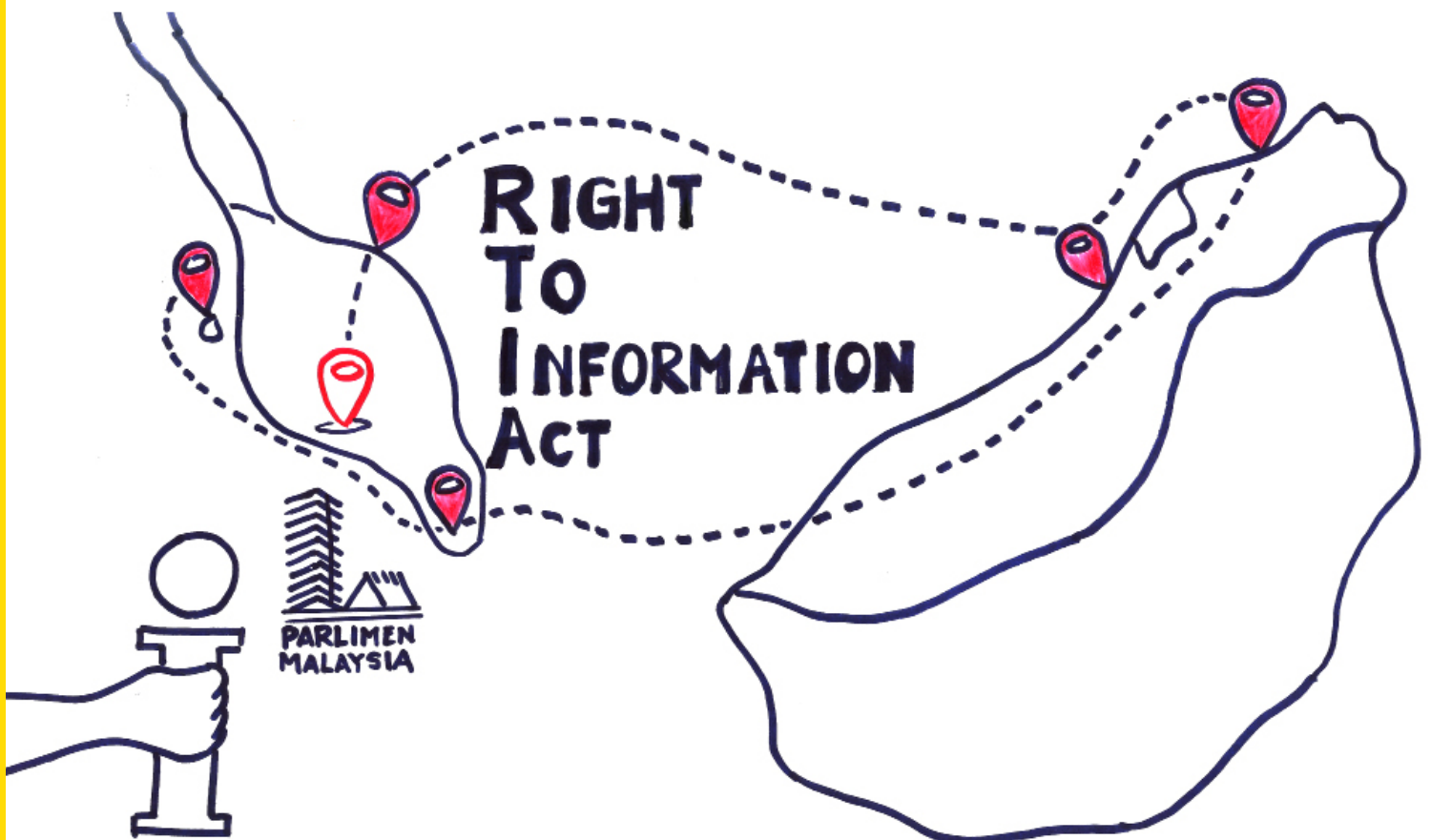


ROADSHOW ON RIGHT TO INFORMATION (RTI) LEGISLATION

Pulau Pinang, Johor, Sabah,
Sarawak, Kelantan

30 April 2021



INTRODUCTION

This report consolidates key findings from five roadshows held in Penang, Johor, Sabah, Sarawak and Kelantan. Key findings from this report are informed by panellist presentations, as well as questions raised by the participants. Panellists represent key stakeholders such as lawmakers, media, academics and civil society organisations representing specific public interests.

The report analyses successes and challenges faced by stakeholders in accessing information in their respective states. It also examines the current legal framework that impacts access to information and further outlines opportunities that can facilitate the legislation of a federal Right to Information (RTI) law in Malaysia.

»» **Background of the Roadshow**

Right to information (RTI) promotes transparency and accountability; and strengthens the public's right to be informed. Creating an enabling environment that upholds and promotes the right of the public and individuals to access their right to information enables constructive participation in any debate or discussion related to specific decision-making processes and/or of public interest, thus enhancing participatory democracy, good governance and strengthens rule of law.

Malaysia has seen significant development concerning RTI in recent years. Benchmarks towards the protection and realisation of the RTI is already initiated through the Selangor and Penang Freedom of Information (FOI) Enactments which respectively seek to recognise and uphold the fundamental right to information, even if it is within the limited boundaries of each state. Numerous other initiatives have been introduced to address the continuing challenges within our current legislative framework, in particular the federal level Official Secrets Act 1972 (OSA), which overrides both state enactments as well as limits the access to a wide array of information on national administration. A federal-level law is therefore necessary to uphold and promote the right of the people to access government information.

»» **Objectives of the Roadshow**

- a. Examine both successes and challenges faced by the public in attempting to access information in Malaysia as a right and its related implications;
- b. Deliberate on the scope of the current legal framework and what needs to be changed to effectively operationalise access and promote the right to information;
- c. Explore the current opportunities that can facilitate new legislation on right to information.

The Pakatan Harapan government (2018-2020) announced that it would repeal the OSA and replace it with a law that would protect and promote the right to information. The Legal Affairs Division (Bahagian Hal Ehwal Undang-undang – “**BHEUU**”) is mandated to lead this initiative and has initiated several stakeholder consultations and engagement to ensure that the views of all parties are heard.

In the last year, two collaborations were initiated by BHEUU and the Centre for Independent Journalism (CIJ) as well as the Coalition of CSOs on Freedom of Expression, namely the National Stakeholders Consultation on the Right to Information Legislation (27 – 28 November 2019) and the Expert Group Meeting (EGM) on the Right to Information Legislation (23 July 2020). Both these initiatives brought together government agencies, SUHAKAM, parliamentarians, international experts, civil society organisations, and relevant media entities, amongst others, and was successful in capturing elements of concerns from across government agencies and civil society and developing a cohesive way forward to support the Government of Malaysia in its efforts to promote and uphold the right to information through an enabling legislation.

As a way forward a series of six roadshows across Malaysia were organised, with a focus on introducing RTI to various stakeholders at the state level, while gathering valuable feedback and lessons learnt to be worked into a future roadmap to support the drafting of a Right to Information law.

» **The following roadshows were held in:**

1. Penang, in collaboration with University Science Malaysia (USM) on 10 September 2020;
2. Johor, in collaboration with ENGAGE Malaysia on 3 October 2020;
3. Sabah (online), in collaboration with University Malaysia Sabah on 12 March 2021;
4. Sarawak (online), in collaboration with Save Rivers on 16 March 2021; and
5. Kelantan (online), in collaboration with University Malaysia Kelantan on 8 April 2021.

» Roadshow Format

The agenda for each roadshow was shaped in a town hall meeting format, consisting of a two-hour discussion session for academics, civil society organisations, media and the public.

The roadshow in Penang and Johor were held in physical venues. Due to the Covid-19 pandemic, subsequent roadshows in Sabah, Sarawak and Kelantan were held online. The virtual roadshows in Sabah and Sarawak were streamed live. The roadshow in Kelantan was a closed-door event that was only accessible to academics and students.

For more details on the respective roadshows, refer to the following appendices:

Appendix 1 for Details of Roadshows

Appendix 2 for Discussion guidelines for panel speakers

» Participants

The roadshows were attended by representatives from legislative assemblies, academic institutions, relevant media entities, civil society organisations, community representatives and the public.

Penang Roadshow	20 participants
Johor Roadshow	25 participants
Sabah Roadshow	30 participants on Webex, 44 participants on FB Live, 2,000 views as of 22 April 2021, 10.45pm
Sarawak Roadshow	14 participants on zoom, 40 participants on FB Live, 4,000 views as of 22 April 2021, 8.57pm
Kelantan Roadshow	56 participants on zoom

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WHY IS THE RIGHT TO INFORMATION IMPORTANT?

“I think right to information is a fundamental human right because it is important for us citizens to know how our country is governed. It is very important to understand the principle that public bodies or governments do not hold absolute propriety rights to information, but we are rather stewards of such data and information.”

“... as a lawmaker and policymaker... it is so, so important for us to obtain adequate information so that we can craft or at least have better inputs, better debates in parliament, on the policy itself, which is supposed to be our main role as policymakers. ... without proper data, we can't debate properly on policies and then you will see MPs have less emphasis on policies.”

YB Dr Kelvin Yii,
Member of Parliament for Kuching

“As [an] elected representative, [it is important] to make sure that the people we represent are well-informed on issues and ... need to formulate laws that will guarantee the right to information.”

YB Datuk Joniston Bangkuai,
Assistant Minister for Tourism, Culture and Environment,
Sabah assemblyman for Kiulu

“Freedom of press and the freedom for access to information... these are the very essence of democratic government, if you look at it, which promotes a government which allows the Rakyat (or the citizens) to participate and to be inclusive and to enable transparency.”

Peter Kallang,
Chairman of Save Rivers

“...maklumat ini juga merupakan salah satu daripada simbolik kepada keterbukaan dan sikap integriti pihak berkuasa. Tak kira samada di peringkat negeri, di peringkat daerah, di peringkat kebangsaan. Bila ada menyokong kepada hak mendapatkan maklumat ini menunjukkan bahawa agensi-agensi yang terlibat sebenarnya adalah agensi-agensi yang berintegriti. Sebab kalau mereka berani untuk berkongsi maklumat, makna kata mereka ini adalah melaksanakan amalan yang terbuka.” (The indicator of an agency with integrity is one that supports the right to information, as if they have the courage to disclose information, this reflects the practice of openness.)

Peter Kallang,
Chairman of Save Rivers

What Information Do People Want?

Information priorities and needs identified by the panellists and participants include:

Information on political issues

- Access to the Outcome Report of the MA 63 Special Committee
- Undiluted historical information on the formation of Malaysia with the inclusion of Sabah and Sarawak in 1963. Why is Sabah (with its own state constitution which was modified in 1965) still governed by the Federal Constitution of Malaya ratified in 1957, when Sabah joined the Federation of Malaya in 1963.
- Accurate information from political leaders on the situation on the ground.

Accurate and timely information on the pandemic

- Continuing education during Covid-19 pandemic, more information about the pandemic, such as infection rate in specific states and cities,
- Decision-making processes regarding the opening of schools, businesses such as Ramadhan market

Education

- Changes within the education system and academic development in the country, detailed information about government plans related to online learning,
- How can right to information law help students and families to obtain information on investigations of misconduct and abuses of power in schools?
- Information for academics to fulfil their primary functions: teach, learn, conduct research and produce publications.

Governance

- Effectiveness of regulations regarding budget allocation

Asset declaration by public officials

- Information on asset declaration by elected representatives and senior government officials to enable the people to hold them accountable in the event their wealth seems disproportionate to their official remuneration.

Environment

- illegal logging, information on state land vs land conservation for natives/ native customary land to prevent clashes between Orang Asli and corporation where land allocation for plantations.
- Sand dredging affects riverbanks which causes landslides. Information can facilitate collaboration between communities and government to prevent the occurrence of a disaster.
- Access to Environmental Impact Assessments (EIA).

Community/ residential interests

- Information from the local council regarding the development plan for a new housing project that may affect their well-being.
- Information related to open spaces and government land in urban areas being used for development as there is a need for land preservation as recreational spaces for a rising population.

How lack of information affects the people

On public interest matters, it was stressed that the people do not always have access to participate in public consultations for development projects such as land allocations for palm oil plantations, East Coast Rail Link (ECRL) project, development for logging. The government does not proactively disclose to public reports such as Environmental Impact Assessment (EIA) or the findings of free prior informed consent (FPIC) processes as part of large development projects involving the indigenous communities.

The public continues to be affected by frequent water cuts, land rights, domestic violence, sexual crimes, government measures in mitigating flood occurrences, river pollution etc., while not having accurate and latest data and information on the causes and findings of related investigations.

Without access to timely and accurate information the public would not be informed, not able to provide constructive feedback to the government, or relatedly hold the government accountable, so that issues can be addressed expediently.

Official duties not performed optimally

On public interest matters, it was stressed that the people do not always have access to participate in public consultations for development projects such as land allocations for palm oil plantations, East Coast Rail Link (ECRL) project, development for logging. The government does not proactively disclose to public reports such as Environmental Impact Assessment (EIA) or the findings of free prior informed consent (FPIC) processes as part of large development projects involving the indigenous communities.

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Declining trust and confidence in civil service

Citing Associate Professor Dr Aman Mohd Ihsan Mamat from the Faculty of Law, University Teknologi MARA (UiTM) in his article taken from the social science research network that,

the government as the “trustee and agency of the people has to act in utmost good faith to pursue the benefits of all”, a CSO panellist iterated that information held by public officials belong to the people, and the information is merely entrusted to the government. It was further added that prohibiting disclosure of information is tantamount to a breach of public trust and will only serve to incur public doubt and mistrust on the government’s integrity.

Why the need for a RTI in Malaysia?

An RTI law enables holding the government and its related bodies and officials accountable for their decisions or actions that affect the general public. It also promotes constructive participation in any debate or discussions related to specific decision-making processes and/ or public interest.

A lawmaker stressed that government policies and guidelines cannot be arbitrary and need to be founded on data and facts. It was stated that an RTI law may act as a push factor for schools and the Ministry of Education to be transparent in their processes and be accountable to students and families by sharing information on guidelines of how they investigated any allegations of misconduct and abuse of power.

EXPERIENCES IN ATTEMPTING TO ACCESS INFORMATION IN MALAYSIA

This section provides a summary of successes and challenges experienced by various stakeholders in accessing information from the government.

Accessing information in Penang with FOI enactment (FOIE)

The current FOI enactments in Penang and Selangor is a positive indicator of respective states' attempt to promote access to information. Weaknesses in the structures of implementation include the high cost of application for information (in Penang), having to provide a reason to support an application for information, and the prohibition to re-publish the information.

It was also shared that applicants experienced challenges in finding the necessary counter or accessing the Information Officer to file an application for information in the Penang state government office in the KOMTAR building.

1. Successes experienced by stakeholders in Penang in accessing information

A Malaysiakini journalist was successful in obtaining information on bicycle lanes in Penang, when the Penang FOIE was first enforced in 2015, with the assistance of a helpful information officer.

2. Challenges faced by stakeholders in Penang in accessing information

A Malaysiakini journalist was successful in obtaining information on bicycle lanes in Penang, when the Penang FOIE was first enforced in 2015, with the assistance of a helpful information officer.

2.1 Prohibitive cost

Costly application¹ and non-refundable appeal cost deters prospective applicants from filing information requests.

Example: An opposition politician spent thousands of ringgit to obtain information related to land reclamation projects in Penang since 2017 (refer to Case Study 1 for more details).

2.2 Government officials unaware of the FOIE law and procedures

A media practitioner approached the Penang Survey and Mapping department to test the implementation of FOIE, however, the attending officer was unaware of the enactment. Anecdotal experiences of other media practitioners share similar reactions from other state government departments in Penang.

¹Base application cost (RM50), application for historical data (RM100 per year), cost per page (RM1/ page) for information

2.3 Information officer lack the capacity to assist applicants with their application

Lack of support from Information Officers in facilitating the application, including in filing the requests to ensure that they would not be rejected over trivial technical mistakes, was identified as a challenge.

Example: SUARAM Penang had an application for information on high-density projects in Penang rejected because they failed to provide detailed information on what they wanted to know. A helpful information officer would have been able to ask them to specify the exact nature and outline the information requests to increase their chances of a successful application.

2.4 Lack of full inventory of data kept within Penang government departments

State departments were also severely lacking in inventories, despite adopting a “no wrong door” policy that allows people to request information from any relevant department. A full inventory of the data kept within each office or department should exist, so that officers can immediately inform applicants if they are indeed reaching out to the correct department and where they should write to for specific information.

2.5 Limited access to documents

2.5.1 Documents classified as confidential

Initial access to documents related to the Penang Transport Master Plan, granted to a journalist was revoked with the justification that the public-private partnership agreement has not been signed with the project’s delivery partners (refer to Case Study 2 for more details).

2.5.2 Access limited to viewing

Penang Forum, who is a member of the Penang Transport Council was not allowed to retain documents presented during council meetings, as those documents were deemed confidential. They were only allowed to view the documents (refer to Case Study 2 for more details).

2.5.3 Guidelines of state government EXCO in assessing special environmental projects

Application by the residents of Sungai Ara to view the guidelines of the Penang state government’s Executive Committee (EXCO) in assessing special environmental project and the state exco’s meeting minutes was rejected, as the meeting minutes were deemed confidential. The applicants proceeded to file an appeal. When the appeal board was convened, there was an attempt to restrict the hearing only for the complainants, even though it was an open hearing. This demonstrates that the public authorities were not used to working under public scrutiny. It was only after lengthy arguments, that the commissioners on the appeals board allowed the viewing of the documents initially requested (*refer to Case Study 3 for more details*).

2.6 Current “Media culture” less likely to utilise FOIE

2.6.1 A media practitioner noted from his own experience and observation that it was rare for journalists in Penang to use the FOIE. This was because they had little to no motivation to do so. The “media culture” of relying on information handed out was partly to blame, as this meant most journalists would not want to delve into investigative reporting or even find out what transpired in the decision-making process of a state government or local council. The media had become used to being spoon-fed by authorities and were very reliant on press conferences by civil society groups, NGOs and other sources to write exposés and publish controversial information.

2.6.2 Other common sources of information include the official websites of these departments, agencies, and ministries, as well as those of regulatory institutions such as Bank Negara Malaysia. However, the information available on these sites were often limited and/or outdated. For more up to date or specific information, journalists were required to source these through their own contacts or by poring over raw data in the form of lengthy documents.

2.6.3 Attempts to change this culture are also hindered by the fear of legal repercussions, as a journalist pointed out, media outlets are concerned about avoiding lawsuits. By merely reporting on the claims made by certain individuals or entities, on the record, journalists are less likely to be named as defendants in the event of a lawsuit. This “sharing of the burden” leaves journalists as mere messengers of information instead of active seekers and interpreters of information.

2.7 Academic access to open access to data and information

Academics and researchers will also greatly benefit from more open access to data and information from the government. An academic from the Penang Institute, who attended the session, noted that many thought of the benefits of RTI from the perspective of obtaining information on current policies, not thinking of the importance of accessing historical data.

Over a decade ago, a few scholars in Malaysia obtained open access to information from the government for their research on migration. Although the entire research was sponsored by the government, the results were never shared or made public. Malaysia should follow the steps of the UK Freedom of Information Act, which pushes for open access to academic research, particularly those that were sponsored by public funds.

2.8 Lack of public awareness of the existence of FOIE Penang

A CSO representative observed that while Penang was fortunate to have the FOIE, many Penangites had not seen the enactment for themselves. The document was not publicised enough and it was entirely possible that many locals were not fully aware of how they can benefit from a right to information. Civil society groups in Penang, however, were rather active in seeking information and had therefore used the FOIE to see if they could access the information they were after.

Experiences in other states – Sabah, Sarawak, Johor, Kelantan

3. Challenges: Lack of cooperation by government agencies to share information

3.1. Change in government administration

The classification of the MA63 report under OSA despite the promise of the Pakatan Harapan government in 2018 in reforming laws and enactments to align with the interests of the peoples in Sabah and Sarawak was a denial of access to key reports. It was pointed out that PH's government's initial efforts of legislating an RTI law and repealing OSA were halted when the Pakatan Perikatan took over in February 2020.

When the Pakatan Harapan government took over in 2018, the Council of Eminent Persons it set up had called for public submissions for ideas to reform the nation. A CSO representative and other activist groups made submissions and held regular engagements with the Council of Eminent Persons in a bid to contribute to a more open system of administration. However, most of the information that the CSOs had requested to make public remain under the Official Secrets Act.

3.2. Inadequate and inaccurate information

While commending the daily information released by the Health Director-General, it was argued that more granular data such as those related to infective rate, number of tests conducted to cities and states would be more relevant. It was further cited that the information provided on the infective rate in Sarawak as 0.87 or 0.93 does not suffice, as there is no breakdown of data in different regions within Sarawak so that the citizens can make informed decisions.²

A participant thinks that the RTI regime should include sanctions against leaders giving inaccurate information that confuses the public. A leader apparently made an audacious claim that his "rakyat" are wealthy, in clear contradiction of data evidence.

² Sarawak RTI Roadshow, 16 March 2021

3.3 Government may not have the data and analysis

The following points were shared by stakeholders as possible factors for experiencing difficulty in obtaining information from public agencies.

3.3.1 Government may not have the data and analysis

Lack of detailed/ updated data

A lawmaker observed that the government agency provided standardized, seemingly “templated answers and similar, if not exactly the same” response from government agencies to his questions raised within a year apart. When the lawmaker requested for further information, often the government agencies hide under the veil of the Official Secrets Act (OSA), such as for issues related to MA63.

The lawmaker alluded this issue to the government agency’s unwillingness to share data or simply that the government may not have the data.

Responses given by government ministries to the lawmaker’s written and oral questions appear unsatisfactory.

The above challenge was similarly experienced by an academician who approached agencies for more detailed information to support research for internal use.

No ‘full data’

Another academician shares the same opinion that government agencies may not have the data in the first place. As part of the Sabah Priority issue, where the issue of illegal immigrants is glaring, the academician recounted futile attempts in obtaining information from various agencies. The academician deduced that none of the relevant agencies has any specific data or information on illegal immigrants in Sabah.³

³ Sabah RTI Roadshow, 5 March 2021

Data lack analysis and no granular information specific to different cities within a state

A lawmaker opined that the daily Covid-19 information provided by the Director-General of the Health Ministry does not include analysis regarding the impact of the pandemic on all sections of society. The lawmaker emphasised the need to have information at a more granular level (such as infective rate within Sarawak, number of tests being done and places of an outbreak) to be able to make informed decisions and thus determine effective approaches in managing the pandemic at a micro-level.

3.3.2 OSA and security laws cited as a reason for non-disclosure

OSA hampers any attempts to access information such as the Special Cabinet Committee Report on MA 63 (even though 17 out of 21 items have been agreed upon) citing it as a sensitive issue involving contentious issues such as oil and gas (refer to Case Study 10 for more information).

This was echoed by an academician that it is difficult to obtain information categorised as sensitive under social contract such as government allocation to vernacular schools are also deemed as classified under OSA or admission to university based on meritocracy.

A media practitioner from Sarawak felt that laws such as OSA, Communications and Multimedia Act (CMA), Printing Presses and Publications Act (PPPA) restrict media from publishing information where the authorities deem it as classified information.

A participant from Johor observed that information related to failed privatisation projects for housing and commercial projects were not accessible to the public as the documents which include terms of the public-private partnership were classified under OSA (*refer to Case Study 6 for more details*).⁴

⁴ Johor RTI Roadshow, 3 October 2021

3.3.3 Bureaucracy and lack of information on Referral to another agency

A civil society organisation leader recounted difficulty in obtaining information from government agencies over the telephone. Concerned about seeing homeless people sleeping in the city, this panellist contacted the Welfare Department on the telephone but was advised to contact the Kota Kinabalu City Council responsible as the primary agency to conduct an assessment on the situation as the Welfare only provides food aid.⁵

Following photos published of the homeless family, this panellist again contacted the Welfare Department on the telephone requesting statistics on the possibility of an increase in violence against women during the pandemic. The Sabah Welfare department referred this panellist to another department citing such statistics as a federal matter. After contacting the agency, the panellist was again referred to another department.⁶

Informed by challenges in getting information, this CSO representative stressed that it is important that civil servants receive training. The panellist speculated that officers may prefer to err on not disclosing information as they are not clear on their role and function in disclosing information.

3.3.4 Fear of reprisals from civil administrative rules

Civil servants are constrained by civil administrative rules where approval is required from their superior before any information can be disclosed.

An academician reiterated that an RTI law would speed up government agency disclosing information. This academician added that a RTI law would accord protection to officers disclosing information.

A CSO representative expressed concern that Malaysia is perhaps the only country that does not have a Public Service Act, unlike other countries where protection is rendered to their civil service members where the civil servants are fully aware of information that can be shared.

3.3.5 Fear of information being misused or abused

An academician thought that civil servants may be hesitant to share information for fear of the information being abused or misused. This academician added that RTI law would enable applicants who abuse information to be penalised.

⁵ Sabah RTI Roadshow, 5 March 2021

⁶ Sabah RTI Roadshow, 5 March 2021

3.4 Prohibitive Cost

In his special area of study with a focus on politics, an academician found it is costly to obtain the electoral list. He said it is a misconception that information from the government is free.

3.5 Access to information from statutory bodies and state-run Government link companies (GLCs)

Information from statutory bodies and state-run GLCs on public interest matters is not forthcoming as illustrated by the following experiences shared by stakeholders.

A participant from Penang shared the Bersih 2.0's legal suit against the Election Commission (EC) to obtain more information about the EC's decision-making process over the redelineation exercise for electoral constituencies (refer to Case Study 4 for more details).

A lawmaker cited the heavy legal repercussion for remarks made following request for additional information about Contributions Towards Approved Agencies Trust Funds, where the Sarawak state government has purportedly allocated a cumulative sum of RM22 billion for the period between 2006 to 2020, which accounts for 40% of the Sarawak state's annual development expenditure (refer to Case Study 9 for more details).

A lawmaker reminded that it is important to scrutinize the state government's management of having additional finances amounting to billions of ringgit a year as a result of the Sarawak's court victory having the legal right to claim additional revenues from the 5% SST on petroleum products. This lawmaker reiterated the importance of having checks and balances in scrutinizing how the extra funds are used, and the need to put in place anti-corruption measures to ensure accountability and transparency on the use of state funds.

3.6 Challenge in obtaining information from private corporations

The lack of a law on right to information impacts not only legal and policy processes, but the investments made by average people. The resident group of a condominium failed to obtain information from the property management regarding how maintenance fees are utilised. Disclosure of this type of information was not explicitly stated under strata law, which governs the management of condominiums. (refer to Case Study 5)

4. Experiences shared by media in getting information

Successes in obtaining information

4.1. “Unofficial intel” from government officials

A former journalist stressed that journalists need to be cognizant of the need to be proactive in reporting the truth, and not be dependent on the government or organisations to provide information. In one example, a former journalist shared that he produced an investigative report surrounding the match-fixing in the National Premier League following success in persuading two sources who were public officials confirming the issue of match-fixing. This journalist was questioned for three hours by the police following police reports made against the journalist’s published article. This journalist was later vindicated.

4.2 Non-confrontational/ blameless approach

Media Prima journalist in Kelantan shared that it is difficult to obtain information from the PAS government, as Media Prima is seen aligned to an opposing party from PAS.

However, as a senior journalist, he is able to access information from state government leaders.

4.3 Pro-active disclosure of information through press conferences

Most media practitioners obtain information through press conferences or resorting to accessing a developed network of personal contacts for information.

Press conference and the occasional media nights with the Chief provides a window of opportunity to access information. Mindful of the fear of public officials giving inaccurate statements, media practitioners look forward to this media night with the Chief Minister as it provides an opportunity for journalists to ask any questions to the top state executives, including questions concerning the political relationship between political parties PAS, UMNO and Bersatu and the reason for the strained relationship between political parties PAS, PKR and DAP.

Challenges

4.4 Political landscape

Obtaining information as a Media Prima journalist in Kelantan with opposition political parties as the state government administration has proven difficult at the beginning of his deployment in Kelantan in the first few years. Over the years, this journalist felt that he could obtain information with ease having fostered a good relationship with the political leaders.⁷

A broadcast journalist opined that the perceived better media freedom during the Pakatan Harapan administration was challenged. This journalist was sanctioned by the journalist’s media company for seeking answers from the then Minister of Energy, Science, Technology, Environment and Climate Change on the issue of hazardous gas in Johor.

⁷ Kelantan Roadshow, 8 April 2021

4.5 Information from specific government agencies not easily accessible

A journalist from Sarawak found it difficult to obtain information from critical government bodies such as the police, Bomba and the health department. This journalist understands that each department has its respective SOPs on information that can be shared with the media. For example, in police cases, where an investigation is still underway, information will not be shared so as not to compromise their processes. The journalist opines that the media needs to accept constraints faced by such agencies.

4.6 Mainstream media having to validate content shared on social media

As an intermediary between the people and the government, a journalist from the mainstream media felt that they have involuntarily assumed an added responsibility of verifying content produced by social media in the era of digital media and social media content. For example, a journalist shared having to verify viral social media content allegedly supported by legitimate sources such as the police.

A journalist and an academic shared the opinion that the 'viral' dissemination of (mis) or (dis) information reflects the lack of media literacy and awareness amongst the general public.

4.7 Legal constraints

A journalist cited OSA, and PPPA as laws restricting media in fulfilling their obligation. It appears this journalist felt resigned to the situation where information is classified under the OSA, unless there is advocacy for law reform. For example, regarding MA63, media should be able to access information on this matter of public interest.

5. Public's lack of knowledge on where to access information

A representative of CSO shared an example of not knowing where to access information related to urban lands being signed away by the state government. This CSO representative stressed that there is a need for an explanation by their State Assistant Minister of Tourism & Environment regarding the development of open spaces using government reserved land in urban areas, as the development plan contradicts the need for the preservation of recreational areas to meet the needs of the rising population.

A concerned citizen from Kelantan failed to obtain information from the participant's elected representative regarding the ECRL alignment that affected residents who are not aware of their land value (*refer to Case Study 11 for more details*).

6. Perception and interpretation of restrictions by stakeholders

6.1 Non-disclosure of specific details

An experienced journalist redacted information in publications especially when the content involves a minor, or is life-threatening to sources who disclose information involving border crimes such as weapons trafficking.

An academician cautioned that access to information may be restricted where banking and finances, and the privacy of individuals are concerned, in line with Banking and Financial Institutions Act 1989 (BAFIA) and Personal Data Protection Act 2010 (PDPDA) respectively. This academician also listed restrictive and controversial laws such as the Defamation Act 1957, Sedition Act, OSA, Security Offences (Special Measures) Act 2012 (SOSMA) and Prevention of Crime Act 1959 (POCA) which prohibit the right to information.

6.2 Limitations in obtaining information based on race, religion and royalty

stakeholders that “sensitive” issues such as race, religion and royalty would be naturally categorised as legitimate restrictions on right to information.

An academician appeared to be cautious in questioning whether it was appropriate to raise concerns about access to information related to the issue of race. Given the declining employability of university graduates, this academician thought that it may be of value to conduct an academic study to examine the merits of meritocracy in enrolling students in a public university. This academician also cited another issue pertaining to the allocation of the annual education budget to vernacular schools that were established before the formation of Malaysia. It appears that this academician may have felt that information related to race would be difficult to obtain. This possibly reflects an underlying fear of not wanting to cause any misunderstanding or discomfort in raising the “sensitive” issue of race.

Echoing this academician’s unspoken fear, a lawmaker shared that he does not have access to information on security and race relation matters while another academician felt that the issue of royalty is deemed as “sensitive” for Kelantan.

6.3 Public perception on the effectiveness of the FOI enactments in Penang and Selangor

A participant from Sarawak questioned why FOIE in Penang and Selangor should be viewed as benchmarks given the extensive exemptions. Further, it was felt that there appears no improvement in people’s access to information of any significance.

CURRENT LEGAL FRAMEWORK THAT PROHIBITS ACCESS TO INFORMATION

Malaysia has no specific legislative guarantee for the right to information but noted that Article 10 of the federal constitution provides for freedom of speech and expression. He clearly articulated that the hierarchy of laws meant that the Federal Constitution is supreme, in comparison to state laws and enactment.

7. Laws that prohibits access to information

It was highlighted that the biggest challenge surrounding access to information is legal barriers. As noted by a few panellists, OSA, CMA, PPPA are laws used to prevent disclosure of information.

These laws penalise public officials acting as whistle-blowers if they release secret, potentially damaging information which they are privy to in the course of their jobs.

An academican opined that PPPA will not be so popular given the rise in digital communication.

In Penang, OSA overrides Penang and Selangor Freedom of Information (FOI) enactment.

7.1 Official Secrets Act 1972 (OSA)

It was highlighted that the broad scope of OSA, allows for arbitrary interpretation in the way documents are classified. Further, there is no specific time limit for the classification. This law does not allow the courts to review the classification of the documents. This removes the power given to the judiciary as another branch of the state.

OSA is too vague and ambiguous

A lawmaker stressed that the use of OSA should be limited to special circumstances as the scope is too vague and ambiguous even though he notes security as a reason for information being withheld. In view of this, this lawmaker proposed that the PSC be allowed to view classified information. This lawmaker opines that PSC acts as another important layer of scrutiny in determining the classification of information by the executive body.

7.2 Penal Code, section 203

It was noted that this provision contravenes the very principle of the right to information where the information held by public bodies are, in principle public and thus should be disclosed. This provision makes it an offence if any public officer discloses unauthorized information obtained in the performance of duty.

For example, the Ministry of Health's directive reignited a guideline that was issued a few years ago prohibiting public officials from releasing any information without the permission of the Minister.

7.3 Evidence Act, section 114A

It was noted that this provision places an additional burden on people providing the necessary platforms or publishers because presently internet users are deemed as publishers, so it makes individuals or entities who administer or provide spaces for these forums, blogs and host these services liable for the published content. This also creates certain barriers on how the public can access information that would enable the public to have the necessary dialogue and debate addressing a diversity in opinion.

7.4 Emergency (Essential Powers) (No.2) Ordinance, known as the 'Fake News' Ordinance

This ordinance that came into force on 12 March 2021 regarding "fake news" related to Covid-19 and the proclamation of emergency has hampered access to information.

It was pointed out that this ordinance appears rather problematic due to its broad scope aimed at curbing or mitigating misinformation related to the dissemination of information about covid-19 and during the emergency. The impact of this includes the shutting down of communication and sharing of information related to Covid-19.

A journalist shared that generally there is a lack of awareness amongst the media of offences that fall under the Fake News Ordinance, as the media is only alerted when a person is charged under this law.

7.5 Environment Ordinance Sarawak

A CSO representative cited the example of the Environmental Impact Assessment (EIA) Reports where the federal and state laws differ according to the right to information to the public.

In Sarawak, the Natural Resources and Environment Ordinance Sarawak covers issues related to land, construction of dams, forestry or logging. Under this state law, the Environmental Impact Assessment or Social Impact Assessment is not accessible to the public. The state Natural Resources Board office has no obligation to allow the Sarawakian public access to EIA or social impact assessment reports, neither the need to provide a reason for denial of access. Unlike the Environmental Quality Act (1974) which applies to Peninsular Malaysia, and not in Sarawak.

The absence of a provision in the enactment that regulates public participation means the public has no access to such information.

Permissible restrictions/ exemptions

An academician opined that while some may call for the abolishment of the OSA, legitimate exemptions such as national security interests should be given adequate consideration. This academic proposed an alternative where OSA is harmonized with RTI law, noting that the operationalization of a RTI law would not be hampered by the OSA.

It was stressed that restrictions or exemptions are not absolute. Permissible restrictions/ exemptions should be in accordance with international standards.

The scope of restrictions or exemptions should be narrowly and clearly defined, which may include national security or privacy issues such as those in accordance with the Personal Data and Protection Act (PDPA).

It was highlighted that the harm test and public interest tests are used to determine the legitimacy and necessity of restrictions. In determining the disclosure of information, public interests should prevail. Questions that can guide in determining information disclosure include:

- Would disclosure of the information cause any harm to the public?
- Would the withholding of information cause any harm to the public?

According to international standards, partial exemptions could instead be exercised over blanket exemption.

For example, it was pointed out information related to vernacular schools or budget allocations to vernacular schools cannot be categorically classified as national security. Another example in point is the fully classified Special Cabinet Committee report on MA63, where consensus was reached for the report to be partially de-classified, for 17 out of 21 issues (refer to Case Study 10 for more details).

The Sarawak Kajing Tubek case⁸ and the Penang Sungai Ara⁹ cases also demonstrate that public interest outweighs any potential harm to corporations.

Declassification of Information

Going through the state assembly Hansard to discover what transpired the day the FOIE was passed, the CSO representative who is also a legal practitioner discovered that the overall philosophy of the FOIE was competency, accountability and transparency. This, however, was not fully reflected in reality. For instance, even if state-held information is exempt from disclosure (with the exception of federal law restrictions), the state has the discretion to de-classify it. The state government has the discretion to lift non-disclosure exemption on matters of public interest like the expenditure of the state exco, and major projects like the Penang Transport Master Plan.

⁸ Refer to Case Study 8

⁹ Refer to Case Study 3

Non-legal barriers

8. Non-legal barriers to the people's right to information were also noted.

8.1 Culture of secrecy

It was noted the seemingly pervasive culture of secrecy in the civil service prevents disclosure of information of public interest.

A panelist illustrated the recent incident where journalists were prohibited from covering a public hearing on the Shah Alam City Council in developing a forest reserve in Shah Alam as a result of the pervasive culture of secrecy in the civil service.

According to an academician, a shift from the culture of secrecy to a culture of openness in the public sector in the disclosure of information is much needed. This academician opined that the proliferation of 'fake news' is somewhat attributed to the lack of information.

8.2 Lack of institutional mechanism to provide information

It was noted the seemingly pervasive culture of secrecy in the civil service prevents disclosure of information of public interest.

A panelist illustrated the recent incident where journalists were prohibited from covering a public hearing on the Shah Alam City Council in developing a forest reserve in Shah Alam as a result of the pervasive culture of secrecy in the civil service.

According to an academician, a shift from the culture of secrecy to a culture of openness in the public sector in the disclosure of information is much needed. This academician opined that the proliferation of 'fake news' is somewhat attributed to the lack of information.

8.3 (Un)Readiness of information officer or officer in a government agency to disclose information

Lack of standardised Digitalised System of Delivery and records

An academician views the lack of digital systematisation of information and records as a huge challenge given that digitalisation of information in the public sector has not been implemented fully. Public administration at all levels may not have fully embraced the digital age, thus not all records are systematically stored. Gaps in storing data and information systematically may hamper the realisation of the right to information.

Lack of clearly defined legitimate exemptions

(Mis) Understanding of restrictions under FOIE may also hamper access to information by public officials or information officers receiving application. Public officials' lack of understanding of FOIE law and procedures, may be attributed to inadequate training on how to operationalise FOIE.

Attitude and mindset of public service

Drawing from discussions with senior administrative officers, an academician deduced that the attitude and mindset of public officials are crucial in facilitating the disclosure of information to the public.

8.4 Accessibility

Prohibitive Cost of obtaining information

As demonstrated in Penang's implementation of its FOIE and the experience by an academician attempting to obtain electoral information, it is expensive to obtain information. The pertinent question remains on why the need to pay for information that technically belongs to the public, as it is a matter of public interest.

Language

Given the multi-lingual facet of Malaysia's multi-racial fabric, information available in multiple languages would enable the public's access to information in their preferred language.

8.5 The right to information not viewed as a priority issue by the public and lack of awareness on the importance of the right to information

A CSO representative opined that the advocacy for the right to information in Sabah seems unreal when Sabah people are struggling with basic human rights issues about having shelter, good nutrition, access to good education and healthcare.

In general, people may not be aware of what information is needed to be able to participate meaningfully in a democratic country.

As such, it is important to prepare the people on utilising RTI to their benefit. An academician observed from the operationalisation of FOI enactments in Penang and Selangor that there appears to be a lack of public filing for a request for information. The low interest amongst the public in filing for information may be misconstrued by the government that the public is not interested in obtaining information, or there is a lack of public awareness on accessing their right to information.

Another academician concurred and emphasized the need to educate the people of the essence of the right to information to address the cultural barrier in accepting the importance of the right to information.

A CSO representative also urged lawmakers and civil societies to consider the "real" challenge of reaching out to the state's population where most are located in the rural areas and creating the awareness of their right to information, in the event where Sarawak enacts a state right to information law following footsteps of Penang and Selangor.

8.6 Lack of connectivity infrastructure

An Orang Asli community in Johor relies on the delivery of information by their respective head of villages. This time consuming and indirect flow of information is primarily caused by the lack of connectivity infrastructure in the rural areas. By the time the community receives information through their village intermediary, the community may have missed deadlines from any economic and educational opportunities (refer to Case Study 8 for more details).

RECOMMENDATIONS

9. Recommendations by stakeholders in view of the challenges highlighted in the previous section are as follows:

9.1 Review and reform of the prevailing legal framework

Repeal OSA, while including specific restrictions such as national security and public order to be incorporated into the RTI law

In the event OSA is not repealed then:

- It needs to be amended to ensure alignment with the RTI law
- Specific provisions to be incorporated into the RTI law so that it supersedes prevailing legislations

9.2 Alignment of security laws with RTI regime

Noting the restrictions of OSA and a myriad of circumstances, an academician opined officials should be given room to determine if disclosure of the information would benefit the public or cause harm.

It was also pointed out restrictions or exemptions should not be broad but narrowly and clearly defined in accordance with international standards.

9.3 Key principles on right to information

A few key principles of the right to information were reiterated given the pervasive culture of secrecy.

a) Information held by public body is public

Information held by the government is essentially public and therefore belongs to the public. The burden of justification lies with the government agency or any official for their refusal to disclose information, and any refusal needs to be based on legitimate reasons as provided by any specific laws.

b) Narrow and clear definition of exemptions

Exemptions are to be narrowly and clearly defined in accordance with international standards. A harm test and a public interest test are employed to determine the disclosure of the information.

c) Proactive disclosure

International standards require proactive and maximum disclosure where information of public interest will be published. Even, in urgent situation, government may still need to meet minimum threshold of providing information to promote public participation.

In cases where government needs to act promptly, such as distributing aid to victims of a natural disaster like a flood, the government still has the obligation to share information on the process or guidelines that guide their determination of aid beneficiaries, relocation, access to food, rebuilding process.

9.4 Promoting the right to information whilst not undermining the right to privacy

It was stressed that the framework of principles underpinning human rights stipulates that one right cannot undermine another right.

For example, promoting the right to information does not mean overriding the right to privacy. This principle was iterated in response to an example shared by a participant from Sabah where organisations share private contact details to anyone who requests the information.

9.5 Parliamentary Select Committee – to be given access to ‘confidential information’

A lawmaker maintained that it is important for the government to release information deemed confidential to PSCs, as this body acts as another mechanism of parliamentary oversight on the administration’s classification of information under the OSA. Members of PSCs can then decide whether the said information should or should not be released to the public.

PSC allowed to function as an oversight body during a state of emergency

As the Chairman of a Parliamentary Select Committee (PSC), a lawmaker opined that PSCs should be allowed to operate as an oversight mechanism to government’s approaches, policies, measures and actions especially in managing the Covid-19 pandemic, even during a state of emergency.

⁸ In response to the question raised by Participant E from UMK raised issue where government does not involve public participation in decisions that need to be made promptly.

9.6 Open government data for academic purposes

Academics need government statistics to support their research. Archival information should be readily accessible, to enable understanding of thought processes when national policies were drawn up. Past lessons are important for future policy-making processes.

9.7 Using courts to hold public agencies accountable for withholding information

A lawmaker recommended that applicants who have their request denied should gather evidence about the agency that is withholding information of public interest and access the court system for disclosure of information.

Successful court cases but lengthy process

Since the Kajing Tubek case 25 years ago, there is no development in terms of the public's access to information, in particular, EIA reports in Sarawak. The CSO representative said that while the court is an avenue for redress, filing a suit with the courts is a tedious process that involves money and time, where not everyone has the privilege to such resources (refer to Case Study 8 for more details).

9.8 Public authority openness in disclosing information

A CSO representative calls for the understanding from the authorities towards public feedback regarding weaknesses in state legislatures or state government.

The CSO representative argued that the public have good intentions to contribute constructively in supporting the government in formulating policies towards achieving nation-building more holistically. The CSO representative added that trust will be developed once the government understands the intent behind the public's need to seek information. This mutual trust between the people and the government may lead to realizing the right to information, which in turn lead to transparency, which enables accountability, and thus increase confidence amongst the people thereby building a stronger nation.

OPPORTUNITIES THAT CAN FACILITATE A NEW LEGISLATION

This section aims to identify points made by stakeholders viewed as opportunities towards facilitating the legislation of a new RTI law in Malaysia.

10. Learning from the existing RTI Regime in Malaysia and overseas

10.1 Best practices from FOIE implementation in Penang and Selangor

The new RTI legislation can incorporate the substance of law that is in line with international standards, adopt good practices that support structures of implementation and learn from gaps in implementation.

10.2 Positive RTI models in neighbouring countries

Malaysia can adopt positive substance of the law and implementation structures of good RTI models such as Sri Lanka, India and Indonesia.

BHEUU can also access an available resource from RTI experts from Sri Lanka, India, Indonesia, Afghanistan, the UK and Australia following CIJ's recent completion of a comparative study on the implementation of RTI law in the afore-mentioned six countries.

10.3 Existing good practice on system of disclosing information upon request in-state without FOIE

In 2016, Johor state assemblywoman Gan Peck Cheng (DAP - Penggaram) had urged its state assembly to pass FOIE following Penang and Selangor's respective FOIE. Even though Johor does not have its FOIE in place, Mersing District Council has a system for disclosure of information complete with SOPs related to online application submission, notification of the receipt of the application by an officer on duty (within 7 days), time limit (30 days) to process application with approval from President or secretary, and appeals procedure (file appeal within 7 days upon receiving rejection notice).

11. Advocacy to Penang and Selangor Government to review and amend enactment

In 2016, Johor state assemblywoman Gan Peck Cheng (DAP - Penggaram) had urged its state assembly to pass FOIE following Penang and Selangor's respective FOIE. Even though Johor does not have its FOIE in place, Mersing District Council has a system for disclosure of information complete with SOPs related to online application submission, notification of the receipt of the application by an officer on duty (within 7 days), time limit (30 days) to process application with approval from President or secretary, and appeals procedure (file appeal within 7 days upon receiving rejection notice).

12. Collaboration between CIJ and partners in respective states

As a follow-up to expressed support for an RTI law from a lawmaker, a CSO representative proposed to have more discussions about access to information specifically related to the environment.

It is important to continue engagement with stakeholders from Penang, Johor, Sabah, Sarawak, and Kelantan to work towards legislation for a new RTI law.

13. Continued engagement with the public and stakeholders

To support CIJ in their advocacy for a new RTI legislation, CIJ invites the public and stakeholders to participate in CIJ's test cases of accessing information from official websites of Ministries and to share their stories on accessing information, that includes the process and outcome of the exercise.

CIJ also encourages the public to engage in civic space and public consultations to strengthen their knowledge on RTI as well as participate in dialogues with MPs or write to their MP inviting them to support a new RTI legislation.

14. Application of federal law on issues that fall under the jurisdiction of the state

There was a resounding agreement from stakeholders on legislating RTI at the federal level, with some level of concern regarding the alignment issue between federal and state laws.

A CSO representative in Sarawak highlighted the issue of state list that encompasses issues such as logging, issuing license, NCR land, native customary rights land, water and immigration as well. If the federal level RTI law were to be enacted, the CSO representative asked how the people of Sarawak would be affected at the state level, as these issues fall within state jurisdiction. On the other hand, if Sarawak were to enact a state RTI law like Penang and Selangor, the CSO representative urged stakeholders such as lawmakers and CSOs to ensure all Sarawakians including those residing in the most rural areas of Sarawak will be aware of such a right.

In summary, the above concerns relate to the issue of alignment between federal, state and other legislations and processes. This requires further discussions on exploring the exercise of harmonizing state laws and a federal RTI law.

15. Need for further discussion on:

- Scope of Exemptions/Classified Information vis a vis Public Interest Test and the Harm Test;
- Exploring Means of Mitigating the National Security Imperatives;
- Alignment between Federal, State and Other Legislations and Processes;
- Mapping the Powers and Enforceability of Decisions of the Oversight Body (RTI Commission).

CASE STUDIES

Penang

Case Study 1: Prohibitive cost

Jason Loo, a local politician from the opposition party of Gerakan, who spent thousands of ringgit on multiple FOIE applications. Loo had famously appeared in the news after more than 20 failed FOIE applications to access documents related to a series of land reclamation projects that have proven controversial in the state. Despite submitting applications since 2017, he has yet to receive a successful response.

Case Study 2: Documents can only be viewed

A journalist applied for 20 volumes of documents submitted by the SRS Consortium to the state government relating to the Penang Transport Master Plan mega project. Initially, the state government had said they would allow viewing of the document although they had yet to sign an agreement with the project's delivery partners. However, this disclosure was immediately revoked and the journalist's application was thus rejected.

A CSO representative of Penang Forum, who participated in the discussion after the panel session, was a member of the Penang Transport Council. However, this CSO representative clarified that even council members were not allowed to retain copies of the documents. They were only allowed to view the document during office hours, with a pen and paper to take notes (mobile devices were not allowed). During council meetings, every single page of the documents on the master plan was deemed confidential.

Case Study 3: Minutes of State EXCO meeting deemed confidential

The residents of Sungai Ara mounted a legal challenge against the Sunway City developers whose plans to build bungalows on an environmentally sensitive and very steep hill had been approved by the Penang state government. It was also alleged that there were existing guidelines to vet special projects of this nature, but the contents of this document and the department responsible for this were not known.

The residents filed an FOIE request to see this document and the state exco's meeting minutes but were rejected as the meeting minutes were deemed confidential. They proceeded to file an appeal, but when the appeal board was convened, it was evident that the authorities were not used to working under public scrutiny. They tried to evict all attendees except for the complainant representing the residents, not realising that it was an open hearing and anyone could attend. It was only after lengthy arguments, the commissioners on the appeals board allowed the viewing of the documents initially requested.

Johor

Case Study 4: Information on redelineation exercise

Haris Ibrahim, a former steering committee member of Bersih 2.0, filed a legal suit against the Election Commission (EC) over the redelineation exercise for electoral constituencies. Haris petitioned for more information about the decision-making process when making changes to the boundaries for electoral constituencies.

Part of the EC's constitutional duty is to present proposed boundary changes to constituents that will be affected by these changes. In this process, they display the relevant map and the boundaries, as well as the housing estates and polling stations encompassed within these boundaries. Affected constituents have a right, within 30 days, to file objections to the EC's proposed changes.

However, the EC does not provide information on why the changes are being made. There is also no justification of factors taken into consideration, such as the expansion of area size, increase in voter population or if the demographics have changed drastically. This formed the crux of Haris's legal challenge and judicial review, however, the courts dismissed this application. Malik Imtiaz, who represented Haris in court, had argued that voters could not meaningfully exercise their freedom of expression without the right to information to accompany it. Many documents are deemed as secret on an almost routine basis, even if the information contained within does not have an impact on national security.

Case Study 5: Management of Condominiums

Participant A heads the residents' group of a condominium in Johor Bahru and faced major difficulties obtaining resources when this participant challenged the property's management over maintenance fee issues.

Participant A's research went on to uncover what this participant termed as "immense corruption" within the property management industry, where people paid maintenance fees but little information was disclosed as to how this money was being used. Disclosure of these types of information was not explicitly stated under the strata law, which is used to govern the management of condominiums.

Case Study 6: Public-private partnership agreement on housing projects deemed "confidential"

Participant [Participant B] observed that privatisation projects for housing and commercial projects were also shrouded in secrecy. For example, he had attempted to assist buyers of a housing project in a private-public partnership which had eventually failed to be completed. However, every attempt to access the privatisation documents was futile as the documents were deemed classified under the OSA, including the terms and conditions of the partnership. Participant B believed it should be made available because when such projects fail, public funds are involved and people have the right to know.

Case Study 7: Obstacles to NGO work

Participant C, who has been involved with a few NGOs in Johor for the past 27 years, noted that the lack of information flow from government authorities made it all the more difficult to plan and execute campaigns that were beneficial to the public. For example, an NGO that participant C was involved in had wanted to plan a public awareness campaign following several fatal motorcycle accidents in Johor Bahru. Most of the reported accidents involved Malaysians who were returning home from working in Singapore.

As they planned for a campaign, Participant C approached the traffic police department to request statistics on the number of deaths due to motorcycle accidents. However, this request was rejected by the department, the reason being the information was classified and that the department could not issue it to NGOs. Participant C said this was disheartening as this information would have greatly benefited a public awareness campaign or research that could help prevent similar incidents in future.

Another concern Participant C had was that for many years, government departments have been very blunt in their responses to applications or requests filed to them. In most cases, applicants get a basic response saying their request had been rejected, but there were no reasons offered or possible ways to improve their future applications to make them successful. Participant C suggested that authorities and officers in charge should be more willing to facilitate requests and offer guidance and assistance.

Case Study 8: Access to information by Orang Asli

One of the most crucial concerns for the Orang Asli in Johor revolved around the rights to their ancestral lands. Participant D, who is from an Orang Asli community in Johor said the status of their villages was still unknown, either because the records did not reflect the status or worse, the status was recorded differently within each government department/agency. For instance, Participant D's own village was recorded in the district office as gazetted Orang Asli land. However, the state government still has the village land recorded as government land and not yet gazetted for Orang Asli.

The communities also face problems in sharing their own information with outsiders. They are also unable to access information from certain sources, such as archival information, without prior approval from specific government agencies. A lack of Internet access in many Orang Asli villages means the community still relies heavily on the batin (community leaders) and agencies like the Orang Asli welfare department for information.

Participant D said that as a result of this arrangement, many opportunities for work and education only arrived to the community's ears at a very late stage. Often, they found that upon reaching out to the parties offering these opportunities that the deadlines had already passed and so the opportunities had been offered to others.

Sarawak

Case Study 8: Kajing Tubek case where Bakun Dam was constructed

A representative from a CSO that advocates for legal reform cited the 1996 Kajing Tubek case where the community filed a suit under the Environmental Quality Act to have access to the EIA report for the construction of the Bakun dam which affects thousands of people in that area. Even though the High Court ruled in their favour, the Court of Appeal overturned the High Court's decision that the issue is a state prerogative and thus the state law applies. This community was eventually granted access to the EIA report, however, they have to pay the NREB a particular sum for such access.

Case Study 9: Transparency in financial allocation for state-run GLCs

A lawmaker cited a 100 million suit filed against his colleague in the famous "Black Hole" case for remarks made following his request for additional information about Contributions Towards Approved Agencies Trust Funds. for requesting additional information about Contributions Towards Approved Agencies Trust Funds. The Sarawak state government have purportedly allocated a cumulative sum amounting to RM22 billion for the period between 2006 to 2020, which accounts for 40% of the Sarawak state's annual development expenditure. He asserted that the public has the right to know who the money is given to, how is it being spent.

Case Study 10: MA63

A lawmaker shared that YB Hanifa Taib, Deputy Minister for Sabah and Sarawak Affairs reported in Parliament in July 2020 that the MA 63 report that reports outcome from the discussion between the federal government and the Sabah and Sarawak state government in a Special Cabinet Committee for MA 63 formed by the PH government was classified under OSA. This classification was reaffirmed as involving "sensitive" issues by Minister YB Maximus Ongkili in November when the lawmaker asked for an update given that 17 out of 21 issues were resolved. There appears no qualified exemption where the report can be partially released given the 17 agreed issues.

Kelantan

Case Study 11: ECRL Alignment and Land acquisition

A student of UMK related his friend's experience in attempting to access information about the ECRL alignment from his elected representative, who also has no knowledge of the alignment. He shared that residents who are affected by the ECRL alignment are unaware of their land value, thus raising the concern of an unfair deal in favour of the corporation. He also felt that the government officials appear to be on the side of the corporation.

APPENDICES

Appendix 1 Details of Roadshows

Roadshows	Date	Collaborator	Venue	Panel speakers
Penang	Sep 10, 2020	Universiti Sains Malaysia, School of Communication	Balai Media, USM	<ol style="list-style-type: none"> 1. Wathshlah Naidu, CIJ executive director 2. Meena Raman, Sahabat Alam Malaysia (SAM) president, 3. Predeep Nambiar, Free Malaysia Today (FMT) journalist and Penang bureau chief, 4. Low Chia Ming, Malaysiakini journalist based in Penang
Johor	Oct 3, 2020	ENGAGE Malaysia	Office of ENGAGE Malaysia	<ol style="list-style-type: none"> 1. Wathshlah Naidu, CIJ executive director 2. Thomas Fann, Bersih 2.0 chairperson
Sabah	Mar 5, 2021	Universiti Malaysia Sabah	UMS Webex and live stream on FB UMS	<ol style="list-style-type: none"> 1. YB Datuk Joniston Bangkuai, ADUN, Assistant Minister of Toursim, Culture and Environment 2. Datin Fazar Arif, Founder of POWER 3. Safwan Sawi, Broadcast Journalist, Media Prima Berhad 4. Dr Lee Kuok Tiung, Communication Programme, Faculty of Social Sciences & Humanities, UMS 5. Wathshlah Naidu, CIJ executive director
Sarawak	Mar 16, 2021	Save Rivers	Save Rivers zoom and live stream on FB Save Rivers	<ol style="list-style-type: none"> 1. YB Dr Kelvin Yii, Member of Parliament Bandar Kuching 2. Murnie Hidayah Anuar, Lawyer Kamek for Change 3. Alice Wee, Commonwealth Journalists Association (CJA) Sarawak 4. Wathshlah Naidu, CIJ executive director
Kelantan	Apr 8, 2021	Universiti Malaysia Kelantan, Faculty of Language Studies and Human Development (FBI)	CIJ zoom (event only for UMK FBI students and staff)	<ol style="list-style-type: none"> 1. Dr. Mohd Khairie Ahmad, Pusat Pengajian Teknologi Multimedia & Komunikasi, Universiti Utara Malaysia (UUM) 2. En Shahnun Hanif, Chairman, Kelab Media Kelantan 3. Pn. Wathshlah Naidu, Centre for Independent Journalism (CIJ)

Appendix 2 Discussion Guidelines for Panel Speakers

RTI Virtual Roadshow in [specific state] Organised by Centre for Independent Journalism in collaboration with [collaborator]

Agenda

10:00 - 10:10am	Welcome Remarks by Host organisation
10:10 - 10:15am	Introduction by CIJ
10:15 - 11:45pm	<p>Panel Presentation and Q & A</p> <ol style="list-style-type: none"> 1. CIJ – Updates and key issues on a right to information legislation 2. Media - Upholding right to information from the media perspective – related challenges in obtaining relevant, reliable and timely information; 3. Academic/CSO – what needs to change within our current legal and political framework that would promote access to information and facilitate a new legislation; 4. Legislature – role of a legislature in promoting a right to information legislation
11:45am - 12:00pm	Synthesis and Closing

Moderator: CIJ Collaborator

Discussion Guidelines:

1. Academic

- a. What is the relevance of right to information as an academic?
- b. What are the barriers/challenges experienced by academics in accessing disaggregated data and how does it impact the work?
- c. What can academic do in promoting right to information and advocating for a new legislation on right to information?

2. CSO

- a. What is the relevance of right to information to the public? Is it important? Why?
- b. Share your experience in attempting to seek for information or data on specific issue/s. Can you tell us about the process and the outcomes?
- c. What do you think needs to change within our current legal and political framework that would promote access to information and facilitate a new legislation?

3. Media

- a. What challenges do you face in obtaining relevant, reliable and timely information in producing content as a journalist?
- b. What do you think needs to change within our current legal and political framework that would promote access to information and facilitate a new legislation?
- c. What kind of law and mechanism will benefit the media?

4. ADUN

- a. As a lawmaker, why do you see right to information as essential in the context of Malaysia?
- b. How do you see your role in moving forward with a federal level RTI legislation?
 - i. What are possible challenges?
 - ii. How would you propose we negotiate around the federal OSA law?

5. CIJ

- a. Why do we need an RTI Law in Malaysia?
 - i. What is the status of the government's commitments towards a new legislation?
 - ii. What are the challenges and limitations in the current legal framework on RTI?
- b. What are the fundamental principles that should be enshrined in a new legislation on RTI?
- c. Briefly share the CSOs campaign on RTI Legislation

Questions to the floor:

1. What are your experiences in trying to access information in Sabah?
2. What kind of information are you most likely to request under an RTI law (state or federal)?
3. What are the main elements you'll like to see incorporated into a new law on RTI?
4. What kind of mechanism/s should be in place to strengthen the implementation of an RTI legislation?
5. What are the commitments you expect from the state government and federal government?

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