



JOINT STATEMENT

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RIGHT TO INFORMATION IS GUARANTEED UNDER ARTICLE 10(1)(A); A CONSTITUTIONAL AMENDMENT IS UNNECESSARY AND REDUNDANT

ARTICLE 19, the Centre for Independent Journalism (CIJ), and the Center to Combat Corruption and Cronyism (C4 Center) recently participated in a meeting with the Parliamentary Special Select Committee (PSSC) on the Freedom of Information (FOI) Bill 2026 on 18 August and in the [National Townhall](#) held on 28 September in Parliament.

One of the main issues raised during both meetings is whether the Federal Constitution should be amended to explicitly provide a right to information before passing the FOI Act. We are of the opinion that Article 10(1)(a) of the Federal Constitution already implicitly guarantees the right to information and therefore, such an amendment is not necessary for the passage of the FOI Act.

The government has already set precedents by enacting the Personal Data Protection Act (PDPA) 2010 and the Data Sharing Act 2025 without amending the Federal Constitution.

The Selangor Freedom of Information Enactment (2011) and the Penang Freedom of Information Enactment (2010), respectively, support the broader proposition that FOI laws are constitutionally compatible, and that FOI is not inherently contrary to constitutional structure or governmental privilege. Thus, a federal FOI law would simply extend similar principles to federal institutions.

Malaysia has also signed and ratified international treaties with provisions on access to information. These commitments were made without amending the Federal Constitution.

Now, the government cannot reverse its stance by delaying the enactment of the FOI Act while discussing amendments to the Federal Constitution.

Furthermore, we have provided context from some Commonwealth countries showing that an express, standalone constitutional guarantee of the right to information is not a prerequisite for Parliament to establish a legally enforceable right of access to information through ordinary legislation.

This FOI legislation is essential to guarantee the public's collective right to be informed by public authorities about important aspects of their functioning; the right to seek or request information; and the right to be informed and to receive information about various aspects of the public sphere.

These are our core arguments on why the amendment is redundant and unnecessary:

1. Right to Information in the Federal Constitution

Advocacy for the right to information has developed over several decades, driven by the need to address issues such as corruption or nepotism, which have led to significant abuse of public institutions and funds by those in power. This has raised concerns about national administration and governance, shaped by a culture of secrecy. Additionally, widespread censorship and intimidation of the media and human rights defenders discourage them from publishing stories that serve the public interest and scrutinise those in power. Historically, authorities have arrested, detained, charged, and investigated individuals for demanding that governments disclose information. These incidents have given rise to the call for the public's right to information and the right to know.

To ensure the transparent functioning of a democratic political system, the Federal Constitution includes provisions for the right to freedom of speech and expression in Part II, which outlines fundamental liberties. The Constitution protects this broad principle. The legal position regarding the right to information has evolved through various court rulings, and its scope has gradually expanded in response to societal and governance shifts.

Specifically, the freedom of speech and expression inherently includes the right to information guaranteed under Article 10(1)(a) of the Federal Constitution. These rights are interconnected: freedom of expression is not a passive right; exercising it effectively requires access to the information and data to participate; the right to know complements the right to express oneself. In summary, one cannot effectively exercise one right without the other.

Although the Federal Constitution does not explicitly mention a right to information, courts have interpreted it as included within the constitutional guarantees in the chapter on fundamental liberties. In [*Sivarasa Rasiah v. Badan Peguam Malaysia*](#), the Federal Court affirmed that the constitutional guarantee of freedom of speech and expression inherently includes the right to receive information:

“For example, the freedom of speech and expression are expressly guaranteed by art. 10(1)(a). The right to be derived from the express protection is the right to receive information, which is equally guaranteed.”

In another case, [*Harris bin Mohd Salleh v Chief Secretary, Government of Malaysia & Ors \[2023\]*](#), the applicant, a former Sabah Chief Minister, applied to the Court to direct the respondents to disclose and declassify an investigation report by Malaysian authorities into a Nomad aircraft 9M-ATZ crashing on 6 June 1976 in Kota Kinabalu.

The High Court held that *“the right to information exists as a corollary to the right to free speech. The Federal Constitution seeks to establish an egalitarian society where citizens exercise their right to free speech on facts and reason, not on assumptions and conjecture.”*

Malaysian courts have also adopted a broad interpretation of Article 5(1) of the Federal Constitution that encompasses a right to privacy.

The Court's interpretation aligns with international standards under Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), as explained below.

2. International law and standards on the right to information

The right of access to information held by public bodies – often referred to as ‘freedom of information’ (FOI) or the ‘right to information’ (RTI) – is a fundamental human right recognised in international law. Crucial in its own right, it is also central to democratic functioning and an important mechanism for achieving other rights and objectives, including combating corruption and ensuring social and economic rights.

- i. **Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR)** guarantee the right to freedom of expression and information. Freedom of expression is the right to **seek, receive, and impart** information and ideas of all kinds, regardless of

frontiers. The words 'seek' and 'receive' emphasise the right to information. Freedom of information, or the right to receive and have access to information, is the 'flip side' of the right to freedom of expression. However, it is also a right of the public at large.

A key issue in a right to information law is defining when a public body may refuse to disclose information. Under international law, restrictions on the right to information must meet the requirements of the so-called three-part test, whereby a public body must disclose any information which it holds and is asked for, unless: a) the information concerns a legitimate protected interest listed in the law; b) disclosure threatens substantial harm to that interest; and c) the harm to the protected interest is greater than the public interest in having the information.

We are aware that Malaysia is not a party to the ICCPR. Yet, in [2018](#) and [2021](#), the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression noted that Article 19 of the ICCPR is based on Article 19 of the UDHR and should inform Malaysia's obligations under international law.

- ii. In [General Comment 34](#), adopted in 2011, the UN Human Rights Committee interpreted the scope and limits of the right to information, stating that Article 19 of the ICCPR encompasses the right to access information held by public bodies. It requires that states proactively disseminate information in the public interest and ensure that access is "easy, prompt, effective and practical." The Committee also stated that countries must enact "necessary procedures," such as legislation, to give effect to the right to information, including timely processes for responding to right-to-information requests and appeal mechanisms.
- iii. International bodies, in particular **the special mandates** (or international mechanisms) on freedom of expression, have recognised the right to access information in their Joint Declarations for many years. In their [2004 Declaration](#), they stated:

"The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions".

- iv. [The United Nations Convention against Corruption \(UNCAC\)](#), to which Malaysia has been a [party](#) since 2008, also considers RTI key to fighting corruption. The Convention mandates states to:

“Adopt procedures and regulations to obtain, where appropriate, information on the organisation, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public.”

UNCAC requires states to enhance transparency in public administration (Article 10), provide effective measures to access information (Article 13), and protect whistleblowers and witnesses (Articles 32 and 33).

- v. The RTI is also specifically protected in Article 13 of the [Convention on the Rights of the Child \(UNCRC\)](#) and Article 21 of the [Convention on the Rights of Persons with Disabilities \(CRPD\)](#), both of which Malaysia has ratified.
- vi. The RTI has been integrated into the [UN 2030 Agenda for Sustainable Development Goals \(SDGs\)](#), which Malaysia [adopted](#) in 2015. Goal 16 calls for all countries to *“Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”*. Progress toward this target is measured, among other things, through Indicator 16.10.2, which concerns the number of countries that adopt and implement constitutional, statutory, and/or policy guarantees for public access to information.
- vii. RTI has also been integrated into the [Paris Agreement](#), which Malaysia [ratified](#) in November 2016. The Paris Agreement is a legally binding international treaty on climate change. In the preamble of the Paris Agreement, it states that: *“Affirming the importance of education, training, public awareness, public participation, public access to information and cooperation at all levels on the matters addressed in this Agreement.”*
- viii. In the [1992 Rio Declaration](#), a non-binding international soft law that Malaysia adopted, Principle 10 recognises the right to information as a key enabler of environmental protection.
- ix. Further, Article 23 of the [ASEAN Human Rights Declaration \(AHRD\)](#), adopted in 2012, expressly recognises the right to information as a fundamental human right. It provides that *“every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and*

impart information, whether orally, in writing or through any other medium of that person's choice". This affirms that the right to information is not merely a procedural privilege granted by governments, but an integral component of the broader right to freedom of expression. As an ASEAN Member State that adopted the AHRD, Malaysia has committed itself to upholding this principle.

The Malaysian government has made commitments by signing several important UN treaties and conventions, such as the UN Convention on the Rights of the Child (UNCRC), the Convention on the Rights of Persons with Disabilities (CRPD), the United Nations Convention Against Corruption (UNCAC), the Sustainable Development Goals (SDGs), and the Paris Agreement. These agreements require signatories to ensure the right to information and uphold transparency by publishing and disseminating documents on matters of public interest.

3. Comparative Commonwealth practices

Comparative Commonwealth practice demonstrates that an express, standalone constitutional guarantee of the right to information is **not a prerequisite for Parliament to establish a legally enforceable right of access to information through ordinary legislation**.

Several Commonwealth legislatures have enacted comprehensive FOI/RTI statutes that establish enforceable access rights, procedures, exemptions, and review mechanisms without first requiring an express constitutional RTI clause.

The Australian Parliament enacted the [Freedom of Information \(FOI\) Act 1982](#) even though the Australian Constitution does not contain an express standalone constitutional right of access to information held by public bodies. The Australian example demonstrates that Parliament can establish a substantive statutory right of access to government information without first inserting a standalone RTI provision into the Constitution.

In practice, the United Kingdom has no single codified constitution containing an express constitutional right to information. Nevertheless, Parliament enacted the [Freedom of Information Act 2000](#), which creates a general statutory right of access to information held by public authorities. Further, under [Article 10 of the Human Rights Act 1998](#), individuals have a right to "receive and impart information and ideas without interference by public authority and regardless of frontiers". The UK model matters because the statutory right is the main legal mechanism through which members of the public access information held by public authorities.

India provides another highly relevant Commonwealth example. Article 19(1)(a) of the Indian Constitution guarantees freedom of speech and expression, but the Constitution does not contain a separate provision expressly framed as a general statutory-style right of access to government records. Parliament nevertheless enacted the [Right to Information Act 2005](#), establishing a detailed statutory regime through which citizens may obtain information held by public authorities.

Likewise, [Canada](#) and [Nigeria](#) provide for freedom of expression constitutionally without a separate constitutional provision establishing a comprehensive general right of access to government records. Their respective laws establish a statutory right of access to information in the custody or possession of public institutions, subject to statutory exemptions and procedures.

Canada, India and Nigeria are particularly instructive for Malaysia because they reinforce the proposition that the absence of a standalone constitutional RTI clause does not prevent a Commonwealth legislature from creating an enforceable statutory right of access.

Overall, these examples show no general constitutional requirement that a country must first insert an express standalone right to information into its Constitution before Parliament can enact comprehensive FOI or RTI legislation.

Therefore, we believe amending the Federal Constitution now is unnecessary, redundant, and likely to protract and delay the enactment of the FOI Bill. What we need to focus on is operationalising the right to information through progressive legislation that:

- 1. Aligns with international best practices and principles of the right to information**, Malaysia's constitutional guarantees under Article 10(1)(a) and other fundamental liberties under Part II of the Federal Constitution, and Malaysia's obligations under international human rights law;
- 2. Ensure the revised draft Bill is published before the PSSC finalises its report**, allowing stakeholders to comment on proposed amendments;
- 3. The PSSC must meaningfully consider all inputs in the FOI Bill revision process**, including those from the Town Hall Session held on 28 September, and ensure that committee amendments align with all relevant international human rights standards.

A progressive FOI Act is essential to promote transparency, accountability, and democracy. A robust FOI Act shifts power from the state to the people and demonstrates the government's commitment to good governance. Any attempts to weaken or delay the enactment of the FOI Act could damage the government's reputation and undermine the [Prime Minister's 2023 promise](#) to give the public access to information from public bodies and the government. Let's ensure that we get this done correctly and meaningfully this time.

Our organisations are committed to contributing to this process in a constructive, meaningful and effective manner. Given our continued coordinated efforts and expertise in the right to information, we want to be at the forefront of raising the standard of our nation's democracy. We hope the considerations set out above will inform the government's approach and reinforce the need to priorities the timely adoption of a robust FOI Act, rather than further delays to the reform process.

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