

# From Official Information to Public Information: Rethinking Thailand's Official Information Act in the Digital Age

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## Abstract

Since the Official Information Act B.E. 2540 (1997) has been in effect for over two decades, numerous provisions stipulated in this Act have become obsolete (outdated) and incongruous with the current societal context. Notably, the Thai state has undergone significant growth over the past 20 years, resulting in the emergence of novel state power structures. Furthermore, state authority and budgetary allocations have been decentralized to private-sector organizations while the scope of information deemed significant and of public interest has expanded considerably. The provisions of the Official Information Act B.E. 2540 (1997) are no longer adequate to address these evolving circumstances. A methodological approach was employed to examine the conceptual framework of public information, complemented by a comparative analysis of the United States Freedom of Information Act. The objective is to elucidate and discuss the limitations of public information accessibility. Based on these findings, the study aims to propose recommendations for amendments to the existing law or the enactment of new legislation to address the identified issues.

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## Keywords

public information, official information, information transparency

## CORRESPONDING AUTHOR

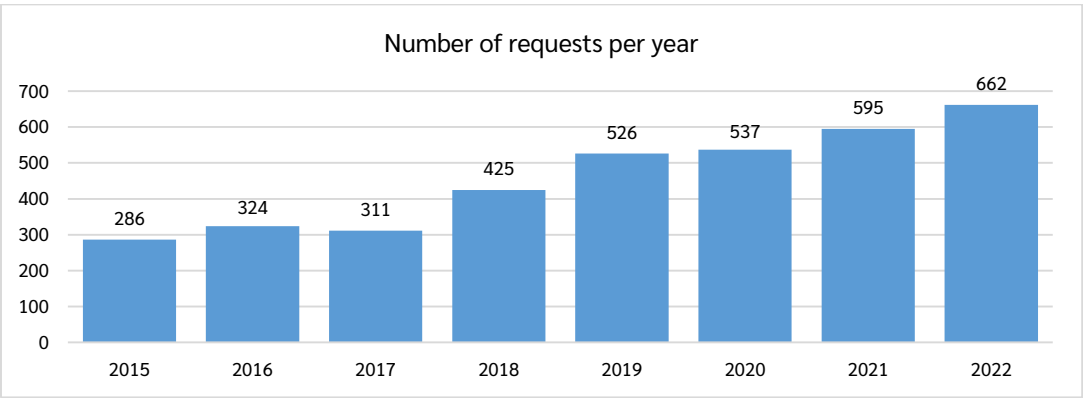
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# Introduction

More than two decades after the enactment of the Official Information Act (OIA) B.E. 2540 (1997), Thailand continues to face persistent difficulties in translating the legal right to official information into effective access in practice. Statistical data on appeals submitted to the Information Disclosure Tribunal show a steady increase from 286 cases in 2015 to 662 cases in 2022. This trend suggests that the problem is not merely the absence of legal rights, but the practical limitations of the existing legal framework to ensure timely, convenient, and meaningful disclosure of information to the public, as shown in Figure 1.



**Figure 1.** Appeal statistics to the Official Information Commission 2015–2022

Source: Adapted from OIC (2015–2022)

The increase in disclosure appeals should therefore be understood as a symptom of a deeper institutional problem. Although the OIA was enacted to establish disclosure as the general principle and non-disclosure as the exception, its design remains strongly shaped by an older bureaucratic model of information control. The Act continues to rely heavily on individual requests, physical access to information at state agencies, and a relatively narrow list of information subject to proactive disclosure. As a result, citizens are often placed in the position of having to petition the state for access to information that may already be of public significance.

This problem has become more pronounced in the digital age. The public importance of information is no longer confined to documents formally held by state agencies. Information relevant to public accountability may also be generated, retained, or controlled by private actors that receive public funds, exercise delegated public functions, obtain concessions, or create environmental and social impacts. At the same time, public expectations of information access have changed. Information should not merely be available at an office upon request; it should be accessible electronically, searchable, reusable, and obtainable through procedures that are convenient for citizens.

Throughout the years, Thailand has enacted several laws aimed at advancing digital public administration, particularly the Digitalization of Public Administration and Services Delivery Act B.E. 2562 (2019) and the Act on Carrying Out of Public Service via Electronic Means B.E. 2565 (2022). Nevertheless, the OIA has not been systematically modernized to align with these developments. It lacks clear provisions for comprehensive electronic proactive disclosure, online request submission, request-tracking mechanisms, machine-readable formats, or a centralized platform for accessing public information. This creates a legal inconsistency between Thailand's broader policy direction toward digital government and the continuing analogue structure of its freedom of information regime.

Beyond technical issues, access to public information is a foundational condition for democratic participation, transparency, and accountability. Citizens cannot effectively monitor governmental action, scrutinize the use of public resources, or participate in public decision-making unless information of public significance is accessible in a timely and usable manner. Freedom of information law therefore performs a constitutional and administrative function: it translates the democratic "right to know" into concrete legal obligations imposed upon public authorities.

This article proceeds from the hypothesis that the OIA, while historically significant, no longer adequately responds to Thailand's contemporary institutional, technological, and governance context. In particular, the Act remains constrained by its focus on official information, narrow obligations for proactive disclosure, an office-based service model, and broad exceptions to disclosure. The article therefore rethinks Thailand's information disclosure regime by shifting the analytical focus from "official information" to "public information" and by drawing comparative lessons from the United States Freedom of Information Act to inform possible legislative reform in the digital age.

## **Research Objectives**

This study is structured around three closely interrelated objectives that collectively guide its analytical and normative inquiry.

First, it aims to examine the statutory limitations of Thailand's OIA, particularly the provisions governing proactive disclosure, individual requests for information, and exceptions to disclosure under Sections 7, 9, 11, and 15. The analysis focuses on how these provisions shape the scope of disclosable information, the accessibility of information services, and the discretion of state officials in refusing disclosure.

Second, it aims to compare Thailand's information disclosure regime with selected mechanisms under the United States Freedom of Information Act, especially those relating to proactive electronic disclosure, request-based access, frequently requested records, request-tracking systems, and the legal treatment of exemptions. This comparative inquiry is intended to

identify institutional and procedural mechanisms that may assist in modernizing Thailand's freedom of information framework.

Third, it aims to formulate recommendations for reforming Thailand's information disclosure law by shifting the legal focus from "official information" to "public information," expanding proactive disclosure obligations, modernizing digital access channels, and clarifying the legal standards governing non-disclosure. These recommendations seek to align Thailand's information disclosure regime with participatory democracy, good governance, and contemporary digital government.

## **Legal Concepts on Freedom of Information**

For the purposes of this study, the author has synthesized a legal conceptual framework on freedom of information to guide the analysis of the provisions of the Official Information Act B.E. 2540 (1997). This framework encompasses the following concepts and theories.

### **The Significance of Public Information and Freedom of Information Legislation**

Information is a prerequisite for the meaningful exercise of rights and freedoms in a democratic system. As both holders of sovereign power and subjects of public administration, citizens must be able to access information held by public authorities in order to monitor whether the state exercises power, allocates resources, and performs public functions in accordance with the public interest. Information disclosure is therefore central to transparency, anti-corruption, and accountability. When public information is accessible, citizens are better able to understand governmental plans, scrutinize the consequences of state action, and exert pressure against corrupt or arbitrary conduct (Nikomborirak and Saelawong, 2014; Unhaket et al., 2017; Yomanak and Angsuwan, 2023).

The significance of information is no longer limited to information formally held by state agencies. Information of public importance may also be retained by private actors, particularly where they receive public funding, perform public functions, or participate in activities affecting the public interest (Nikomborirak and Saelawong, 2014). Corruption and abuses of power may likewise occur beyond the public sector (Holmes, 2016). In practice, however, information relevant to public affairs is often concentrated in the hands of state agencies or institutions closely connected to the exercise of public power. This creates a condition of asymmetric information between citizens and those who govern, making it difficult for the public to know what the state is doing, how public budgets are used, or how state resources are being managed (Stiglitz, 2002). Freedom of information legislation is therefore necessary to transform public access to information from a matter of administrative discretion into a legally enforceable obligation.

Moreover, in the digital age, the significance of public information also depends on the design of disclosure systems. Digital transparency cannot be achieved merely by transferring existing bureaucratic records onto websites. Rather, it requires institutional and technological foundations that enable information to be organized, discovered, accessed, interpreted, and reused by the public. Recent scholarship on digital transparency emphasizes the need to design government systems for transparency rather than treating digital tools as isolated add-ons (Matheus et al., 2021). Similarly, studies on open data portals show that formal online availability does not necessarily guarantee meaningful public access, since many portals remain more usable for professional or technically skilled users than for ordinary citizens (O’Grady and Mangina, 2025). In the context of open government information, the distinction between proactive disclosure and disclosure upon request is also significant, as the effectiveness of each method depends on institutional design, information usefulness, disclosure channels, and the cost of access (Wei and Zhang, 2025).

This design-oriented view is consistent with contemporary digital government frameworks. The OECD’s Digital Government Index and OURdata Index emphasize that public-sector data should not only be disclosed, but should also be open, useful, reusable, and organized through coherent, citizen-centered governance systems (OECD, 2026). From this perspective, freedom of information law should move beyond a request-based model and impose duties on public authorities to design disclosure systems that enable citizens to access and use public information effectively.

### **Theoretical Foundations of Freedom of Information Law**

This study draws upon participatory democracy theory and the concept of good governance as the theoretical foundations of freedom of information law. In a democratic system, governance is rooted in the people, and the role of citizens is not limited to periodic voting. Rather, citizens should be able to participate in decision-making processes on matters affecting their lives and welfare (Sribua-iam et al., 2002). Participatory democracy therefore requires institutional arrangements that enable citizens to access information, monitor public administration, express opinions, and provide input for public decision-making (Uwanno and Bureekul, 2005). In this regard, the right to access information is a prerequisite for meaningful participation, since citizens cannot effectively monitor or criticize governmental action without information concerning the conduct of the state and its agencies (Wongwattanasan, 1997). Recent open government frameworks similarly recognize access to information as an essential condition for citizen participation and the effective exercise of other rights (OECD, 2025).

The concept of good governance reinforces this obligation from an administrative perspective. Good governance seeks to address institutional failures such as corruption, democratic deficits, and the absence of the rule of law by requiring public authority to be

exercised in a transparent, accountable, participatory, and responsive manner (Sheng, 2009; OHCHR, n.d.). Contemporary public governance literature likewise treats transparency of public information as a key condition for public scrutiny and institutional trust (OECD, 2025). For the purposes of this study, the UNESCAP framework is particularly relevant because it identifies transparency, participation, responsiveness, effectiveness and efficiency, equity and the rule of law, accountability, strategic vision, and sustainability as core principles of good governance (Sheng, 2009). Applied to freedom of information law, these principles require the state not merely to refrain from arbitrary secrecy, but to actively facilitate citizens' access to information so that they may scrutinize public administration, evaluate the exercise of state power, and participate meaningfully in public affairs (Serirak, 2015).

### **Legal Framework on Freedom of Information**

Beyond the theoretical foundations outlined above, freedom of information is also grounded in international human rights law. Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights recognize the right of individuals to seek, receive, and impart information. In the context of freedom of information, this right has been developed into standards requiring states to establish legal and institutional mechanisms through which information can be accessed in a timely, effective, practical, and convenient manner (Article 19, 2012).

Building upon this recognition, freedom of information law is commonly understood through a set of core principles. Puddephatt (1999) identifies nine principles for freedom of information legislation. For the purposes of this study, four principles are particularly relevant to the analysis of the OIA.

First, minimum standards for information disclosure require public bodies to make information available in all formats held under their custody or control, whether disclosure occurs proactively or in response to an individual request. This principle also supports the proactive publication of information of public significance in forms that are accessible and usable by the public.

Second, the promotion of open government requires legislation to cultivate a culture of openness within public bodies. Disclosure should not depend solely on the discretion or willingness of individual officials; rather, the law should establish clear duties, procedures, and institutional guidelines for information disclosure.

Third, exceptions to disclosure must be clearly and strictly defined. While freedom of information law may legitimately protect certain public or private interests, exceptions should be prescribed by law, interpreted narrowly, and applied consistently with the overarching objective of promoting disclosure.

Fourth, cost-effectiveness and facilitation of access require that the exercise of the right to information not be obstructed by excessive fees, inconvenient procedures, or inaccessible service channels. The design of disclosure mechanisms should therefore take into account citizens' practical ability to obtain and use information.

## **Analytical Framework**

Drawing from the theoretical foundations and legal principles discussed above, this study analyzes the OIA through four interrelated criteria: transparency, accountability, accessibility, and digital readiness.

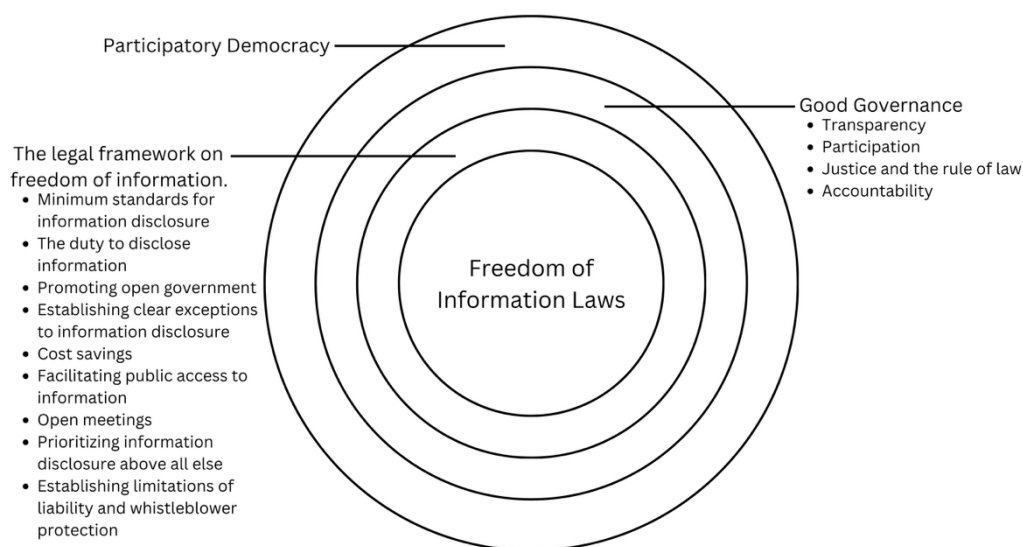
First, transparency concerns whether the law requires sufficient disclosure of information of public significance. This includes not only information disclosed upon individual request, but also information that should be made available proactively so that the public can understand the operation of state agencies, public policies, public expenditure, and matters affecting the public interest.

Second, accountability concerns whether the legal framework enables citizens to scrutinize the exercise of public power. In this sense, freedom of information law should allow the public to evaluate whether state agencies exercise authority, allocate resources, and perform public functions in accordance with law and the public interest. Accountability also requires that refusals to disclose information be justified by clear legal grounds and subject to meaningful review.

Third, accessibility concerns whether citizens can exercise the right to information in practice. This criterion encompasses the procedures, timeframes, costs, service channels, and administrative burdens involved in obtaining information. A legal right to information may be ineffective if citizens face excessive delay, inconvenient procedures, unclear request mechanisms, or service models that do not correspond to their practical capacity to access information.

Fourth, digital readiness concerns whether the law is compatible with contemporary digital government and open data practices. This criterion considers whether the legal framework supports electronic proactive disclosure, online request submission, request-tracking mechanisms, searchable and reusable formats, and service channels that are not limited to physical access at state agencies. Digital readiness is particularly important because public information in the digital age must be not only disclosed but also organized and delivered in ways that enable citizens to find, use, and reuse it effectively.

These four criteria guide the analysis of the main limitations of the OIA, particularly in relation to the scope of disclosable information, proactive disclosure obligations, information service delivery, and exceptions to disclosure. They also provide the basis for the comparative analysis of selected mechanisms under the United States Freedom of Information Act (FOIA) and inform the formulation of reform recommendations, as illustrated in Figure 2.



**Figure2.** Conceptual Research Framework

Source: Compiled by the author

## Provisions of Thailand's Freedom of Information Law

The Official Information Act B.E. 2540 (1997) is Thailand's first freedom of information law, enacted in 1997 as a general statute establishing guidelines for the disclosure of and access to information held under the custody and control of state agencies. Prior to its enactment, the right to access official information in Thailand was considerably limited, with access left entirely to the discretion of individual state officials as to whether disclosure would be permitted. In the absence of procedural rules, the provision of information to the public was largely arbitrary in nature (Watthanakan, 2018).

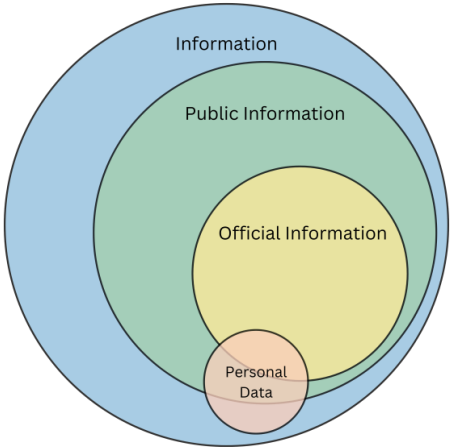
### Overview of Thailand's Freedom of Information Law

The Official Information Act B.E. 2540 (1997) rests on two core principles. The first concerns the establishment of criteria governing the disclosure of official information held under the custody and control of state agencies, which constitutes the cornerstone of the Act. The Act prescribes a framework for information disclosure through three conditions: the establishment of internal structures within state agencies to facilitate public access to information; the provision of access to information of public significance; and the creation of procedures enabling citizens to request access to specific information on an individual basis (Chongchakphan, 2000). The second principle concerns the establishment of criteria for the protection of personal data held under the custody and control of state agencies. The personal data protection objectives of

the Act extend beyond preventing the disclosure of personal data without the consent of the data subject; the Act also sets standards requiring the state to collect personal data only to the extent necessary and relevant to the operational purposes of the state agency concerned, to maintain such data in an accurate and up-to-date manner, and to cease retention once the data is no longer required (Serirak, 2015). The study further identifies the following limitations of the Official Information Act B.E. 2540 (1997), which are discussed below.

### Scope of Currently Disclosed Information

The scope of information currently subject to disclosure remains confined to official information — defined as information held under the custody or control of state agencies, whether relating to state operations or to private individuals (Official Information Act, 2540/1997). In this regard, Rangsan Thanapornpan has observed that the current law does not reflect a culture of transparency premised on the proactive disclosure of public information but rather mirrors the culture of official secrecy characteristic of the Cold War era (Thaipublica, 2012). This reflects a conception of information as something to which citizens are entitled to know and regard as their own, yet in practice citizens are reduced to merely petitioning state agencies for its release (Nikomborirak and Saelawong, 2014).



**Figure3.** Relationships between different types of information under OIA

Source: Compiled by the author

Furthermore, the scope of information under the Act does not extend to other categories of information carrying equivalent public significance to official information (Figure 3), such as data on the environmental impact of private companies, information relating to tax privileges, data held by organizations receiving state budget subsidies, and information held by private entities granted concessions to provide public utilities by the state. These constitute matters of considerable public importance that remain unaddressed under the current legal framework.

## Criteria for Proactive Disclosure of Official Information

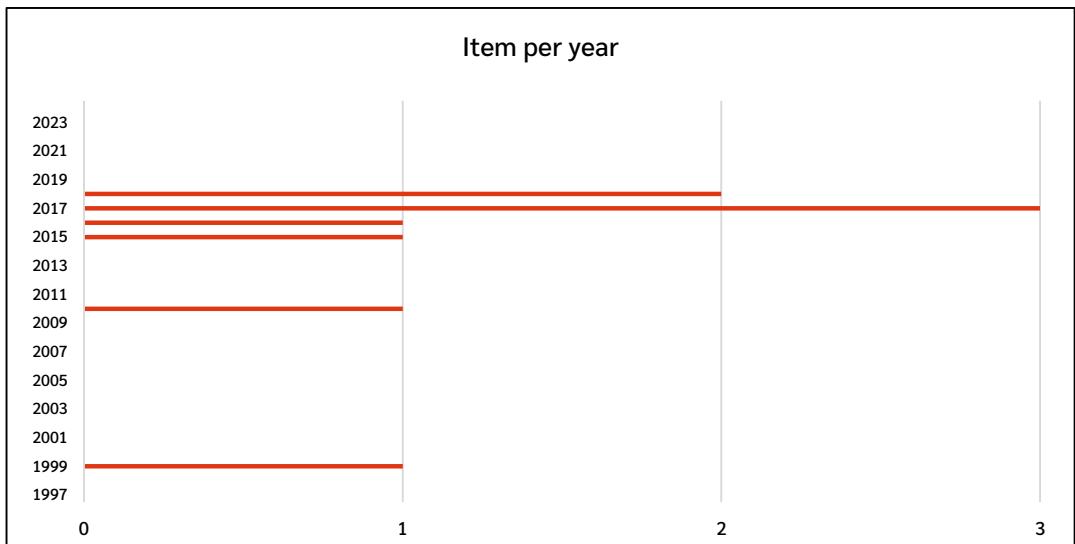
The Official Information Act B.E. 2540 (1997) prescribes three methods of official information disclosure: the publication of information in the Royal Gazette (Section 7); the preparation of information for public inspection at the agency's premises (Section 9); and the provision of information upon individual request (Section 11) (Wongwattanasan, 1997).

Proactive disclosure under Sections 7 and 9 currently encompasses ten categories of information that must be disclosed by operation of law. Under Section 7, state agencies are required to publish three categories of information in the Royal Gazette: (1) the organizational structure and powers and duties of the state agency; (2) the location at which information may be requested; and (3) rules and subordinate legislation. Under Section 9, seven additional categories must be made available for public inspection: (1) decisions having direct effect on private parties; (2) policies or interpretive guidelines of government departments; (3) work plans, projects, and budgets; (4) operational manuals or work instructions; (5) publications referenced in the Royal Gazette; (6) significant state contracts; and (7) resolutions of the Cabinet, statutory committees, and committees appointed by Cabinet resolution.

Furthermore, Sections 7 and 9 of the Official Information Act B.E. 2540 (1997) also authorize the Official Information Commission to prescribe additional categories beyond the ten listed above. To date, the Commission has designated nine further categories of information subject to mandatory disclosure under Section 9, paragraph one (8)<sup>1</sup>. It should be noted, however, that the majority of information categories currently prescribed by law remain focused on information held under the custody and control of state agencies, and the number of additional categories designated through subsequent announcements has been modest given the Act's enforcement period of over 27 years — averaging only one additional category every three years (Figure 4). This is considerably limited when measured against the range of significant public information that ought to be subject to more extensive proactive disclosure, such as registration documents and various official registers that should be disclosed by law to enable public scrutiny (Nikomborirak and Saelawong, 2014).

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<sup>1</sup> To date, the following nine additional categories of information have been designated for disclosure under Section 9(8): (1) competitive bidding and price comparison notices of state agencies signed by the head of the government department concerned; (2) information on the procurement decisions of state agencies; (3) information relating to the environment and public health; (4) information in accordance with transparency standards and transparency indicators of state agencies; (5) information relating to budget-funded research; (6) information relating to public utilities and public interest matters; (7) lists of trainees participating in training programmes of various state agencies; (8) public invitation announcements, procurement award notices, and contracts that have been approved for purchase or hire; and (9) building inspection reports under Section 32 bis of the Building Control Act B.E. 2522 (1979).



**Figure4.** Additional information disclosures since 1997–2024

Source: Compiled by the author

The reason the law originally prescribed only eleven categories of mandatory disclosure — with authority delegated to the Official Information Commission to designate additional categories — was that, at the time of enactment, the disclosure of all types of information was considered potentially costly, for instance, in terms of the establishment of information retrieval systems (Wongwattanasan, 1997). The list was therefore kept limited so as not to impose an unduly burdensome obligation on government agencies.

### Current Methods of Information Service Delivery

With respect to the modality of information service delivery, the current Announcement of the Official Information Commission on Criteria and Procedures for Making Official Information Available for Public Inspection requires state agencies to maintain a designated space — such as a library or public relations room — where members of the public may conveniently access and examine information (Wongwattanasan, 1997). In practice, however, the prevailing approach to information service delivery under the law remains primarily office-based (Suttikhot et al., 2005), with no provisions addressing the electronic disclosure of information through websites.

Although the Cabinet previously adopted a policy promoting electronic disclosure under the Act — through the establishment of electronic information centres and a Cabinet resolution directing state agencies to publish information under Sections 7 and 9 on their websites — the categories of information required to be published online remained limited. The law does not mandate proactive electronic service delivery across all categories of information (Chanthrasiri,

n.d.), nor does it establish a general framework enabling citizens to access information electronically via the internet, which would be both more convenient and more cost-effective.

Regarding individual requests for information under Section 11, while the law recognizes the right of citizens to access personal data held by state agencies, it does not prescribe clear guidelines as to how such requests should be processed or within what timeframe. Section 11 merely stipulates that state agencies shall act "within a reasonable time" — generally understood to mean a period that is not unduly prolonged (Wongwattanasan, 1997) — yet in practice the disclosure process may take considerably longer. The law further grants third parties the right to object to the disclosure of information concerning them, which creates difficulties for citizens seeking access to private-sector information held under the custody and control of state agencies (Nikomborirak and Saelawong, 2014).

### **Exceptions to Information Disclosure**

The legal framework on freedom of information recognizes that exceptions to disclosure may be permissible (Puddephatt, 1999) where disclosure would cause demonstrable harm to either the public interest or private interests (Nikomborirak and Saelawong, 2014). Under the Official Information Act B.E. 2540 (1997), Section 15 prescribes seven grounds for non-disclosure: (1) information that would cause damage to national security, international relations, or the country's economy or public finances; (2) information that would undermine the effectiveness of law enforcement; (3) internal opinions or recommendations of state agencies, excluding academic reports, factual reports, or information used in the formulation of such internal opinions or recommendations; (4) information that would endanger the life or safety of any person; (5) medical reports or personal data; (6) information protected from disclosure by law, or information provided to the agency by a person who did not consent to its further disclosure; and (7) other cases as prescribed by Royal Decree.

Although the exceptions under Section 15 are not absolute, state officials are afforded discretion as to whether to disclose information, having regard to the agency's statutory functions, the public interest, and private interests, provided that the information does not constitute classified state secrets<sup>2</sup>(Official Information Act, 2540/1997). In practice, these exceptions lack sufficient clarity and are susceptible to broad interpretation. This reflects a legislative orientation that prioritizes concealment over disclosure, placing the burden of judgment on individual state officials.

For instance, the term "national security" has been interpreted broadly to encompass security across multiple dimensions, including governance, international security, military affairs,

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<sup>2</sup> Classified state secrets refer to information that state officials have ordered to be withheld from disclosure pursuant to Sections 14 or 15, in accordance with the Regulations on the Maintenance of Official Secrets B.E. 2544 (2001), which establish classification levels ranging from restricted to top secret (Wongwattanasan, 1997).

economics, social psychology, science, and the environment (Wongwattanasan, 1997). The expansive scope of this interpretation has led state agencies to routinely invoke national security as a pretext for withholding information (Suttikhot et al., 2005). Similarly, "undermining the effectiveness of law enforcement" has been interpreted to cover situations involving litigation, prevention, suppression, testing, or investigation (Wongwattanasan, 1997). The lack of legislative precision gives rise to interpretive difficulties and creates opportunities for the improper exercise of official discretion.

Aside from these two examples, the exceptions under Section 15 show a broader tendency to be invoked as grounds for refusing disclosure, as the law does not establish criteria for weighing private interests against the public interest in disclosure. This enables state officials to invoke personal data protection or the claim that the information was provided in confidence as justifications for non-disclosure. A notable illustration is the Supreme Administrative Court judgment, Red Case No. 326/2566, in which the petitioner sought a court order requiring the Office of the National Anti-Corruption Commission (NACC) to disclose a fact-finding and evidence-gathering report. In its submissions, the NACC invoked Section 15(2)(4), claiming the information had been provided by a person who did not consent to its further disclosure — an approach that may be at odds with the principles of good governance and the imperative of anti-corruption scrutiny.

## **Provisions of United States' Freedom of Information Law**

The Freedom of Information Act (FOIA) 1967 (5 U.S.C. § 552) is a federal statute enacted to establish a framework for the disclosure of information in the United States. Prior to its enactment, the United States had no general law prescribing criteria for the disclosure of information held under the custody and control of federal agencies (Lakkhiphinitakun, 2006).

### **Overview of the United States' Freedom of Information Law**

The United States Freedom of Information Act (FOIA), 5 U.S.C. § 552, establishes a general legal framework for public access to records held by federal agencies. Its central principle is that agency records should be disclosed to the public unless they fall within one of the statutory exemptions. FOIA therefore reflects an attempt to balance the public's right to know against legitimate governmental and private interests in confidentiality (*John Doe Agency v. John Doe Corp.*, 1989).

For the purposes of this study, FOIA serves not merely as a historical model, but as a comparative legal framework that illustrates how freedom of information law may be modernized through concrete institutional mechanisms. These include proactive electronic disclosure, disclosure of frequently requested records, request-tracking systems, centralized online request channels, and clearer standards governing exemptions. The 2016 amendments

to FOIA are particularly significant because they strengthened proactive disclosure and digital access, thereby offering useful comparative lessons for Thailand's Official Information Act B.E. 2540 (1997) (Department of Justice, 2020a; Office of Information Policy, 2015).

### **Scope of Currently Disclosed Information**

FOIA requires all federal agencies<sup>3</sup> to disclose records or information under their possession — whether in documentary or electronic form — including annotations to such records maintained by the agency or by any other person under contract (5 U.S.C. § 552(f)(2)).

The scope of disclosable information is not, however, limited to government-held information, but extends to private-sector information held in the possession of federal agencies. In certain circumstances, private organizations may also be subject to disclosure obligations with respect to information under their custody and control where such organizations have been delegated responsibility for delivering public services on behalf of a federal agency or receive federal funding. In *Forsham v. Harris*, the Supreme Court held that private organizations receiving federal grants were not subject to FOIA (*Forsham v. Harris*, 445 U.S. 169 (1980)); however, the government later issued a policy circular requiring privately funded research grant recipients to disclose their research findings to the public under FOIA (OMB Circular A-110 (2 CFR 215)). This principle was affirmed by the court in *American Chemistry Council, Inc. v. HHS*, which further imposed an obligation on federal agencies to maintain their own records and to obtain and retain information from federal research grant recipients (*Am. Chemistry Council, Inc. v. U.S. Dep't of Health and Human Servs.*, 2013).

### **Criteria for Proactive Disclosure of Records**

FOIA prescribes three methods of official information disclosure: (1) publication in the Federal Register, which may be analogized to the Royal Gazette in Thailand; (2) public inspection in an electronic format; and (3) access to and disclosure of public information upon individual request (5 U.S.C. § 552(a)).

Publication in the Federal Register is analogous to publication in Thailand's Royal Gazette (Trisadikoon, 2024) and serves the purpose of enabling the general public to access information and to understand the procedures and means of contacting federal agencies (Department of Justice, 2022). Information subject to disclosure under this method includes: (1) descriptions of the internal structure of federal agencies, their locations, and contact procedures for obtaining information; (2) general information concerning the operational procedures of

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<sup>3</sup> FOIA does not apply to other sovereign institutions, such as Congress and the courts, as both bodies have their own established frameworks governing information disclosure (Lakkhiphinitakun, 2006). Furthermore, with respect to individual states, the law respects state authority to enact their own legislation for internal application (Department of Justice, 2020).

federal agencies; (3) rules, regulations, and procedural requirements of federal agencies, together with descriptions of official forms; (4) substantive rules, regulations, and agency policies of general applicability; and (5) amendments, revisions, or revocations of the foregoing categories.

The public inspection in electronic format channel was introduced through the 2016 amendments to accommodate convenient and efficient electronic information delivery (Trisadikoon, 2024). Its purpose is to ensure that citizens have access to necessary information, can anticipate the legal relationships that may arise between themselves and federal agencies and are able to comply with applicable law — necessitating the broad public dissemination of information (Department of Justice, 2022). Electronic public inspection also serves to reduce the burden on agencies of responding to repeated individual requests for the same information (Office of Information Policy, 2015).

To facilitate electronic public access, FOIA imposes a duty on federal agencies to maintain an index of information made available through electronic public inspection for routinely disclosed records (Department of Justice, 2020b). Information subject to disclosure under this method includes:

(1) final administrative opinions and orders that have been conclusively determined at the administrative level (NLRB v. Sears, Roebuck and Co., 421 U.S. 132 (1975)), excluding opinions or orders issued by courts in judicial proceedings (Am. Immigration Lawyers Ass'n v. Exec. Office for Immigration, 2016);

(2) specific policy statements issued by federal agencies;

(3) administrative manuals and staff instructions affecting members of the public generally; and

(4) records previously disclosed in response to individual FOIA requests that have been requested on at least three separate occasions, or which the agency reasonably anticipates will be the subject of future requests (Office of Information Policy, 2016).

It is worth noting that the amendment introducing category (4) has significantly advanced proactive disclosure by making frequently requested information broadly accessible, while also reducing the need for frequent legislative amendments to enumerate new categories of disclosable information.

### **Current Methods of Information Service Delivery**

As noted above, FOIA prescribes three methods of record disclosure: publication in the Federal Register, electronic disclosure, and disclosure upon individual request. For the third method — disclosure upon individual request — FOIA does not impose conditions that would unduly impede access to information. Requesters are simply required to comply with the

procedures established by the relevant federal agency and to pay any applicable fees (Department of Justice, 2021).

FOIA further requires federal agencies to establish a queuing system and a request-tracking mechanism, whereby each request is assigned a tracking number enabling requesters to monitor the progress of their request by telephone or via a website, unless the information can be provided immediately. In addition, to facilitate the exercise of citizens' rights, each federal agency must designate an official to review requests and provide guidance to assist requesters in correcting any deficiencies in their submissions (Office of Information Policy, 2022).

Following the 2016 amendments to FOIA, the government adopted a policy requiring the Office of Management and Budget and the Department of Justice to develop a centralized online system for consolidating FOIA record requests, enabling citizens to submit requests to any federal agency through a single website (Department of Justice, 2020b).

### **Exceptions to Information Disclosure**

Like Thai law, FOIA provides for exceptions to information disclosure, the purpose of which is to protect private and governmental interests from the consequences of disclosure. The legislative intent underlying these exceptions is to strike a balance between the public's right to access information and the federal government's need to maintain confidentiality within the limited scope necessary for the purposes specified by law, while precluding state officials from exercising selective discretion in withholding information (Barczewski, 2024). The Act prescribes nine exceptions to the disclosure of records, as set out in Table 1.

**Table1.** Exceptions to FOIA disclosure as provided under 5 U.S.C. § 552(b)(1)–(9)

| Type of Exception                                                            | Brief Description                                                                                                                                                               |
|------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| National Security (5 U.S.C. § 552(b)(1))                                     | Information properly classified under an executive order for national defence or foreign policy purposes.                                                                       |
| Internal Personnel Rules and Practices (5 U.S.C. § 552(b)(2))                | Information relating solely to the internal personnel rules and practices of an agency.                                                                                         |
| Information Exempt by Statute (5 U.S.C. § 552(b)(3))                         | Information specifically exempted from disclosure by another statute.                                                                                                           |
| Trade Secrets and Commercial or Financial Information (5 U.S.C. § 552(b)(4)) | Trade secrets and confidential commercial or financial information obtained from a person.                                                                                      |
| Inter-agency or Intra-agency Memoranda (5 U.S.C. § 552(b)(5))                | Internal memoranda or letters protected from disclosure in litigation, including deliberative materials.                                                                        |
| Personal Privacy (5 U.S.C. § 552(b)(6))                                      | Personnel, medical, and similar files whose disclosure would constitute a clearly unwarranted invasion of personal privacy.                                                     |
| Law Enforcement (5 U.S.C. § 552(b)(7))                                       | Records compiled for law enforcement purposes where disclosure could interfere with proceedings, invade privacy, reveal confidential sources or techniques, or endanger safety. |
| Financial Institution Reports (5 U.S.C. § 552(b)(8))                         | Information contained in or related to reports used in the supervision or regulation of financial institutions.                                                                 |
| Geological and Geophysical Information (5 U.S.C. § 552(b)(9))                | Geological and geophysical information, including maps, concerning wells.                                                                                                       |

Source: Adapted from Barczewski (2024)

It should also be noted that, as with Thai law, the exceptions under FOIA are not absolute — federal officials and agencies retain discretion as to whether to disclose the information in question. Nevertheless, consistent with the law's objective of promoting transparency and good governance (Barczewski, 2024), FOIA under 5 U.S.C. § 552(a)(8)(A)(ii)(II) and (b) expressly requires agencies to take reasonably segregable portions of a record and disclose any non-exempt content, while redacting or removing only those portions that fall within an applicable exemption. Furthermore, the United States Supreme Court has articulated the legislative intent behind FOIA and established that its exemptions must be construed as narrowly as possible (*Department of the Air Force v. Rose*, 1976).

In addition, where a federal agency seeks to invoke a FOIA exemption, the United States Court of Appeals for the District of Columbia Circuit has held that the agency bears the burden of demonstrating how the absence of the claimed exemption would affect the interests the law is designed to protect and of identifying the harm by establishing a specific nexus between the

information withheld and the potential injury (*Reporters Committee for Freedom of the Press v. Federal Bureau of Investigation*, 2022). This judicial framework effectively compels agencies to default toward disclosure, rendering it considerably more difficult to invoke exemptions as grounds for withholding information.

## **Analysis of Limitations on Information Disclosure**

An examination of the provisions of the Official Information Act B.E. 2540 (1997) reveals that the legislative intent of the Act is directed toward promoting the disclosure of official information held under the custody and control of state agencies. However, the mere existence of freedom of information legislation does not in itself confirm that Thailand has genuinely advanced participatory democracy. Against the historical context of Thai society, the Act was enacted as an attempt to reduce the prevalence of the culture of information concealment in Thailand. Yet the bureaucratic culture of that era placed greater emphasis on secrecy than on openness — as Rangsan Thanapornpan observed, Thai political society has historically prioritized concealment, treating information as a weapon of the ruling class (Suphawattanakun, 2012) — a disposition that is reflected in the provisions of the Act itself.

With respect to the scope of information subject to mandatory disclosure, the Act remains focused exclusively on official information held by state agencies and does not extend to other categories of information of significant public importance (Figure 3), such as data on the environmental impact of private entities or information concerning private organizations receiving state funding. This limited scope may leave citizens insufficiently empowered to exercise their right to scrutinize matters of public concern, particularly in the absence of statutory authority to compel disclosure. In general, information held by private entities constitutes private property which those entities are entitled to withhold<sup>4</sup>. Legislation of sufficient breadth that imposes an obligation on private actors to disclose information of public significance may therefore be essential to advancing societal transparency in accordance with good governance principles. Listed companies, for example, are already required to disclose material information to investors and the public, encompassing not only financial data but also environmental, human rights, and governance matters (The Stock Exchange of Thailand, n.d.). This reflects a broader demand that capitalism become more responsive to society (Trisadikoon, 2021).

By comparison, while FOIA does not impose a comprehensive obligation on private entities to disclose all information of public significance, it has at least made meaningful efforts to require private organizations receiving federal funding to disclose information relating to such subsidies — representing a commendable starting point for promoting transparency and

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<sup>4</sup>Such rights are recognized under the Civil and Commercial Code in the provisions governing ownership.

enabling citizens to understand how public funds are being utilized, a dimension that does not appear to be reflected in Thai law.

Regarding the scope of proactive disclosure obligations, the OIA prescribes only eleven categories of information subject to proactive disclosure in the legislation itself, with nine additional categories subsequently designated by announcement — a notably limited number that burdens citizens and fails to promote the open government principle by requiring them to submit individual requests for information on a case-by-case basis. The designation of additional proactive disclosure categories rests entirely within the discretion of the Official Information Commission, with no mechanism compelling or incentivizing further designations.

This stands in contrast to FOIA, which was amended to require federal agencies to proactively disclose records that have been requested on at least three separate occasions, or that the agency reasonably anticipates will be the subject of future requests — an approach more likely to expand public access to information over time.

Regarding the modality of information service delivery, Thailand's current legal framework and prevailing practices continue to require citizens to obtain information in person at agency premises. Despite policy efforts to promote disclosure through websites, government agencies' online communications remain predominantly one-directional, limited to publishing information under Sections 7 and 9, without extending to other categories of information, enabling online requests through web pages, or facilitating data connectivity through Application Programming Interface (API) technology. The law also fails to prescribe clear guidelines and procedures for information disclosure.

By contrast, following the 2016 amendments, FOIA has considerably expanded electronic service delivery — both through website-based disclosure and through a centralized online system enabling citizens to submit FOIA requests to any federal agency from a single website.

In terms of exceptions to disclosure, the OIA remains a significant barrier to information access, as the Act confers broadly discretionary authority on officials to withhold information without imposing any obligation on state agencies to provide reasoned justifications supported by evidence for non-disclosure. The Supreme Administrative Court's judgment in Red Case No. 326/2566 illustrates the practical tension between disclosure and administrative secrecy in anti-corruption matters. The requester sought access to documents held by the NACC, including a fact-finding and evidence-gathering report and written explanations submitted in connection with a high-profile asset scrutiny case. The dispute demonstrates that information relating to anti-corruption proceedings may carry strong public accountability value, particularly where the information concerns the conduct of public officials and the reasoning of an independent accountability institution. However, the case also reveals the ease with which public agencies may rely on statutory confidentiality, law enforcement interests, or non-disclosure exceptions to resist access to such information.

From the perspective of freedom of information law, the significance of the case lies not only in the outcome, but in the absence of a clearly structured statutory test under Section 15. The Act does not expressly require an agency refusing disclosure to demonstrate concrete harm, explain why non-disclosure is necessary, or balance the protected interest against the public interest in disclosure. As a result, disputes of this kind depend heavily on subsequent adjudication rather than on clear ex ante legal standards guiding administrative decision-making. The case therefore supports the need to reform Section 15 by introducing a harm test, a public interest balancing test, and a duty to provide written reasons when information is withheld. This contrasts with the FOIA approach, under which exemptions are subject to narrower interpretation and agencies must justify withholding by reference to the protected interest and the foreseeable harm that disclosure would cause.

In summary, while the OIA and FOIA share broadly similar principles, they differ considerably in their details, as illustrated in Table 2.

**Table2. Comparative mechanisms between Thailand’s Official Information Act and the United States FOIA**

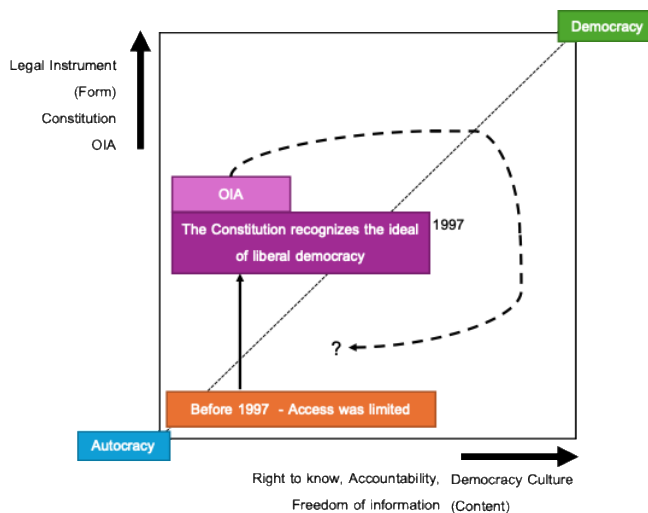
| Analytical issue     | Thai OIA                                                                                                                                                                                                | United States FOIA                                                                                                                                                                                                         | Comparative implication for Thai reform                                                                                                                                                                                           |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Scope of information | Disclosure is primarily limited to official information held or controlled by state agencies. Information of public significance held by private actors generally remains outside the scope of the Act. | FOIA applies to records held by federal agencies and, in certain circumstances, extends to information connected to federally funded research or public functions through agency control and record-retention obligations. | Thai law should consider moving from a narrow concept of “official information” toward a broader concept of “public information,” especially where private actors receive public funds, concessions, or perform public functions. |
| Proactive disclosure | Sections 7 and 9 prescribe limited categories of information for publication and public inspection. Additional categories depend largely on the discretion of the Official Information Commission.      | FOIA requires proactive disclosure of certain records, including records that have been requested repeatedly or are likely to become the subject of repeated requests.                                                     | Thai law should introduce a mechanism requiring proactive publication of frequently requested information, reducing dependence on individual requests and periodic administrative announcements.                                  |

**Table2. Comparative mechanisms between Thailand’s Official Information Act and the United States FOIA (Cont.)**

| Analytical issue         | Thai OIA                                                                                                                                                                                                                       | United States FOIA                                                                                                                                                                                                                                | Comparative implication for Thai reform                                                                                                                                                  |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Service delivery         | The disclosure model remains largely office-based and request-dependent, with limited statutory requirements for online access, tracking, or centralized electronic submission.                                                | FOIA supports electronic public inspection, request-tracking numbers, online status checks, and centralized request submission through digital channels.                                                                                          | Thai law should require electronic disclosure, online request submission, tracking systems, and centralized access channels to align freedom of information law with digital government. |
| Exceptions to disclosure | Section 15 provides broad grounds for non-disclosure, including national security, law enforcement, internal opinions, personal data, and confidentiality, but gives limited guidance on how officials should justify refusal. | FOIA exemptions are statutorily enumerated, interpreted narrowly, and accompanied by duties to disclose reasonably segregable non-exempt portions. Agencies must justify withholding by reference to the protected interest and foreseeable harm. | Thai law should clarify exceptions by introducing a public interest balancing test, a harm test, written reasons for refusal, and a duty to disclose non-exempt portions where possible. |

## Conclusion and Recommendations

The foregoing analysis suggests that the limitations of the OIA are not merely technical but reflect a gap between formal legal recognition and practical access to information. Although enacted to support liberal democracy and reduce reliance on administrative discretion, its current operation has not fully realized that promise. Limited proactive disclosure, office-based access, broad exceptions, and weak constraints on discretion keep access request-dependent and uncertain. As a result, the law risks a cyclical regression: despite formal recognition of the right to information, citizens may still face conditions similar to those of the pre-OIA period, where access depended on the willingness of state agencies to disclose.



**Figure5.** Formal Recognition and Practical Regression of Freedom of Information

Source: Compiled by the author

To prevent this regression, reform should proceed through a legislative blueprint with two main dimensions.

First, the substantive scope of disclosure should be revised. The law should move beyond the narrow concept of “official information” and recognize “public information” as information that carries public significance, even where it is held by private actors. This should include information relating to public funds, state subsidies, concessions, delegated public functions, public services, environmental impacts, and other matters substantially affecting the public interest. The law should also strengthen proactive disclosure by requiring agencies to publish information that is repeatedly requested, reasonably expected to be requested, or necessary for public scrutiny.

Second, the procedure for access should be redesigned for the digital age. The law should require electronic request channels, request-tracking numbers, online status checks, and a centralized public information platform through which citizens can submit requests and access proactively disclosed information. A clear statutory timeframe should be prescribed, with 15 days as the default period for responding to requests, subject only to limited and reasoned extensions. Where appropriate, disclosed information should be provided in searchable and reusable formats.

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