the people whose lives are impacted by these bodies. In this sense, any determination of disclosure must be fundamentally driven by a thorough consideration of the public interest. But the vague and unrestricted nature of the exemptions in the policy actually undermines the public interest.



For example, the policy exempts from public access any commercial and financial information that “would harm either the financial interests of the ITU or members of ITU”. However, the threat to the financial interests of a company or government is not in itself a sufficient challenge to people’s right to know. Even when there’s a potential for harm, it must still be weighed appropriately against the benefit that disclosure would bring to the public interest on matters such as corruption or conflict of interest. However, the policy doesn’t provide an explanation of tests, frameworks, or standards that the ITU uses—if any—to determine whether information truly meets the threshold for a likelihood of harm and whether this harm ultimately outweighs the benefit of disclosure to the public interest. The simple fact that information can be placed under a particular category of exemptions does not imply an automatic justification for non-disclosure.

Without clear and narrowly defined exemptions and frameworks for determination, the public's access to information will be undermined by overbroad, inconsistent, and non-transparent application of the non-disclosure policy.

The very general language used in the policy to set out the possible areas of non-disclosure results in ambiguity over what content may or may not be withheld. As a result, providers of information and the ITU may be unsure of the sensitivity of particular data or records. They may therefore retreat to over-censorship by withholding information that is subject to disclosure under international law, to be certain that they comply with the ITU policy.

At the same time, the vague and overbroad language used in the policy to describe areas of non-disclosure, such as the privacy and financial harm exemptions, can be easily manipulated to apply to a breadth of information that goes far beyond what is acceptable for non-disclosure within the right to information framework. In this sense, ITU Members and the ITU itself can take advantage of this ambiguity to censor information that is of interest to the public. And without any transparency in the decision-making process, there is no way for the public to hold the decision-makers accountable. This lack of accountability means application of the non-disclosure policy is driven by specific actors' motivations.



#### We recommend that:

- ◇ The set of exemptions is revised to be clearly restricted and more narrowly defined;
- ◇ Exemptions are limited to legitimate subjects of restrictions as they exist in international law, including protection of the rights of others, national security, and public order or public health;
- ◇ A public interest test is applied as part of the decision-making process—including in cases where the information generally falls into any of the categories of exemptions—to determine whether the benefits and public interest of disclosure outweighs any likelihood of harm to the interests protected by the exemptions;
- ◇ Any decision of non-disclosure must be accompanied by a demonstration that the event of disclosure would likely cause harm to a legitimate interest, according to the principles of necessity and proportionality; and that
- ◇ The ITU must provide a clear and complete explanation for any decision of non-disclosure.



2 THE SOLE  
DISCRETION OF  
DETERMINING  
NON-DISCLOSURE  
FALLS TO THE  
INFORMATION  
PROVIDERS



One of the most important functions of the right to information is to empower individuals to hold their governance bodies accountable for the decisions they make. But under the current terms of the ITU's Information/Document Access Policy and the subsequent procedures established for providing and requesting information, the power over what information people can access rests not with the public, but entirely with those that initially provide the information or documents to the ITU—that is, the ITU's membership, which is comprised overwhelmingly of governments and companies.

The policy clearly states that the information providers are solely responsible for determining whether information is "sensitive" and therefore to be withheld from public access. As we've already explained, the language of the policy regarding exemptions provides no limitation on what information could be withheld from the public; providers therefore have complete freedom to make the first and only determination. Additionally, the procedures for requesting information state that documents will be withheld from disclosure in the event that any part of them have been redacted by the information provider. Therefore, the redaction of even a single word would preclude the ITU from disclosing an entire document. Such a low standard only further enables information providers to be the unilateral authority for determining what information is accessible to the public.

In fact, the procedures don't even require information providers to submit justification for any decisions to withhold information; in turn, the ITU isn't required to provide any justification in the event that information is withheld from requesters. Moreover, the policy doesn't establish any kind of appeals mechanism. There is therefore no way for the public to assess or challenge non-disclosure in cases where access to the information is indeed of public interest that outweighs the potential for any legitimate harm.

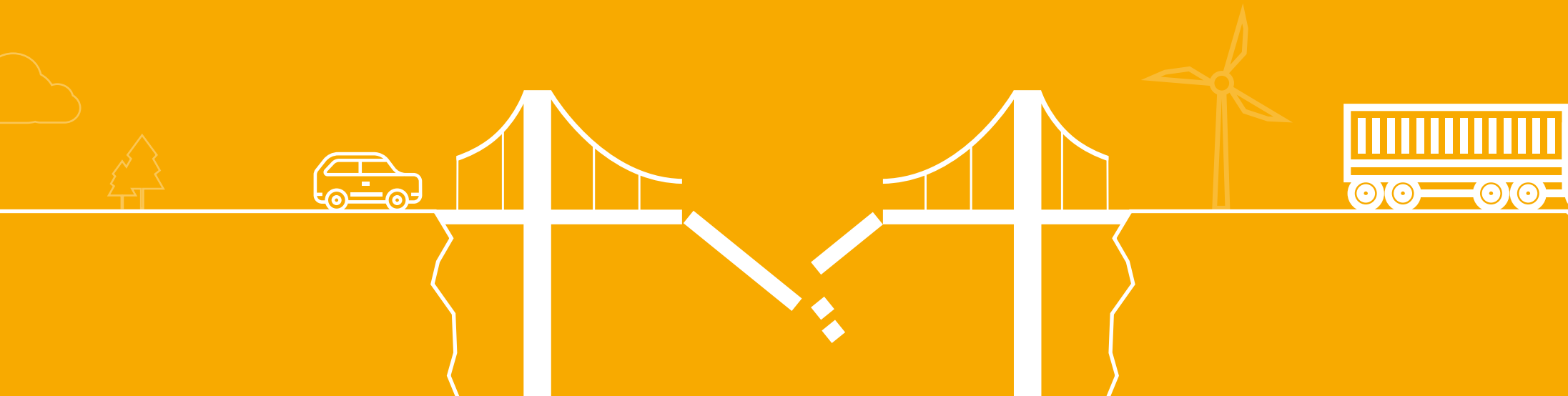
Without the establishment of an independent authority to oversee information providers' decisions regarding disclosure or an appeals process to challenge these decisions, the public's access to information is unilaterally subject to the providers' interpretations of the policy and entirely driven by their individual interests. The resulting inconsistency in disclosure does not constitute real accountability. Rather, in the best case, it encourages over-censorship; in the worst case, it provides stronger cover for corruption and poor governance.

Several UN bodies have already recognized this concern and responded accordingly; the UN Environment Programme (UNEP), UNDP, and World Bank all have both internal review mechanisms and external, independent panels for evaluating appeals.

#### **We recommend that:**

- ◇ Information providers are required to provide written justification in any instance in which they opt to withhold information during the submission of documents.
- ◇ Internal review mechanisms are established to evaluate information received by information providers and ensure that only information that falls within a restricted and narrowly defined set of exemptions is withheld from public access;
- ◇ Procedures are amended so that partial redaction of a document does not preclude public access to the remainder of the document;
- ◇ An external and independent appeals mechanism is established, one that is hosted by an independent ombudsperson or commissioner, is protected against political interference, and has the competence to make decisions; and
- ◇ Responses to requests for appeal are promptly delivered and that clear and thorough reasoning is provided in cases where the final determination upholds the decision to withhold information from public access.

3 THE POLICY DOES  
NOT COVER ALL  
CORE WORKING  
DOCUMENTS



The Information/Document Access Policy sets out categories of information that are affirmatively subject to public access: information related to the ITU's treaty-making conferences, its governance and management, and its operational activities. The policy covers outcome reports, plans, and other final versions of output documents; in the final version of the policy, access has been expanded further to include input documents provided to all conferences, Council sessions and working group meetings, and advisory group meetings. This greater openness is a welcome shift in policy, though it remains concerning that these input documents are subject to overbroad exemptions based on the sole discretion of information providers, as we discussed earlier.

There's still one significant category of internal documentation that's withheld from public access: input and working documents related to the development of standards, manuals, and guidelines—effectively, ITU's core body of work.

The ITU's mandate ranges from developing security standards for telecommunication architecture to producing policy guidelines for increasing broadband access. For every person who relies on telecommunication networks to receive and impart information—and for every person who remains unable to access them—the ITU's greatest impact lies in the decision-making of its standards, manuals, and guidelines. These outputs are subsequently implemented by governments, industry, and technical communities in the development and management of telecommunication infrastructure around the world. While the final versions of most ITU outputs are made publically available, the ITU policy does not allow the public to access any of the Member contributions, drafts, and working documents that together comprise their development.

It may appear at first that the availability of final versions of ITU outputs is enough to satisfy the public interest. However, access to contributions, drafts, and working documents enables the public's right to participation, which is one of the most important functions of the right to information. These process documents allow people to better understand the analyses and deliberations that form the foundations for decisions that impact their lives. Citizens can view the proposals and contributions made by their own governments as part of a well-informed public. And external stakeholders including civil society can more effectively follow developments and reach out to government representatives or industry allies to provide expertise where needed, leading to outcomes that ultimately have greater legitimacy among the public.

**We recommend that:**

- ◇ Public access is extended to all internal documents, including input and working documents, related to the development of standards, manuals, and guidelines.

# WHERE DO WE GO FROM HERE?



In its [Resolution 71](#), the ITU Council clearly established transparency as a core value of its strategic plan, recognizing that transparency engenders accountability in its decision-making processes and outcomes. However, the current Information/Document Access Policy does not meet this commitment. Not only does the policy fail to facilitate robust access to information in its current form; it appears that its provisions—and omissions—are designed to provide the greatest cover to ITU Members seeking to set telecommunication standards and policy-making, while avoiding real public participation or accountability. Yet, a stronger policy for accessing information at the ITU has the potential to strengthen the quality and benefit of the corpus of ITU standards, research, and recommendations. An improved access policy is necessary to ensure that the global telecommunication infrastructure is an enabling environment for the free and full exercise of human rights, as well as sustainable economic and social development.

## We finally recommend that:

- ◇ The ITU implements trainings and other internal education programming to develop a stronger understanding of access to information within the organizational culture;
- ◇ The Information/Document Access Policy is subject to a comprehensive review process held on a regular basis to monitor implementation and provide opportunity for revision to better align it with international best practices. This review process should include a public consultation that is open to all stakeholders, including non-Members of the ITU. The recommendations of these consultations should be meaningfully considered in future updates to the policy; and
- ◇ Any information disclosed as a result of a public request for access is published on the ITU website in multiple formats to ensure that it is accessible and available to the widest range of users for the widest range of purposes. In particular, information must be retrievable, downloadable, and searchable, with no restrictions placed on its use.



**ARTICLE 19**

**DEFENDING FREEDOM  
OF EXPRESSION AND INFORMATION**

---

**ARTICLE 19**

Free Word Centre  
60 Farringdon Road  
London,  
EC1R 3GA  
United Kingdom

**T:** +44 20 7324 2500

**F:** +44 20 7490 0566

**E:** [info@article19.org](mailto:info@article19.org)

**W:** [www.article19.org](http://www.article19.org)

**Tw:** [@article19org](https://twitter.com/article19org)

**Fb:** [facebook.com/article19org](https://facebook.com/article19org)