

The Right to Access Information in Convenient with Human Rights Laws: Facts and Solutions in Vietnam

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Abstract. The right of access to information has moved from a governance reform to a recognised component of international human rights law, yet the distance between formal legislation and effective enjoyment remains a central concern in comparative scholarship. This article develops a seven-component normative benchmark maximum disclosure and the scope of duty-bearers, personal scope, proactive disclosure, request procedures, narrow exceptions under a three-part test, independent review, and protection and promotion drawn from Article 19 of the International Covenant on Civil and Political Rights, General Comment No. 34, regional case law and comparative scholarship. Using doctrinal and comparative analysis, it applies this benchmark to Viet Nam's Law on Access to Information No.01/2026/QH16, in force since 1 September 2026. The 2026 Law marks real progress: it widens the range of duty-bearers, mandates digital proactive disclosure, permits partial release of records and supports persons with disabilities, ethnic minorities and residents of disadvantaged areas. Four gaps remain against international standards: the restriction of the right to citizens, the absence of a general harm and public-interest test, the lack of an independent review body, and broadly worded prohibited acts. The article argues that these gaps will be resolved chiefly at the implementation stage and proposes seven measures for doing so. It offers an early human-rights assessment of a new national statute and a transferable benchmark for comparable jurisdictions.

1. INTRODUCTION

At its first session in 1946, the United Nations General Assembly declared that “freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated” (United Nations General Assembly [UNGA], 1946). More than seven decades later, the Assembly proclaimed 28 September the International Day for Universal Access to Information, building on UNESCO's 2015 proclamation (UNGA, 2019). The 2030 Agenda devotes Sustainable Development Goal target 16.10 to public access to information and the protection of fundamental freedoms, although “in accordance with national legislation and international agreements” (UNGA, 2015). Since the 1990s, national access-to-information laws have spread so rapidly that Ackerman and Sandoval-Ballesteros (2006) called the phenomenon a “global explosion.”

The spread of legislation has not, however, settled what the right requires or whether it works in practice. Scholarship follows two broad strands. The normative strand asks whether access to information is a human right in its own right and what its content should be (Birkinshaw, 2006; Bishop, 2012; Mendel, 2008; Peled & Rabin, 2011). The empirical and political strand examines why governments adopt such laws, how they are used, and how states respond once they are in force (Michener, 2011; Roberts, 2006; Worthy, 2017; Fenster, 2017). Much of the empirical work concentrates on jurisdictions with long-standing regimes. Less attention has been paid to assessing a newly enacted statute against international human rights standards at the moment it enters into force, when interpretive choices are still open and implementing instruments are still being drafted. This article addresses that gap.

Viet Nam offers a timely case. The 2013 Constitution recognises the right of citizens to access information in Article 25, and the first Law on Access to Information (Law No. 104/2016/QH13) took effect on 1 July 2018. On 23 April 2026 the 16th National Assembly passed the Law on Access to Information No. 01/2026/QH16 (“the 2026 Law”), which took effect on 1 September 2026 and replaced the 2016 Law (National Assembly, 2026; Tuyen Quang Provincial Department of Justice, 2026). On 26 August 2026 the Government issued Decree No. 337/2026/ND-CP detailing implementation (Government, 2026). Because this article was completed as the new framework came into operation, the assessment is necessarily an early and forward-looking one.

The article pursues three research questions. First, what are the nature and value of the right of access to information within the human rights framework? Second, what do international and regional law require of states, and what are the legitimate limits of the right? Third, to what extent does the 2026 Law meet those requirements, and what should be done during implementation? It makes three contributions. It consolidates dispersed international sources into a seven-component benchmark that can be reused in other jurisdictions. To the author's knowledge, it offers one of the first systematic benchmarkings of the 2026 Law against that standard. And it derives implementation-oriented recommendations from the gaps identified. Section 2 explains the methodology and its limits. Section 3 sets out the theoretical foundations, Section 4 reviews international and regional standards, and Section 5 presents the benchmark. Section 6 assesses the Vietnamese framework, Section 7 discusses the findings and recommendations, and Sections 8 and 9 address limitations and conclude.

2. METHODOLOGY

The study uses three complementary methods. First, doctrinal (normative) analysis interprets the relevant treaty provisions, authoritative interpretive texts and domestic legislation. Second, comparative analysis sets the Vietnamese framework against

international and regional standards. Third, case-law analysis examines selected decisions of the UN Human Rights Committee, the Inter-American Court of Human Rights and the European Court of Human Rights. These decisions were chosen because they are repeatedly cited as leading authority on the existence of a right to information, the test for restrictions, or the limits of state secrecy.

The benchmark in Section 5 was built by triangulating three types of source: (i) binding treaty text and its authoritative interpretation, notably Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and General Comment No. 34; (ii) regional treaties and jurisprudence; and (iii) soft-law principles and comparative surveys, including the ARTICLE 19 principles (Article 19, 1999), the Tshwane Principles (Open Society Justice Initiative, 2013) and Mendel's (2008) comparative survey for UNESCO. The benchmark is a heuristic yardstick, not a scoring index. Quantitative instruments such as the Global Right to Information Rating (Centre for Law and Democracy & Access Info Europe, n.d.) offer a complementary approach and are a natural next step for comparative work.

Evidence on the 2026 Law comes from its official designation and text, Decree No. 337/2026/ND-CP, the Prime Minister's implementation plan (Decision No. 918/QĐ-TTg), official introductory materials prepared by the Tuyen Quang Provincial Department of Justice (2026), and two scholarly analyses published in 2026 (Nguyen & Nguyen, 2026; Vũ & Bùi, 2026). Article numbers cited below follow these materials. Where they differ from the promulgated text in the Official Gazette, the latter prevails. As no implementation data yet exist, the study assesses the law in the books, not the law in action. Section 8 returns to this limitation.

This study has four limitations. First, it assesses the law in the books. No implementation data on requests, refusals or appeals yet exist, so claims about effectiveness are necessarily prospective. Second, article-level assessments rely on official introductory materials and should be checked against the promulgated text and the final decrees. Third, the Vietnamese-language scholarly literature on the 2026 reform is still very limited, and this study draws on two 2026 analyses. Fourth, the benchmark is qualitative and reflects choices about which sources to prioritise.

Future research could usefully (i) map the 2026 Law against a quantitative instrument such as the Global Right to Information Rating; (ii) gather empirical data on request volumes, refusal rates and complaint outcomes once the first reporting cycles are complete; (iii) conduct comparative studies with other Southeast Asian regimes; and (iv) examine how agencies interpret Articles 15 and 16 in practice, including through analysis of refusal decisions.

3. LITERATURE REVIEW

3.1. Concept

International literature uses "freedom of information," "right to information," "access to information" and "right to know" almost interchangeably, although each term places a slightly different emphasis (Bishop, 2012; Mendel, 2008). Vietnamese constitutional terminology has itself shifted. The 1992 Constitution (amended in 2001) recognised a right "to be informed" in Article 69, whereas the 2013 Constitution speaks of a right of access to information in Article 25 (National Assembly, 2001, 2013). The change signals a stronger emphasis on the active role of the rights-holder: citizens are not merely passive recipients of information but may seek, request and use it.

In its narrowest and most common sense, the right is an individual's entitlement to request and receive information created or held by public authorities, matched by a corresponding obligation on those authorities. That obligation covers both the provision of information on request and the proactive disclosure of information of public interest (Human Rights Committee [HRC], 2011, paras. 18–19).

3.2. The Value of the Right

Three kinds of value are commonly attributed to the right. The first is intrinsic value, linked to human dignity and autonomy. Individuals cannot take informed decisions about their own lives if they are denied information about state decisions that directly affect them, such as personal records, zoning plans, health policies or administrative decisions (Birkinshaw, 2006; Peled & Rabin, 2011).

The second is instrumental value: access to information is a means of securing other rights. The Committee on Economic, Social and Cultural Rights (CESCR, 2000, para. 12(b)) treats information accessibility as a component of the right to health. In *Guerra and Others v. Italy* (1998) the European Court of Human Rights held that the state's failure to inform residents about the risks of a nearby chemical plant breached the right to respect for private and family life. The Aarhus Convention (United Nations Economic Commission for Europe [UNECE], 1998) treats access to environmental information as a precondition of public participation and access to justice.

The third is structural value for the rule of law and democracy. Sen (1999) argues that governments respond to crises when exposed to a free press and public scrutiny, and that severe famines rarely occur where information flows freely. Stiglitz (2002) contends that information asymmetry between state and society fosters corruption and flawed policy, with transparency acting as an institutional safeguard. Empirical work is broadly consistent with this view: Cordis and Warren (2014) find that stronger freedom of information laws in US states are associated with greater exposure of public corruption. Birkinshaw (2006) and Bishop (2012) go a step further, arguing that the right is not merely a governance tool but has emerged as a distinct human right.

3.3. Critical Perspectives

These claims are contested. Fenster (2017) warns against the "transparency fix": access laws do not automatically generate accountability, because the information supplied may be overwhelming, selective or misinterpreted, and the state may adapt its practices to circumvent its obligations. Roberts (2006) documents how governments, after enacting such laws, moved information to bodies outside their reach, prolonged procedures or expanded the realm of secrecy. Schauer (2011) reminds us that transparency has costs and that, in some domains, full disclosure can impair the quality of internal deliberation. Hazell and Worthy's (2010) assessment of the United Kingdom's Freedom of Information Act suggests that greater formal transparency does not translate automatically into greater public trust. Hood and Heald (2006) add that transparency takes several distinct forms whose effects differ.

These counterarguments do not negate the right. They show that it is meaningful only if the institutional design is robust on four points: the scope of covered entities, the exceptions, the procedures, and independent review. These four points structure the analysis in the sections that follow.

3.4. State Obligations

Under the tripartite typology of human rights law, the state must respect the right (refrain from hindering people from seeking or receiving information), protect it (prevent third parties, including private bodies holding information of a public nature, from creating obstacles), and fulfil it (proactively disclose information and establish the necessary procedures and infrastructure). The obligation of proactive disclosure is increasingly seen as a second pillar alongside the request-based mechanism, because it relieves citizens of the burden of knowing exactly what to ask for (Darbishire, 2010; Article 19, 1999).

One point of principle matters for what follows. Article 19 of the ICCPR is not subject to progressive realisation in the way that many economic and social rights are. When this article later proposes a “gradual” roadmap for reform, it therefore refers to pragmatic sequencing within a framework of existing obligations, not to a legal justification for delay.

4. FINDINGS AND DISCUSSION

4.1. International and Regional Legal Standards

4.1.1. United Nations

Article 19 of the Universal Declaration of Human Rights (1948) and Article 19(2) of the ICCPR (1966) protect the freedom to “seek, receive and impart” information and ideas of all kinds, regardless of frontiers (UNGA, 1948, 1966). The word “seek” supplies the textual basis for treating access to information as a component of freedom of expression. Viet Nam acceded to the ICCPR on 24 September 1982 and is bound by this provision.

The Human Rights Committee gave the most authoritative interpretation in General Comment No. 34 (2011). Article 19(2) embraces a right of access to information held by public bodies, regardless of the form in which it is stored, its source or its date of production, and public bodies may include entities performing public functions (HRC, 2011, para. 18). Paragraph 19 sets out four requirements: the state must proactively make information of public interest available; it must make every effort to ensure easy, prompt, effective and practical access; request procedures must be clear, handled in a timely manner and not made prohibitive by cost; and refusals must be reasoned, with a mechanism for appeal (HRC, 2011, para. 19).

In individual communications, the Committee applied this reading in *Toktakunov v. Kyrgyzstan* (2011), concerning a refusal to provide information held by the state. It held that the state must show that any restriction is necessary under Article 19(3) and that a generic invocation of confidentiality is insufficient.

The UN, OSCE and OAS Special Rapporteurs on freedom of expression have repeatedly affirmed in joint declarations that the right of access to information held by public bodies is a fundamental human right to be given effect through comprehensive legislation (UN Special Rapporteur on Freedom of Opinion and Expression et al., 2004). The 2015 report of Special Rapporteur David Kaye adds another dimension: protecting sources and whistleblowers is a precondition for information of public interest to reach the public (Kaye, 2015).

The Convention on the Rights of Persons with Disabilities (CRPD, Articles 9 and 21) obliges states to provide information in formats and technologies suited to different disabilities, and the Convention on the Rights of the Child (Articles 13 and 17) recognises children’s right to seek and receive appropriate information (UNGA, 1989, 2006). These provisions bear directly on the 2026 Law’s new support measures for persons with disabilities and persons under 18.

4.1.2. The Americas

In *Claude Reyes et al. v. Chile* (2006), the Inter-American Court of Human Rights became the first international tribunal to affirm expressly that Article 13 of the American Convention protects the right to request access to state-held information (para. 77). The state must give a reasoned answer, and any restriction must be prescribed by law, pursue a legitimate aim and be proportionate. In *Gomes Lund et al. v. Brazil* (2010), the Court held that the state cannot rely on official secrecy to refuse information about serious human rights violations, because the right to know the truth prevails over administrative confidentiality. The Organization of American States (2010) subsequently adopted a Model Law on Access to Public Information.

4.1.3. Europe

The European Court of Human Rights illustrates how case law evolves. In *Leander v. Sweden* (1987) and *Gaskin v. United Kingdom* (1989), it held that Article 10 of the European Convention did not confer a right of access to information held by public authorities. The position shifted from the late 2000s in cases such as *Társaság a Szabadságjogokért v. Hungary* (2009), *Kenedi v. Hungary* (2009) and *Youth Initiative for Human Rights v. Serbia* (2013). The Court recognised the “social watchdog” role of non-governmental organisations, researchers and the press, and treated a state monopoly over information of public interest as an interference with freedom of expression.

In *Magyar Helsinki Bizottság v. Hungary* (2016), the Grand Chamber consolidated this line of authority and identified four criteria for deciding when Article 10 gives rise to a right of access: the purpose of the request, the nature of the information sought, the role of the applicant, and whether the information is ready and available. Academic commentary on the earlier shift can be found in Hins and Voorhoof (2007). Beyond case law, the Council of Europe Convention on Access to Official Documents (Tromsø Convention, CETS No. 205), opened for signature in 2009, entered into force on 1 December 2020 and is the first binding multilateral treaty dedicated to the field (Council of Europe, 2009).

4.1.4. Africa and ASEAN

Article 9 of the African Charter on Human and Peoples' Rights recognises the right to receive information. The Model Law on Access to Information for Africa (African Commission on Human and Peoples' Rights, 2013) and the Declaration of Principles on Freedom of Expression and Access to Information in Africa (African Commission on Human and Peoples' Rights, 2019) elaborate that right.

In Southeast Asia, Article 23 of the ASEAN Human Rights Declaration (2012) recognises the right to seek, receive and impart information, while Article 8 permits limitations on the exercise of rights for purposes that include national security, public order and "general welfare." Article 7 also stresses regional and national context in realising rights. The Declaration is not legally binding, and these qualifications make it a weaker benchmark than the ICCPR. It remains a significant regional reference point for Viet Nam (ASEAN, 2012).

Although no single global treaty is dedicated to the right, these sources converge on three points: access to information is a component of freedom of expression; the obligation extends to all bodies exercising public functions; and exceptions must be narrow, prescribed by law and subject to independent review. The "nine principles" of ARTICLE 19 (1999) and Mendel's (2008) comparative survey are widely used as technical reference frameworks for these points of convergence.

4.2. A Normative Benchmark for National Legislation

4.2.1. Seven Components

Drawing on the sources above, seven components can be used to evaluate a national legal framework.

1. Maximum disclosure and scope of duty-bearers. All information held by public authorities is presumed accessible. The bodies covered must include not only the three branches of government but also entities performing public functions or using public resources (HRC, 2011, para. 18; Mendel, 2008). "Information" should cover all forms of storage.
2. Subject of the right. The ICCPR speaks of "everyone," not merely "citizens." This is a crucial distinction when compared with national laws that confine the right to citizens.
3. Proactive disclosure. The state must publish essential categories of information, such as organisational structure, budgets, administrative decisions, procurement outcomes and public-service procedures, in accessible formats and, in the digital age, preferably as open data (Darbishire, 2010).
4. Request procedures. Procedures should be simple, require no statement of reasons, observe reasonable time limits, carry non-prohibitive costs, offer support to people facing difficulties (illiteracy, disability, limited proficiency in the dominant language), and ensure that refusals are written and state their legal grounds (HRC, 2011, para. 19).
5. Narrow exceptions and the three-part test. Exceptions must be clearly prescribed by law, pursue a legitimate aim listed in Article 19(3), and apply only where disclosure would cause substantial harm to that aim and the harm outweighs the public interest in disclosure. If only part of a document falls within an exception, the remainder must be released (Mendel, 2008; Article 19, 1999).
6. Independent review. A person refused access must be able to appeal to a body independent of the agency concerned, such as a court or an information commissioner, with power to examine the withheld document itself (Article 19, 1999; Mendel, 2008).
7. Protection and promotion. This covers protection for those who disclose information in good faith in the public interest, safeguards against penalising requesters, and promotional measures such as civil-servant training, sound record-keeping, periodic reporting and oversight by an independent body or parliament.

4.2.2. Limits on the Right and the Principle of Balancing

The right is not absolute. Article 19(3) of the ICCPR permits restrictions to respect the rights or reputations of others and to protect national security, public order, public health or public morals, but only where they are provided by law and necessary. General Comment No. 34 clarifies that the law imposing restrictions must be precise enough for individuals to regulate their conduct and must not confer unfettered discretion on those charged with its execution (para. 25), and that restrictions must be proportionate and use the least intrusive means available (paras. 22, 34) (Joseph & Castan, 2013). In the access context, the harm test and the public-interest override are what convert a list of exempt categories into a genuine proportionality assessment.

State secrets. General Comment No. 34 (para. 30) stresses that secrecy laws must not be used to conceal information of legitimate public interest where disclosure would not harm national security. The Johannesburg Principles (Article 19, 1996, adopted 1995) and the Tshwane Principles (Open Society Justice Initiative, 2013) elaborate the point. The Tshwane Principles state that certain categories, such as information on serious human rights violations, cannot be withheld on national security grounds. The label "secret" cannot be a magic wand that ends all inquiry, as *Gomes Lund* illustrates.

Personal data. Access to information and privacy are not opposites but rights to be balanced. In *Magyar Helsinki*, the Grand Chamber found a violation of Article 10 where information essential for public oversight had been withheld, reasoning that it could be disclosed without disproportionate harm to privacy interests. Recent legislative trends, including in Viet Nam, strengthen personal data protection alongside transparency. The risk is that data-protection rules become a broad ground for refusal. A clear public-interest balancing mechanism and anonymisation techniques allow disclosure where the public interest prevails.

Restrictions on use. The state may penalise the use of information to defame others or cause actual harm, but any prohibition must be precise. Bans based on broad, unquantifiable concepts risk a "chilling effect" on those seeking information.

4.3. The Vietnamese Framework Assessed

4.3.1. International Commitments and Constitutional Foundation

Besides the ICCPR, Viet Nam is party to the ICESCR, the CRC and the CRPD, and is a member of ASEAN. In 2019 the Human Rights Committee reviewed Viet Nam's third periodic report and expressed concern about restrictions on freedom of expression online and in criminal law, including Articles 117 and 331 of the 2015 Penal Code, recommending a review to ensure compliance with Article 19 (HRC, 2019). This conclusion is directly relevant to assessing the access framework, because the

benchmark is the set of obligations Viet Nam has itself accepted.

The 2013 Constitution permits human rights and citizens' rights to be limited only by law and only where necessary for national defence, national security, social order and safety, social morality or public health (Article 14(2)), and recognises the right of access to information in Article 25 (National Assembly, 2013). This model is structurally compatible with Article 19(3) of the ICCPR. However, "necessary" must be interpreted according to international standards of necessity and proportionality, not as a standard of administrative convenience.

4.3.2. The 2016 Law and the 2026 Reform

The 2016 Law (Law No. 104/2016/QH13) was Viet Nam's first specialised legislation in this field (National Assembly, 2016), implemented under Decree No. 13/2018/ND-CP (Government, 2018). After nearly a decade, policymakers identified four categories of shortcoming. First, provisions on information-providing bodies no longer fitted the reorganised state apparatus and the two-tier structure of local government. Second, the grounds for exemption were applied inconsistently, particularly the reference in Article 6(2) to information that would "harm the interests of the State." Third, the list of information subject to disclosure had not been adequately compiled or updated. Fourth, procedural requirements remained cumbersome for a digital government (Tuyen Quang Provincial Department of Justice, 2026, pp. 4–6). The 2026 Law has four chapters and 31 articles, one chapter and six articles fewer than the 2016 Law. Its main innovations are as follows:

- i. Wider duty-bearers. Besides state agencies, public service delivery units providing basic and essential public services must disclose and provide information. State-owned enterprises, socio-political organisations and associations assigned tasks by the state are not covered (Tuyen Quang Provincial Department of Justice, 2026, p. 9).
- ii. Created and held information. The Law distinguishes information created by an agency from information it holds. Agencies must provide the former and, when necessary to protect the public interest or public health, the latter (Articles 2 and 10).
- iii. Partial release. Where a record contains both accessible and non-accessible content, the agency may consider releasing the accessible portion if it can reasonably be separated (Article 10(4)).
- iv. Limited public-interest mechanism. The head of an agency may decide to disclose information on private life, personal secrets, personal data, family secrets or business secrets without consent when necessary for the public interest or public health (Article 16(4)).
- v. Digital proactive disclosure. Article 17 lists 21 categories of information subject to mandatory disclosure through channels that now include data portals and official community pages, within five working days of the information being generated unless specialised law provides otherwise.
- vi. Request procedures. Requests may be made in person, by post or online, and requesters may photograph or copy documents at the agency's office. The time limit is 12 days from receipt of a valid request, extendable by up to 12 days. Citizens pay no fees, only actual costs of printing, copying, photographing and posting.
- vii. Support for vulnerable groups. Additional provisions cover persons with disabilities, ethnic minorities and residents of border, island, mountainous and disadvantaged areas, and there are specific rules for persons lacking civil act capacity and persons under 18.
- viii. Alignment with new legislation. The Law is aligned with the Law on Personal Data Protection (No. 91/2025/QH15), the Law on Data 2024, the Law on Archives 2024 and the Law on Implementation of Grassroots Democracy 2022.

Decree No. 337/2026/ND-CP further details measures to guarantee rights and facilitate access for persons with disabilities, ethnic minorities and residents of disadvantaged areas. The Prime Minister's implementation plan (Decision No. 918/QĐ-TTg of 21 May 2026) tasks ministries, sectors and localities with reviewing relevant legal documents and reporting to the Ministry of Justice by 1 August 2026 (Prime Minister, 2026).

4.3.3. Benchmarking Against International Standards

Table 1 compares the 2026 Law, as described in official introductory materials, with the seven components of Section 5. Ratings are the author's qualitative assessment.

Table 1. The 2026 Law benchmarked against the seven-component standard

Component	Provisions of the 2026 Law	Assessment
C1. Duty-bearers	State agencies and public service delivery units providing basic, essential services	Significant expansion. Not yet covering entities using public resources such as state-owned enterprises.
Right-holders	Citizens; foreigners residing in Viet Nam may request only information directly related to their own rights and obligations (Article 29)	Narrower than Article 19 of the ICCPR ("everyone").
C3. Proactive disclosure	Article 17 (21 categories); digital channels; five-working-day deadline	Marked progress.
C4. Procedures and costs	No fees beyond actual costs; online submission; 12-day period, extendable by 12 days	Appropriate; depends on implementing decrees.
C4/C5. Severability	Article 10(4)	Consistent with standards.
C5. Exceptions	Article 15 (denial of access); Article 16 (conditional access)	Specified in detail, but no general harm test or public-interest test.
C6. Independent review	Complaints, denunciations, administrative litigation; Government exercises unified state management	No specialised independent institution.
C7. Protection and promotion	Prohibition of obstruction, intimidation or retaliation against requesters and information providers (Article 5)	Partial progress; no dedicated whistleblower protection mechanism evident.
Restrictions on use	Article 5(2), (3) and (6)	Risk of overbreadth and vagueness.

Source: Tuyen Quang Provincial Department of Justice (2026).

Before turning to the gaps, the 2026 Law's achievements deserve recognition. It integrates digital technology into disclosure and provision of information. It resolves the disconnect left by the omission of the district level and the shift to commune-level

administration. It requires systematic maintenance of information databases, supports vulnerable groups, and provides a six-month transition period for agencies to begin disclosing the Article 17(1) information that was not previously subject to disclosure requirements (Tuyen Quang Provincial Department of Justice, 2026, pp. 20–21). These measures align with the CRPD and with standards on proactive disclosure.

4.4. Analysis of the Principal Gaps

4.4.1. Personal Scope

International standards attach the right to “everyone,” whereas the Law grants it to citizens, with a narrow exception for resident foreigners. This creates difficulties for stateless persons, migrant workers and foreign non-governmental organisations lawfully operating in Viet Nam, who have a legitimate interest in information on policy, the environment and workplace safety. Restricting access by nationality does not automatically violate Article 19, since states may have legitimate legislative reasons for doing so. Applied strictly, however, the limitation could conflict with the ICCPR’s non-discrimination principle. The appropriate step is to widen the class of eligible persons through decrees and implementing practice.

4.4.2. Grounds for Restriction and the Harm Test

The 2016 Law (Article 6(2)) used formulations such as “interests of the State” and “causing harm” to a list of interests including national defence, national security, international relations, public order and safety, social morality and public health, and enforcement agencies themselves acknowledged that they were interpreted inconsistently (Tuyen Quang Provincial Department of Justice, 2026, pp. 5–6). Under General Comment No. 34, “interests of the State” is not among the legitimate aims in Article 19(3), which refer to national security and public order rather than to the interests of the state apparatus. The 2026 Law is said to make Articles 15 and 16 more specific and consistent, but the promulgated text must be examined closely to determine whether open-ended concepts survive. Article 16(4) is a step forward in permitting disclosure in the public interest. Yet it applies only to private information and trade secrets, it is discretionary (a decision for the “head” of the agency), and it has not been established as a general principle for all exceptions. Vũ and Bui (2026), benchmarking the draft Law against model laws, likewise identify structural gaps in enforcement institutions and procedural mechanisms.

4.4.3. State Secrets and Specialised Laws

The 2018 Law on Protection of State Secrets defines state secrets by reference to a list issued by the Prime Minister (National Assembly, 2018). Because the access Law excludes information classified as a state secret, the real scope of the right depends on the breadth of that list and on the quality of declassification. Consistently with General Comment No. 34 and the Tshwane Principles, mechanisms should allow competent authorities and courts to review secrecy classifications when access is requested, particularly for information on corruption, waste, or damage to the environment and public health.

4.4.4. Independent Review

Under Article 13 and the explanatory materials, a person whose request is refused may lodge a complaint or denunciation or bring administrative litigation, while the Government retains unified state management of access to information (Tuyen Quang Provincial Department of Justice, 2026, p. 16). This does not yet meet the international standard of independent, prompt and low-cost review. Internal administrative complaints lack structural independence, and court proceedings entail significant cost, delay and barriers for ordinary citizens, especially in disadvantaged areas. Many jurisdictions have created an information commissioner or specialised tribunal empowered to examine withheld documents and issue binding decisions (Mendel, 2008). Nguyen and Nguyen (2026) likewise question whether the framework can secure the substantive right. A feasible Vietnamese roadmap could start with a specialised focal point of relative independence, housed in the Ministry of Justice or the Government Inspectorate, before considering a more independent institution.

4.4.5. Prohibited acts

Article 5 prohibits obstructing, intimidating or victimising requesters and providers, and destroying or falsifying information. It also prohibits “providing or using information to oppose the State,” “undermining policies of solidarity,” “insulting beliefs or religions,” and abusing the right to commit unlawful acts or obstruct the normal operation of agencies (Tuyen Quang Provincial Department of Justice, 2026, pp. 10–11). Several of these concepts are broad. Under paragraph 25 of General Comment No. 34, restrictive laws must be precise enough for people to foresee the legal consequences of their conduct. Broad application could deter people from requesting or using information. Grounds for refusal such as “exceeding capacity to respond or affecting the normal operation of the agency” likewise need narrow interpretation and specific guidance so that they do not become catch-all excuses (Tuyen Quang Provincial Department of Justice, 2026, p. 20).

4.4.6. Whistleblower Protection and the Wider Legal Ecosystem

The Law does not replace whistleblower protection found in legislation on denunciations and anti-corruption. Yet, as Kaye (2015) observes, the right of access is fully effective only when insiders dare to disclose information of public interest without fear of reprisal. Alignment among the Law on Access to Information, the Law on Protection of State Secrets and legislation on cybersecurity, the press and criminal matters requires the comprehensive review foreseen in the Government’s implementation plan (Prime Minister, 2026).

4.5. Discussion

The four principal gaps share a structure. The 2026 Law is precise where it regulates procedure, with defined deadlines, channels, cost rules and duties of digital disclosure. It is less precise, or leaves the outcome to discretion or to other statutes, where it defines substantive limits: who may claim the right, when information may be withheld, who reviews a refusal, and what conduct is prohibited. That pattern is not unique to Viet Nam. Roberts (2006) and Worthy (2017) show that governments often accept the visible architecture of transparency while retaining latitude where the law meets contested interests, and Berliner (2014) shows that adoption is shaped by domestic political incentives. It follows that the practical meaning of the 2026 Law will depend less on its text than on interpretive guidance, implementing decrees, the competence of officials and the availability of credible correction of wrongful denials.

Two features nonetheless give reason for cautious optimism. The Law already contains the mechanisms on which a stronger regime could be built: partial release, a public-interest clause and a broad proactive-disclosure list. Moreover, the implementation plan and Decree No. 337/2026/ND-CP create a channel through which interpretive gaps can be addressed without amending the statute.

4.6. Recommendations

First, Make the harm test and public-interest test general principles. When applying Articles 15 and 16, agencies should assess whether disclosure would cause actual harm to a legitimate interest, weighing it against the public interest, instead of refusing simply because information falls within a category. This can be achieved through guidance, standard refusal templates and civil-servant training.

Build a faster, cheaper and more independent review mechanism. In the short term, define time limits and procedures for access-to-information complaints and allow the reviewing body, or a court, to inspect the withheld documents. In the medium term, explore a dedicated independent institution.

Clarify prohibited acts. Implementing decrees and enforcement practice should target specific, measurable harms, such as the unlawful dissemination of personal secrets, rather than vague political concepts. Sanctions against requesters should be applied only for clear violations causing actual harm.

Refine the scope of duty-bearers and right-holders. Consider extending access rights to lawfully resident foreigners in areas directly related to health, the environment and workplace safety. At the same time, review the disclosure regimes of state-owned enterprises and organisations using state budget funds, currently governed by specialised laws, to secure consistency in content and remedies.

Measure and publish implementation data. International standards call for public annual reports on the number of requests, refusal rates, grounds for refusal and complaint outcomes. Without such data it is impossible to judge how far the right is exercised, and conclusions about the Law's effectiveness would rest on impressions. Cooperation with independent surveys of provincial governance and public administration could add citizens' perspectives.

Balance personal-data protection with transparency. Unified anonymisation guidance should be issued so that official documents can be released with identifying data masked, in preference to outright refusal. This uses the partial-release principle in Article 10(4).

Build capacity and a culture of transparency. New standards are not enough without civil-servant training, investment in digitizing records, development of archiving systems and public legal education. Reviews of the 2016 Law identified this as a critical bottleneck (Tuyen Quang Provincial Department of Justice, 2026, p. 5).

5. CONCLUSION

The right of access to information has evolved from a governance initiative into a human right recognised in international and regional law, characterised by fairly consistent elements: maximum disclosure, proactive disclosure, simple procedures, narrow exceptions and independent review. Viet Nam's Law on Access to Information (2026), in force since 1 September 2026, is a significant reform, particularly on digital proactive disclosure, request procedures, support for vulnerable groups and partial release of records. Gaps against international standards remain on the personal scope of the right, the precision of grounds for restriction, the absence of a dedicated independent review mechanism and the breadth of prohibited acts. These gaps will largely be closed or widened during implementation, depending on how authorities interpret the exceptions, the quality of implementing decrees, the competence of officials, and whether citizens believe their requests are taken seriously. A law that is sound on paper becomes a substantive right only when citizens, lawyers, the media and civil society use it, and when wrongful denials are corrected through credible mechanisms. As Viet Nam advances the rule of law and digital transformation, guaranteeing access to information in line with human rights standards is not only an obligation arising from its international commitments but also a precondition for effective governance, anti-corruption efforts and public trust. Comparative studies and monitoring of implementation in the first years after 1 September 2026 will provide the essential basis for refining the framework.

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