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Transparency and Accountability - A Comparative Analysis of Freedom of Information Legislation across various Jurisdictions

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Everybody knows that corruption thrives in secret places, and avoids public places, and we believe it is a fair presumption that secrecy means impropriety.

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Woodrow Wilson

Abstract (English)

This thesis presents a comparative analysis of Freedom of Information Acts (FOIAs) across selected European jurisdictions to evaluate how statutory design affects transparency and efficiency of access to information held by public authorities. Drawing on a structured comparative framework, the study examines key provisions—including scope of applicability, exemptions and exceptions, request requirements and time limits, appeal procedures, oversight mechanisms, and proactive disclosure obligations—in twelve representative European Freedom of Information regimes – ten national FOIAs, an EU Regulation and a Council of Europe Convention. Empirical data was gathered from primary legislation, with reference to judicial proceedings, reports and articles on the subject to shed light on the manner in which statutory provisions translate to practice implementation.

Findings reveal varying degrees of disparity in breadth of access, application of exemptions, and procedural efficiency. The thesis synthesizes these findings into a set of best practices for FOIA design and implementation by identifying those provisions which provide for an adequately wide scope of coverage, impose a public-interest balancing exercise when applying exemptions, and mandate short response timelines, among other recommendations. Recommendations are offered for policymakers seeking to reform national FOI laws and an invitation is made for future research to explore the correlation between the health and robustness of a statutory framework and the practical implementation thereof.

Abstract (Deutsch)

Diese Arbeit präsentiert eine vergleichende Analyse der Gesetze zur Informationsfreiheit (FOIAs) in ausgewählten europäischen Rechtsordnungen, um zu bewerten, wie sich die gesetzliche Ausgestaltung auf die Transparenz und Effizienz des Zugangs zu Informationen auswirkt, die sich im Besitz öffentlicher Stellen befinden. Auf der Grundlage eines strukturierten Vergleichsrahmens untersucht die Studie zentrale Bestimmungen – darunter den Anwendungsbereich, Ausnahmen und Ausschlüsse, Anforderungen an Anträge und Fristen, Rechtsbehelfsverfahren, Kontrollmechanismen sowie Verpflichtungen zur proaktiven Offenlegung – in zwölf repräsentativen europäischen Informationsfreiheitsregelungen: zehn nationale FOIAs, eine EU-Verordnung und eine Konvention des Europarats. Empirische Daten wurden aus Primärrechtsquellen gewonnen, wobei auf Gerichtsverfahren, Berichte und Artikel zu diesem Thema zurückgegriffen wurde, um Aufschluss darüber zu geben, wie sich gesetzliche Bestimmungen in der Praxis umsetzen lassen.

Die Ergebnisse zeigen unterschiedliche Ausprägungen hinsichtlich des Umfangs des Zugangs, der Anwendung von Ausnahmeregelungen und der Verfahrenseffizienz. Die Dissertation fasst diese Ergebnisse zu einer Reihe von Best Practices für die Gestaltung und Umsetzung von FOIA-Gesetzen zusammen, indem sie unter anderem jene Bestimmungen identifiziert, die einen ausreichend breiten Anwendungsbereich vorsehen, bei der Anwendung von Ausnahmeregelungen eine Abwägung des öffentlichen Interesses vorschreiben und kurze Antwortfristen vorschreiben. Es werden Empfehlungen für politische Entscheidungsträger gegeben, die eine Reform der nationalen Gesetze zur Informationsfreiheit anstreben, und es wird zu weiteren Forschungsarbeiten aufgefordert, um den Zusammenhang zwischen der Qualität und Robustheit eines gesetzlichen Rahmens und dessen praktischer Umsetzung zu untersuchen.

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Abbreviations

CMPF: Centre for Media Pluralism and Media Freedom

CoE: Council of Europe

ECB: European Central Bank

EMFA: European Media Freedom Act

EU: European Union

FOI: Freedom of Information

FOIA: Freedom of Information Act

IDPC: Information and Data Protection Commissioner

SDG: Sustainable Development Goal

TFEU: Treaty on the Functioning of the European Union

UK: United Kingdom

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Decreto legislativo 14 marzo 2013, n. 33: Riordino della disciplina riguardante il diritto di accesso civico e gli obblighi di pubblicità, trasparenza e diffusione di informazioni da parte delle pubbliche amministrazioni.

Malta

Freedom of Information Act (Chapter 496 of the Laws of Malta)

Slovenia

Access to Public Information Act

Sweden

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United Kingdom

- The Freedom of Information Act 2000

- Public Office (Accountability) Bill

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The Law of Ukraine on Access to Public Information

Table of International Instruments

Council of Europe

Council of Europe Convention on Access to Official Documents

European Union

- Charter of Fundamental Rights of the European Union

- Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents

- The European Code of Good Administrative Behaviour

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Introduction

General

The theoretical foundations of Freedom of Information (FOI) are not novel. The eminent philosopher and jurist Jeremy Bentham aptly remarked that 'secrecy, being an instrument of conspiracy, ought never to be a system of regular government.'[1] That same idea was reiterated by the UN General Assembly in its very first session in 1946, during which it adopted Resolution 59(I), stating, 'Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.'[2] At European Union (EU) level, the right of access to 'documents of the institutions, bodies, offices and agencies of the Union' is enshrined as a fundamental right of citizens and residents of the Union in Article 42 of the Charter of Fundamental Rights of the European Union. The same right also features in Article 15(3) of the Treaty on the Functioning of the European Union (TFEU).

In modern times, this fundamental idea is reflected and given effect through various pieces of legislation commonly termed Freedom of Information Acts (FOIAs). These FOIAs have come to be considered a cornerstone of modern democratic governance, so much so that one of the indicators used to track implementation progress with the United Nation's Sustainable Development Goal (SDG) Number 16 'Peace, justice and strong institutions'[3] is SDG Indicator 16.10.2 which tracks the 'number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information.'[4]

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[1] Jeremy Bentham, Works of Jeremy Bentham (W. Tait Edinbugh 1843) Vol. 2 pp. 310-317, cited by Norman Marsh (ed), Public Access to Government-held Information (London Stevens & Sons Ltd. 1987) p. 2.

[2] Toby Mendel, 'Freedom of Information as an Internationally Protected Human Right' <https://www.article19.org/data/files/pdfs/publications/foi-as-an-international-right.pdf> accessed 12 May 2026

[3] United Nations Department of Economic and Social Affairs, 'The 17 Goals' <https://sdgs.un.org/goals> accessed 14 May 2026

[4] 'Right to Information' <https://www.unesco.org/en/right-information> accessed 14 May 2026

By granting citizens, journalists, researchers, and civil society access to government-held information, these laws enable public scrutiny of decision-making, promote accountability, and strengthen the rule of law. In Europe, FOI regimes sit at the intersection of fundamental rights, administrative law, and public policy; they shape citizens' ability to participate meaningfully in democratic processes and to hold public authorities to account.

Comparative study in this area of law is particularly valuable because, despite the EU's shared commitment to transparency principles, FOI law has – to date – not been the subject any harmonisation effort. In fact, while there are broad structural and substantive similarities among the various national laws, they do however display significant divergence in legal scope, exemptions, procedural mechanisms, and enforcement tools. Differences in definitions of public bodies, disclosure obligations, time limits, appeal procedures, and sanctioning powers produce varied outcomes in terms of actual access to information. Understanding these cross-national variations helps reveal which legal features and implementation practices most strongly predict effective transparency.

An argument can and has been made that the current fragmentation of FOI legislation across EU Member States is inherently inadequate and inevitably leads to undesirable situations of unequal access in which similar requests for information (hereinafter also referred to as 'FOI Requests') produce different outcomes from one Member State to another.[5] Article 114 of the TFEU has been identified as a potential legal basis for an eventual pan-EU Freedom of Information Act[6], with close parallels being drawn from the process that led to the enactment of the European Media Freedom Act (EMFA).[7]
The purpose of the present thesis is not to make an argument in favour or against harmonisation. Its aim is that of carrying out a comparative analysis of a broad range

[5] Neus Vidal Marti and Viktoria Kraetzig, 'Why Europe Needs a Harmonised Access to Information Act' (*Verfassungsblog*, 3 May 2024) <verfassungsblog.de> DOI: 10.59704/ef33ec3f6449ae88.
[6] Alberto Alemanno and Sébastien Fassiaux, 'Towards a pan-EU Freedom of Information Act? Harmonizing Access to Information in the EU through the internal market competence' (April 2024) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4804432> accessed 15 May 2026
[7] *Ibid*, n. 5

of European FOIAs in order to identify and extract legislative best practices – an aspect which seems to have been largely overlooked in the existing literature on the subject. The findings that will emerge from this comparative exercise – together with the recommendations that will be drawn therefrom – can certainly prove useful to legal drafters in Brussels should the EU eventually move towards harmonisation. Until then, legislators in the various European national parliaments and beyond are free to have a look at these few pages and perhaps take inspiration therefrom.

Methodology and Structure

The methodology adopted in developing this thesis focuses on a thorough reading of a number of legal instruments that regulate in same form or fashion the right of access to information held by public authorities. While the majority of selected legal texts are pieces of national legislation, an EU Regulation and a Council of Europe Convention have also been scrutinised as part of this comparative exercise. The following is a complete list of the pieces of legislation that have been analysed in this thesis:

1. The Estonian Public Information Act[8] - passed on the 15th of November 2000 and entered into force on the 1st of January 2001. Since then, it was amended numerous times, with the last amendment entering into force on the 1st of April 2013.

2. The German FOIA – officially known as the Federal Act Governing Access to Information held by the Federal Government (Freedom of Information Act).[9] It was enacted on the 5th of September 2005 and entered into force on the 1st of January 2006.

3. In Hungary, FOI is not regulated by a free-standing Act dedicated specifically and exclusively to FOI matters. Instead, FOI is regulated in Chapters III, IV and V of Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of

[8] Accessible here: < https://www.riigiteataja.ee/en/akt/525032026001>
[9] Accessible here: <https://www.gesetze-im-internet.de/englisch_ifg/englisch_ifg.html#p0013>

Information[10], which Act was enacted by the Hungarian Parliament on the 11th of July 2011.

4. The Irish Freedom of Information Act 2014, which came into effect in October 2014.[11]

5. The Italian FOIA formally titled *decreto legislativo 14 marzo 2013, n. 33: Riordino della disciplina riguardante il diritto di accesso civico e gli obblighi di pubblicità, trasparenza e diffusione di informazioni da parte delle pubbliche amministrazioni*.[12] Extracts taken from the Italian FOIA have been translated to English before being reproduced in the present thesis.

6. The Maltese Freedom of Information Act (Chapter 496 of the Laws of Malta)[13] and the Code of Practice[14] issued thereunder – a particular close look was given to Malta's FOIA, Malta being the author's home country.

7. The Slovenian Access to Public Information Act – published on the 22nd of March 2003 and entered into force on the 6th of April 2003. Extracts have been taken from a reliably translated version prepared and published by the office of the Slovene Commissioner for access to public information.[15]

8. The Swedish Freedom of the Press Act of 1949[16] - Sweden was one of the earliest pioneers in the area of open and transparent government, and consequently, of Freedom of Information. In fact, the original Swedish Freedom of the Press Act dates back to 1766, with the current Freedom of the Press Act of 1949 in which provisions

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[10] Accessible here: <https://www.naih.hu/files/Privacy_Act-CXII-of-2011_EN_201310.pdf>
[11] Accessible here: < https://www.irishstatutebook.ie/eli/2014/act/30/enacted/en/html>
[12] Accessible here: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2013-03-14;33!vig=2023-10-02>
[13] Accessible here: <https://legislation.mt/eli/cap/496/eng>
[14] Accessible here: <https://europam.eu/data/mechanisms/FOI/FOI%20Laws/Malta/5.%20Code%20of%20Practice%20for%20Public%20authorities%20of%202010_ENG,%20not%20consolidated.pdf>
[15] Accessible here: <https://www.ip-rs.si/en/legislation/access-to-public-information-act/>
[16] Accessible here: < https://www.riksdagen.se/globalassets/05.-sa-fungerar-riksdagen/demokrati/the-freedom-of-the-press-act-2023-eng.pdf>

which specifically address FOI matters are found, preserving the same principles laid down in the revolutionary 1766 law.

9. The UK Freedom of Information Act 2000 and the Schedules issued thereunder.[17]

10. The Law of Ukraine on Access to Public Information[18], enacted in January 2011. Ukraine is a signatory and a ratifying State of the Tromsø Convention and thus considered a reliable reference point for the purposes of this comparative analysis.

11. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. This EU Regulation (hereinafter referred to as 'EU Regulation 1049/2001') entered into force on the 3rd of June 2001 and became applicable on the 3rd of December 2001, and is the legal text that regulates access to information held by various EU institutions.

12. The Council of Europe Convention on Access to Official Documents, commonly referred to as the Tromsø Convention and hereinafter also referred to as 'the CoE Convention'.[19] The Treaty was opened for signature by the member states and for accession by non-member States and by any international organisation on the 18th of June 2009, but only entered into force on 12th of January 2020, upon ratification of the Treaty by 10 member states. The Tromsø Convention is the first binding international legal instrument to recognise a general right of access to official documents held by public authorities.

The comparative analysis is laid out in four main chapters. Chapter 1 deals with those provisions that essentially define the scope of applicability of the respective FOIAs. It looks at what sort of information is covered by the respective FOIAs, who is entitled

[17] Accessible here: <https://www.legislation.gov.uk/ukpga/2000/36/contents>
[18] Accessible here: <https://zakon.rada.gov.ua/laws/show/en/2939-17#Text>
[19] Accessible here: <https://rm.coe.int/1680084826>

to make an FOI Request, and which public entities are subjected to FOI legislation. Chapter 2 looks at various procedural aspects of FOI law, namely the transfer of requests from one public entity to another, applicable timeframes, modes of provision of access, publication requirements, enforcement bodies, and appeal proceedings. Chapter 3 focuses on the substantive exemptions which public authorities can invoke in refusing FOI Requests. The findings from each chapter are discussed, and the author's opinions and recommendations thereon are all included, in Chapter 4 of this Thesis.

Statement of Research Question

The present thesis shall aim to answer the following two-limbed research question:

1. How are the key provisions in the FOIAs selected for analysis similar and how do they differ from one another?

2. What best practices can be deduced from the findings of such comparative analysis in terms of procedural efficiency and substantive openness and transparency?

The answer to the first limb of the research question will become self-evident throughout the chapters dedicated to the comparative analysis of the various legislative provisions. The answer to the second part will be explored in detail in Chapter 4 of this thesis.

Chapter 1

Delineating the Scope of Applicability of Freedom of Information Legislation

An appropriate point of departure for this comparative exercise is the exploration of those aspects of each respective FOIA that essentially set the parameters of the scope of applicability of said FOIAs. Three provisions that undoubtedly fit the aforementioned description are those relating to what sort of information can be the subject of a valid FOI Request, who is deemed an eligible applicant, and finally which are those public entities to which FOI Requests can be validly submitted. The manner in which each selected piece of legislation addresses these key issues determines how broad or narrow its scope of applicability is – and, in turn, to what extent openness and transparency are truly guaranteed under the FOIA in question.

1.1 Information Subject to the Freedom of Information Acts

The question of what sort of 'information' can be the subject of a valid FOI Request is a pivotal feature of any FOIA. A definition clause that is not adequately broad or that is poorly drafted can lead to the exclusion of information from the reach of the FOI regime that would otherwise not fall under any of the substantive exclusions that shall be discussed in subsequent chapters of this thesis, and which would therefore have been made available. Any shortcoming in this regard could seriously prejudice applicants' ability to obtain information that should be made available under substantive FOI legislation.

The position under the various pieces of legislation varies in this regard. The below table brings together the relevant provisions from all the FOIAs selected for analysis.

FOIA	To what can access be granted
CoE Convention	'all information recorded in any form, drawn up or received and held by public authorities' – Article 1(2)(b)
Regulation 1049/2001	'all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union […] 'document' shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility' – Articles 2(3), 3(a)
Malta	'Any eligible person has a right of access to documents held by public authorities in accordance with and subject to the provisions of this Act.' – Article 3 'document' means any article that is held by a public authority and on which information has been recorded in whatever form, including electronic data, images, scale models and other visual representations, and audio or video recordings, regardless of whether the information can be read, seen, heard or retrieved withor without the aid of any other article or device' – Article 2
Italy	'The provisions of this decree regulate the freedom of access for anyone to data and documents held by public administrations and other entities.' – Article 2(1)
Germany	'The authority may furnish information, grant access to files or provide information in any other manner.' – Section 1, Article 2
Ireland	'every person has a right to and shall, on request thereof, be offered access to any record held by an FOI body' – Article 11(1)

Hungary	'data of public interest and data accessible on public interest grounds under its control' – Section 26(1) 'The name of the person undertaking tasks within the scope of responsibilities and authority of the body undertaking public duties, as well as their scope of responsibilities, scope of work, executive mandate and other personal data relevant to the provision of their responsibilities to which access must be ensured by law qualify as data public on grounds of public interest.' – Section 26(2) 'Unless otherwise prescribed by law, any data, other than personal data, that is processed by bodies or persons providing services prescribed mandatory by law or under contract with any governmental agency, central or local, if such services are not available in any other way or form relating to their activities shall be deemed data public on grounds of public interest.' – Section 26(3)
Ukraine	'public information shall be understood as: information possessed by government agencies and other public information providers […] information of public interest (importance) – Article 1
Sweden	'free access to official documents' – Article 1 'Document is understood to mean any written or pictorial matter or recording which may be read, listened to, or otherwise comprehended only using technical aids. A document is official if it is held by a public authority, and if it can be deemed under Article 6 or 7 to have been received or drawn up by such an authority.' – Article 3 'A compilation of information taken from material recorded for automatic data processing is however regarded as being held by the authority only if the authority can make it available using routine means.'- Article 3

Estonia	'information which is recorded and documented in any manner and on any medium and which is obtained or created upon performance of public duties provided by law or legislation issued on the basis thereof.' – Article 3
Slovenia	'Public information shall be deemed to be information originating from the field of work of the bodies and occurring in the form of a document, a case, a dossier, a register, a record or other documentary material (hereinafter referred to as 'the document') drawn up by the body, by the body in cooperation with other body, or acquired from other persons.' – Article 4(1)
UK	**'General right of access to information held by public authorities.'** – Article 1

1.2 Eligible Applicants

Another preliminary provision which has a decisive role in ensuring that an FOIA has an adequately wide scope of applicability is the provision concerning the eligibility of those who can submit an FOI Request. The crucial role such a provision plays in providing the general public with access to public information is self-evident – a liberal FOIA that upholds the highest standards of openness and transparency would be utterly useless if the clause defining eligible applicants is overly restrictive.

The following table seeks to compare the relevant clauses of all chosen jurisdictions in this regard:

FOIA	Eligible Applicants
CoE Convention	'everyone, without discrimination on any ground' – Article 2(1)
Regulation 1049/2001	'Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State' – Article 2(1) 'The institutions may […] grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.' – Article 2(2)
Malta	'a person who is resident in Malta and who has been so resident in Malta for a period of at least five years, and who is either a citizen of Malta or a citizen of any other member state of the European Union or a citizen of any other state the citizens of which have a right, in virtue of any treaty between such state and the European Union, to be treated in Malta in the same manner as citizens of member states of the European Union.' – Article 2
Italy	'any person' – Article 2(1)
Germany	'Everyone' – Section 1, Article 1
Ireland	'every person' – Article 11(1)
Hungary	'any person' – Section 26(1)
Ukraine	'every person' – Article 2(1)
Sweden	'Every Swedish citizen' – Article 1
Estonia	'every person' – Article 4(2)
Slovenia	'everyone' – Article 1(1)

1.3 Bodies to whom FOI Requests may be Addressed

The third and final scope-defining clause selected for comparison is that relating to the entities that can stand as addressees of FOI Requests under the various FOIAs. The inclusion of this procedural aspect of FOI law in this Chapter is owed to the fact that, as was the case with the provisions previously examined, any exclusions or limitations in this regard could effectively neutralize the effectiveness of the substantive provisions of the FOIAs.

While certain public entities feature in practically all FOIAs chosen for analysis, there do exist variations. In order to avoid repetition that adds little academic value, this comparative analysis shall focus on the more meaningful and significant nuances and variations among the FOIAs selected for analysis, rather than the reproduction of near-identical lists lock stock and barrel.

For instance, the entities which are subject to the provisions of the Maltese FOIA are listed in the definition of 'public authority' contained therein.[20] The definition provided is three-fold:

a) the Government, including any ministry or department thereof;
b) a Government agency established in terms of the Public Administration Act or any other law; and
c) any body established under any law, or any partnership or other body in which the Government of Malta, a Government agency or any such body as aforesaid has a controlling interest or over which it has effective control.

However, a subsequent provision[21] within the Maltese FOIA renders certain entities exempt from the provisions of the FOIA altogether. These entities are:

[20] *Ibid*
[21] Freedom of Information Act (Malta), s 5(4)

- the Electoral Commission;
- the Employment Commission;
- the Public Service Commission;
- the Office of the Attorney General;
- the National Audit Office;
- the Security Service; or
- the Broadcasting Authority, in so far as such documents relate to its functions under article 119(1) of the Constitution; or
- the Ombudsman.

The Council of Europe Convention lays down a mandatory tripartite definition of 'public authorities' for the purposes of FOI Requests, with the frequent inclusion of qualifiers relating to the exercise of specific functions and powers[22]:

- government and administration at national, regional and local level;
- legislative bodies and judicial authorities insofar as they perform administrative functions according to national law;
- natural or legal persons insofar as they exercise administrative authority.

However, the Convention also provides for the optional inclusion of further areas of activity of said public authorities within the scope of applicability of FOI legislation[23]:

- legislative bodies as regards their other activities;
- judicial authorities as regards their other activities;
- natural or legal persons insofar as they perform public functions or operate with public funds, according to national law

Similar to the Maltese position, the Irish FOIA also includes a list of entities which are to be considered 'public bodies' for the purposes of the FOIA.[24] Such a list is however subject to the Minister's power to, following consultation with the appropriate

[22] Council of Europe Convention on Access to Official Documents, s 2(a)(i)
[23] *Ibid*, s 2(a)(ii)
[24] Freedom of Information Act 2014 (Ireland), s 6(1)

Minister and Committee of Parliament, exclude certain bodies from the applicability of the FOIA[25], to whatever degree he deems fit, and also to include other bodies into the scope of the FOIA.[26] Furthermore, Article 42 of the Irish FOIA lists a number of bodies to which, with respect to certain records held by them, the FOIA does not apply. This list, which includes the courts and the Criminal Assets Bureau, amongst others, is arguably the closest, from the legislations reviewed, to the complete exclusion of certain bodies from the applicability of the FOIA found under Maltese law.

The Italian FOIA introduces a budgetary threshold for private entities to fall within its scope of applicability. In fact, the Italian FOIA applies to all associations, foundations and private law entities however named, even those without legal personality, with a budget exceeding five hundred thousand euros, whose activity is financed in a majority way for at least two consecutive financial years in the last three-year period by public administrations and in which the totality of holders or members of the administrative or governing body is designated by public administrations.[27]

The notion of 'public authority' for the purposes of the UK FOIA is laid out in a highly detailed and elaborate manner which merits particular elaboration. The multi-faceted approach is summarised in Article 3(1):

(1) In this Act 'public authority' means—
(a) subject to section 4(4), any body which, any other person who, or the holder of any office which—
    (i) is listed in Schedule 1, or
    (ii) is designated by order under section 5, or
(b) a publicly-owned company as defined by section 6.

[25] *Ibid*, s 6(5)(a)
[26] *Ibid*, s 7(1), (2)
[27] Decreto Legislativo 14 marzo 2013, n. 33, s 2-bis

Schedule 1 to the UK FOIA is the main point of reference. It contains reference to a plethora of governmental entities which are deemed 'public authorities' for the purposes of the UK FOIA. A noteworthy feature of this extensive list is the fact that references to certain entities come with a qualifier, explicitly excluding certain information held by those entities from the purview of the FOIA. For instance:

The House of Commons, in respect of information other than—
(a) information relating to any residential address of a member of either House of Parliament,
(b) information relating to travel arrangements of a member of either House of Parliament, where the arrangements relate to travel that has not yet been undertaken or is regular in nature,
(c) information relating to the identity of any person who delivers or has delivered goods, or provides or has provided services, to a member of either House of Parliament at any residence of the member,
(d) information relating to expenditure by a member of either House of Parliament on security arrangements.
(e) information held by the Intelligence and Security Committee of Parliament.
Paragraph (b) does not except information relating to the total amount of expenditure incurred on regular travel during any month.

Article 4 of the UK FOIA regulates in detailed fashion the manner in which an entity can be added or removed from the list contained in Schedule 1, with specific conditions for inclusion within that list being outlined therein:

(1) The Secretary of State or the Minister for the Cabinet Office may by order amend Schedule 1 by adding to that Schedule a reference to any body or the holder of any office which (in either case) is not for the time being listed in that Schedule but as respects which both the first and the second conditions below are satisfied.
(2) The first condition is that the body or office—

(a) is established by virtue of Her Majesty's prerogative or by an enactment or by subordinate legislation, or
(b) is established in any other way by a Minister of the Crown in his capacity as Minister, by a government department or by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government.
(3) The second condition is—
(a) in the case of a body, that the body is wholly or partly constituted by appointment made by the Crown, by a Minister of the Crown, by a government department or by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government, or
(b) in the case of an office, that appointments to the office are made by the Crown, by a Minister of the Crown, by a government department or by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government.

The second manner in which an entity can be deemed a 'public authority' for the purposes of the FOIA is designation as such by the Secretary of State or the Minister for the Cabinet Office. This residual power is envisaged in Article 5 of the UK FOIA and essentially allows persons and/or to be brought within the scope of applicability of the UK FOIA even though they are not included in Schedule 1 nor do they fit the cumulative requirements outlined in Article 4 in order to be included in Schedule 1. However, such a residual power is not unfettered. On the contrary, one of two conditions must be met in order for this power to be exercised:

(1) The Secretary of State or the Minister for the Cabinet Office may by order designate as a public authority for the purposes of this Act any person who is neither listed in Schedule 1 nor capable of being added to that Schedule by an order under section 4(1), but who—
(a) appears to the Secretary of State or the Minister for the Cabinet Office to exercise functions of a public nature, or
(b) is providing under a contract made with a public authority any service whose provision is a function of that authority.

The third and final category of 'public authorities' for the purposes of the UK FOIA are the so-called 'publicly-owned companies'. Article 6 of the UK FOIA outlines in typical detailed fashion the conditions that must be satisfied in order for a company to qualify as a 'publicly-owned company'.

The German FOIA treats a natural or legal person as equivalent to an authority where the authority avails itself of such a person in discharging its duties under public law.[28]

An interesting provision in the Estonian FOIA[29] is that which qualifies as a 'holder of information' the following:

- undertakings which have a dominant position in the market or special or exclusive rights or which are natural monopolies – with regard to information concerning the conditions and prices of the supply of goods and services and changes thereto.

- sole proprietors, non-profit associations, foundations and companies – with regard to information concerning the use of funds allocated from the state or a local government budget for the performance of public duties or as support.

1.4 Observations

These 'preliminary' provisions have been reproduced in such a full and detailed manner for a specific reason that has already been alluded to. Poor or deliberately inadequate drafting of scope-setting provisions has the potential of nipping an FOIA in the bud.

The most striking distinction among the FOIAs position when it comes to what sort of information can be the subject of an FOI Request is the one between 'information' and 'documents'. Some jurisdictions seemingly allow unrecorded information to be

[28] Federal Act Governing Access to Information held by the Federal Government (Germany), s 1(1)
[29] Public Information Act (Estonia), s 5

compiled and disclosed, while others seem to adopt the position of a right of access to exclusively pre-recorded, pre-existing documents. The implications of such a distinctions will be amply discussed in Chapter 4.

With regard to who qualifies as an eligible applicant under the various FOIAs, at first glance there seems to be a large degree of homogeneity about these provisions. However, there are a few glaring exceptions, the undesirable implications of which shall be discussed in detail in Chapter 4.

When it comes to the provisions relating to which entities are to be deemed 'public authorities' for FOIA purposes, the issue which seems to be most contentious and consequential is the manner in which the different FOIAs treat certain private entities that are contract by government entities to carry out public functions. The importance of this particular point is discussed in detail in Chapter 4.

Chapter 2

The Mechanics of Access: Procedural Rules in FOI Frameworks

The focus of the present thesis shall now shift to those provisions which regulate the intricacies of how FOI Requests are processed under the various FOIAs selected for analysis. Admittedly, variations in this regard do not – generally speaking – have the same decisive and fundamental impact as discrepancies in the provisions analysed in the previous chapter of this thesis. They do, however, have a considerable bearing on the efficiency with which FOI Requests are processed under the various regimes.

A comparative analysis of legislation regulating freedom of information would be utterly incomplete if it did not seek to measure the varying degrees of efficiency that is achieved by the relevant provisions of the FOIAs in question. In the author's view, having liberal substantive provisions which grant the public the widest right of access possible to public information would be of little use if these provisions are accompanied by an inefficient and lengthy system of request-processing. Both aspects are complementary and co-dependent in creating a system of true freedom of information.

2.1 Internal Transfers of Requests

In cases where an eligible person files a valid FOI Request to a public authority which however does not possess the required information, it is generally the public authority's duty to transfer said request to the appropriate entity. Such an obligation features in essentially all the FOIAs selected for analysis. However, a comparison of the various provisions is still worth making insofar as there is an important differential among these provisions – the 'time' factor. While it is commendable to note that most

FOIAs provide for the internal transfer of a misdirected FOI Request without the applicant having to start over with a fresh request, the timelines within which such requests are to be transferred have a material bearing on the efficiency of the FOI regime as a whole.

Under the Maltese position, the obligation to transfer a misdirected FOI Request to the appropriate public authority is laid down in Article 8 of the Maltese FOIA, which provides for a duty to inform the applicant of such a transfer and a ten-working day period within which such transfer must be carried out. This process of transferring requests from one public authority to another is facilitated by the existence of an FOI Officers' Network. This network is established by the Code of Practice issued under the Maltese FOIA, with one of the declared views of such being to 'facilitate procedures whereby requests for documents or information addressed to the wrong Authority by applicants are re-directed to the responsible Authority'.[30] This same Code of Practice also puts forth a clear procedure[31] which FOI Officers must follow, together with strict deadlines to be adhered to, in cases where their public authority does not have the requested document.

The Irish FOIA lays down this same obligation to transfer requests lodged with the inappropriate public authority, albeit with a longer, two-week timeframe within which to do so.[32]

The Estonian provision also explicitly lays down this obligation, but with a briefer, five working day time-limit.[33] The Slovenian FOIA is the most efficient in this regard, with such transfers of information to be done within 3 working days.[34]

[30] Code of Practice (Malta), s 2.2(a)
[31] *Ibid*, s 5
[32] Freedom of Information Act (Ireland), s 12(3)
[33] Public Information Act (Estonia), s 21(1)
[34] Access to Public Information Act (Slovenia), s 20

2.2 Decision to be Taken and Applicable Time Limits

While not all FOI Requests go through the aforementioned internal transfer process, they invariably go through a substantive evaluation process which determines whether the request will ultimately be acceded to or rejected. This process, as with all other distinct stages of the entire *iter* that an FOI Request goes through, is the subject of a determinate timeframe. This timeframe varies from one FOIA to another. The table below compares some of those timeframes in a manner which facilitates the identification of those regimes which truly embrace efficiency as an important feature of the FOI process.

FOIA	Decision Taken and Applicable Time Limit
Regulation 1049/2001	15 working days to grant access to the requested information – Article 7(1)
Malta	20 working days to decide upon the request, in what manner access will be granted, and at what fee, and inform the applicant accordingly – Article 10 Actual access to the requested document must then be given within a maximum of 10 working days from date of payment of any fees due – Code of Practice, Article 10.2
Italy	30 days to grant access to the requested information – Article 5(6)
Germany	1 month to grant access to the requested information – Section 7, Article 5
Ireland	4 weeks to decide upon the FOI Request – Article 13(1)
Hungary	15 days to grant access to the requested information – Section 29(1)
Ukraine	5 working days to grant access to the requested information, while certain motivated, urgent requests are to be addressed within 48 hours – Article 21

Estonia	5 working days to grant access to the requested information – Article 18(1)
Slovenia	20 working days to decide upon the FOI Request – Article 23
UK	20 working days from date of receipt of FOI Request. – Article 10(1) Where a fees notice has been issued, the aforementioned 20-working day period is suspended for the period of working days between issuing of fees notice and payment of fees – Article 10(2)

2.3 Time Extensions

Practically all FOIAs selected for analysis provide for the extension of the aforementioned timeframes. Invariably, there are rules regulating the manner in which a public authority can exercise its power to apply such an extension. For instance, the position under Maltese Law with respect to extensions of the abovementioned timeframes is stated in Article 11, which provides for a possible forty-working day extension of the original twenty-working day limit to decide upon an FOI Request. The Maltese provision also lays down the situations which justify such an extension, together with the duty to notify and explain the reasons for the extension to the applicant, as well as the duty to inform the applicant of the right under Article 23 to lodge a complaint with the Information and Data Protection Commissioner (IDPC). Similar 'ancillary' rules are commonplace in essentially all the FOIAs under analysis, with a negligible degree of divergence among the relevant provisions.

However, the extent to which such time-limits can be extended varies substantially from one FOIA to another – although practically all are considerably shorter than Malta's maximum timeframe, as evidenced in the below table:

FOIA	Extensions
Regulation 1049/2001	15 working days – Article 7(3)
Ukraine	15 working days – Article 21(4)
Estonia	15 working days – Article 19
Hungary	15 days – Article 29(2)
Slovenia	30 working days – Article 24(3)
Ireland	4 weeks – Article 14(1)

2.4 Manner in which Access may be Granted

Another procedural aspect of FOIAs is the manner in which access to a requested document is granted if the request is upheld. The standard methods are fairly consistent throughout, together with the basic principle that the mode of access should be, wherever possible and practicable, that preferred by the applicant.

Article 12 of the Maltese FOIA envisages numerous modes of access, such as inspection on site or provision of a copy, excerpt or summary of the contents. The Maltese provision goes on to provide for three qualifications to the rule that the mode of access preferred by the applicant is to be adhered to, in which case there arises a duty to give reasons and to inform the applicant of his right to appeal. These qualifications dictate that the public authority shall make the requested document available in the applicant's preferred way unless to do so would:

(a) impair efficient administration; or
(b) be contrary to any legal duty of the public authority in respect of the document; or
(c) prejudice the interests protected by Part V and Part VI and (in the case of the interests protected by Part VI) those interests are not outweighed by a contrary public interest.

Article 13 of the Maltese FOIA provides for the possibility of granting access to a redacted form of the requested document, which copy would exclude irrelevant or exempt matter under Parts V or VI of the Act from the document. This comes with a duty to inform the applicant that a redacted copy is being provided and of the grounds for such redaction.

A related provision is found across practically all FOIAs chosen for comparison, to the extent that reproduction of equivalent provisions would not add anything of material academic value to this work. There are however some provisions which are worth mentioning. For instance, the relevant provision in the CoE Convention allows overly complicated deletions to constitute a ground in and of itself for refusal of access.[35]

The Italian provision on mode of access is particularly interesting and certainly worth delving into. Under Italian law, the primary mode of granting access is through publication on official websites, based on the notion of 'data, information or documents subject to mandatory publication'. Therefore, if the information requested by an applicant falls under this category of information subject to mandatory publication, and has not yet been so published, then that information is published, and not disclosed 'privately' to the applicant. This does not exclude the possibility of requesting, and being granted access to, information which although is not subject to mandatory publication, can still be disclosed to an applicant.[36]

Also noteworthy is the fact that the Irish FOIA allows for the possibility of extracting information from various records, even if this results in the creation of a new record. This does not seem to be the case under Maltese law, with the Maltese FOIA adopting a rather strict interpretation of the term 'document', as previously discussed. The relevant Irish provision reads as follows:

[35] Council of Europe Convention on Access to Official Documents, s 6(2)
[36] Decreto Legislativo 14 marzo 2013, n. 33, s 2(2)

Where an FOI Request relates to data contained in more than one record held on an electronic device by the FOI body concerned—

(a) subject to paragraph (b), the FOI body shall take **reasonable steps to search for and extract the records to which the request relates**, being steps that involve the use of any facility for electronic search or extraction that existed on the date of the request and was used by the FOI body in the ordinary course, and

(b) if the reasonable steps referred to in paragraph (a) result in the **creation of a new record**, that record shall, for the purposes of considering whether or not such new record should be disclosed in response to the request, be deemed to have been created on the date of receipt of the FOI Request.[37]

2.5 Publication Requirements

It is a common feature in FOI law to have provisions on how certain information is to be made publicly accessible without the need for an FOI Request to be filed. The existence of such provisions is testament to the fact that there is certain information the publication of which is always in the public interest.

Part III of the Maltese FOIA, titled 'Access to Certain Documents', obliges public authorities to publish and update, at least annually[38], various information on their structure and functions, certain FOI-related information and application requirements, as well as a general description of the categories of documents held by them and of the manuals in accordance with which they takes their decisions.[39]

[37] *Ibid*, s 17(4)
[38] Freedom of Information Act (Malta), s 17(3)
[39] *Ibid*, s 17(1)

Maltese law also lays down the right of eligible persons, subject to the standard exceptions to the right of access, to submit a request for 'any document (including a manual) which is held by a public authority and which contains policies, principles, rules, or guidelines in accordance with which decisions or recommendations are made in respect of members of the public (including bodies corporate and employees of the public authority in their personal capacity).'[40] Any deletion of information from such documents is reviewable by the IDPC.[41] Such documents are also to be published on the relevant public authority's website, whenever possible.[42]

The provisions regulating the categories and types of documents subject to outright publication, as opposed to granting of access upon request, vary considerably amongst the different jurisdictions chosen for analysis. The CoE Convention provides that:

At its own initiative and where appropriate, a public authority shall take the necessary measures to make public official documents which it holds in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest.[43]

The relevant provisions in EU Regulation 1049/2001 are by far the most conducive to openness and transparency, whereby each institution is obliged to provide public access to a register of documents and, as far as possible, make documents directly accessible to the public in electronic form or through said register, without the need for a formal request to be submitted.[44]

In accordance with the Italian stance on publication, the Italian FOIA takes the format of an extensive list of information which is to be published, rather than a list of detailed exceptions to the right of access. Amongst the information which public authorities are

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[40] *Ibid*, s 19(1)
[41] *Ibid*, s 19(4)(b)
[42] Code of Practice (Malta), s 9.2
[43] Council of Europe Convention on Access to Official Documents, s 10
[44] Regulation (EC) No 1049/2001, s 11, 12

dutybound to publish, one finds information on the public authority's expenditure[45], costs of personnel engaged on indefinite and definite contracts, and particular information on public office-holders, such as engagement contracts, CVs, allowances and employment information (whether or not they are employed elsewhere).[46]

The German FOIA also lays down a duty to publish 'directories identifying the available information resources and the purposes of the collected information' as well as 'organisational and filing plans'.[47]

The Estonian FOIA regulates this matter in great detail, laying down the duty to keep a register, its content and how this can be accessed.[48] It also provides an extensive list (32 sub-articles in total) of information which is to be published on a website, including:

- 'information concerning the use of assets and budgetary funds which the state or a local government has transferred to legal persons in private law founded by the state or local government or with the participation thereof'[49]

- 'salaries of officials of state and local government agencies and other income related to their functions, and salary guides of agencies pursuant to the procedure provided for in the Public Service Act;'[50]

An interesting, and innovative, provision in this respect is found in the Slovenian FOIA, which states that public information requested by applicants three times or more are to be published online.[51]

[45] *Ibid*, s 4-bis(2)
[46] *Ibid*, s 14, 15
[47] Federal Act Governing Access to Information held by the Federal Government (Germany), s 11
[48] Public Information Act (Estonia), s 11, 12
[49] *Ibid*, s 28(1)(21)
[50] *Ibid*, s 28(1)(25)
[51] Access to Public Information Act (Slovenia), s 10(1)(6)

2.6 Supervising Bodies

Most of the FOIAs selected for analysis designate some sort of authority or office that is tasked with overseeing and ensuring the proper application of the provisions of each respective FOIA.

Under the Maltese position, this task is entrusted to the Information and Data Protection Commissioner. Part IV of the Maltese FOIA sets forth the functions of the IDPC. The IDPC is primarily entrusted with the promotion of the observance of the provisions of the Maltese FOIA and of the Code of Practice by the public authorities and to inform the public about said Act.[52]

In order to execute its functions, the IDPC is given numerous powers, most notably the power to:

- Issue a variety of notices, namely:
    - Decision notices - issued on request by an aggrieved applicant, specifying steps which the public authority must take to comply with the requirements of the FOIA within a specified timeframe.[53]
    - Information notices - served on a public authority where 'the Commissioner has received an application under article 23, or reasonably requires any information' – not merely documents – to determine compliance or lack thereof by that public authority with this Act and the code of practice.
    - Enforcement notices - if satisfied that a public authority has failed to comply with its obligations under the Act, which notice shall include steps to be taken to achieve compliance and within which timeframe.[54]

[52] Freedom of Information Act (Malta), s 21
[53] *Ibid*, s 23
[54] *Ibid*, s 25

- Issue hefty fines in case of failure by a public authority or one of its officers to comply with any of the three abovementioned notices.[55]

- Enter and search premises[56] if an information notice not adhered to, or if an offence under Article 43 is being or is about to be committed.

The IDPC's autonomy in its functioning is laid down in the law, however this is subject to the jurisdiction of the Data Protection Appeals Tribunal and the Court of Appeal, together with the Prime Minister's 'veto' to block decision and enforcement notices issued by the IDPC if the Prime Minister deems the document in question to be an exempt document under Part V of the FOIA.[57]

All other FOIAs chosen for analysis provide for authorities similar to the Maltese IDPC, with some having an Office dedicated exclusively to the regulation of Freedom of Information, such as Ireland[58] and Slovenia[59], and not a combined entity with both FOI and Data Protection falling within its remit.

Under Italian Law, the task of reviewing denied FOI Requests falls under the remit of the office responsible for the prevention of corruption and for transparency.[60] With regard to general compliance, the Italian FOIA provides for an officer responsible for transparency within every public authority, entrusted to ensure compliance of the department with its obligations under the FOIA.[61]

Under the Hungarian FOIA, the National Authority for Data Protection and Freedom of Information is completely independent, and is not subject to any 'veto' by the Prime

[55] *Ibid*, s 27
[56] *Ibid*, s 27(2)
[57] *Ibid*, s 26
[58] Freedom of Information Act 2014 (Ireland), Part 6
[59] Access to Public Information Act (Slovenia), s 45
[60] Decreto Legislativo 14 marzo 2013, n. 33, s 5(7)
[61] *Ibid*, s 43

Minister as is the case under the Maltese position. The relevant Hungarian provision provides as follows:

The Authority shall be an independent organ subject to Acts only; it may not be instructed in its functions and shall operate independently of other organs and of undue influence. The tasks of the Authority may only be determined by an Act.[62]

2.7 Appeal Procedures

Public authorities do not, under any of the FOIAs chosen for analysis, have the last word when deciding upon an FOI Request. On the contrary, each FOIA contains provisions regarding the way in which applicants can challenge refusals of their FOI Requests. These provisions are typically accompanied by rules that oblige public authorities to give reasons for the decision taken and to inform the applicant of any right of appeal which they might have. These rules are pivotal in allowing applicants to exercise their right to appeal and are commonplace principles in any respectable FOIA. The below table seeks to sum up a number of appeal processes under the various FOIAs:

FOIA	Appeal Procedure
CoE Convention	Requires 'a review procedure before a court or another independent and impartial body established by law. An applicant shall always have access to an expeditious and inexpensive review procedure, involving either reconsideration by a public authority or review in accordance with paragraph 1.' – Article 8
Regulation 1049/2001	Possibility of making a 'confirmatory application' 'in the event of a total or partial refusal', 'asking the institution to reconsider its position.' - Article 7(2). If the outcome is not satisfactory to the applicant, there exists the remedies of 'instituting court proceedings

[62] Act CXII of 2011 (Hungary), s 38 (5)

	against the institution and/or making a complaint to the Ombudsman.' – Article 8(1)
Malta	Four stages of review/appeal: 1. Internal Complaints Procedure – Code of Practice, Article 8 2. Filing an application with the IDPC – FOIA, Article 23 3. Appeal before the Information and Data Protection Appeals Tribunal – FOIA, Article 29 4. Appeal before the Court of Appeal (Inferior Jurisdiction) – FOIA, Article 30
Ireland	Wide power of review given to the Head of Authority of decisions taken by officials in his department, and this within 3 weeks – Article 21 This is subject to a further layer of review by the Information Commissioner, and this within 4 months – Article 22 Further appeal can be made to the High Court, proceedings in which are to avoid the disclosure of exempt information – Article 24
Germany	Provides only for the right of appeal to 'the Federal Commissioner for Freedom of Information.' – Article 12
Estonia	Right to file a challenge with either the Data Protection Inspectorate, or a superior body or agency, or the Ministry of Economic Affairs and Communications, or else to file 'an action with an administrative court either personally or through a representative.' – Article 46
Slovenia	Provides only for the right of appeal to the Commissioner for Access to Public Information – Article 27

2.8 Observations

At first glance, it may seem to the reader that the differences between the FOIAs in respect of the procedural norms discussed in this chapter are merely a matter of preference of the respective legislator, and that discrepancies in this regard are not truly consequential. The author begs to differ and opines that the qualitative and quantitative standards upheld by these provisions are decisive in creating an efficient and effective FOI system. As the popular legal maxim goes – justice delayed is justice denied. The same can be said about access to information – information delayed is information denied. It is for this precise reason that the exploration of best practices that shall be carried out in Chapter 4 on the basis of the above data is an essential exercise.

Chapter 3

Reasons for Non-Disclosure – A Distinguishing Feature or an Area of Commonality?

The comparative analysis has, so far, been concerned primarily with the seminal procedural aspects of the various FOIAs. This structural choice was not coincidental. On the contrary, it was made with the conviction that, particularly in this field of law, the proverbial devil is in the detail. Since much of the academic body of work that has been written on FOI law around the world has been centred upon the more substantive aspects of the subject, a thorough analysis on the procedural rules governing this area of law was merited.

However, no serious discussion on the state of freedom of information across jurisdictions would be complete without an analysis of the substantive exceptions and exclusions that invariably qualify the general right of access to information held by public authorities – the so-called reasons for non-disclosure. In fact, every FOIA selected for study contains a list of reasons which public authorities can invoke in order to justify non-disclosure of requested information. These reasons set the boundaries of the right of access to information and constitute a necessary limitation of this general right for the purposes of effective Government.

In keeping with the structure that has been adopted so far, this chapter shall take the form of a loyal reproduction of the substantive exceptions scattered across the various FOIAs, while the author's comments, observations and recommendations shall be made in Chapter 4.

3.1 CoE Convention

The European Convention lays down a framework to be followed by national FOIAs in this regard. An important provision contained therein stipulates that 'limitations shall be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting', whilst also highlighting the following interests which are to be protected by Member States[63]:

- national security, defence and international relations;
- public safety;
- the prevention, investigation and prosecution of criminal activities;
- disciplinary investigations;
- inspection, control and supervision by public authorities;
- privacy and other legitimate private interests;
- commercial and other economic interests;
- the economic, monetary and exchange rate policies of the State;
- the equality of parties in court proceedings and the effective administration of justice;
- environment; or
- the deliberations within or between public authorities concerning the examination of a matter.[64]

However, and perhaps more importantly, the Convention explicitly stipulates that all the above-mentioned limitations are subject to 'an overriding public interest in disclosure'[65] and that such limitations should also include time-limits after which they would no longer apply[66], making the Convention one of the legal instruments most conducive to Governmental openness in this regard.

[63] Council of Europe Convention on Access to Official Documents, s 3(1)
[64] Any communication with the country's Head of State may also be included among the possible limitations under the Convention.
[65] *Ibid*, s 3(2)
[66] *Ibid*, s 3(3)

3.2 Malta

One can speak of a three-fold classification of exemptions under Maltese law. Firstly, Article 14 provides a list of various 'technical' reasons for non-disclosure scattered across the Act. These include:

- Non-applicability of the Act to information subject to any other law, in line with the general principle of law that *lex specialis derogat legi generali*
- Documents 'held by a commercial partnership in which the Government or another public authority has a controlling interest, in so far as the documents in question relate to the commercial activities of the commercial partnership'
- Documents containing 'personal data subject to the Data Protection Act', and documents held by the exempt bodies previously mentioned.
- Non-confirmation of existence or non-existence of the document requested.
- Requested document is publicly available or will be published within three months.
- Requested document cannot be found, and this is certified in writing by the head of the public authority.
- Complying with the FOI Request would substantially and unreasonably divert the resources of the public authority from its other operations.
- The document requested is not held by the public authority and the person dealing with the request has no grounds for believing that the document is held by, or connected more closely with the functions of, another public authority.
- The request is frivolous or vexatious or the information requested is trivial – this notion is expanded upon in the Code of Practice. [67]

The second category of exemptions is contained in Part V of the Maltese FOIA, titled 'Conclusive Reasons for Not Disclosing Official Documents under this Act', which provides a list of reasons which merit non-disclosure of a requested document. The reasons contained therein are deemed 'conclusive', and hence not subject to a balancing-out exercise between the public interest served in disclosure and non-disclosure of the

[67] Code of Practice (Malta), s 11.1

requested document. The interests which these provisions aim to protect are fairly standard across all the FOIAs selected for comparison, and include *inter alia* national security, international relations, law enforcement, legal professional privilege, parliamentary privilege, confidentiality, judicial proceedings, ongoing research, trade secrets and other commercially sensitive information.[68]

Part VI, on the other hand, provides a list of reasons for non-disclosure which become operative 'only if [the requested document] contains matter in relation to which the public interest that is served by non-disclosure outweighs the public interest in disclosure'.[69] This categorisation in itself is by no means an insignificant matter. On the contrary, it plays a central role in the decision-making process carried out by public authorities in terms of the FOIA and will hence be a point of comparison in this comparative exercise.

Part VI, as previously discussed, provides a (shorter) list of reasons subject to a balancing-out exercise to be carried out by the public authority in question between the public interest served in disclosure and non-disclosure of the requested document. The interests protected by such provisions include the confidentiality required to protect the integrity of the deliberative process involved in the functioning of Government, the financial and property interests of Government, the integrity of tests, examinations, or audits carried out by a public authority, the proper and efficient conduct of public authority operations, and the integrity of negotiations, including commercial and industrial negotiations, by or on behalf of Government or a public authority.[70]

3.3 EU Regulation 1049/2001

The EU Regulation, similar to the Maltese text, provides a two-fold categorisation of limitations; outright and conclusive grounds for refusal on one hand, and the

[68] Freedom of Information Act (Malta), s 29 - 34
[69] *Ibid*, s 35(2)
[70] *Ibid*, s 35 - 38

possibility of an overriding public interest in disclosure on the other. In the first category, one finds the protection of:

(a) the public interest as regards:
— public security,
— defence and military matters,
— international relations,
— the financial, monetary or economic policy of the Community or a Member State;

(b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.[71]

In the second category – that subject to an overriding public interest in disclosure – one finds the following limitations:

- commercial interests of a natural or legal person, including intellectual property,
- court proceedings and legal advice,
- the purpose of inspections, investigations and audits
- documents, drawn up by an institution for internal use or received by an institution, which relate to a matter where the decision has not been taken by the institution, if disclosure of the document would seriously undermine the institution's decision-making process
- documents containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned, even after the decision has been taken, if disclosure of the document would seriously undermine the institution's decision-making process[72]

The EU Regulation furthers provides that all the above exceptions 'shall only apply for the period during which protection is justified on the basis of the content of the

[71] Regulation (EC) No 1049/2001, s 4(1)
[72] *Ibid*, s 4(2), (3)

document', and in any case, for a period not exceeding 30 years. However, where the exceptions relate to 'to privacy or commercial interests and in the case of sensitive documents, the exceptions may, if necessary, continue to apply after this period.'[73] The reference to 'sensitive documents' is a reference to those documents classified as 'top secret', 'secret', or 'confidential', which documents protect essential interests of the EU and its Member States, notably public security, defence, and military matters.[74]

On a perhaps more technical point, the EU Regulation stipulates that when a requested document is already public, there is the duty to direct applicants to access such public documents.[75] Under other FOIAs, such as the Maltese Act, stop at qualifying previous publication as a ground for refusal of a request, even though it could be argued that directing the applicant to the published material would fall under the duty to be helpful enshrined in most FOIAs, such as Art. 7 of the Maltese FOIA for instance.

3.4 Hungary

Of particular interest in this regard is the relevant provision in the Hungarian FOIA, which potentially has a determining influence on *how* the exceptions to the right of access are to be interpreted. This aspect of Freedom of Information Law is as pivotal, if not more so, than the actual exceptions themselves. The provision in question, which encompasses the ideal mode of application of any FOIA, reads as follows:

If the controller is vested with discretionary authority by an Act with respect to the refusal of requests for access to data of public interest, the grounds serving for refusal shall be interpreted restrictively, and the request for access to data of public interest

[73] *Ibid*, s 4(7)
[74] *Ibid*, s 9
[75] *Ibid*, s 10(2)

shall only be refused if the underlying public interest outweighs the public interest of allowing access to the data of public interest.[76]

3.5 Estonia

Notably, a justifiable ground of refusal under the Estonian FOIA relates to information requested that 'does not concern the performance of public duties.' Also of relevance is the provision which qualifies as a ground of refusal those instances where FOI Requests require information to be additionally systematised and analysed and new information would have to be documented on the basis thereof.[77] Estonian law stipulates that such a request for information is deemed to be a request for explanation and shall be responded to pursuant to the procedure prescribed in the Response to Memoranda and Requests for Explanations Act.

Of particular interest is that the Estonian FOIA goes on to adopt a sort of converse approach insofar as it provides a list of information that cannot be classified as internal and hence withheld, which list includes, inter alia[78]:

- reports on the work or the work-related success of the holder of information and information on the quality of the performance of duties and on managerial errors.
- information which damages the reputation of a state or local government official, a legal person in private law performing public duties or a natural person, except sensitive personal data or personal data whose disclosure would breach the inviolability of the private life of the data subject.

The implications of the above two exclusions are, to say the least, noteworthy and could serve as a benchmark for government scrutiny in a democratic society.

[76] Act CXII of 2011 (Hungary), s 30(5)
[77] Public Information Act (Estonia), s 23
[78] *Ibid*, s 36

3.6 Italy

The Italian FOIA categorises exceptions based on whether the interest to be protected is of a public or a private nature, with the 'balancing-out' exercise of the public interest to disclose or not altogether excluded. However, the caveat that the exception stands only for as long as is justified applies to both categories.[79] The grounds for refusal are quite generic and largely correspond to the grounds already discussed.[80]

3.7 Germany

The German FOIA lists, in detailed fashion, the several instances of 'special public interests' which could conclusively serve as grounds for refusal of disclosure, which grounds more or less approximate those contained in in most other FOIAs for selected for comparison. The German FOIA sets forth the so-called 'balancing-out' exercise with respect to certain private interests, the relevant provisions being the following:

- 'Access to personal data may only be granted where the applicant's interest in obtaining the information outweighs the third party's interests warranting exclusion of access to the information or where the third party has provided his or her consent.'[81]
- 'No entitlement to access to information shall apply where such access compromises the protection of intellectual property. Access to business or trade secrets may only be granted subject to the data subject's consent.'[82]

[79] Decreto Legislativo 14 marzo 2013, n. 33, s 5-bis (5)
[80] *Ibid*, s (1),(2)
[81] Federal Act Governing Access to Information held by the Federal Government (Germany), s 5(1)
[82] *Ibid*, s 6

3.8 Ireland

The exceptions to the right of access contained in the Irish FOIA also emulate to a large extent those contained in the other FOIAs chosen for analysis. The Irish position also embraces the distinction between mandatory grounds of refusal and grounds subject to the 'the weighing of public interest'.[83]

3.9 Sweden

The Swedish FOIA also provides a generic list[84] of interests which justify non-disclosure of requested information. However, this is supplemented by a separate piece of legislation with a lengthy and immensely specific list of exceptions to the general right of access.[85] This method of listing exceptions is targeted at minimising the discretion to disclose or withhold requested information; a method with has its advantages and disadvantages.

3.10 Slovenia

The list of exceptions to the right of access found in the Slovenian FOIA contains various references to other pieces of legislation which regulate the particular area to which each ground of refusal refers to – a feature which provides clarity in the interpretation of such restrictions and allows for the provision of more detail as to when access should be refused.[86] Amongst the legislation cross-referenced to are the Act Governing Classified Data, the Act Governing Companies, the Act Governing the Protection of Personal Data, the Act Governing Government Statistics Activities and the Act Governing Tax Procedure.

[83] Freedom of Information Act 2014 (Ireland), s 11(7)
[84] Freedom of the Press Act (Sweden), s 2
[85] Public Access and Secrecy Act (Sweden) (2009:400)
[86] Access to Public Information Act (Slovenia), s 6(1)

3.11 Observations

The above data shows that, by and large, the reasons for non-disclosure contained in the various FOIAs fall within the list contained in the CoE Convention. There are naturally some reasons for non-disclosure in certain FOIAs but not in others, but it is the author's opinion that this is not the main issue which merits discussion. The actual decisive factor is the manner in which such reasons for non-disclosure are applied, as shall be discussed in detail in Chapter 4.

Chapter 4

Translating Comparative Findings into FOIA Best Practices

4.1 Information Subject to the Freedom of Information Acts

This is a seminal point that any FOIA that purports to promote openness and transparency must get right in order to achieve such a goal. A restrictive definition – whether by design or defect – seriously prejudices the effectiveness and defeats the purpose of the entire Act. Having an FOIA that is perfectly drafted in all other aspects but which has an inadequate clause that outlines what sort of information can be subject to a valid FOI Request would be futile, insofar as the Act would not cover documents and information that should fall within its scope of applicability.

An FOIA that merits close inspection in this regard is the Maltese clause. The Maltese FOIA establishes the right of access to '*documents* held by public authorities'[87], which documents are defined as follows:

any article that is held by a public authority and on which information has been recorded in whatever form, including electronic data, images, scale models and other visual representations, and audio or video recordings, regardless of whether the information can be read, seen, heard or retrieved with or without the aid of any other article or device.[88]

While the use of categorical terms such as '*any* article' and 'in *whatever* form' seems to suggest that the definition of 'documents' is practically all-encompassing, one

[87] Freedom of Information Act (Chapter 496 of the Laws of Malta), s 3
[88] *Ibid*, s 2

should not be misled by such terminology. On the contrary, it is worth noting from a very fundamental standpoint that the Maltese FOIA does not speak of a right of access to information *per se*, but to documents. Such an observation is not made aimlessly. On the contrary, an important implication that may be drawn from such a distinction is that an FOI Request would not be deemed valid under the Maltese FOIA unless it points to an already-existing document, and not to information and/or raw data that has not yet been recorded in some sort of physical form.

This state of affairs is echoed in other FOIAs – namely, Ireland's, Estonia's, Slovenia's, as well as the CoE Convention. The position under EU law is peculiar, as although Regulation 1049/2001 speaks only of 'documents', there exists a European Code of Good Administrative Behaviour[89], Article 22 of which outlines a separate and distinct process with which applicants may make requests for 'information' rather than 'documents'. This alternative procedure, however, does not include binding timeframes nor an appeal process. It is worth pointing out that despite the fact that the EU's 'institutions, bodies, offices and agencies' are obliged to 'conduct their work as openly as possible' and ensure that their 'proceedings are transparent'[90], these same bodies have shown not to be immune to exploiting narrow definitions in order to restrict access. Emblematic in this regard is Case T-436/09 *Dufour v. European Central Bank*, wherein the European Central Bank (ECB) withheld access to databases that it used to compile statistical analyses for its reports on staff recruitment and mobility from a doctoral researcher. The ECB argued that 'a database would only 'constitute a document under Article 3(a) [of Directive 1049/2001] if a printed version of it existed.'[91] The manifest superficiality of such a refusal is evidence of the inadequacy of a restrictive definition clause that speaks only of 'documents' and not of 'information'.

[89] Accessible here: <https://www.ombudsman.europa.eu/en/publication/en/3510>
[90] Treaty on the Functioning of the European Union, s 15
[91] Deirdre Curtin and Adrian Rubia, 'Regulation 1049/2001 on the right of access to documents, including the digital context' (Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies, August 2024)

NGOs dealing with FOI matters have flagged the right of access to mere documents an ‘outdated concept’ which is ‘narrower’ than the all-encompassing right to information.[92] The author subscribes to the idea that the latter formulation is far more appropriate to ensure the public’s right to be informed in the digital era and participate in a democratic process which deals with ever more complex matters and decisions.

A few of the FOIAs chosen for analysis embrace this wider notion of access to ‘information’. The Italian FOIA makes reference to ‘data and documents’ and the German FOIA similarly mentions both ‘files’ as well as ‘information’ that may be provided ‘in any other manner’. The UK FOIA includes only the broad term ‘information’ when identifying to what exactly are eligible applicants entitled to request. The Swedish FOIA seems to allow for a hybrid of sorts, and this in the form of ‘a compilation of information’ that can be taken from recorded material.

The above variations and nuances all related to differences in *formal* requirements that must be met for information to fall within the scope of the various FOIAs. However, there are two pieces of legislation which go a step further and include more substantive and material qualifications within the clause that outlines what information is subject to the workings of that same legislation. One of such pieces of legislation is Regulation 1049/2021, which dictates that the document must be one ‘concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility.’ The Ukrainian FOIA is perhaps even more noteworthy. The relevant clause speaks of:

information of public interest (importance), i.e. information that indicates threats to state sovereignty and territorial integrity of Ukraine; enables citizens to make informed political choices; guarantees awareness of events and facts affecting one’s life; ensures realization of constitutional rights, freedoms and duties; helps prevent

[92] Pamela Bartlett Quintanilla and others, ‘Guide on Access to EU Documents’ (*Access Info Europe*, January 2013)

violations of human rights, deception of the public, hazardous environmental and other consequences of actions of commercial entities, or absence thereof, etc.[93]

While there may be good intentions behind the choice to adopt such a style of legislative drafting, it is the author's belief that a such lengthy and winding qualification has no place in a defining clause of an FOIA. The risk that such qualifications may be abused by public entities in order to deprive applicants from access to information that they should be legitimately entitled to access by far outweighs any benefits that the legislator may have envisaged when promulgating such a provision. Such overly elaborate qualifications lend themselves to the undesirable situation in which applicants would have to motivate their request in order to fall within said qualifications – anathema to the legal ideal that public access should be the default position.

After careful consideration of all the variations among the comparable provisions of the selected FOIAs in this regard, it is the author's opinion that if a model clause had to be identified and recommended for adoption in the other FOIAs, it would be the UK provision. At the heart of this choice is the simplicity with which the UK clause has been drafted – a quality of supreme importance in a clause that outlines the scope of applicability of a piece of legislation. A simple and straightforward text, bereft of unnecessary complexities and qualifications, is significantly more conducive to openness and transparency, insofar as it is most resistant to attempts by public authorities to give 'creative' interpretations of the legal text in order to deny access of public information.

The above recommendation would certainly be most conducive to a high degree of openness and transparency. However, the author is also mindful of the fact that legal amendments are often incremental rather than drastic. In light of this, an alternative recommendation would be that of substituting references to 'documents' with 'information' (as in the aforementioned UK position) but also introducing a

[93] The Law of Ukraine on Access to Public Information, s 1(2)

distinction between documented information on one hand and 'undocumented' or 'other' information on the other. The first term could be defined in manner similar to how it is defined in the Maltese FOIA, while the latter term could be defined as information compiled from various sources of recorded/known data, which compilation of information would not unreasonably divert from the public authority's resources. This latter qualification is meant to act as a compromise in systems like the Maltese freedom of information regime, insofar as would still render the disclosure of undocumented information possible while easing public authorities' concern of complex FOI Requests that would be too burdensome or time-consuming to accede to. This alternative is being recommended because it is the author's belief that amelioration (even if not to the fullest degree) is better than no progress at all.

4.2 Eligible Applicants

When it comes to the clauses regulating who may and may not file an FOI Request, the position adopted by the selected pieces of legislation is almost unanimous – the right of access is afforded to any and all, without distinction or qualification. There are however some notable exceptions which merit further discussion. The first is the Swedish FOIA, which endows only Swedish *citizens* with a right to file a FOI Request – to the apparent exclusion of mere residents of whatever duration. At this juncture, it is worth considering what the requirements to obtain Swedish citizenship are – and as a corollary, what are the requirements for a Swedish resident to be able to file an FOI Request. In fact, it transpires that the Swedish Citizenship Act has very recently undergone amendments that have increased the residency requirement from five to eight years, along with the requirement to sit for language proficiency and knowledge tests, among other requirements.[94]

[94] 'Sweden: Parliament Approves New Citizenship Law Requiring Language and Knowledge Tests', <https://www.loc.gov/item/global-legal-monitor/2026-05-08/sweden-parliament-approves-new-citizenship-law-requiring-language-and-knowledge-tests/> accessed 13 May 2026

The other provision which departs from the predominant position is the Maltese clause, which includes a five-year residence requirement as well as status as a Maltese or EU citizen. The wording of the law seems to suggest that the two requirements (residence and citizenship) are cumulative and not alternative. In fact, a request for information regarding migrant returns made by Access Info – a Madrid-based NGO – was rejected on the basis that the five-year residency requirement had not been met.[95] The rejection was confirmed by the Information and Data Protection Commissioner. However, Access Info persisted and filed an appeal before the Information and Data Protection Appeals Tribunal. In its decision, the Tribunal clarified that European citizenship alone suffices in order for a person to be deemed an 'eligible person' in terms of Article 2 of the Maltese Freedom of Information Act.[96] In adopting such a 'liberal' interpretation of the relevant provision, the Tribunal made reference to the relevant parliamentary debates and held that:

'it is clear that the intention of the legislator was never to withhold such information from the EU citizens although the wording used in the legislation regarding the criteria of 'eligible person' according to Article 2 of Chapter 496 of the Laws of Malta leaves scope for interpretation.'

While it is positive to note that the Information and Data Protection Tribunal has given a liberal interpretation to the provision in question, the fact of the matter remains that Access Info had to pursue a 3-year legal challenge to have their request considered on its merits. This is an undesirable state of affairs which could have been avoided had the relevant legal provision been drafted more clearly and unequivocally. And even if that were the case, the provision would still be limited to EU citizens, thereby excluding from the right of access to information citizens of non-EU states who have lived in Malta for two, three or four years.

[95] https://www.access-info.org/2020-03-05/malta-access-info-in-court/ accessed 14/05/2026
[96] Access Info Europe vs Ministry for Home Affairs and National Security (Appeal Number 5/2019) (24 March 2022) (Information and Data Protection Appeals Tribunal)

It is for this reason that both the Swedish and Maltese provisions are, in the author's view, grossly incompatible with the principles of openness and effective public engagement that FOI legislation should seek to embody, uphold and promote. It is not the length of the highly onerous residency requirements that is concerning. The critique of such requirements tackles a more fundamental point than that. It is the author's view that restrictions and exceptions to disclosure of information should be based on purely substantive and applicant-neutral considerations – i.e. considerations limited to the list of material exceptions contained in every FOIA – and should have absolutely no connection to the identity, status or nationality of the applicant.

Such restrictive clauses seem to suggest that persons who have lived in the country for three or four years have no legitimate interest in requesting information from the public entities and institutions that are responsible for the administration of the city and country which such residents have made their home. This is, in the author's view, an absurd and discriminatory proposition that has no place in a society that seeks to foster a culture of meaningful public engagement and the free flow of information.

It is for these reasons that it is strongly suggested that the relevant clauses in this regard should be as all-encompassing as possible – as most already are – and that any reference to citizenship status and/or residency requirements should be discarded completely.

4.3 Bodies to whom FOI Requests may be Addressed

From the comparative analysis carried out in this regard, a significant number of differences has been identified in the manner in which the different jurisdictions outline which entities can be the subject of an FOI Request and which cannot. These are not merely slight nuances in an otherwise common approach. Rather, they reflect the extent to which the legislator has chosen to render entities that serve a public function subjectable to the FOI obligations. The results of the comparative analysis have the potential to serve as a blueprint for a model clause that maximises the scope of applicability of FOIAs.

The first legislative position worth expanding upon is that adopted in the Maltese FOIA. The inclusion of a blanket provision that excludes on an *a priori* basis a number of public entities from the scope of applicability of the FOIA is, in the author's view, antithetic to the declared aim of the Maltese FOIA itself, namely 'to promote added transparency and accountability in government.'[97] It is understandable that certain information held by these public entities is of a highly sensitive nature and should under no circumstance be disclosed to the general public. However, it is equally evident that not all information and documents held by such authorities is of such a sensitive and confidential nature as to merit automatic exclusion from the purview of the FOIA – for instance, it is difficult to envisage a justification for the *a priori* exclusion of information relating to staff salaries and other information relating to general administration.

Therefore, the author contends that non-disclosure of sensitive information held by the prescribed public authorities can – and should – be guaranteed by the general exemptions that are contained in practically all FOIAs and which apply indiscriminately to all public entities, without the necessity of a blanket, *a priori* exclusion of any and all documents held by the prescribed entities. It is for this reason that the author suggests the abrogation of such a blanket exclusion in its entirety.

Alternatively, should the legislator not have the appetite to abrogate such a list completely, a more conservative amendment would be the extension of the qualifier applicable to the Maltese Broadcasting Authority, which limits the *a priori* exclusion to documents which relate to 'its functions under article 119(1) of the Constitution'[98], to all the listed entities. A similar structure features in the Irish FOIA, which specifies

[97] Malta Freedom of Information Act, preamble
[98] Art. 5(4)(g) of the Maltese FOIA

the matters handled by certain public authorities which fall outside the purview of the FOIA.[99] Under this more moderate approach, information relating to matters of general administration would be able to be the subject of a valid FOI Request – an improvement to the current state of affairs in Malta.

The comparative analysis also identified a number of interesting provisions that are clearly aimed at widening the notion of what is meant by a 'public body' for the purposes of freedom of information law. Any such provision which goes beyond a strict interpretation of what constitutes a public entity for such purposes is laudable. The cornerstone values of transparency and accessibility to information that is in the public interest are best served by FOIAs that capture within their scope of applicability all entities and/or persons that carry out a public function or are financed by taxpayer money.

Particular reference is made, for instance, to the German FOIA's rule which essentially renders private contractors engaged by public entities subject to the dispositions of the freedom of information regime. It seems that the *raison d'etre* behind this provision is to prevent public entities from bypassing the scrutiny of FOI applicants by contracting third parties to carry out public functions.

Also commendable is the basic reasoning behind the rule contained in the Italian FOIA which lays out financial thresholds of public funding which, when met, render entities – even those lacking legal personality – subject to the FOIA. However, the author finds the Estonian position in this regard to be qualitatively superior, insofar as information relating to public funding of private third parties is inherently subject to the FOIA, regardless of the amount of financing. The absence of financial thresholds rules out the possibility of public authorities and private entities adopting 'creative' methods to bypass FOI scrutiny – such as staggering payments and contracting separate linked 'façade' entities. Another provision certainly worth mentioning is the Estonian provision rendering undertakings with a dominant

[99] Art. 42 of the Irish FOIA

position in the market and monopolies subject – limitedly to pricing conditions – to the freedom of information regime. This novel approach is commendable insofar as promotes a wide and progressive understanding of the public's right to have access to information that affects their lives and moulds the fabric of the society in which they operate.

If, however, one legislative position had to be singled out for providing a clear, well-defined, robust and wide-ranging notion of 'public authority' for the purposes of freedom of information law, that would have to be the UK position. The clarity of structure with which the concept of what is to be deemed a 'public authority' is outlined is laudable in and of itself. The UK legislator's decision to provide both an explicit list of public authorities in Schedule 1 – together with clear rules on how an entity can be added or removed from that list – as well as the possibility of having other persons designated as public authorities even if they do not meet the strict criteria to be included in Schedule 1, provides an ideal mix of legal certainty and a healthy dose of flexibility to cater for changing circumstances and particular instances where public interest would dictate that certain persons be made subject to freedom of information law.

That said, the author contends that there is one specific aspect of the UK FOIA that merits amendment in this regard. Reference is being made to persons 'providing under a contract made with a public authority any service whose provision is a function of that authority.'[100] Under the present framework, such persons can only be subjected to the FOI obligations if they are designated as public authorities by the Secretary of State or the Minister for the Cabinet Office. In the author's opinion, the ever increasing frequency with which public authorities outsource their functions to private entities[101] merits a legislative amendment which would attribute to these private contractors – limitedly to matters relating to the execution of public functions

[100] Freedom of Information Act 2000 (UK), s 5(1)(b)
[101] Eve Lacroix, 'Freedom of Information at 25: successes, setbacks and the road ahead' (City St George's, 9 January 2026) <https://www.citystgeorges.ac.uk/news-and-events/news/2026/january/25-years-of-foia> accessed 15 June 2026

entrusted to them – public authority status for the purposes of the FOIA, as is the case under the German position, without the need to have *ad hoc* designation each time a public contract is awarded or an FOI Request relating to a private contractor is made. Such an amendment could safeguard against a Secretary of State or the Minister for the Cabinet Office reluctant to designate a private entity as a public authority when transparency and openness would so dictate.

4.4 Internal Transfer of Requests

This particular aspect of the freedom of information system may, at face value, seem to be rather trivial and insignificant. However, it is the author's opinion that any sub-process that carries with it a time-component merits careful consideration. The internal transfer of misdirected FOI Requests is no exception, more so when one considers how it is not at all improbable that a person making an FOI Request does not address such request to the appropriate public authority at the first attempt. The likelihood of such a scenario is compounded significantly by the proliferation of various public entities, agencies and departments which has become a hallmark of modern civil service in various jurisdictions.

From the FOIAs chosen for analysis, a wide discrepancy has emerged in the time-limits within which such 'internal' transfers must be carried out. It is the author's view that the longest time-limit identified – the two-week timeframe under the Irish FOIA – is unjustifiably excessive. The time-limit provided for in the Slovenian FOIA – three working days – seems much more appropriate without being unrealistic or unfeasible, particularly when one bears in mind that this is merely a *transfer* of a request which precedes the assessment of the request on its merit. There is no apparent reason why such a straightforward administrative step cannot be carried out in a swift manner not exceeding three working days, particularly when no substantive assessment of the request is necessary at this stage of the process.

4.5 Decision to be Taken, Applicable Time Limits and Extensions

From the comparative analysis carried out in this regard, it emerged that this is one of the aspects of the FOI process in which the FOIAs chosen for analysis are most divergent among themselves. In fact, extremities range from a 48-hour timeframe to process urgent requests to a staggering one-month processing time-limit, with many variations in between.

On a preliminary note, reference ought to be made to the Maltese position in this regard. The Maltese FOIA essentially lays down an initial twenty-working day period within which a decision is to be taken upon the FOI Request, and a further ten-working day period which commences from payment of the relative fees within which actual access to the requested documents is to be granted. While there is a logic behind the separation of these two time periods – i.e. that of allowing the applicant to decide whether to proceed with the request in light of the fee that would be payable – the author can find no possible justification for the excessive length of the latter period. It is truly difficult to envisage a scenario in which a public authority, after having considered the request for as much as twenty working days, requires an additional ten working days to actually grant access to the requested documents. The evaluation process that leads to the decision on the merits certainly requires that the requested documents be identified and retrieved, and therefore it is expected that access to said documents can be provided in a significantly shorter timeframe than the additional ten working days afforded to the public authority under the current legislative position.

Similarly to the Maltese position, the equivalent UK rule also takes the issue relating to payment of fees into account, without resorting to the unsatisfactory and excessive prolongation of timeframes that plagues the Maltese provision. In fact, under the UK position, the original timeframe of twenty working days is merely suspended for the duration of time (in working days) between issuing of a fees notice and payment of said fees. In other words, the matter of how long it takes for the FOI Request to be processed depends on how long it takes the applicant to settle the applicable fees, and not entirely at the public authority's whim. This is by far a more desirable state of affairs.

Another unique feature that was identified in this segment of the comparative analysis is the one contained in the Ukrainian provision. It essentially introduces the concept of a 'motivated, urgent request' – a notion which does not feature in the other FOIAs chosen for analysis. While normal FOI Requests are required to be processed within five working days, the aforementioned urgent requests must be addressed within an abridged timeframe of forty-eight hours. Such a notion may prove immensely useful in scenarios in which it is pivotal that information be made available before a certain decision is to be taken – whether of personal importance to the applicant or of a wider importance to the general public. Such a bold and liberal approach is certainly one that merits close consideration by legislators across the various jurisdictions under analysis.

As for the general timeframe within which the FOI Request is to be decided upon, the Ukrainian and Estonian five-working day timeframes are truly commendable, while the Italian, German and Irish one-month time-limits are admittedly hard to justify. It is the author's opinion that, if a recommendation had to be made in this regard, a 'golden mean' of sorts ought to be recommended for adoption. An eight-working day time-limit within which a decision must be taken seems feasible without being excessive. Also recommended for adoption is the UK system of suspending the applicable timeframes for the duration of working days it takes the applicant to settle any applicable fees. Furthermore, the Ukrainian notion of a 'motivated, urgent request' is strongly recommended for adoption – along with its forty-eight-hour timeframe which the author deems appropriate in light of its particular function. Finally, in relation to public authorities' power to extend the timeframe within which an FOI Request is to be acceded to, the fifteen-working day extension that features in the Ukrainian, Estonian and Hungarian FOIA as well as

Regulation 1049/2001 seems to be an adequate period that strikes a balance between public authorities' need to process particularly burdensome or voluminous requests and the general public's right to swift and efficient access to information.

4.6 Manner in which Access may be Given

The Italian provision identified in the comparative analysis regarding publication – rather than direct transmission – of information is intriguing from two perspectives. Firstly, from a purely practical point of view, it is simply sensible to publish requested information the publication of which would be in the general public interest rather than merely transmit it directly and exclusively to the individual applicant. Secondly, the fundamental principles underlying freedom of information legislation – openness, transparency and accountability – are better served with information of a certain public relevance being made available to the general public rather than to individual applicants. Publication of information in this manner resembles the practice of parliamentary questions common to many parliamentary systems, by way of which members of parliament can make questions to elected members of the executive, the answers to which are tabled in parliament. Under the FOI system, it is the citizen who makes the questions directly to the executive branch, and there is no reason why the answers to those questions which strike at the very heart of the public interest should not be made public from the offset. It is for these reasons that the Italian provision is being recommended for adoption across the various FOIAs chosen for analysis.

The Irish provision regarding extraction of information from various documents and the creation of an *ad hoc* record in order to satisfy an FOI Request is also worth analysing further. Such a provision essentially offers a practical solution to the loophole identified in the first part of this concluding chapter relating to references to 'documents' or 'records' rather than to 'information'. By explicitly providing for the possibility of the creation of a new record in order to accede to an FOI Request, this provision prevents undesirable situations whereby an FOI Request has to be denied simply because there is no singular document which satisfies the FOI Request as formulated. While the recommendations made in the initial part of this chapter hold true, such a provision is also laudable.

4.7 Publication Requirements

Freedom of information law can be described as a two-pillar system. The first pillar – as has been thoroughly discussed throughout this thesis – is that part of every FOIA that regulates the manner in which FOI Requests are processed. There exists however another pillar of FOI law that embodies in perhaps a more fundamental way the principles of openness and transparency that should be at the heart of every FOIA. This latter pillar is made up of those rules that require the mandatory *a priori* publishing of certain information held by public authorities, without the need for an FOI Request to be lodged.

These provisions crystallise a foundational principle of FOI law – namely that information should, by default, be made available to the general public. This creates a culture of openness and of a free flow of information that allows citizens to be well-informed when participating in the democratic process.

The publication of information on the basis of these rules serves, in the author's view, two main purposes. The first is that publication does away with the need to file an FOI Request – a process which is inevitably time-consuming and at times overly bureaucratic. Needless to say, the author endorses those systems adopt wide-ranging publication requirements, insofar as the more information is made readily available to the general public, the better served the values of openness and transparency are. A secondary function of having information published by public authorities is that, even if certain information is not so published, interested parties can get a clear picture of what sort of information is held by which public authority, and would therefore be in a better position to lodge FOI Requests to the appropriate public authority at the first attempt without having to have their request go through the internal transfer procedure previously discussed.

4.8 Supervising Bodies

The necessity of having a body that oversees the proper functioning and application of the provisions of the FOIA by public authorities is made rather self-evident by the presence of such a body in all the FOIAs chosen for analysis. The broad powers that such bodies typically enjoy – as exemplified by the powers which the Maltese IDPC enjoys – are a pre-requisite of an effective enforcer of FOI law, as opposed to an ineffectual observer. The importance of having a superior entity that is not 'toothless' in the face of public authorities that refuse to uphold the rules laid down in the relevant FOIA cannot be understated. The mere existence of an oversight body with significant powers of enforcement has the positive effect of dissuading public authorities from issuing refusals of FOI Requests that they know will be overturned upon review by the overseeing authority. In this respect, the author has no reservations in recommending that the wide powers afforded to the Maltese FOIA be used as a blueprint for the equivalent authorities under the other systems chosen for analysis.

This recommendation is made, however, with one very important qualifier. Reference is made to the Prime Minister's veto power enshrined in Article 26 of the Maltese FOIA. In the author's view, such a power is nothing short of a transgression of what should be the IDPC's full autonomy and independence. One of the main purposes of having freedom of information legislation is precisely that of enabling members of the public to hold public officials to account, and any sort of intervention by the head of the executive branch, however justified or savvy, is very likely to appear to have been motivated by partisan, political considerations. That is not to say that the author is advocating for full and final decision-making powers to an omnipotent Information Commissioner. On the contrary, the Maltese FOIA already contemplates an appeal system which allows for the review of decisions taken by the

IDPC before the Data Protection Appeals Tribunal and eventually the Court of Appeal. Such checks and balances are necessary in any democratic society that aims to uphold the rule of law. However, the Prime Minister's power to unilaterally veto a decision taken by the IDPC does not, in the author's view, qualify as such a legitimate check or balance and should therefore be abrogated entirely in favour of an independence and autonomy as enshrined in the relevant Hungarian provision reproduced in the comparative analysis component of this thesis.

4.9 Appeal Procedures

There is a large degree of similarity among the appeal processes analysed in the comparative analysis segment of this thesis. However, there are still some points worth delving into further. The first observation to be made relates to the notion of a request for reconsideration. This concept features in the Convention, in Regulation 1049/2001 and in the Maltese FOIA, among others. While there is a logic behind this, the author remains highly sceptical of its utility in practice. In fact, it is the author's belief that such a process, particularly if it is made a pre-requisite to filing an application before the relevant appellate body, would simply result in unnecessary delays in obtaining redress. The reasoning behind such a conclusion is that it is unlikely that a public authority changes its position simply because the applicant asks it to 'reconsider'. It is because of the likelihood that this administrative step simply leads to delayed redress rather than a reversal of the original decision that the removal of this particular aspect of the appeal process is being recommended.

Another aspect worth discussing further is the approach taken by some FOIAs to limit the right of appeal to the 'Commissioner' responsible for freedom of information. The German and Slovenian regimes adopt this approach of limiting the right of appeal to this supervisory authority in its *quasi*-judicial capacity. While there is an argument to be made for the timeliness of redress that is achieved by such systems, it remains the author's view that a right of appeal to a fully autonomous and impartial court of law is the ultimate safeguard against the wrongful refusal of a request for information. If there is a stage in the multi-tiered appeal system that is to be omitted, it should be the request for reconsideration made to the public authority that has already denied the FOI Request, and not the right of appeal to an impartial judicial body.

4.10 Reasons for Non-Disclosure

When carrying out the comparative analysis of this particular aspect of freedom of information law, the author was admittedly surprised by the findings that emerged therefrom. It transpired that, as opposed to a feature that distinguishes the more 'liberal' FOIAs from the more restrictive ones, in reality this is one of those areas in which the FOIAs chosen for analysis displayed a high degree of similarity and commonality among themselves.

In fact, a deliberate choice was made not to reproduce entire lists of reasons for non-disclosure contained in the various FOIAs. The results that such an exercise would have yielded is of little academic value, insofar as said reasons for non-disclosure are largely similar in substance across all FOIAs.

Instead, the author contends that there is one provision in particular that merits further elaboration and discussion in this regard. Reference is being made to the rule that features in some of the legal instruments under scrutiny regarding the balancing-out exercise that public authorities are obliged to carry out when deciding upon an FOI Request, which exercise can be summarised in the following manner: does the public interest that is served by disclosure of the requested information outweigh the public interest served by non-disclosure?

Some of the FOIAs chosen for comparison do not make provision for such an interest-weighing exercise. Others – like the Maltese and Irish legal instruments as well as Regulation 1049/2001– do feature such a rule but limit its application to a select few reasons for non-disclosure. The CoE Convention, on the other hand, subjects all the reasons for non-disclosure contemplated therein to a similar public-interest balancing test, as does the Hungarian FOIA.

It is the author's view that the framework set forth by the CoE Convention and adopted by the Hungarian FOIA in this regard ought to serve as a benchmark and a model which other FOIAs should emulate. While it is understandable that some reasons for non-disclosure are, by their very nature, more sensitive than others, this should not in and of itself preclude public authorities from weighing out the public interest served by disclosure or retention of information. On the contrary, the effect of the inherent sensitivity of certain reasons for non-disclosure (such as national security, for instance) should lead to a presumed high threshold that must be satisfied in establishing a public interest in disclosure, but not to an outright refusal to even consider public interest arguments. The *a priori* exclusion of certain reasons for non-disclosure from the scope of applicability of such a balancing-out exercise gives public authorities the possibility of merely invoking such a reason as a basis to reject a legitimate FOI Request, even when such an FOI Request clearly merits positive consideration.

The room for abuse that characterises the 'mandatory' or 'compulsory' nature of certain reasons of non-disclosure merits, in the author's view, the abrogation of such a notion from freedom of information legislation. Instead, the processing of all FOI Requests should entail an exercise of weighing out public interest served by disclosure or retention, regardless of the potentially applicable reason for non-disclosure. Such an amendment should not, however, be made in a vacuum. As the Estonian Data Protection Inspectorate has rightly pointed out[102], undefined legal concepts such as the notion of 'public interest' require constant interpretation and their introduction into legislative frameworks should therefore be accompanied by comprehensive guidelines on their proper interpretation. Another valid point raised

[102] Viljar Peep 'Implementation of the Public Information Act and the Personal Data Protection Act in 2013, Recommendations for 2014' (Estonian Data Protection Inspectorate, April 2014), <https://www.aki.ee/sites/default/files/documents/2024-01/Annual%20report%202013.pdf> accessed 10 June 2026

by the Estonian Inspectorate in its report is that 'considering how small the Estonian law and language space is, [Estonian] specialized legal scientific commentary and judicial practice takes more time to develop than in bigger countries.' This is reflective of the difficulties which smaller jurisdictions could face in developing a clear and comprehensive notion of 'public interest'. Collaboration with competent authorities in bigger nations with a longer tradition of FOI legislation could, in the author's view, accelerate and facilitate this process.

Chapter 5

Final Remarks

The comparative analysis conducted in the present thesis was strictly limited to the legislative instruments that regulate freedom of information across select jurisdictions. Valuable insights can and have been drawn from such an analysis. The most striking insight is how one and the same FOIA can be very progressive and efficient in some aspects of the law (for instance, a wide scope of applicability based on a liberal notion of 'public authority') but weak in others (for instance, an unjustifiably lengthy timeframe within which an FOI Request is to be decided upon). It is precisely for this reason that a comparative analysis can be so fruitful – it identifies best practices from which all FOIAs can benefit.

It is however the author's belief that in order to gain the full picture of the soundness and adequacy of an FOI regime as a whole, a wider analysis has to be carried out. A comprehensive examination of how legal design, institutional practice, and political context combine to produce openness — or to permit opacity — in public administration is necessary to discern which systems are truly effective and efficient and which are not. This is true in the context of any area of law, but particularly in the field of FOI – an area of law in which even the finest legal drafting cannot prevent a wilfully unobliging public authority from denying legitimate rights of access to information. In fact, a recent report issued by the Centre for Media Pluralism and Media Freedom (CMPF) analysed data gathered by the Media Pluralism Monitor and came to the following two conclusions which are highly pertinent to the present discussion:

1. A robust law is not a guarantee of its exemplary implementation and enforcement

2. A weak law does not mean that the public authorities use it to obstruct access to public-interest information.[103]

The author cannot but agree with and subscribe to these conclusions. It is precisely in light of such considerations that it is of paramount importance that public officials are placed under a binding, legal obligation to act in an honest, good faith and transparent manner when processing FOI Requests – as seems to have been recognised and understood by the UK legislator in the proposal of the Public Office (Accountability) Bill, which Bill aims to 'impose a duty on public authorities and public officials to act with candour, transparency and frankness.'[104]

Therefore, the present thesis ought to be considered not as a point of arrival, but rather a solid starting point for further, deeper and wider studies into how FOIAs are applied (or misapplied) across various jurisdictions.

[103] Konrad Bleyer-Simon and others, 'Monitoring Media Pluralism in the Digital Era' (Centre for Media Pluralism and Media Freedom) <https://cadmus.eui.eu/server/api/core/bitstreams/ed666093-d5a2-5133-8ebc-dd2a09b3b629/content> accessed 12 June 2026

[104] <https://bills.parliament.uk/bills/4019> accessed 15 June 2026

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