

FOI Enactments in Selangor and Penang

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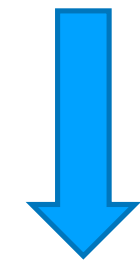
22 February 2023



SDG 16.10.2

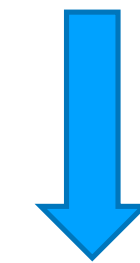
“Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information.”

Proactive Disclosure



OPEN DATA

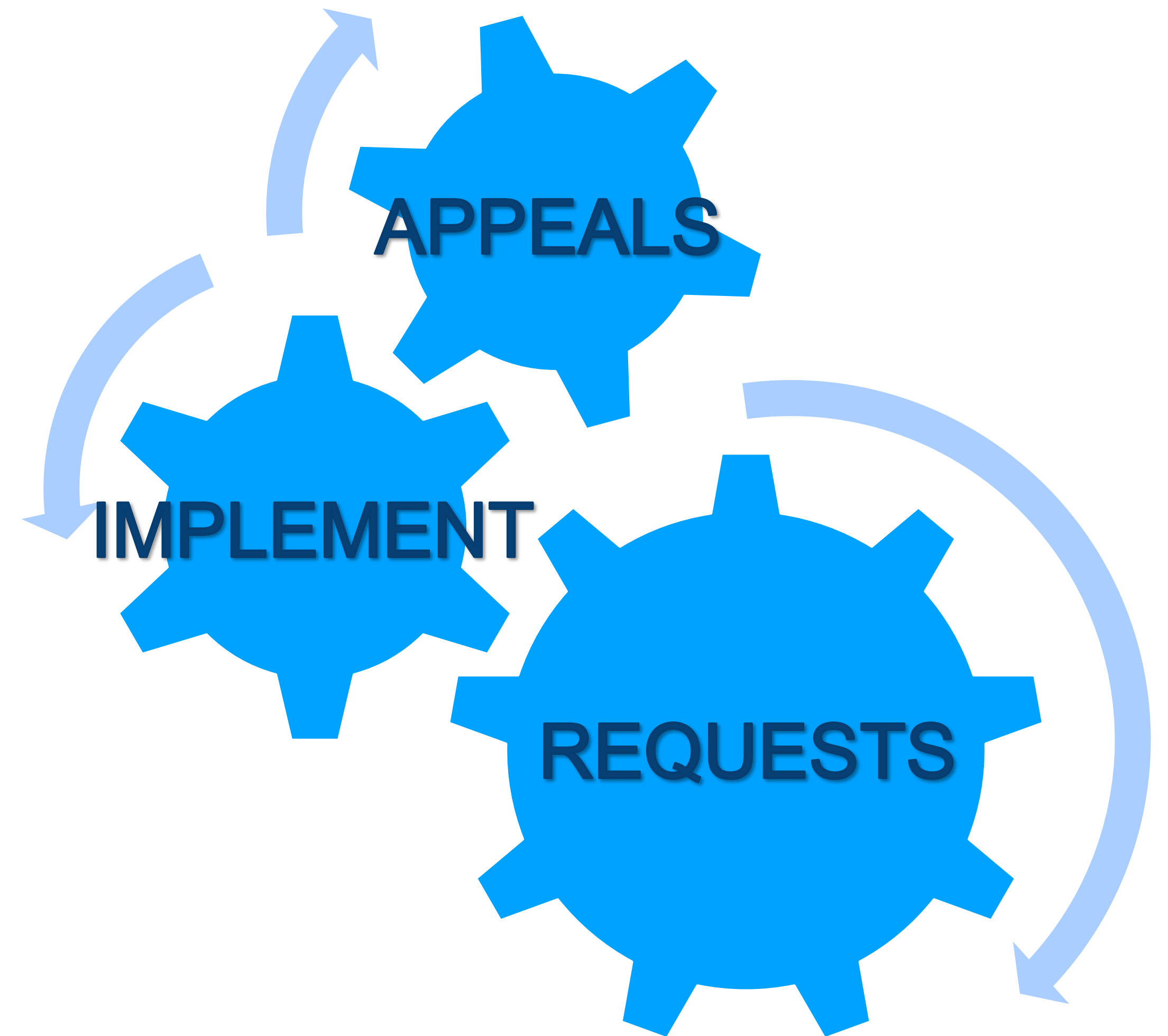
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FOI/RTI LAWS

WHAT DOES AN ATI/RTI/FOI LAW LOOK LIKE?

- Legal mechanism for citizens to REQUEST for specific information/documents from government with stipulated timeframes and obligations to respond
- Appoints and empowers specific Information Officers
- Appoints a coordinating/oversight body
- Implements an appeals process to disclose classified information if in the public interest
- Effectively creates *locus standi* for citizens and legal third party declassification mechanism





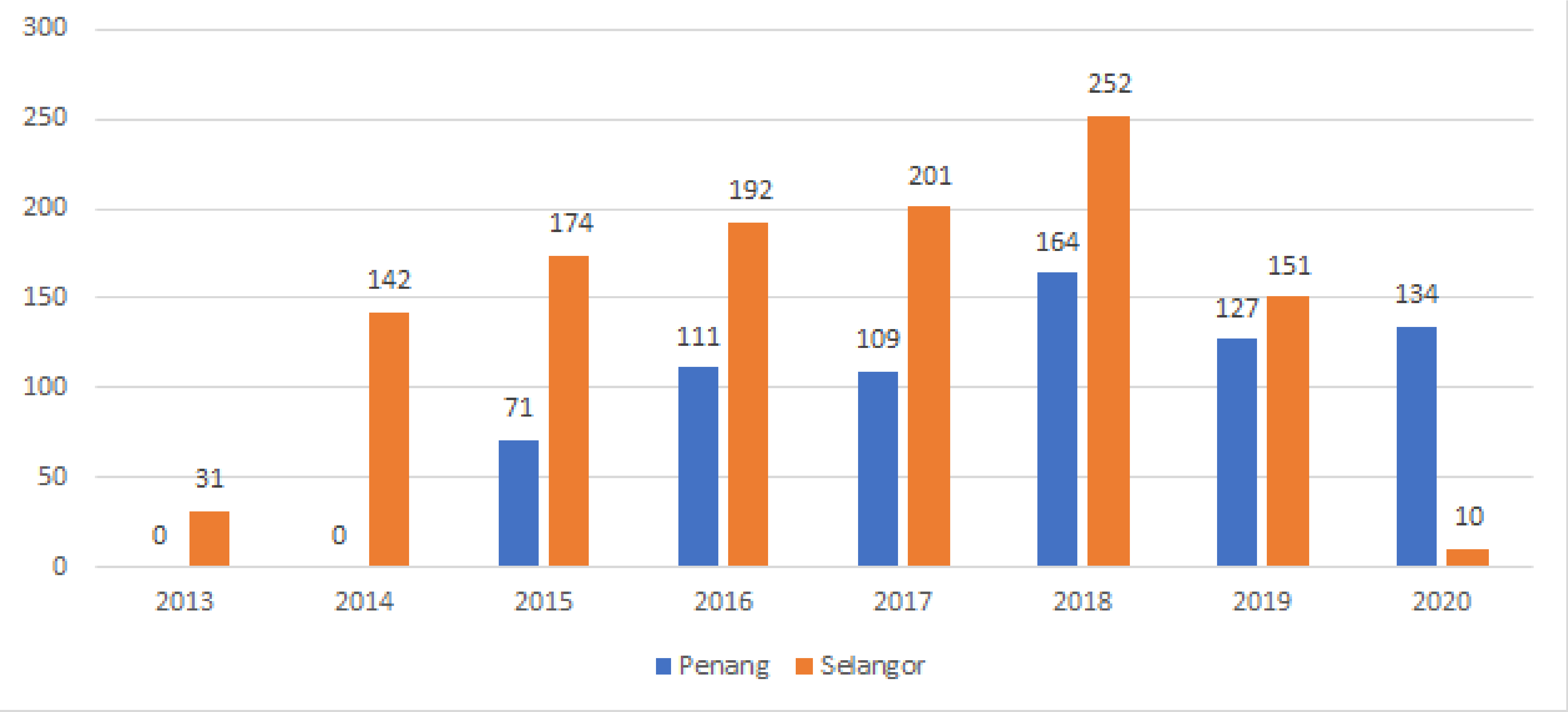
**PENANG FREEDOM OF
INFORMATION
ENACTMENT 2011**

**SELANGOR FREEDOM OF
INFORMATION
ENACTMENT 2010**

MAJOR DIFFERENCES IN SELANGOR VS PENANG

	SELANGOR FOI ENACTMENT	PENANG FOI ENACTMENT
SIMILARITIES	<ol style="list-style-type: none"> 1. Appoints information officers and the State Information Board 2. Gives the right for people to make FOI requests 3. Rejections can be appealed within 21 days 4. State government has the right to declassify information 5. Partial disclosure is possible 	<ol style="list-style-type: none"> 1. Appoints information officers and the Appeals Board 2. Gives the right for people to make FOI requests 3. Rejections can be appealed within 21 days 4. State government has the right to declassify information 5. Partial disclosure is possible
MAIN DIFFERENCES	<ol style="list-style-type: none"> 1. 30 days to respond, 7 days if life or liberty threatened 2. Must state the reasons of why the FOI request is refused 3. Automatic declassification after 20 years 4. State information board must prepare annual report of usage 5. Destroying information is an offence 6. Appeal decisions can be contested again at a higher court. 7. Can fine people up to RM50,000 and/or 5 years' jail for making false application, destroying information, wilfully obstructing access 	<ol style="list-style-type: none"> 1. 14 days to respond, 48 hours if life or liberty threatened 2. Application can automatically be transferred if the information is elsewhere 3. Long list of specified confidential information categories. 4. Appeal decisions are incontestable. 5. No criminal offence embedded.

HOWEVER, STATE FOIE HAS PROMISING RESULTS



	Government Agency (Selangor)	Year				Total
		2013	2014	2015	2016	
1	Jabatan Kehakiman Syariah Negeri Selangor	0	34	46	47	127
2	Lembaga Urus Air Selangor	13	25	32	23	93
3	Perbadanan Perpustakaan Awam Negeri Selangor	10	29	17	11	67
4	Majlis Perbandaran Ampang Jaya	0	14	13	19	46
5	Perbadanan Kemajuan Negeri Selangor	0	0	3	41	44
6	Pejabat Daerah dan Tanah Kuala Langat	0	10	10	17	37
7	Perbadanan Adat Melayu dan Warisan Negeri Selangor	5	8	16	6	35
8	Majlis Perbandaran Subang Jaya	1	5	9	4	19
9	Pejabat Setiausaha Kerajaan Negeri Selangor	0	4	6	4	14
10	Pejabat Daerah dan Tanah Petaling	0	3	5	4	12

	Government Agency (Penang)	Year						TOTAL
		2015	2016	2017	2018	2019	2020	
1	Majlis Bandaraya Seberang Perai	20	15	72	159	119	129	514
2	Jabatan Kehakiman Syariah Negeri Pulau Pinang	24	66	16	0	0	0	106
3	Majlis Agama Islam Negeri-negeri Pulau Pinang	11	11	11	3	6	4	46
4	Pejabat Setiausaha Kerajaan Negeri Pulau Pinang	2	12	6	1	1	1	23
5	Majlis Bandaraya Pulau Pinang	13	4	2	0	0	0	19
6	Pejabat Ketua Negeri Pulau Pinang	0	0	1	0	1	0	2
7	Jabatan Perancangan Bandar dan Desa Negeri Pulau Pinang	1	0	0	0	0	0	1
8	Jabatan Kebajikan Masyarakat Negeri Pulau Pinang	0	1	0	0	0	0	1
9	Jabatan Pengairan dan Saliran	0	1	0	0	0	0	1
10	Pejabat Daerah dan Tanah Daerah Timur Laut	0	1	0	0	0	0	1

REJECTION RATES

Penyata SELCAT 2015 gives that 5 out of 163 requests for 2013-2015 were rejected, and they were due to the following reasons, respectively:

- (1) It required the approval of the chief minister;*
- (2) Their requests required more time as it needed information from more departments;*
- (3) Third party permission was required.*

Penyata SELCAT 2015, p. 4

Department/Agency (Penang)	Total FOI Requests	Total FOI Request Rejected	Rejection/No. of Requests (%)
Pejabat Setiausaha Kerajaan Negeri Pulau Pinang	23	10	43%
Majlis Bandaraya Seberang Perai	514	9	2%
Majlis Bandaraya Pulau Pinang	19	7	37%
Jabatan Kehakiman Syariah Negeri Pulau Pinang	106	4	4%
Pejabat Ketua Negeri Pulau Pinang	2	1	50%
Perbadanan Ketua Menteri Pulau Pinang (CMI)	1	1	100%
Pejabat Daerah dan Tanah Seberang Perai Selatan	1	1	100%

PENANG –REASONS FOR REJECTIONS

- *A request on rezoning information by a property company was denied, as the requester did not provide a complete form;*
- *A request for the meeting agenda of the permanent committee of the city council was denied, as it is classified as secret;*
- *A request for the meeting agenda of the OSC was denied, as it is classified as secret;*
- *A request for open-tender and approval documents for state contracts was denied as those documents were with the MACC.*
- *A request for proposals on the Penang Transport Masterplan was denied as the masterplan was (then) still under consideration.*
- *A request of a public-private contract was denied because it was still in the drafting stage;*
- *A request on a public-private land reclamation contract was denied because of a confidentiality clause in the contract.*
- *A request for the contract of the SPICE project was denied because it involved a third party;*
- *Information that was requested was not complete;*
- *Information that was requested was not available;*

REJECTION RATES

☒ Appeals board members are appointed.

☐ No successful appeal known to date.
Unknown status vis-à-vis OSA

3. APPEALS BOARD

- The Selangor FOI implementation request stated that the names of the appeals board members were undisclosed (SULIT)
- we managed to find the names of the members of the first-term appeals board in the Selangor State Legislative Assembly Hansards
- The Penang FOI implementation request stated that the names of the appeals board members were undisclosed (SULIT)
- the names of the appeals board members until 2019 could also be found in the Penang State Legislative Assembly Hansards
- FOI request made by the watchdog NGO Sinar Project in 2015 also disclosed a detailed list of names

4. PUBLIC ENGAGEMENT

- The Penyata SELCAT 2015 noted that public engagement should be coordinated by the state executive committee, the state secretary and the various government departments and agencies, and proposed that coordinating meetings be held three times a year.
- that Penyata SELCAT 2015 has made recommendations for strengthening public engagement, such as publishing flyers and organising booths.
- The Penang FOI Enactment webpage also stated that there was a special counter in KOMTAR (from January 2015)
- 2021 Penang FOI implementation request reported that some outreach had been conducted on social media and Bulletin Mutiara, the monthly bulletin of the Penang government, but did not provide any links or evidence.

5. NUMBER OF & BUDGET FOR INTERNAL TRAINING SESSIONS

- The Selangor FOI implementation request reported 3 internal training workshops (2 in 2013, and 1 in 2016). Nevertheless, between 2016 and mid-2020, no internal training workshops were held.
- The Penang FOI implementation request reported that there was no training at all.

6. INTERNAL GUIDELINE DOCUMENTS

- the Penyata SELCAT 2015 also recommended that a handover guide document be produced to new information officers from those leaving.
- Unfortunately, no documents were obtained from both the Selangor and Penang FOI implementation requests; nor were any further documents revealed.
- Both states referred us to their respective public-facing websites for all documentation

7. OTHER ISSUES

- FOI requests in both states must be made on paper and hand delivered (despite the form being available primarily in PDF on their webpages). There is no option for online payment in either state.
- The cost of making an FOI request in Selangor was relatively accessible for this study compared to Penang: RM12 vs RM400.
- FOI request process is that we were reminded verbally by the processing officer in Selangor that we were not allowed to publish the document as is.
- **Private requests vs public requests:** some reasonably made in the public interest and benefit from public dissemination, which also prevents duplication of work in handling multiple similar requests and subsequently strengthening accountability processes.

The Broader Picture



WHAT DOES OUR VNR SAY ABOUT ACCESS TO INFORMATION?



“ Public Access to Information

The freedom of expression and access to information is guaranteed by the Federal Constitution, and as such, the Government is undertaking efforts to continuously ensure freedom of information. At the global level in accordance with the World Press Freedom Index²⁰³, Malaysia recorded an improved ranking in 2020 at 101 from 123 in 2019.

In line with the open data policy under the Malaysian Administrative and Management Planning Unit (MAMPU), enables for greater access to public sector information. The Department of Statistics has also played a major role in providing access to information. Towards freedom of information, the Personal Data Protection Act 2010 was introduced to protect and prevent any form of abuse against the storage or processing of personal data. In addition, the Whistle-blower Protection Act was enacted in 2010 to encourage disclosure of any acts of corruption including improper conduct and enable a person to be protected against any detrimental action due to the disclosure made.

”

Malaysia SDG VNR 2021, p. 112

THE GOVERNMENT IS BUILDING ARCHITECTURE FOR DATA MANAGEMENT THROUGH DIGITALISATION

PEKELILING AM BIL. 1 TAHUN 2015

PELAKSANAAN DATA TERBUKA SEKTOR AWAM



PELAN STRATEGIK PENDIGITALAN SEKTOR AWAM (PSPSA) 2021-2025



PSPSA 2021 – 2025

Pelan Strategik Pendigitalan Sektor Awam (PSPSA) 2021-2025 menggariskan pelaksanaan pendigitalan Sektor Awam untuk tempoh lima tahun yang akan datang kepada agensi Sektor Awam bagi memacu agenda Kerajaan Digital membentuk masyarakat digital.

Kepentingan PSPSA 2021-2025

- 1 Menyokong aspirasi Kerajaan untuk menggapai *Sustainable Development Goal 2030. Wawasan*

PEKELILING KEMAJUAN PENTADBIRAN AWAM BIL. 1 TAHUN 2020

MyGovEA: PELAKSANAAN PENDEKATAN REKA BENTUK BERSTRUKTUR EKOSISTEM ORGANISASI PERKHIDMATAN AWAM

PEKELILING TRANSFORMASI PENTADBIRAN AWAM BIL. 1 TAHUN 2017

PELAKSANAAN ANALITIS DATA RAYA SEKTOR AWAM (aDRSA)

TUJUAN

Pekeliling ini bertujuan memberi panduan kepada agensi sektor awam bagi melaksanakan analitis data raya dengan menggunakan kaedah atau metodologi yang bersesuaian ke arah meningkatkan produktiviti dan kecekapan perkhidmatan awam.






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Reasons behind ‘Allah’ ban in non-Muslim publications classified under OSA

Oct 17, 2017 @ 15:26











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Azmin, PPBM man fail court bid to declassify Auditor-General's 1MDB report



Jason Thomas - November 18, 2021 9:23 PM

355
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M Indira Gandhi met the investigating officer from the Ipoh district police headquarters today to push for the police to reclassify her daughter's disappearance as a missing persons case.

PETALING JAYA: An activist has questioned why documents related to the case of M Indira Gandhi have been classified under the Official Secrets Act (OSA).

Earlier this year, Indira's lawyer Rajesh Nagarajan noted that while the police filed an affidavit on the actions taken to track down Indira's ex-husband Muhammad Riduan Abdullah and to find their youngest daughter Prasana Diksa, these were not substantiated as the documents they referred to were not produced.

THE OSA STILL GOVERNS THE ADMINISTRATION OF GOVERNMENT INFORMATION

MALAYSIA

POLITICS & GOVERNMENT

Select Language

Parliament

PAC regrets Govt's action not to fully declassify report related to AES

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KUALA LUMPUR (Aug 1): The Public Accounts Committee (PAC) on Monday (Aug 1) expressed its regrets over the government's action to not fully declassify the Special Investigation Committee on Public Governance, Procurement and Finance (JKSTUPKK) report related to the Automatic Enforcement System (AES).

In Zahid trial, judge orders prosecution to declassify defence witness' MACC statement for impeachment hearing



Datuk Seri Ahmad Zahid Hamidi arrives at the Kuala Lumpur High Court October 31, 2022. — Picture by Hari Anggara

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By Ida Lim
Monday, 31 Oct 2022 3:40 PM MYT

KUALA LUMPUR, Oct 31 — The High Court today directed the prosecution to make visible certain redacted parts of a defence witness' past statement to the Malaysian Anti-Corruption Commission

SLOW PROGRESS ON FEDERAL REACTIVE DISCLOSURE

Freedom of Information Act soon

Published on: Thursday, November 28, 2019
By: David Thien

Text Size: + - Dark Mode: Off



PUTRAJAYA: The Federal Government is committed to replacing the Official Secrets Act (OSA) with a Freedom of Information Act (FOIA) to fulfil a promise made in the Pakatan Harapan election manifesto.

Minister in the Prime Minister's Department for Legal Affairs Datuk Liew Vui Keong (pic) said he had been mandated by the Cabinet to work with the Minister of Communication and Multimedia to develop this Act.

Freedom of info? Need to strike balance between public and private interest, says law minister

By RAHIMY RAHIM, HEMANANTHANI SIVANANDAM, TARRENCE TAN and MARTIN CARVALHO



NATION 

Wednesday, 02 Dec 2020
12:33 PM MYT



Datuk Takiyuddin Hassan. -filepic

KUALA LUMPUR: The government is prepared to consider enacting a Freedom of Information Act in order to give better protection but also strike a balance between private and public interest, Parliament was told.

PAKATAN HARAPAN GOVT, 2018-2020

PERIKATAN NASIONAL I GOVT, 2020-2021

SLOW PROGRESS ON FEDERAL REACTIVE DISCLOSURE

| Wan Junaidi: Govt to study parameters before enacting Freedom of Information legislation



Datuk Seri Wan Junaidi Tuanku Jaafar said the right to information holds a significant impact for Malaysia in the current global human rights scenario as the country was working towards a transparent and open nation. — Bernama photo

Right to information law can help counter fake news, says Wan Junaidi

By MARTIN CARVALHO



NATION

Wednesday, 08 Jun 2022

2:58 PM MYT

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PETALING JAYA: Engagement sessions on a possible right to information law have been carried out at both state and federal levels, says Datuk Seri Dr Wan Junaidi Tuanku Jaafar.

CONCLUSIONS

Can OSA co-exist with an ATI act?

Yes, but problematic.

Thorny Points to Consider?

Yes, but problematic.

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