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The Right to Access Information: Perspectives from Lawsuits of Refusal to Information Supply in Selected Countries and Vietnam

Thai Thi Tuyet Dung, Vu Kim Hanh Dung

*University of Economics and Law,
Vietnam National University, Ho Chi Minh City, Vietnam*

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Abstract: The right to access information constitutes a fundamental entitlement for citizens across numerous jurisdictions worldwide. In Vietnam, the Law on Access to Information became effective on 1 July 2018. Despite certain inherent shortcomings both objectively and subjectively encountered during its implementation, Vietnamese citizens have begun utilizing this legal framework to solicit information. In instances where requests are denied, individuals have resorted to lodging complaints or initiating administrative lawsuits. As of 15 May 2023, Vietnamese courts have overseen four administrative cases directly linked to the right to access information. This study centers on these four administrative cases, scrutinizes Vietnamese regulatory statutes concerning information access, and suggests avenues for improvement to ensure the practical realization of the right to access information, which inherently embodies the protection of rights. Employing analytical legal research methodology, this paper analyzes pertinent legal provisions governing information access. Additionally, research methodology of case study are conducted, such as analyze and compare judgments pertaining to information denial in various selected countries and Vietnam. Ultimately, an analytical approach rooted in the Vietnamese legal theory and law is employed to draw conclusions and provide recommendations.

Keywords: Vietnam; law on access to information; right to access information; lawsuit; refusal of information supply

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I. Introduction

When coming up with the definitions of “the right to access information” in different parts of the world, almost all definitions mention it directly and recognize that it is a legal right, one of the legal and important rights of people. Also, these definitions mention the access to one type of information – the information held by the State, but less discuss the access to other information. In current international legal sciences as well as in the reality of enactment and implementation of the law on the right to access information, it deems that there is not much debate about this right, despite the name, it could be presented differently international and international legal documents. The right to access information is considered in the following aspects (Thai, 2014, pp. 21, 22).

The right to access information is the ability to act and the manner in which people choose to act in specific conditions specified by the law

so as to obtain the information held by the State. The people exercising the right to access information have the following rights:

(1) citizens have the right to receive information from State organizations or reserve the right to search for information to exercise their subjective rights;

(2) citizens can request the subjects who are responsible for information supply to fulfill their obligations on information supply upon request or require them to terminate any prevention behaviors such as refusal to provide information so that they can get their right of owning state information;

(3) citizens can request competent state agencies to interfere or take necessary coercive measures to protect their rights in case of complaints, lawsuits filed if the prevention of information supply harms their legal rights and interests.

Meanwhile, some scientists define the right to access information as the right to obtain information held by the State by making a request and the State has the obligation of providing this information (Mendel, 2003) (unless otherwise stipulated in other regulations on the waiver of the obligation on information supply). In the report in 1998 and 2000, United Nations Secretary-General Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression affirmed that the right to access information is an independent human right which is under the scope of freedom of speech protected by international documents on human rights. The right to access information regulates the State agencies' obligations to ensure that every person can access the information sources, first of all, are information held or managed by state agencies themselves in one form or another (United Nations, 1998¹, 2000²).

In Vietnam, before 2016, the right to access information was stipulated in the Constitution of 1992, and mentioned directly in the

¹ United Nations, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression No. E/CN.4/1998/40 dated 28 January 1988, para, 14–16.

² United Nations, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression No. E/CN.4/2000/63 dated 18 January 2000, Para. 42–43.

Law on Anti-Corruption, or indirectly in the Press Law, Land Law, and Environmental Protection Law. When the Law on Right to access Information was issued, the right to access information was proclaimed: all citizens can access the information of the State, excepting those are not allowed to be accessed and information that is accessed with conditions specified in the Law (Vietnam National Assembly, 2016).³ In it information access is characterized as “*the activity of reading, watching, listening, recording, copying and taking photo of the information,*” (Art. 2, Clause 3) and “provision of information includes the state agency’s disclosure of information and provision of information as requested by citizens” (Art. 2, Clause 4).

Therefore, according to Vietnamese Law, people can access information in two ways: firstly, they access the information disclosed by the state authorities; secondly, they seek information by requesting the state authorities to provide it. Thus, it can be understood that people’s right to access information means their right to read, watch, listen, record, copy, take photo of the information which is made public or provided by the state authorities when being requested. People’s right to access information depends largely on the State’s responsibility for assurance, respect, protection, on the level of socio-economic development, on the history, geography, religion of each nation. Thus, the contents of the right to access information are various, relying on the will of each nation and closely related to the protection of state confidentiality and privacy.

When the right to access information is violated – for example, by denial of information that does not comply with legal regulations, or by receiving incomplete, inaccurate, or delayed information from obligated agencies and organizations, citizens can file complaints or lawsuits to protect their rights. The court may consider the case, and if the court finds a violation, the judgment may require the state agency or organization to provide information, correct the information provided, or take other measures. The process and mechanism for filing lawsuits may vary depending on the law of each country.

³ Vietnam National Assembly, Law No. 2014/2016/QH13 dated 6 April 2016 on Access to Information, Art. 3.

II. Limit of the Right to Access Information

The right to access information is a limited right, this limit is the scope of information that people could neither receive nor request for information supply. In common sense, this information must be accessible for the public unless there is another community interest, an individual interest that is more important and required to be kept secret. (Mendel, 2009, p. 4) The problem is that there must be sufficient legal bases to deal with the relationship between accessible and inaccessible information. In other words, the right to access information allows people to access documents, dossiers of the state authorities, but not all of them.

Each country sets out exceptions or waivers when the state authorities have the right not to disclose or to refuse to provide information. The regulation on such exceptions shows that the right to access information is only limited to the cases stipulated by the law and that the state authorities are not entitled to not disclose or refuse to supply information without a legitimate reason. Out of information under waiving scope, nations rank national security (defense, security), or a private secret, information regarding scientific policy development planning, national economic interests as the top information that needs protecting, namely:

(1) information regarding national security, defense and other international relationship; (2) information relating to private secret, personal safety;

(3) documents on prevention, inspection or lawsuit of criminal cases,

(4) information in relation to trade secret and economic benefits;

(5) internal information that is under preparation and has not been officially approved or adopted.⁴

In addition, nations set out some cases of waiver such as:

(1) the information to be provided will cause negative impacts on social safeguards, life, health and environment, etc. For example, the

⁴ A Model Freedom of Information Law (2001), Art. 19, Part IV. Available at: <http://www.article19.org/data/files/pdfs/standards/modelfoiaw.pdf> [Accessed 11.06.2024].

supply of information related to the living positions of rare animals, plants could affect their habitat as people would visit, hunt, cut and damage their habitat;

(2) the information to be provided will have adverse impacts on the economics, financial policies, monetary of a nation. Typically, the leakage of the information about the rise of petroleum price will make rush to buy petroleum for reserve, causing uneasiness of people and affecting the economics as individuals, organizations speculate petroleum and then sell it when the price rises to earn profits;

(3) the information could negatively affect the diplomatic relations between countries and among international organizations;

(4) the information, if being disclosed, will affect the inspection, prosecution, adjudication, and law enforcement.

This regulation is intended to ensure that the activities of agencies in charge of investigation, prosecution, adjudication and the process of fighting and preventing crime are not hindered, ensuring that crimes are detected, prevented and handled according to the provisions of law.

The identification of information scope to be accessed is closely related to the state secrets. Currently, many countries issue a separate law on state secrets so that the Law on access to information can be referred to. However, there are many nations that implement their management activities in secret, and even nations that are assessed to be democratic still carry out their activities out of public view when trying to categorize the information into a national secret or information to keep public order. This has created a situation of abuse of power, as state agencies can determine at their discretion what types of information are inaccessible to the public without considering the nature of the information.

Of course, every country has its own “sacred” secrets relating to security, national defense, but the “secret” of state management information will be simply the “wide opened gate” for corruption, injustice and inequality. It should be seen that corruption grows in secret places and avoids public places, thus, it can be easily observed that the non-public things will be the seed of corruption. The “instinct” of keeping secret grows in secret environment, allowing officials to be “inviolable,” and free from responsibilities for explanation; this is a

difficulty that needs to be addressed. It is the secret culture that slows down the opening of the society, preventing the social development.

The determination of the limit of the right to access information is also closely linked to the private right. These two zones share a collapse zone, so conflict is unavoidable. The competent state agencies have right and responsibility for collecting a large amount of private information and sometime allows accessing information based on diversely various reasons. Information requesters include reporters who fight for transparencies, individuals who request explanation about decision making process, historians and centers studying current events and other non-current events.

Conflicts between the two laws on adjusting rights arising due to inconsistency in determining the subjects to be protected, whether or not the private information, information related to assets of officials are considered to be private. Today, the information related to individuals becomes more and more important when information is stored in e-data, so the information is disclosed more easily. However, laws on access to information and laws on data protection are still vague and inaccurate, and they fail to identify what information is private. This is applied excessively when privacy is used as a basis for preventing access to information.

In the US, the Government takes privacy as a basis to deny to make public the name of individuals who have recently been arrested in terrorism investigations (it often causes a lot of controversies). In Japan, the Code on private information protection is used to be the basis for keeping officials-related information secret. The UK keeps confidential costs and information about the trip of members of the British Parliament. In fact, in many cases, even knowing that information secret could harm the private right of citizen, the courts still lean towards the right to access information by requesting the state authorities to disclose information, but not revealing the name of the individuals involved. Therefore, if the State refuses to provide information for protecting private rights, this could be a basis for filing a complaint.

Therefore, the determination of the limit of information types that must be disclosed and provided and those types that cannot be disclosed

is always a difficulty for every nation. The advantages of a publicized government are to determine the responsibilities and the democratic participation more clearly. However, this sometimes could harm social values which have been respected by people such as as a person's private right.

III. Specific Lawsuits about the Right to Access Information in Selected Countries

*1. Társaság a Szabadságjogokért v. Hungary (2009)*⁵

The case is a judgment by the European Court of Human Rights (ECHR), reaffirming the fundamental right to access information held by public authorities. This case is significant as it established that access to information is an integral part of the right to freedom of expression under Art. 10 of the European Convention on Human Rights and Fundamental Freedoms. In this case, a non-governmental organization in Hungary requested access to transcripts from parliamentary sessions related to discussions on changes to drug laws. However, their request was denied on the grounds that the transcripts were considered internal documents and were not publicly available. The organization subsequently brought the matter to the ECHR, arguing that the denial of information violated their right to freedom of expression.

The ECHR ruled that the denial of access to such public information constituted an interference with the right to freedom of expression and lacked any legitimate justification. The Court emphasized that access to information plays a crucial role in promoting transparency and democracy, and public authorities have a duty to provide information upon request unless there are compelling reasons for secrecy.

The ECHR's decision in *Társaság a Szabadságjogokért v. Hungary* has far-reaching implications for the right to access information and freedom of expression in Europe. It reaffirms that access to information is a fundamental right and that public authorities must be transparent and accountable in their actions. The decision also encourages European

⁵ Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-92171%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-92171%22]}) [Accessed 13.06.2024].

member states to review and strengthen their access to information laws.

*2. Guardian Newspapers Ltd and Heather Brooke v. Information Commissioner and BBC 2007*⁶

The case set a significant legal precedent in the United Kingdom, reinforcing the right to access public information and the importance of transparency in government. This case involved Heather Brooke, a citizen advocate for government transparency and accountability, who requested access to a report commissioned by the UK government on the implementation of the Freedom of Information Act. Brooke, a prominent advocate for transparency and citizen rights, filed a request under the Freedom of Information Act (FOIA) to obtain a copy of a report commissioned by the UK government on the implementation of the FOIA itself. The Information Commissioner, the independent body responsible for overseeing the FOIA, initially rejected Brooke's request, citing exemptions related to internal deliberations and the protection of commercially sensitive information. Undeterred by the initial denial, Brooke pursued her quest for access to the report through a series of appeals and legal challenges. She argued that the Information Commissioner's decision was flawed and that the public had a right to know how the government was evaluating the effectiveness of the FOIA.

The Upper Tribunal, the appellate body for FOIA appeals, overturned the Information Commissioner's decision and ruled in favor of Brooke. The Tribunal found that the public interest in understanding the government's assessment of the FOIA outweighed the claimed exemptions. This decision set a precedent for greater transparency in government self-evaluation processes.

*3. Fishermen and Friends of the Sea v. Environmental Management Authority and others (2018)*⁷

This case highlighted the significance of access to information in environmental decision-making and public scrutiny. In this case, the Fishermen and Friends of the Sea (FFOS), an environmental

⁶ Available at: <https://www.casemine.com/judgement/uk/5a938b4b60do3e5f6b82c838> [Accessed 13.06.2024].

⁷ Available at: <https://www.jcpc.uk/cases/jcpc-2018-0055.html> [Accessed 13.06.2024].

organization, sought access to information from the Environmental Management Authority (EMA) regarding a controversial development project. The EMA initially denied their request, but the FFOS successfully challenged this decision in court.

The EMA v. FFOS case underscores the fundamental right of the public to access information related to environmental matters. It demonstrates that environmental organizations and individuals should have the ability to scrutinize government decisions and ensure that environmental considerations are adequately addressed. The case also emphasizes the importance of judicial oversight in upholding transparency and accountability in environmental governance.

4. Other Notable Cases on Access to Information in Asia

Prita Mulyasari v. RS Omni International Hospital (Indonesia, 2009).⁸ This case involved a nurse who was dismissed from her job for criticizing the quality of services at a private hospital in Indonesia. The case gained significant public attention and raised awareness about the importance of freedom of speech and access to information in holding healthcare providers accountable.

Nithyananda Ashram v. Government of Tamil Nadu (Madras High Court, 2013)⁹. In this case, a religious organization challenged the government's decision to block access to its website. The court ruled in favor of the organization, recognizing that the government's action violated the organization's right to freedom of speech and the public's right to access information.

IV. Specific Lawsuits about the Right to Access Information in Vietnam

As of June 2023, there were four lawsuits in Vietnam about the right to access information that have gone on trial, including (i) two lawsuits in Da Nang city in 2019 (Supreme People Court at Da Nang City, 2019)¹⁰

⁸ Indonesia Law Advisory. Available at: <http://indonesianlawadvisory.com/Case%20Prita.aspx> [Accessed 13.06.2024].

⁹ Available at: <https://indiankanoon.org/doc/13403449/> [Accessed 13.06.2024].

¹⁰ The appeal judgment No. 199/2019/HC-PT dated 17 December 2019 re: "Request on cancellation of administrative decision."

and 2021 (Supreme People Court at Da Nang City, 2021)¹¹ on request for supplying information relating to the Report on verification results of the inspection, denunciation settlement; (ii) one lawsuit in Can Tho city in 2020 (Can Tho City People Court, 2020)¹² about the denial of providing information on land planning; (iii) the one in Khanh Hoa province (2022) (Khanh Hoa People Court, 2022)¹³ about not supplying information about an enterprise's investment registration certificate which directly related to the petitioner's acquired land. These lawsuits are only individual lawsuits against state agencies, with no lawsuits from organizations, institutions, or businesses regarding the right to access information.

– The first lawsuit in Da Nang (Supreme People Court at Da Nang City, 2019): Mr. DC requested to be provided with the Report on verification results of the inspection, denunciation settlement, Report on settlement of complaints and grievances. The first instance administrative judgment No. 12/2019/HC-ST was issued on 14 August 2019 of Da Nang People's Court on refusal of Mr. DC's request as the Court assumed that the report on the verification results of Da Nang city Inspectorate were the reports after Da Nang city Inspectorate was assigned by Da Nang city People's Committee. The report's contents were the bases for the Chairman of city People's Committee to handle people's complaints, were the documents of subordinates reported to superiors. And reports on verification, denunciation results fell into the Inspection's List of confidential documents according to regulations in Clause 2, Art. 1 of the Circular No. 08/2015/TT-BCA dated 27 January 2015 of the Ministry of Public Security, thus, these reports were inaccessible to people and even when being disclosed according to the Art. 6, Law on Access to Information as well as regulations at Clause 1, Art. 9 of Law on Denunciations 2011 stipulating that the denunciator had no right to request for information on denunciation verification

¹¹ The appeal judgment No. 02/2021/HC-PT dated 30 July 2021 re: "Complaints on the refusal to provide information, cancellation of decision on complaint address."

¹² The judgment No. 42/2020/HC-ST dated 25 November 2020 issued by Can Tho City's People Court.

¹³ The judgment No. 13/2022/HC-TC dated 20 April 2022 issued by Khanh Hoa Province's People Court.

results. The first instance judgment of Da Nang High Court applied above bases and Art. 12 Circular No. 33/2015/TT-BCA dated 20 July 2015 of the Ministry of Public Security on remaining the first instance judgment.

– The second lawsuit in Da Nang (Supreme People Court at Da Nang City, 2021) was initiated in 2020. It was similar to the above case when the plaintiff requested the Inspector of district T, Da Nang city for providing the information of the Report No. 41/BC-TTr dated 11 June 2013 of district T’s Inspector on the verification results of the contents about people’s denunciation contents and was denied.¹⁴ The Inspectorate assumed that this report was the document compiled by the State for internal works, based on Clause 2, Art. 6, Law on Access to Information 2016, Art. 5.1d Decree No. 13/2015/ND-CP promulgating details and methods of enforcing the Law on Access to Information, and refused to provide information. The first instance and appeal court were also based on the regulations mentioned above to refuse Mr. C’s request.

– The third case is in Can Tho (Can Tho City People Court, 2020)¹⁵: Mr. Pham Hong D in district B, Can Tho city, initiated a lawsuit to District B People’s Committee, Can Tho city about the refusal to provide information on land planning via the response to deny providing information. For this case, Can Tho city People’s Court of First Instance accepted the Mr.D’s lawsuit request and ordered district B People’s Committee to receive, provide the initiator with the information regarding the planning of the land plots where Mr. D is not the owner in district B, Can Tho city. This case was not on appeal.

¹⁴ Inspector of district T issued the Notice No. 112/TB-TTr on denying providing the Report No. 41/BC-TTr dated 11 June 2023 of district T’s Inspector. The Trial Penal found that the Report No. 41 above is the document compiled by the district T’s Inspector, it reported the verification results according to the Chairman of district T People’s Committee, Da Nang city to address the denunciation dated 17 April 2013 of Mr. DC, it is the internal job, and inaccessible to people in accordance with the Clause 2, Art. 6, the Law on Access to Information 2016.

¹⁵ The judgment No. 42/2020/HC-ST dated 25 November 2020 issued by Can Tho City’s People Court.

– The fourth case (Khanh Hoa People Court, 2022)¹⁶: this lawsuit has been causing a lot of controversies as it has been reported in almost all top presses in Vietnam. On 13 April 2020, Mr. Nguyen Van Binh in Khanh Hoa filed a lawsuit to Khanh Hoa Provincial People’s Committee to request for providing information on the project licensed in his land plot which had been acquired, including the golf course Investment Registration Certificate issued to Hoan Cau company so that he could obtain the documents and information to sent to competent agencies to address his complaint. As from 2000 to date, he and his family have been affected by the land acquisition decided by Khanh Hoa Provincial People’s Committee, the land was acquired and hand over the land to Hoan Cau Construction Trading Co., Ltd (Hoan Cau JSC) for carrying out Lo River Tourism and Recreation Area (currently the Diamond Bay resort & spa Nha Trang tourism complex). He believed that the land acquisition failed to comply with regulatory laws. He has continuously sent complaints over 20 years, but no satisfactory settlement was given.

On 13 May 2020, Mr. Binh filed the case to Chairman of Provincial People’s Committee (PPC) on the behavior of refusing to provide information. In June 2020, Chairman of Khanh Hoa Provincial People’s Committee signed the Document No. 5898/UBND responding “the refusal to provide information to Mr. Binh is because such supply of information relating to the issue of Golf Investment Registration Certificate of Hoan Cau Company infringed on the enterprise’s legitimate rights.” Unsatisfactorily, Mr. Binh initiated the case to Khanh Hoa Provincial People’s Court to request for cancelling the document of Chairman of Khanh Hoa Provincial People’s Committee, requesting the Provincial People’s Committee to provide information to citizen as stipulated by the laws.

In May 2021, Khanh Hoa Provincial People’s Court brought the case to trial,¹⁷ but the Trial Panel suspended the court to collect, supplement

¹⁶ The judgment No. 13/2022/HC-TC dated 20 April 2022 issued by Khanh Hoa Province’s People Court.

¹⁷ At the court, the PPC Chairman’s Protector said that the Golf course Investment Registration Certificate of Hoan Cau Company was the information related to the enterprise’s business secret. Unless being approved by the Company, the supply of information would infringe on the enterprise’s rights and benefits.

documents, evidence. In December 2021, The Chairman of the People's Committee of Khanh Hoa province has decided to withdraw the sued document on the grounds of "not being suitable for the form of the document" and request the Office of the People's Committee to respond. On 14 January 2022, Khanh Hoa Provincial People's Committee issued the Notice No. 36/TB-VPUB on denial of providing information to Mr. Binh with the reason that the information he requested had been existed before the Law on Access to Information 2016 and the Decree No. 13/2018/ND-CP regulating details and method of enforcing the Law on Access to Information effectively. Still not agreeing with these results, Mr. Binh filed a lawsuit against the Provincial People's Committee office, requested the court for cancelling the Notice above, and requested the Office to provide information.

On 20 April 2022, Khanh Hoa Provincial People's Court re-opened the trial and the verdict in judgment No. 13/2022/HC-TC rejected Mr. Binh's request to cancel Document 5898 with the reason that the Chairman of the Provincial People's Committee had withdrawn and cancelled this Document in December 2021. For the request to cancel the Notice 36/TB-VPUB, the Trial Panel concluded that this notice was an independent document which would not be considered in this case, so Mr. Binh had the right to initiate another independent administrative lawsuit.

Then in May 2022, Khanh Hoa Provincial People's Procuracy partially appellated the above judgment. On 16 August 2022, the High People's Court in Da Nang opened an appeal trial, accepted part of the lawsuit filed by Mr. Binh and accepted the appeal of Khanh Hoa Provincial People's Procuracy, revised part of the first instance judgment of Khanh Hoa Provincial People's Procuracy; only rejected Mr. Binh's claim on cancellation of the Document No. 5898 as the subject of the lawsuit no longer existed. As for the content of forcing Khanh Hoa Provincial People's Committee to provide a private certificate of ownership, the court did not reject this request. Whenever requested, this request will be gone on trial in another administrative case.

V. Comments

Out of the four lawsuits above, there is a case where the petitioner won, two cases where the petitioner lost and one has been unclear about the final results of whether or not the information would be provided. Studying the contents of judgments, the key problem should be clarified that which information is inaccessible and which must be provided upon request.

According to the provisions of Art. 6 of the Law on Access to Information 2016, the information which is inaccessible by citizen includes:

(1) state secrets, including information with important contents in the fields of politics, defense, national security, foreign affairs, economics, science, technology and other fields as prescribed by law. When the information that is a state secret is declassified, citizens can access it according to the provisions of this Law.

(2) The information that, if accessed, will harm the interests of the State, adversely affect national defense, national security, international relations, social orders and safety, social morality, community health; endanger the lives or property of other people; information belonging to confidential works; information about internal meetings of state agencies; documents drafted by state agencies for internal works.

The information provided upon request specified in Art. 23 of the Law on Access to Information 2016, includes:

(1) information that must be made public and information within the disclosure period but has not yet been made public, information after the deadline for disclosure as prescribed by law expires. The information is being made public but due to force majeure reasons the requester could not be accessible.

(2) Information related to business secrets, private life, personal secrets, and family secrets which are eligible to be provided according to the provisions of Art. 7 of the Law on Access to Information.

(3) Information related to the life, daily life, production and business of the requester but not belonging to the type specified in Art. 17 and Clause 2, Art. 23 of the Law on Access to Information.

(4) Based on duties, powers, conditions and actual capabilities, state agencies may provide other information created or held by them.

Thus, according to the exclusion principles, citizens have the right to access information that is not within the scope of Art. 6 above. However, when put into practice, each type of information will have different aspects regarding the level of disclosure, supply upon request and not supply of the same type of information, specifically.

Firstly, is the “Inspection Conclusion Report” a document that can be accessed upon request. Both judgments in Da Nang were determined differently by the courts, at times the Inspection Conclusion Report was a “confidential document,” at other times it was an “internal document” and they were applied differently, but both fell into the type of “inaccessible document,” so agencies’ refusal to provide must be based on clear legal grounds.

After the Law on Protection of State Secrets was promulgated in 2018, the Prime Minister issued decisions stipulating the list of secrets for each field. According to Decision No. 774/QĐ-TTg dated 5 June 2020 promulgating the List of State secrets in terms of inspection, settlement of complaints and denunciations and prevention and fight for corruption, the Report concludes inspection results of Inspection Team members and of the Inspection Team. The contents of the inspection conclusions have not been made public, report on the results of verifying the denunciation contents before concluding the denunciation content public. If the conclusion of the denunciation content has not been made public, it must be kept confidential.

As for the Inspection Conclusion, it must be made public, so if relevant entities do not receive the Inspection Conclusion, they have the right to request for supply, as Art. 79 of the Law on Inspection of 2022 stipulates that the inspection conclusion must be disclosed in full text, except for state secrets or other secrets as prescribed by law. Regarding the results of complaints and denunciations, the complainant or denouncer will receive these documents.

Secondly, there are different opinions on the question that does the information about the land for which the requester is not the land owner belong to the group of accessible information upon request. According to district B Urban Management Department, Can Tho city, based on

Art. 38 and Art. 191 of the Civil Code of 2015,¹⁸ to ensure the legitimate right and interests of the person whose name is on the land use right certificate, if the requester refuses to provide a Letter of Authorization of the person who holds land use rights in their names, the request for information supply will not be fulfilled.

At the court's viewpoint, Art. 17.1g of the Law on Access to Information of 2016 states that the planning information and land use plans are those that must be made public and are not private information. The disclosure of the planning and land use plans aims to create transparency in land management and avoid unnecessary risks in land transactions. Therefore, when requested, the land management agency must be responsible for providing it. This regulation shows that information about planning is made public without limiting the scope or object of disclosure. This means that people other than the person whose name is on the land use rights are provided with information. Therefore, Mr. D has the right to access information, even though he is not the person holding the land use rights. Furthermore, based on Clause 13, Art. 29 of the Law on amending and supplementing a number of articles in Art. 37 of the Law related to planning, the People's Committees at all levels are responsible for organizing the reception, processing and provision of documents upon request. The information provided must be based on the approved urban planning and urban design projects and promulgated regulations on management according to urban planning and design projects. Thus, in this case, the district B People's Committee is responsible for receiving, processing and providing information upon request. Therefore, the plaintiff's request satisfies the statutory conditions. The district B People's Committee's failure to provide the planning information for the mentioned land plots upon request is illegal.

Thirdly, there are different points of view about whether or not the Investment Registration Certificate belongs to the case of not providing

¹⁸ Vietnam National Assembly, Civil Code of 2015, Art. 38 stated that: "3. The collection, store, use and disclosure of information related to private life, personal secrets must obtain the consensus of that person.

The person who is not the owner is allowed to use assets according to the agreement with the owner or according to the regulatory laws."

information. For the case of Mr. Nguyen Van Binh, the refusal of Khanh Hoa Provincial People's Committee to provide information showed a relatively big gap between regulatory laws and the reality of exercising the law on access to information. Actually, the information requested for information supply by Mr. Binh is only the Decision of the investment project of which he is the affected person.

– The reason that “exercising citizens” right to access information must not infringe on the national or ethnic interests, the legitimate rights and interests of agencies, organizations or other people.¹⁹ According to Clause 5, Art. 3 of the Law on Access to Information, that Mr. Nguyen Van B requested the Provincial People's Committee to provide Company H's Golf Course Investment Certificate violated the legitimate rights and interests of Company H; Therefore, the PPC refused to issue the Certificate. And the Investment Registration Certificate (the Project No. 2234135873) with the first issuance on 16 November 2016 by the Department of Planning and Investment issued to H Company Limited, the Zone VII project region – Golf Club is not the information that must be made public according to Art. 17 of the Law on Access to Information 2016. Clearly, if based only on the regulation that “it must not infringe on national interests, people's rights and legitimate interests of agencies and other organizations” without any specific explanation of what is “infringing on the legitimate rights and interests of agencies and organizations” and what level of infringement will create arbitrariness when applied.

– The use of the reason that the information is related to business secrets to refuse to provide information, this type of information is not the “business secret” which can be based to refuse to provide information.²⁰ According to Clause 23, Art. 4 of the Unified Intellectual

¹⁹ The document No. 243/UBND-NC dated 11 January 2021 sent to the court, the defendant is Chairman of Khanh Hoa Provincial People's Committee, explained the reason why he issued the Document No. 5898/UBND-NC dated 16 June 2020 for denying the supply of information.

²⁰ At the first instance court in May 2021, Chairman of Khanh Hoa PPC and his interest's protector said that the 18-hole Golf Course Investment Registration Certificate of Hoan Cau Company under Lo River Tourism and Recreation Area Project belongs to the business secret information of Hoan Cau Company, unless obtaining the Company's agreement, the supply of information related to this Certificate will infringe

Property Law, a “*business secret*” is information obtained from financial and intellectual investment activities that has not been disclosed and is likely to be used in business,²¹ the “administrative” decision issued by the People’s Committee on investment project approval is completely not a business secret to refuse to provide information. Therefore, based on Art. 7 and Art. 23 of the Law on Access to Information, citizens still reserve the right to access this information upon request.

— The use of the reason that information was created before the Law on Access to Information took effect in 1 July 2018 to deny providing it is not in accordance with the law. Based on Art. 14 of Decree 13/2018/ND-CP, the access to information created before 1 July 2018 continues to comply with the provisions of law and regulations on access to information issued before 1 July 2018 and must not be against Art. 3 of the Law on Access to Information. Mr. Binh’s legal rights and interests are affected by the decision made by the People’s Committee on land acquisition and hand over Hoan Cau Joint Stock Company for project implementation and his wish to know how the golf course investment registration certificate is affects his land plot is completely legitimate. According to Art. 28 and Art. 35 of the Land Law 2013, Art. 5 of the Ordinance on Democracy at the grassroots, Art. 3 of Law on Access to Information, there are sufficient legal bases to provide information to Mr. Binh is legal.

— Information about investment certificates issued by State agencies is not in the list of confidential information, or confidential documents, but is just normal information documents and papers. So, there is no reason for the State agencies to deny providing it to citizen. Furthermore, the people’s request to provide information of an investment project, which is directly related to them, does not only comply with the Law on Access to Information. Through it the people

legal rights and interest of Hoa Cau Company. So, requesting the Trial Panel to reject the plaintiff’s lawsuit request.

²¹ Vietnam National Assembly, Integrated Law on Intellectual Property Rights dated 8 July 2022, Art. 84 specifies more details about the conditions on protected business secret (1): Neither to be common knowledge nor easily obtained; (2) To be capable, when being used in the business course, to render advantages to its holder over those who do not hold or use it; (3) To be kept secret by its owner with necessary measures so that it shall neither be disclosed nor easily accessible.

exercise their right of supervision. Therefore, the refusal of Khanh Hoa PPC to provide information fails to comply with Art. 6 of the Law on Access to Information and other regulatory laws.

– This lawsuit is ongoing and has not yet ended. However, considering the complex procedure required by authorized state agency, from refusal, claim the lawsuit, withdraw of the refusal document in the first instance and at appeal stages. Consequently, the requester has not been provided with the information. This reflected that the access to information, in reality, is quite difficult when the state agencies do not want to provide as Mr. Binh’s application on 13 May 2020 was only a petition but not the Request for Information Supply. The reason that Provincial People’s Committee issued document No. 12644/UBND-NC dated 13 December 2021 to send to the Government Inspectorate to ask for opinion on dealing with citizen’s petition related to the S Tourism and Recreation Area Project, N city, of which Mr. Binh’s petition and request form for information supply had been checked, considered by the Government Inspectorate and Government Inspectorate’s Inspection Team and the official inspection results related to the project above according to the Decision No. 111/QD-TTTP dated 17 August 2020 on establishment of the Inspection Team for “inspection, review request, recommendations of some households related to the S Tourism and Recreation Area Project in P commune, N city, Khanh Hoa province” for refusal is unconvincing.

VI. Conclusion

In the era of technological development, information plays an important role in the administration of a State. Making information public to every person to access is considered to be one among scales to assess the democracy of a country. The Law on Access to Information of 2016 is the first step, which shows a strong will to protect citizens’ political rights. The proactive application of the right to access information by the people is not yet widespread, so there are still few lawsuits and complaints and mainly they are related to information on the inspection, complaint and denunciation process, planning-related information.

Under legal perspectives, lawsuits where domestic administrative agencies refuse to provide to citizens the above information demonstrate that people are clearly aware of the enforcement mechanism as well as the protection of constitutional rights when there is an infringement from other subjects. Dispute settlement and administrative enforcement through the judicial mechanism is a civilized way due to the advantages of legal proceedings. Initiating an administrative lawsuit is a citizen's desire to exercise their rights and have their right to access the information protected. This is a behavior that needs to be viewed positively in the context of establishing a rule of law state in our country. Therefore, some recommendations need to be formulated.

First, in cases where the type of information is not clearly specified by law as to whether it belongs to the category of refusing people's requests for information or not, the following principles should be applied. Inaccessible information must not meet three conditions as below: (1) it belongs to one of the inaccessible contents and must have a specific legal basis; (2) if the disclosure of information actually harms the national security; and (3) the classification agency is capable of identifying and describing specific damages – in this case it must make a clear estimate when they impede the access to information, the damage caused by the information leakage could be much greater than the benefits that the public enjoys when they obtain information. At the same time, a specific guideline on how to access information with conditions and inaccessible information should be provided.

Second, regulations on information classification should be completed as the current regulations contain many inadequacies, inconsistencies and fail to cover all types of information. According to current regulations, information is divided into 3 types: (1) confidential information according to the law; (2) information that must be made public; (3) information that must be provided upon request. As for the information in the third case, it is not insignificant but has not been clearly defined, impacting the exercise of the right to access information.. For instance, when conducting inspection on information related to corruption prevention, whether or not the asset declarations, confirmation of income tax payments, list of properties in the data of notary public agencies of officials, civil servants, and public employees

belongs to the type of information that must be made public. Kindly note that the handling of the information related to corruption warrants careful consideration, including determining the extent to which it should be made public. This gap is the cause leading to the interruption of the access to information of citizen, and the anti-corruption activities are also not effective.

Third, it is necessary to clarify in what cases citizens would not be provided with information, as current regulations are quite quantitative. The competent authorities have the right to deny providing information in certain cases, namely, *“the information if accessible will harm the interests of the State, adversely affect national defense, national security, international relations, social orders and safety, social morality, community health; endanger the lives or property of other people”*; *“the information is beyond the authority’s capacity of fulfillment or could harm the ordinary activities of the agency.”*²² In this process it is hard to avoid inconsistencies on the applicable conditions as well as the possibility that the State relies on it to postpone the supply of information.

Fourth, it is necessary to set out a specific regulation for settlement of violations, responsibilities of State agencies in ensuring the right to access information. Article 15 of the Law on Access to Information stipulates that any person who violates regulatory law on access to information, upon the nature, violation extent, will be disciplined, handled of administrative violation or prosecuted for criminal liability. However, in the three cases that were considered above, the case in Can Tho caused impacts directly on legal interests of the information requester. The delay, refusal to provide information without any compensation mechanism will have many impacts on people, affect people in implementing their rights as they are in concern of costs when being denied providing information.

Fifth, in cases where state agencies refuse to provide information, there should be simple and efficient procedures for resolving these issues. The goal is to obtain “information,” so the existing complaint

²² Vietnam National Assembly, Law No. 2014/2016/QH13 dated 6 April 2016 on Access to Information, Art. 6.2 and 28.1(d).

and lawsuit regulations are overly complex and time-consuming. It discourages the plaintiff and reduces his/her expectation of exercising their right to access information. At the same time, it is necessary to abolish procedures on exercising the right to access information that cause difficulties analyzed above so that this right can be realized, such as refusing to provide information if the “requested information is beyond the capacity of fulfilment or affects the normal operations of the agency” or refusing if the names of documents, records and dossiers in the request form for information supply are incorrect or the name of request form is incorrect.

Sixth, it is necessary to set out a principle of dialogue between relevant parties (Carey and Turtle, 2006, p. 10) including the subject requesting information, the subject holding the information and third parties related to the information to find out a reasonable balance between public interests, state interests and individual interests rather than agencies determining the type of information themselves. The general trend in some countries is to establish an independent information committee to specifically perform the function of supervising the implementation of the right to access to information (Bainisar, 2006, p. 23). There’s no single model for Freedom of Information (FOI) oversight commissions. Some countries, like Thailand, embed them within the Prime Minister’s Office, while others make them independent bodies or integrate them with existing government structures, like parliaments. Based on the report of Bainisar, 22 countries have established such commissions. Interestingly, several nations, including the UK, Germany, Switzerland, and Slovenia, have merged their FOI commissions with national Data Protection Commissions. This approach has been mirrored at the sub-national level in Germany and Canada, although a recent Canadian government commission rejected the idea. Ireland takes a different approach, combining the Information Commissioner role with the general Ombudsman position. The power wielded by these commissions also varies. In Canada and France, they hold similar authority to Ombudsmen. Conversely, commissions in Slovenia, Serbia, Ireland, and the UK can issue binding decisions, with limited appeal options or ministerial overrides in specific cases. The Information Commissioner typically has broader responsibilities beyond handling appeals. These

often include overseeing the entire FOI system, providing training, proposing legislative changes, and raising public awareness. Notably, the Commissioner in Antigua and Barbuda even has the authority to receive information from whistleblowers (Bainisar, 2006, p. 23).

Thus, while some argue that establishing a new independent agency would be costly, the potential benefits far outweigh the initial investment, for example: it would dedicate the necessary time and resources to ensure thorough and efficient processing of FOI requests; an independent agency would safeguard the impartiality of the FOI process, fostering public trust and transparency; and most crucially, an independent agency would possess the authority to compel government agencies to disclose information, ensuring accountability and upholding the principles of open governance. Moreover, global experience overwhelmingly demonstrates that the independent agency model is the most effective approach to implementing FOI laws. In light of these compelling arguments, Vietnam should seriously consider establishing an independent FOI agency to strengthen its commitment to transparency.

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Information about the Authors

Thai Thi Tuyet Dung (Dr.), Deputy Head of the Department of Inspection and Legal Affairs, University of Economics and Law, Vietnam National University, Ho Chi Minh City, Vietnam
tttdung@vnuhcm.edu.vn
ORCID: 0000-0002-5570-2988

Vu Kim Hanh Dung (Dr.), Head of International Trade Law, Faculty of Economic Laws, University of Economics and Law, Vietnam National University, Ho Chi Minh City, Vietnam
dungvkh@uel.edu.vn
ORCID: 0000-0002-1907-3598