

The Right to Access Administrative Information

الحق في الوصول إلى المعلومة الإدارية

Abdallah CHIBANI*, Mohamed Lamine Debaghine, setif 2 Universty
a.chibani@univ-setif2.dz

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Abstract:

The right to obtain information is one of humanity's fundamental rights and a pivotal pillar for entrenching democracy, enhancing transparency, and reinforcing accountability. It constitutes an effective means for empowering citizens to monitor public-authority performance, participate knowledgeably in the management of public affairs, and combat corruption. Consequently, many States—including Algeria—have enshrined this right within their constitutional and legislative frameworks. However, textual recognition alone is insufficient: a precise legal framework, genuine political will, effective institutional mechanisms, and independent oversight bodies are all required to ensure its practical implementation. This study will examine these necessary elements..

Key words: Administration; access to information; human rights; citizen.

Introduction:

The right to obtain information is a fundamental human entitlement and a central pillar in the construction of democratic societies, serving to strengthen transparency and accountability. No longer confined to media or journalistic contexts, this right has become an essential tool for enabling citizens to oversee the performance of public authorities, engage knowledgeably in public-affairs management, secure access to justice, and combat corruption.

The international human-rights system has enshrined this entitlement within a series of treaties and conventions, most notably Article 19 of the International Covenant on Civil and Political Rights, which explicitly guarantees the freedom to seek, receive, and impart information regardless of frontiers. Moreover, best international practices have solidified this right as a core principle of open governance and democratic accountability.

Against this backdrop, a growing number of countries—including Algeria—have incorporated this right into their constitutional and legislative orders, responding to international commitments and pursuing democratic-reform objectives. However, effective activation of the right to information does not end with constitutional recognition: it requires a clear and detailed legal framework, robust political commitment, and institutional mechanisms that guarantee genuine, practical access to administrative information.

Research Question

To what extent has the Algerian legal system succeeded in enshrining the right to access information?

Research Methodology

This study adopts an analytical and comparative approach. First, it examines the relevant Algerian legal texts. Second, it compares these provisions with the legislative frameworks of selected Arab States—namely Jordan, Morocco, and Tunisia—to identify strengths and weaknesses within Algeria's system. Finally, it draws lessons from States that preceded Algeria in this domain, focusing on legal drafting, institutional structures, and enforcement mechanisms.

* Corresponding Author

THE FIRST TOPIC: Enshrining the Right to Access Information

The right to obtain information ranks among the core entitlements associated with transparency, accountability, and meaningful participation in public affairs. Increasingly, it is viewed as a mechanism that empowers citizens to scrutinize the performance of public authorities, influence policy choices, and contribute to the fight against corruption

FIRST REQUIREMENT: Conceptualizing the Right to Access Information

The right to information has received prominent attention in literature addressing efforts to modernize public-administration practices within the broader wave of political and administrative reforms aimed at restructuring administrative bodies and bringing them closer to citizens. Scholars approach this right from multiple angles grounded in administrative science, political science, sociology, and economics.

From a management perspective, the New Public Management movement that emerged in the early 1980s in the United Kingdom and the United States stressed the need to embed openness and transparency within the criteria of good governance for public-sector management¹.

Several theories have underscored the added value of transparency in administrative institutions. Open System Theory, for instance, emphasizes managing information flows as a crucial factor in developing organizational structures and enhancing an agency's capacity to interact positively with its environment, thereby meeting stakeholders' expectations and adapting sustainably to external change².

Open government theory also highlights the public availability of information as a fundamental indicator of both the political system's openness and the state's administrative effectiveness. According to this view, the extent to which financial and administrative data on public policies are disclosed serves as a key measure of sound public sector governance; the more transparent an administration becomes, the more effective its activities and the better its ability to satisfy users' needs efficiently³.

Within political studies, administrative democracy theory foregrounds transparency and openness as values that redistribute power within and among administrative structures. Effective democratic balance, the theory argues, requires rethinking the relationship between administration and citizen by positioning transparency as a foundational legitimacy norm. In this regard, Carl Schmitt notes that political representation cannot attain legitimacy without honoring transparency, which demands that all public information be accessible to the populace⁴. Conversely, Hannah Arendt contends that secrecy and privacy provide a fertile ground for authoritarian practices, thereby undermining representative democracy, whose essence rests on publicity and open dialogue⁵.

From a legal rights perspective, the right to obtain information is an inherent, inalienable human right that must be guaranteed for every individual in accordance with fundamental human-rights principles such as equality, justice, and fairness. Owing to its pivotal role in realizing civil and political rights, certain scholars refer to information as "the oxygen of democracy." Access to information is deemed indispensable for exercising the right to participate in public affairs and for enriching public debate through open data, which, in turn, underpins good governance and safeguards the effective exercise of freedom of expression⁶.

The same logic applies to economic and social rights. The right to education and knowledge relies on the free flow of information, while rights related to a healthy environment and public health depend largely on access to data about pollutant emissions, water quality, and environmental conditions. Amartya Sen affirms that the effective enjoyment of basic rights and equal access to public goods necessarily hinge on unrestricted access to information, because only individuals who possess knowledge can participate meaningfully in decision-making and influence government policy⁷.

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Within this framework, some jurists define the right to information as “enabling individuals within the State to consult information concerning public services managed by the State, subject to reasonable procedural and substantive constraints prescribed by law, thereby ensuring the balanced, effective exercise of the right.” Others describe it as “the freedom to obtain, circulate, and disseminate information and ideas from diverse sources, a basic right that offers the public an authentic opportunity to form opinions and adopt positions freely and humanely, free from pressures or restrictions aimed at imposing views or suppressing dissenting ideas.”⁸

Transparency International defines the right to information as “a right established by law for citizens, permitting them to obtain information held by the State, its institutions, and its agencies.”⁹ These definitions reveal several essential attributes of the right to information:

- It is an intrinsic democratic right that should not be curtailed by differences in political systems or cultural particularities; rather, it remains constant as part of universal human rights.
- The right is accorded to all individuals without distinction of nationality, social status, or cultural background. Its inclusive nature reinforces equality and equal opportunity in accessing knowledge and participating in public affairs.

• **SECOND REQUIREMENT: Legislative Framework for the Right to Access Information**

Jordan is the first Middle-Eastern state to enact a statute specifically safeguarding the right to obtain information¹⁰. Law No. 47 of 2007 acknowledges every citizen’s entitlement to government data and establishes important enforcement mechanisms, including an Information Council that reviews requests and allows appeals against refusals before the Council itself or the High Court of Justice¹¹.

Despite continuous efforts to amend the statute in line with Jordan’s commitments under the Open Government Partnership, the revised text did not secure parliamentary approval until March 2024. The new version represents a qualitative leap: it obliges all government departments to disclose information proactively, to organize and index their records, and to appoint qualified staff to handle requests. It also stresses abandoning exclusive reliance on paper formats, which had long posed a technical obstacle for seekers of public information¹².

Tunisia is the second Arab country to codify access to information. Decree No. 41 of 2011 on access to administrative documents marked the starting point, further reinforced by the 2014 Constitution, whose Article 32 obliges the State to guarantee the right to information, communication, and network access. This constitutional basis led to Organic Law No. 22 of 2016, which introduced regulatory provisions to operationalize the right¹³.

Key elements include: compelling public administrations to organize and update usable information and to make it publicly available; refining the request procedure by simplifying filing and follow-up steps, shortening processing deadlines, and clarifying avenues for appeal. The law also recommends establishing an independent public body to oversee implementation. The 2022 Constitution reaffirmed the State’s duty to secure information access in Article 38, making Tunisia the second Arab country, after Morocco, to embed the right explicitly in its Constitution.

Morocco ranks among the earliest Arab states to constitutionalize access to information, through Article 27 of the 2011 Constitution, consistent with the global drive to enhance public-affairs transparency for citizens’ benefit¹⁴.

Law No. 31-13 followed, providing legal guarantees to ensure public availability of information and limiting restrictions to narrow, exceptional cases¹⁵. The statute distinguishes two forms of publication¹⁶:

- **Proactive publication:** administrations must release as many documents and data as possible without prior request.
- **Interactive publication:** a set of procedures governs the receipt, examination, and

processing of requests, including the creation of specialized digital platforms and the appointment of officers responsible for managing them.

The law also creates a specialized committee, under the Prime Minister's authority, that ensures proper implementation. This body decides on appeals and complaints lodged by information seekers, issues recommendations and reports to improve access mechanisms, and offers technical advice and support to relevant institutions¹⁷.

Tracing the legislative path in the countries mentioned reveals a tangible effort to honor international obligations, particularly by expanding automatic disclosure, a genuine indicator of governmental respect for free information flow. Legislators also introduce tools to support applicants and to encourage public bodies to release data through multiple channels, including digital platforms and appointed information officers¹⁸.

Nonetheless, this legislative progress does not mask a significant gap between Arab legal frameworks and international standards and best practices. The disparity is evident in global benchmarks that measure compliance with freedom-of-information norms, foremost among them the Right to Information (RTI) Rating managed by the Centre for Law and Democracy in cooperation with Access Info Europe. International organizations, including United Nations agencies and donor bodies, use this index widely as a primary reference for assessing the effectiveness of national legislation in guaranteeing the right to information¹⁹.

Algeria recognizes access to information through several domestic instruments. The 2016 constitutional amendment anchored the right in Article 51, which states that "citizens are guaranteed the right to obtain information, documents, and statistics and to transmit them."²⁰ The wording is general, lacking detail on the kinds of information covered or on the entities obliged to disclose, whether public institutions, administrative bodies, or private actors providing public-interest services.

The 2020²¹ constitutional amendment reaffirmed the right in Article 55: "Every citizen has the right to access information, documents, and statistics, to obtain them, and to circulate them. Exercising this right may not infringe the private life and rights of others, the legitimate interests of institutions, or national security requirements. The law shall determine the methods for exercising this right."²² Compared with Article 51, the new text adds explicit safeguards for privacy, third-party rights, institutional interests, and national security, while referring directly to legislation for procedural details, an important step toward legal implementation.

Although constitutionally recognized since 2016, Algeria enacted no dedicated statute until 2021, when Ordinance No. 21-09 on the protection of administrative information and documents entered into force²³. The ordinance affirms every citizen's right to access information, documents, and statistics held by public administrations, subject to legal exceptions such as personal privacy or matters affecting national security.

THE SECOND TOPIC: Safeguards and Operational Rules for the Right of Access to Information

To secure administrative data and documents, the Algerian legislator has laid down a set of requirements that must guide anyone exercising the right of access.

FIRST REQUIREMENT: Restrictions on the Right of Access

Under the Algerian Constitution, every natural or legal person may obtain and inspect information and records held by the administration, subject to several specific situations in which the right is suspended:

Firstly: Information Concerning the Private Life of Individuals

The privacy limitation follows a principle recognized in international law, especially Article 17 of the International Covenant on Civil and Political Rights, which protects persons from arbitrary or unlawful interference with their private life or correspondence. Modern constitutions,

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including Algeria's, reaffirm this safeguard. Article 81 of the 2020 Constitution states in its first clause that every person has the right to the protection of private life and honor. Clause 5 adds that every breach of these rights shall be punishable by law²⁴.

Privacy, like other rights, is not absolute. Public interest or public-order needs may sometimes override it, for example when administrative or judicial bodies²⁵ collect or process personal data for clear purposes such as civil-status records, tax files, criminal-record certificates, or visa procedures. This approach matches Law 18-07 on the protection of natural persons in the processing of personal data²⁶; Article 2 declares that every person has the right to the protection of personal data.

In this regard, digital portals used by public bodies to handle personal information raise legal questions about how well these entities respect confidentiality and prevent unlawful exploitation or disclosure, in line with personal-data-protection rules²⁷.

Legal protection extends beyond general information to commercial and industrial data belonging to private undertakings, because disclosure might undermine competition or reveal trade and professional secrets (production methods, technology in use, financial figures, and similar items)²⁸.

A clear line must therefore separate protected personal data from information that may be released in the public interest, such as material indicating possible corruption or mismanagement in public services, provided disclosure truly serves the common good.

Secondly: **The Duty of Professional Secrecy within the Civil Service**

Article 48 of Ordinance 06-03, which sets the General Statute of the Civil Service, expressly upholds the protection of administrative information and documents and imposes professional secrecy²⁹. A public servant must safeguard records, files, and documents, ensure their security, and refrain from concealing, diverting, or destroying them, unless authorized by the competent bodies³⁰. The text does not, however, define the exact scope or limits of that secrecy.

Professional secrecy is not absolute; certain exceptions permit disclosure:

- Disclosure needed to prove innocence or to provide an appropriate answer in an administrative matter is accepted when necessary to serve justice or clarify a case³¹.
- Circular No. 1430 of 5 October 1981, issued by the Directorate-General of the Civil Service, grants every person the right to inspect non-nominal administrative documents such as files, reports, circulars, and ministerial replies interpreting legislation³².

These exceptions reflect a gradual shift toward transparency, giving citizens access to non-personal information while secrecy remains mandatory in other situations.

Thirdly: **Information Relating to National Security**

Even though citizens' right of access is recognised, special limitations apply to classified records protected by Decree 84-387 on measures for safeguarding classified documents³³. A "classified document" is any physical medium (text, decree, map, photograph, sound tape, film, and so on) containing information that must be protected³⁴.

Classified material falls into four categories according to sensitivity³⁵:

1-Top secret – disclosure would certainly endanger national security and the vital interests of the nation.

2-Secret – disclosure could harm State security or assist a foreign power.

3-Confidential – disclosure would clearly damage the interests of government bodies or public officials.

4-Restricted distribution – disclosure could cause limited harm and the record may circulate only among authorized persons who must follow special handling procedures.

The decree forbids circulating "secret" or "top secret" documents without an explicit authorization from the competent authority. Every consultation must be logged in a special register showing the reader's name, capacity, signature, and the date and duration of examination³⁶. Reproduction, partial or full, is banned except for "confidential" and "restricted distribution"

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records, and only with written permission as stated in Article 16.

As a result, all records dealing with national defense and State security, whether military, intelligence, cartographic, or related to defense capabilities, human and financial resources, foreign relations, external policy, monetary or economic strategy, or any material likely to harm State interests or affect public security, remain outside the scope of the right of access. Nevertheless, declassification is possible in certain situations, particularly when disclosure is necessary to expose serious human-rights violations or to serve an overriding public interest during emergencies or exceptional circumstances.

SECOND REQUIREMENT: Guarantees for Activating the Right of Access to Information

Preface on the second requirement and the issues to be addressed.

Firstly: Legal Guarantees

Legal and institutional guarantees form the basic infrastructure on which the right of access rests; without them, the right stays on paper. They include the following elements

1- Avenues of Appeal

Citizens must be able to seek redress first before a specialised administrative body and, when necessary, before the administrative courts.

a-The right to petition as a route to information

The Constitution of 2020 recognizes petitions as a democratic tool that lets citizens influence public policy and administrative practice. It declares: "Every citizen has the right to submit petitions, individually or collectively, to the administration in matters of public interest or concerning violations of fundamental rights."³⁷

- **Definition and types**

A petition is a document sent by one or more citizens to a public authority requesting action, inaction, or the reporting of a specific situation. Two main types exist:

- **Complaint petitions:** filed against arbitrary administrative acts or refusals to meet a lawful request, such as an information query.
- **Informational petitions:** submitted to draw official attention to a public issue—for example, failure to publish environmental or economic reports³⁸.

- **Link to information rights**

Petitions serve as an indirect path to information when the administration unjustifiably refuses a request, when recurrent opacity surrounds matters of public concern (contracts, local projects), or when public mobilization is needed to press for greater openness.

b-Administrative grievance

Many legal systems give the administration a chance to correct its own acts before litigation begins. A grievance is a request asking either the same body (hierarchical grievance) or a higher authority (superior grievance)³⁹ to reconsider a negative decision such as the refusal of documents. It reopens the file without cost, spares time in urgent cases—environmental or health data, say—and allows the administration to rectify errors without the courtroom spotlight.

c-Administrative courts

The administrative judiciary is widely regarded as a prime gauge of any country's legal effectiveness and quality. It plays a decisive role in ensuring the protection of rights and freedoms, among them the right to obtain and review administrative information and documents.

Despite the separation-of-powers principle, which ordinarily prevents courts from directing the executive, the Algerian legislator has introduced a clear statutory exception in the Code of Civil and Administrative Procedure. The urgent-applications judge may, at the very first hearing, order the administration to hand over the contested administrative decision to the litigant. This arrangement gives concrete procedural force to the right of inspection⁴⁰.

Within the ex parte order framework, the law also authorises individuals who have standing

and a legitimate interest to petition the urgent-applications judge for measures such as fact-finding or a formal warning issued by interrogation in the absence of the opposing party. The purpose is to obtain documents in the possession of that party, whether a public servant or an administrative representative, or to secure an informative administrative statement, provided the claimant shows an existing interest⁴¹.

In a similar vein, when convened as a panel, the urgent-applications division of the administrative court may intervene where fundamental freedoms are at stake. Should a serious and unlawful infringement arise, the judge is empowered to impose any measure required to preserve those freedoms that have been violated by public-law entities or bodies subject to administrative jurisdiction in the exercise of their powers. The court must resolve such cases within forty-eight hours from the date the application is filed⁴².

Taken together, these provisions implicitly uphold the right to access administrative information and records, establishing a key judicial guarantee that supports the free circulation of information, itself inseparable from the principle of transparency in public governance.

Secondly: Institutional Guarantees

1-The Ombudsman as an independent, non-judicial defender of access

The Algerian legislator leaves the task of classifying administrative information and records entirely to the administration. In doing so, it grants officials full discretion both to label documents and to decide whether the public may inspect them⁴³. Such latitude creates a legal dilemma: the arrangement conflicts with constitutional principles and international instruments that affirm a right to information. In practice, secrecy becomes the norm, disclosure the exception, and citizens' freedom to obtain data is narrowed while administrative power expands.

To correct that imbalance, many states—including Algeria—have created bodies structurally independent of the executive that defend fundamental rights by mediating with the administration or, where needed, turning to the courts. Notable among them is the "Ombudsman of the Republic," first established in France by the statute of 3 January 1973 and given broader powers by the Act of 24 December 1976, which reshaped it into a non-judicial institution charged with shielding individuals from administrative abuse⁴⁴. Tunisia followed a comparable path: Organic Law No. 22 of 24 March 2016, on the right of access to information, created an Access to Information Authority⁴⁵—an independent public body with legal personality and financial autonomy—whose explicit mandate is to ensure that this constitutional right can be exercised in practice.

2-High Authority for Transparency, the Prevention of Corruption, and its Suppression

The High Authority for Transparency, the Prevention of Corruption, and its Suppression is a constitutional body introduced in the 2020 constitutional amendment⁴⁶. It is governed by Law No 22-08 of 5 May 2022, which sets out its organization, composition, and prerogatives⁴⁷.

According to that law, the Authority seeks to attain the highest standards of integrity and transparency in the conduct of public affairs. Beyond the functions assigned to it by the Constitution, it collects, classifies, analyses, and disseminates information and recommendations that help public administrations as well as natural and legal persons to prevent corruption and uncover its forms⁴⁸.

The body is also charged with evaluating the effectiveness of legal instruments linked to transparency, monitoring the administrative measures adopted in this domain, and proposing mechanisms capable of improving them. In doing so, it ranks among the principal actors that foster transparency and ensure the circulation of information on public-sector management⁴⁹.

To build a productive partnership with civil society, the Authority is creating an interactive network designed to coordinate and promote civil-society activities related to transparency and the fight against corruption, within a participatory framework⁵⁰.

Articles 9 and 10 of the same statute establish several notification and reporting procedures that confirm the citizen's right to lodge complaints about practices infringing the principle of transparency or to request administrative information and documents. These provisions form a

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core legal guarantee that strengthens freedom of access to information and entrenches administrative accountability.

Conclusion:

A comparative reading of national laws and selected Arab legal systems shows a clear gap between formal recognition of the right to information and its day-to-day practice. Many constitutions now acknowledge the right and label it a pillar of transparency and good governance, yet the surrounding legal and regulatory frameworks remain incomplete. Practical procedures for obtaining data are either ill-defined or missing, and real safeguards against arbitrary refusals by the administration are still weak.

The Algerian experience illustrates these shortcomings vividly. No single, comprehensive statute regulates access to information. Broad discretionary power to classify records is left to administrative bodies, so secrecy becomes the rule and disclosure the narrow exception. Citizens' ability to exercise the right is therefore curtailed. The absence of strong, independent oversight bodies and the limited reach of proactive publication obligations further hollow out the right and strip it of practical effect.

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