Information Access and Privacy Protection in Thailand

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1. Historical Background

The legal basis for Information Access and Privacy Protection in Thailand or the so-called “Official Information Act of B.E. 2540” (OIA) is a product of the recent political reform movement in Thailand from 1992 to 1997 as well as a part of the political legacy of the democratic movement of 1973. The act came into force in September 1997 just a month before the proclamation of the present Constitution and is valid as the very first legal basis of the “Right to Know” and the “Right to Privacy.”

The conception of the “Right to Know” as a part of democracy has been discussed since the abolition of the absolute monarchy in 1932. But it was no further understood than as a political slogan to promote the popular education and to praise the freedom of expression and the freedom of the press. The right to know had never been conceived of or demanded by the Thai public as a “subjective right” of citizens until the May uprising of 1992. This is also true for the right to privacy, which had been prior to the 1997 constitution conceived of as just a basis for limiting the right of expression.

In the 1992 “May Event,” General Suchinda, a former army Commander in Chief as the Prime Minister, was trying to calm down the masses protesting against him. He ordered a news embargo and imposed a curfew. However, because of the

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1 James Madison’s statement “Knowledge will forever govern ignorance. And a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both” in Letter to W.T. Barry, 4 August 1822, The Complete Madison, Saul Padover (ed.), Harper & Brothers, New York, 1953, p. 337, was well known to the Thais, as was evident in the establishment of the department for public relations in the Office of the Prime Minister and the foundation of the University of Political and Moral Sciences directly after the revolution.

2 There was an important article presented in 1981 by Chaiwat Wongwatanasan, “The Freedom of Information,” Thammasat Law Journal, but this found no resonance until 1992 and Chaiwat then became a key person in proposing the bill.

3 Although protection of the “Right to Privacy” as a fundamental right was known prior to the 1997 Constitution as mentioned in Art. 39 para. 2 of the revised Constitution of 1995 (5th amendment of the 1991 Constitution), this “Right to Privacy” was not valid as a “subjective right” but was recognized only as a legitimate basis for limiting freedom of expression.
modern communication technologies, especially mobile phone, telefax and satellite television receiver, the embargo was impossible and led to a great scepticism of information distortion by the government. Many people came out of their houses and went to the street to find out the truth. The people lost confidence in the government and the government lost its control over Bangkok. It turned into a bloodbath, and the event ended with the resignation of General Suchinda and his cabinet. This was followed by a political reform movement demanding more democratisation, transparency, people’s participation, and a new constitution. Additionally, it was realized that the State should not gather all information about its citizens, and that the State should respect and protect the privacy of its citizens. The Official Information Act was, therefore, under these main ideas proposed into consideration of the parliament.

The idea behind the Official Information Act is the spirit of administrative reform. As the drafting of the Constitution was taking place in 1996-97 and nobody was sure then whether it would be adopted by the powers that be, three main statutes aiming at further political reform - independent of the draft constitution - had been worked out and successfully pushed into force before the 1997 Constitution.

1. **The Administrative Procedure Act of 1996** limits, regulates, and rationalizes the discretionary powers of officials in issuing administrative acts affecting the rights and freedoms of individuals;

2. **The Official Liability Act of 1996** provides government officials legal protection from personal liability unless they abuse their power or intentionally violate the rights of a citizen;

3. **The Official Information Act of 1997** ensures the transparency and accountability of public agencies and supports people’s participation in the formation of government policy and its implementation by binding all public agencies, on one hand, to disclose all public sector information demanded by citizens and on the other hand, to protect personal data or privacy.

2. **The Scope of the Official Information Act**

2.1. **The Right to Know and the Right to Privacy as Fundamental Rights**

Under the actual Constitution of 1997, the “Right to Know” has been established
as a subjective fundamental right in Article 58, which reads as follows: *A person shall have the right to get access to public information in possession of a State agency, State enterprise or local government organisation, unless the disclosure of such information shall affect the security of the State, public safety or interests of other persons which shall be protected as provided by law.*

The Right to Privacy is for the first time recognized in Article 34 of the 1997 Constitution. Before 1997, the right to privacy and the right to one’s own picture were considered--analogous to the right to one’s own name (Section 18 of the Civil and Commercial Code, 1925)--part of the personality right attached to every human being. Article 34 of the 1997 Constitution reads: *A person’s family rights, dignity, reputation or the right of privacy shall be protected. The assertion or circulation of a statement or picture in any manner whatsoever to the public, which violates or affects a person’s family rights, dignity, reputation or the right of privacy, shall not be made except for the case which is beneficial to the public.*

The content of the Official Information Act (OIA) and its application are therefore to be considered in the light of the political reform and the Article 58 and Article 34 of the Constitution. The Act covers two important domains of law.

Firstly, the law guarantees to all citizens freedom of access to public sector information.

Secondly, it binds all State agencies to provide protection for personal information or privacy in all public sector information.

The principles of Access to Information and Privacy Protection adopted by the Act govern only the field of public sector information. Although the consumer’s right to information is governed by the Consumer Protection Act, the protection of privacy in the private sector is only partly recognized in the law of torts as a part of the right to one’s own personality. It is protected in a manner analogous to the protection of the right to one’s name. The protection of personal data is still not well recognized by law, especially if those data are held by the private sector. However, in the field of administrative law, the Official Information Act of 1997 provides citizens with the right to access to information held by State agencies and protects individuals from

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4 The right to know was for the first time established in Art. 48/2 of the revised version of the Constitution in 1995 (5th amendment of the 1991 Constitution).
violations of privacy by State agencies collecting information with new information technology. Thai law concerning privacy protection in the private sector information system is at the moment in a preparatory period. It could be expected that a draft would be proposed for the approval of the Cabinet by the middle of the year.

“Information” has not been defined in the constitution. However, the Official Information Act as specific legislation on this matter defines the concept of information in a generous way. According to Section 4 of the Act “information” means any material corporeal or incorporeal which communicates meaning, whether such communication is made by the nature of such a thing itself or through any means whatsoever and whether it is arranged in any form or any other method which can be displayed. The public sector information is, therefore, not limited to records or public information in a narrow sense and not only limited to information concerning administrative acts, but public sector information means any information held by public authorities, which covers all public and private information existing in, held or gathered by public authorities or “State agencies” in their functions.

“Personal Information” or “Privacy” is not defined by the constitution, either. But Section 4 of the Official Information Act defines “Personal Information” as information relating to all the particular private matters of a person which contain indications identifying that person. Such “personal information” includes, for instance, educational, financial, medical, criminal, or employment records, which contain the name of such person or contain a numeric reference, code or other indications identifying that person, such as fingerprint, tape or diskette on which a person’s voice is recorded, or photograph. Additionally, the Thai legislation also includes information relating to personal particulars of the deceased as “Personal Information.” All State agencies are obliged by law to provide proper protection for these kinds of information. According to this definition, the concept of personal information is realized as equal to privacy. In this sense personal information is to be distinguished from information relating to any person, the meaning of which is much wider.
2.2. The Scope of Application

2.2.1. Agencies Subject to the Law

All “State agencies” are subject to the Official Information Act. The definition of “State agency” governed by the Act is very extensive. According to Section 4 of OIA\(^5\) “State Agency” covers all executive, legislative and judicial organs. The law applies to all central, provincial and even to local administrations. Even the public agencies attached to the Parliament and the Court are subjected to this law. The only exception is the Court during its judicial process. The State enterprises and the professional oversight organisations under public mandate as well as independent agencies exercising State power are included. Other agencies that are not directly exercising State power, such as the Red Cross and the religious bodies established by law, do not qualify as “State Agencies” but if it is necessary the Act provides that they can be included under the law by further prescription in the Regulation of the Prime Minister Office.

Additionally, all persons, corporate or individual, performing official duties for a State agency are considered to be “State Officials” and are subject to the Act too. In this sense a private enterprise acting as a contract partner or a license holder for an agency carrying any State mandate, like certifying documents or doing registration works, can fall under the law.

The main goals of the Official Information Act are accountability and transparency of the public sector. Therefore the Act gives the regulating power, oversight and the final appeal decision on information disclosure to an external independent agency other than the holder of such information itself. These external independent bodies are divided into two organs, namely the Official Information Commission and the Disclosure Tribunal.\(^6\)

However, the issue of which agencies are subject to the law is not without controversy. In a recent pending case of disclosure appeal, a State agency claimed that it should not be subject to the Official Information Act. This is the case of an

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\(^5\) “State agency” means a central administration, provincial administration, local administration, State enterprise, Government agency attached to the National Assembly, Court (only with respect to the affairs unassociated with the trial and adjudication of cases), professional supervisory organisation, independent agency of the State and other such agencies as prescribed further in the Ministerial Regulation. See Section 4 of Official Information Act B.E.2540.

\(^6\) See Art. 28 and 37 of Official Information Act B.E.2540.
independent State agency called the “National Anti-Corruption Commission,” which was established as an independent agency by an organic law of the constitution and set up in 1999. As the Disclosure Tribunal ordered the Office of the Anti-Corruption to submit their information for inspection by the Tribunal, the Anti-Corruption Commission did not let its Office comply with the Tribunal’s order. The Anti-Corruption Commission asserted that the OIA should not apply to its constitutional exclusive jurisdiction against corruption and claimed that the disclosure of information concerning this matter is its exclusive power as an independent agency. This controversy will also extend to other areas of information concerning elections held by the Poll Watch Commission, which is also an independent agency established by an organic law of the constitution. The agency would also assert that, as an independent agency working for free and fair elections, all information concerning its jurisdiction prescribed by law are under its exclusive jurisdiction and the Official Information Act is not applicable. This could be a matter of discussion or even litigation for a certain period as the Official Information Commission would have to make an effort to establish a certain acceptable level of transparency and privacy protection in the activity areas of these independent agencies.

2.2.2. Subject of the Right to Know and the Right to Privacy

Any citizen is entitled to make a request for disclosure. Everybody has the right to inspect official information, to request a copy, and to get proper advice regarding his rights (Section 7, 9, 11, 12). Everyone has the right to access to one’s own personal information kept by public agencies and the right to request that the State agency make a correction or change one’s own personal information (Section 25). If the State agency fails to perform its duties the citizen may raise a complaint before the Official Information Commission (Section 13). In case of rejection of any request for disclosure of public sector information or refusal to correct personal data, the citizen may make an appeal to the independent disclosure tribunal (Section 18, 25). These rights are given to any citizen independent of that citizen’s interest in, involvement with, or relationship to the information requested.

Though the requests of foreigners are subjected to further regulations, this is

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7 According to Section 120 of Counter-Corruption Act B.E. 2542 (1999), any official who discloses information acquired in his or her function without permission of the Anti-Corruption Commission shall be punished with imprisonment up to six months.
only to carry a reciprocal principle and has no practical effect. A Foreigner could ask a partner or any Thai citizen to make a request in his/her own name.

The exercise of citizens’ rights to information access is expected to turn the traditional confidential practice of state officials more transparent and more accountable to the public. The general attitude and behaviour of officials towards government information in keeping it strictly and confidentially for official uses only are no longer justified and lose their legal basis. Public sector information is to be considered an open area for inspection. It no longer belongs principally to an exclusive official domain, but more and more to the public domain. For the matter of responding to public demands for access, disclosure has to be the rule. Keeping information secret can be justified only in exceptional cases. Secrecy will burden the official in charge, but transparency will unload him. If an official decides to disclose the requested information in good faith and in a reasonable manner, that official is protected by the Act excluding him from any liability according to other law. However, the agency is not excluded from liability and in case of damages to a private person the agency shall be liable to pay damages (Section 20). In case of a non-disclosure order an official has to make a hearing and state the reason for non-disclosure prior to such a decision (Section 15). He also has to explain the rights of the requester to make an appeal to the OIC in time.

2.2.3. Duties of State Agencies

2.2.3.1. Information Disclosure

According to the Official Information Act (OIA), a state agency has to prepare the disclosure in general by analysing and restructuring all the information systems, publishing all information affecting the general public in the Government Gazette (Section 7) and revealing all public information and their indexes for the purpose of public inspection (Section 9) as well as by being well prepared to provide all information held in its capacity for any individual request (Section 11).

The State officials have to advise the citizen in regards of their request properly (Section 12). In case of a decision for non-disclosure, the State agency has to make sure that hearing and motivation of the decision as well as the explanation of rights of requester to make an appeal in time have been done properly (Section 15).
2.2.3.2. Privacy Protection

As far as personal information concerns, a State agency has to refrain from establishing any personal information system (Section 23).

The provision of a personal information system is permissible only insofar as it is necessary for the operation of a State agency. It is clear that the primary goal of the Act is to limit the informational power of the State and to reduce State surveillance. The State need not know everything about an individual, and its agencies must limit their power of information on individuals only to the specific purpose which is necessary to fulfil their tasks.

If, for example, a married couple reveal their financial information to the Court for purpose of a divorce process, this information can be used only for this purpose--and cannot, for example, be disseminated to the tax authorities, which always maintain an interest in the financial information of individuals. The same applies to the information of farmers given to the Bank for Cooperation and Agriculture. Personal information collected under loan agreements should not be transferred or disclosed to the tax authorities.

The most important goal of the act is privacy protection. All State agencies are obliged to provide an appropriate security system for the personal information system (Section 23 (5)). The dissemination or disclosure of personal information held by a State agency - without consent of its subject - is restricted by the Act. In general, dissemination without consent of the information subject is only permissible where it is necessary to serve a higher public or private interest or justified by law (Section 24).

A further goal of the Act is to make data processing in State agencies open, correct, accessible, reviewable and subject to supervision and auditing. State agencies are not normally allowed to find out anything personal behind the back of the person involved. State agencies are obliged to inform the data subject about the collection of such personal information. Personal information should not disappear down dark channels. It must be possible for the person affected to access and monitor the path it takes and to review its content (Section 25).

2.2.4. Mechanism of the Law
2.2.4.1. Official Information Commission

In order to implement the Act there is a supervisory body established by law. This is an independent regulating agency called the Official Information Commission (Section 27). The Commission is composed of three elements.

First of all the chairperson has to be a politician in a rank of Minister authorized by the Prime Minister. The Chairperson represents the Prime Minister as the leader and executive policy maker.

Secondly there are the representatives of the highest level of administrative organs. Therefore thirteen officials of the highest rank (permanent secretaries or officials of comparable position) are represented. They are standing members of the Commission who shall ensure the implementation of the Act in different key State agencies.

The third element is represented by nine experts from the private and public sectors nominated by the cabinet. These expert-members are independent and once nominated by the cabinet they are not removable for a certain service period of three years.

The Official Information Commission has mainly supervisory and advisory functions (Section 28). The Commission has the power to summon any person to give statements or to furnish any document or object for its consideration (Section 32). In the case where a State agency denies the existence of the requested information and the requester made a complaint with the Commission, the Commission has the power to inspect the relevant official information and notify the complainant of the result of the inspection (Section 33). According to Section 28 the Commission has to submit a report on the implementation of this Act to the Cabinet from time to time as appropriate but at least once a year. However, it is also authorized to initiate and give recommendations on the enactment of different regulations under this Act. The Commission also has legal mandate to decide or give opinions on the complaints that any State agency fails to comply with the Act.

The Commission normally performs its supervisory and advisory functions through monitoring activities and consultations. However, during the first three years of service, the Commission faced complaints that some State agencies had failed to comply with their duties according to the Act. Because the Act does not provide any
clear process of enforcement in such a case, the Commission has preferred to discuss such matters with the agencies and to inform the public about the situations. In case the agency refuses to follow the recommendations of the Commission or delays the performance of its duties, the Commission would consider the matter seriously and decide whether such an agency should be judged as having intentionally violated the law. In such a case the Commission might recommend that agency in question handle the case according to its function and jurisdiction, which could lead to the removal of the Head of the agency or to other legal consequences.

2.2.4.2. Information Disclosure Tribunal

Disclosure Tribunals are independent bodies consisting of experts who are appointed by the Cabinet upon the recommendation of the Official Information Commission for a period of three years (Section 35-39). They are independent and are not removable. In case of appeals the Tribunals have the power to review the order of any State agency refusing the disclosure of information or refusing the correction, alteration of personal information. They are also empowered to summon any person to give statements or to furnish an object, document or evidence for their consideration (Section 39). The decision of an Information Disclosure Tribunal is deemed final (Section 37 para. 2).

2.2.4.3. Office of the Official Information Commission

The Office of the Official Information Commission is established in the Office of the Prime Minister and has the function to perform technical and administrative works for the Commission and the Information Disclosure Tribunals (Section 6). The Office shall co-ordinate with State agencies and give advice to private individuals with regard to the execution of the Act. The Head of the Office is the Director who is appointed from a Government official. The Act does not provide an independent status for the Director. As the Office is established in the Office of the Prime Minister, the Office falls under the organisational supervision of the Permanent Secretary of the Office of the Prime Minister.

2.2.4.4. The Court

If any citizen feels that his right to know or right to privacy has been violated by any State agency, that person is entitled to bring his case before the Administrative
Court (Section 9, Administrative Court Act, 1999). Instead of bringing the case before the Court, he or she may try another time-saving process and lodge a complaint or an appeal with the Official Information Commission or Information Disclosure Tribunal. The Commission as well as the Tribunal will have to decide the case within 30 days and this could be extended to another 30 days, altogether no longer than 60 days. If this appeal is not successful, the case can be brought into the Administrative Court. In this case the Administrative Court will have the final decision on the case.

3. Categories of Information

“Official Information” means any information held by a State agency in its official capacity and is not restricted only to administrative documents. The concept of information covers any object - material or immaterial - that could refer to any meaning, independent of its media.

Official Information is divided into two categories, namely Information subject to disclosure and Information not subject to disclosure:

3.1. Information subject to disclosure

They are three types of Information to be disclosed according to Section 7, Section 9 and Section 11 of the Act.

3.1.1. Information to be published

Section 7 requires that public information widely affecting the public be published in the Government Gazette as follows:

1. the structure and organisation of its operation;
2. the summary of important powers and duties and operational methods;
3. a contact address for persons wishing to contact the State agency in order to request and obtain information or advice;
4. by-laws, resolutions of the Council of Ministers, regulations, orders, circulars, Rules, work pattern, policies or interpretations only insofar as they are made or issued to have the same force as by-laws and intended to be of general application to private individuals concerned;
5. such other information as determined by the Official Information Commission.
3.1.2. Information to be revealed for public inspection

Section 9 governs all public information--unless it is information not subject to disclosure as stated in Section 14 and Section 15--to be revealed for public inspection as follows:

1. a result of consideration or a decision which has a direct effect on a private individual including a dissenting opinion and an order relating thereto;
2. a policy or an interpretation which does not fall within the scope of the requirement of publication in the Government Gazette under section 7(4);
3. a work-plan, project and annual expenditure estimate of the year of its preparation;
4. a manual or order relating to work procedure of State officials which affects the rights and duties of private individuals;
5. the published material to which reference is made under section 7 paragraph two;
6. a concession contract, agreement of a monopolistic nature or joint venture agreement with a private individual for the provision of public services;
7. a resolution of the Council of Ministers or of such Commission, Tribunal, Commission or Committee as established by law or by a resolution of the Council of Ministers; provided that the titles of the technical reports, fact reports or information relied on in such consideration shall also be specified;
8. such other information as determined by the Official Information Commission.

3.1.3. Information to be provided for individual inspection

Section 11 provides that all other information--not subject to Information not bound to be disclosed as provided in Section 14 or as listed in Section 15--is subject to disclosure upon a specific request within a reasonable period of time. This includes most information held by State agencies. If any person makes a request for any specific official information the State agency shall provide it to such person within a reasonable period of time, unless the request is made for an excessive amount or frequently without reasonable cause.

3.1.4. Historical information

Although the Act provided that information negatively affecting the Royal Institution shall not be disclosed (Section 14) and information concerning State security or affecting public safety or a justified interest of a third person might be categorized as not subject to disclosure (Section 15), the right to know in these matters is not excluded but still observed by law. The Act provides that after a certain
period of time such information should be delivered to the National Archives in order to be selected for the purpose of public studies (Section 26). The period for information under Section 14 is seventy-five years and the period for information under Section 15 is twenty years. If necessary these time periods could be extended, but each extension should be considered carefully and should not exceed five years.

3.2. Information not subject to disclosure

This category includes information subject to Section 14 and Section 15 of the Act. The Act makes a distinction between the information which may jeopardise the Royal Institution (Section 14) on one hand and information whose disclosure may affect the security of the State, public safety, or the interests of other persons who shall be protected (Section 15), on the other hand.

3.2.1. Information jeopardising the Royal Institution

The disclosure of information negatively affecting the Royal Institution is forbidden according to Section 14. The officials are bound by law not to release or disclose information that they think might jeopardise the Royal Institution. This is due to the constitutional principle that the King can do no Wrong and that only the Minister in charge is responsible for the Royal deed.

3.2.2. Information affecting public security or public safety or the interests of other persons

Information affecting public security or safety or the interests of other persons is - up to the discretion power of the official in charge thereof - not bound to be disclosed. These kinds of information are listed as follows:

1. the disclosure thereof will jeopardise the national security, international relations, or national economic or financial security;
2. the disclosure thereof will result in a decline in the efficiency of law enforcement or failure to achieve its objectives, whether or not it is related to litigation, protection, suppression, verification, inspection, or knowledge of the source of the information;
3. an opinion or advice given within the State agency with regard to the performance of any act, not including a technical report, fact report or information relied on for giving opinion or recommendation internally;
4. the disclosure thereof will endanger the life or safety of any person;
5. a medical report or personal information the disclosure of which will unreasonably encroach upon the right of privacy;
6. an official information protected by law against disclosure or an information given by a person and intended to be kept undisclosed;
7. other cases as prescribed in the Royal Decree.

Any order refusing the disclosure of official information is considered to be an administrative act. The State agency is obliged to state in such an order the type of information and the reasons for non-disclosure.

4. The Implementation of the Law

According to the record of the Office of Official Information Commission, the majority of those who exercised the OIA in the year 1999 were private citizens, while government officers and journalists ranked second and third, and only two politicians utilized the Act. The most commonly requested information was official information related to concessions, contracts, projects and budgets, followed by investigative documents.

4.1. Interesting Cases on Privacy and Right to Access

During the first three years of the Official Information Act of 1997, there were some significant cases that drew a lot of public attention. These cases created new practices concerning official information and privacy protection. They played important roles in changing the traditional values and behaviour of Thai bureaucrats. The changes have shifted the belief that official information belongs to the state agencies and should be kept secret and for internal official uses only, to the new realization that official information belongs to public inspection and that the disclosure of it is the basic priority, while the few closures can only be just a small exception.

4.1.1. Disclosure of the result of a school entrance examination

In the very early stages of the implementation of the Official Information Act, the parents of a girl-pupil who had failed the entrance examination for a Demonstration School of a famous State University petitioned the school to disclose the examination result and related papers of her daughter and of the other pupils who had passed the examination. After the school denied the request, the parents then
submitted the appeal to the Official Information Commission to force the school to disclose the requested information. The Disclosure Tribunal ruled that the parents had the right to access the examination result, but the school, however, declined to comply with the Tribunal’s decision. The school claimed that the requested information, the examination results and papers in question, were personal information and should be protected from any public inspection. The school wanted, therefore, to consult the Council of State, the Attorney General’s Office, and the Ministry of University Affairs first, in order to have guided procedures for disclosing examination results, which should be set up as a new standard to cope with similar requests in the future.

Finally, the Official Information Commission enforced the disclosure. The Commission considered examination papers in a public competition to be information open to public inspection. The Commission made a distinction between an examination in a public competition and a normal examination. The result of a normal examination doesn’t have any impact on the interest of the public and therefore, could be considered a particular private matter of a person with identifying indication, therefore, as personal information. But the examination result in a public competition to obtain a public privilege is not a particular private matter, but official information to be disclosed to the public. It would be absurd, if a person, who wrote an essay and won a prize in a public competition, were not to allow others to read his essay and were to keep it undisclosed saying that his essay is his personal information. The Commission insisted that the school had to follow the decision of the Tribunal. This was followed by the cabinet’s resolutions in December 1999 asserting that the State agency had to comply with the Tribunal’s recommendations and the Tribunal’s order, otherwise they should be punished by disciplinary regulation.

As the parents of students, whose examination results should be disclosed, were of the opinion that the disclosure would violate privacy right of their children, they filed a law suit against the Disclosure Tribunal’s ruling to the Civil Court. The Court confirmed the ruling of the Disclosure Tribunal that the score and answer sheets of all students in a public competition were not personal information and should be disclosed. The Appeals Court and the Supreme Court also upheld this decision.

The case contributed greatly to the educational system of the country. The

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examinations held by many institutions have been adapted in compliance with the Act, which brought about fair examination and a more transparent academic system.\(^9\)

In dealing with the case, it was found that the State agency lacked knowledge of the law and did not know how to implement the Act correctly. Moreover, the case of disclosing the examination result, the score and the answer sheets is quite new and has never been practiced before, and is contrary to the traditional practice of the educational system, the ruling decision by the Disclosure Tribunal was in the first place resisted. However, finally, the implementation was successful.

This case has given rise to the new principle of examination disclosure, in particular the examination of public interest. The Ministry of University Affairs then ordered the school to revise the screening procedures of the examination and the process must be transparent and accountable. The case plays a significant role in the Thai educational system.

After the parents had seen the examination result, finding some irregular admittance under uncommon procedure, they then submitted a complaint to the Office of the Council of State. The Council of State considered the recruitment procedure of the school through privileged considerations (i.e. donation, sponsorship or kinship rather than examination score) to be a discriminatory practice prohibited by the Constitution. The Council of State thus recommended that the government revise all procedures of the school entrance examination and stated that the process should be done properly and in line with the principle of equality according to the Constitution.

### 4.1.2. Corruption Investigative Report

Journalists and non-governmental organizations (NGOs) petitioned the Office of the Counter Corruption Commission (CCC) to disclose the investigative report on corruption in the Ministry of Public Health. The Counter Corruption Commission refused disclosure of the requested documents; petitioners then submitted the appeal to the Disclosure Tribunal.

The Disclosure Tribunal ruled that the investigation was finalized. Those

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\(^9\) Disclosure Tribunal on Social and Administrative Issues, Decision 2/2541 (1998) concerning disclosure of university entrance examination for a specific student. This disclosure decision was followed by another decision concerning disclosure of details in a recruiting process for scholarship grants (Decision 3/2541).
involved officials were disciplinarily punished and politicians were forwarded to criminal investigation. The Disclosure Tribunal considered the investigative report to be official information. And as the case has great impact on public interest and the disclosure could bring about positive attitude to the national administration, in particular to the Counter Corruption Commission itself, the Disclosure Tribunal decided that the Counter Corruption Commission had to disclose the requested information.10

The disclosure of an investigative report of the Counter Corruption Commission, concerning the corruption scandal in purchasing drug and health materials in the Ministry of Public Health, was criticized as potentially hampering the efficiency of law enforcement. It was argued that in this case the principle of confidentiality should be maintained, that the report was protected by the Counter Corruption Commission’s regulations against disclosure and that concerned witnesses who gave investigative documents intended their names and the information provided to be kept undisclosed.

But as a matter of fact, the witnesses in this case were high-position executives; their activities as witnesses in this case were official duties provided for by law. Though there is a regulation of the Counter Corruption Commission against the disclosure of such information for the sake of witness safety, it is clear that safety of the high-ranking officials who are witnesses in this case was not at risk. The Disclosure Tribunal explained that it is unreasonable to argue that any high-ranking witness like the Chief of Police or the Prime Minister or other high position executives of government would be at risk if they had reported activities done in their public functions to any investigating commission. Therefore, the discretion of the Disclosure Tribunal in this case was outweighed by the public interest in disclosure. As the scandal involved financial malpractice in the payment of a large sum from the national budget--malpractice committed by high-ranking officials and involving high executive members, both government officials and politicians--this issue aroused great public concern. The case was very sensitive, as it involved corruption in the purchase of drugs, which affect basic services to the people and, in particular, the poor. The public confidence in transparency and accountability of public administration is therefore to be maintained.

4.1.3. Business Contract

After the fall of the Financial Sector in Thailand in 1997 a journalist requested that the Financial Sector Restructuring Authority (FRA) release the Purchasing Contract related to the bid for sales of the Financial Sector Debts. The FRA refused to release such requested information, claiming that the documents were business contracts between the FRA and a private company. Its conceptualisation and formulations are valuable and of great business interest. Disclosure of such a commercial deal would affect the trade secrets, market position, and other justified interests of a private company. Therefore, the contract should not be disclosed. After considering this appeal case, the Disclosure Tribunal ordered the FRA to release the contract with exceptional conditions for Initial Purchase Price and Profit Sharing Agreement to be released after the bid date. Those documents containing personal information, such as amounts of personal debts, should be protected as privacy information and should not be released.11

However, the Financial Sector Restructuring Authority (FRA) did not comply with the decision of the Disclosure Tribunal immediately but tried instead to delay the disclosure by making additional conditions to the disclosure that the requester who is a journalist should not make information known to the public. As this was not acceptable to the journalist, he appealed to the Disclosure Tribunal again and obtained his right. But the FRA delayed disclosure again with an argument that another legal opinion from the Council of State had been sought. The journalist appealed to the Commission. After two hearings the Official Information Commission found that the FRA was trying to delay the ruling which was deemed final by law, and that this conduct could be considered a circumvention of law. The Commission then gave a notice to the Minister of Finance indicating that the FRA was violating the law by not following the decision of the Disclosure Tribunal. The Minister followed the recommendation and reminded the FRA to disclose the information.

4.1.4. Access to Personal Evaluation Letters

After an evaluation process for promotion of an academic member at a State university to a professorship ended with a negative result, the evaluated person requested the Ministry of University Affairs to release the evaluation papers, the name

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and position of the evaluator for his information. The Ministry of University Affairs refused to disclose the name and position of the evaluator. This was motivated by reasons that the disclosure would violate the privacy of the evaluator and would affect his personal safety and the integrity of deliberative process of evaluation. The evaluated person disagreed with these reasons and lodged an appeal with the Disclosure Tribunal.

The Tribunal considered the matter and spoke for disclosure.\(^\text{12}\) The reason was that the evaluation for promotion was an administrative act and therefore, is subject to the principle of transparency and accountability in administrative procedure. The Administrative Procedure Act of 1996 provides that after an administrative act has been done, any person affected by such an administrative act shall be entitled to inspect all documents concerned in the procedure. As the decision of promotion or non-promotion of an academic essentially affects his academic career and the evaluated person should be entitled to defend his right concerning a due evaluative process, the Tribunal decided in favour of disclosure. The disclosure of the name and position of an evaluator is not a violation of the right to privacy, because the evaluation is not a private affair but rather a public duty authorized by law. The worry for the safety of the evaluator was also deemed to be irrelevant.

This disclosure decision met with protest from the conference of the Rectors. A group of professors who had been nominated as evaluators in the past declared that the decision violated the principle of confidentiality in the evaluation process and would affect the collegial relationship among academics. Qualified scholars would not feel free to join the evaluating process in the future if their names were not kept confidential. The Commission pointed out that the principle of confidentiality should be further observed. However, this principle should not absolutely prevent the evaluated person from his right to know, especially when he believes he is facing unfairness or injustice in his career. The commission accepted that in such a case cordial relationships might be affected, but this relationship should be based on the principle of truth. As the evaluation of a scholar is done on basis of his academic work and not on personal considerations, therefore, the evaluation itself could be openly spoken and the evaluator should not be kept absolutely confidential. The commission has also pointed out that an evaluator should be protected in his dignity

\(^{12}\) Disclosure Tribunal on Social and Administrative Issues, Decision 33/2543 (2000).
and if he would be insulted due to his fair and free evaluation, the administration should take all measures to protect him. After a delay of a few months due to public discussion on this matter, the Commission insisted on the disclosure, and the Ministry of University Affairs then followed the recommendation of the Commission.

4.2. Reflections on the Cases

Because the Official Information Act is a new law, knowledge and understanding of the Freedom of Information, and Privacy Protection issues, in particular, is totally new. During the first three years of the implementation of the Information Act, there was some implication of misunderstanding of the substance of the law, and many cases reflected the tension between the matter of freedom of access to information and privacy protection, since these two issues are closely related. On the academic front, many scholars propose that the two issues be separately considered, while some claim that this close interrelationship is as inseparable as that of the two sides of a coin. In the Thai experience relating to the Act, in the matter of information disclosure, discretion of state officials must be made with regards to the factors of State duties, public interests, and private interest. This is also confirmed by the constitution, which stipulates that information causing damage to a person’s dignity, reputation or privacy must be prohibited. Therefore, freedom of information and privacy protection could be persistently found on each other’s boundary and become a matter of how to balance these two components. The controversies over the case of the examination scores and answer sheets and the case of revealing of witnesses in investigative report are evidence in this criticism.

4.3. Problems in Implementation of the Law

4.3.1. Lack of Knowledge and Understanding

As the Official Information Act is a newly established law, both government officers who have the duty of information services according to the Act and the people who have the rights guaranteed by the Act are not familiar with the new principles. Although the government made a public campaign through different public-relations measures and the public acceptance of the Act is quite high, knowledge and understanding of the Freedom of Information is still limited. Although State agencies have formally expressed their support, they do not well understand or do not want to
understand the spirit of the law and the principle of people’s right to know. The reason is quite clear. The principle of the act is to reduce the State’s monopoly on information. The agencies are limited in their information power. The oversight and final decision have been transferred to another authority. The better the services of information disclosure, the less the power of the agencies.

4.3.2. Lack of Consciousness

State officials, ranked from the executive and high-position level to the service level, from the policy level down to the implementation level, still lack consciousness in carrying out the task of information service to the public. It is very important to raise the level of consciousness and morality of State officials on this matter. They might accept the concept of Freedom of Information as a good idea, but in practice they still feel that the Act puts a heavy burden on them. Many feel difficulties in doing their job in spite of the fact that this principle of the information law strives to make the government’s documentary work more systematic and more convenient, and this could help make official paperwork easier indeed.

In February 2000 the cabinet concluded a resolution—recommended by the Official Information Commission—to lay down an additional principle on evaluation and promotion of high-ranking officials that approval of proper and sufficient knowledge on the principle of the new Administrative Procedure Act and the Official Information Act is to be considered as an essential part of the process. However, this resolution - which has to be implemented by the Civil Servant Commission and shall be worked out in the form of a regulation - has not been transformed into a practical rule.

4.3.3. Structure of Information Flows

The information mapping system is very important in every administration. It is well known that administration is a process of making and implementing decisions. This has to be based on a good system of information. The documentary administration of the Thai governmental agencies was conceptualized and overseen by the Office of the Prime Minister and the information management is governed by the Prime Minister’s Regulation for Documentary Administration. However, as a matter of fact, the huge amount of official documents in various agencies has not been well managed, nor has the information flow within the agency been systematically
managed. Moreover, as for the cross-ministerial information, the flow becomes more confused and complicated, since the documents are not well stored. This makes the information service a difficult task. And as it usually takes too much time to search for and to find information to serve those who make requests, state officials feel unhappy to do the information disclosure service; they see the job as burdensome and also boring.

4.3.4. Lack of Faith

The information law is a very significant mechanism for the reformation of the public sector, in particular in the movement toward an Information Society as well as an Open Society. However, Thai officials still do not recognize its importance and do not have a clear vision of what position the government organization should achieve in the future. State officials in the next generation must be developed as new-generation bureaucrats who must possess skill and knowledge not only in national administration and management techniques, but also in Information Technology. And most importantly, they should realize the importance of the Right to Know and the Right to Privacy Protection. They must understand the Information Act and perform information disclosure efficiently. They should have “faith” in their own future, as a modern type of civil servants, who will be proud of services, during the information era, to eventually achieve the development of the nation towards an Information Society.

5. Concluding remarks

In the Thai experience, the idea of freedom of information has been well accepted by the general public. One of the main purposes of the Thai Constitution of 1997 is the transformation of representative democracy to participatory democracy. In this aspect the Official Information Act has been a crucial component of democratic development as it encourages people to enjoy more political participation by directly expressing their opinions and proposing their needs or suggestions to the state. This should help make the government more accountable and more transparent. In order to participate well and efficiently, people should have full access to state information and should know what is going on through state policy. People should know all that the government does or will do. The Official Information Act represents the government’s vision that “what the government does or knows, people have the Right to Know.”
This is the emergence of the principle of separation of information power.

However, the Official Information Act is a new law, and the concepts of freedom of information and privacy protection are totally new to both the Thai state officials and the people. Thai society thus needs some time to learn and to experiment with the Information Law and Privacy. State officials have to understand more clearly the procedures of law enforcement so that they know how to provide information services and disclose information to meet public requests and at the same time to protect individual concerned. Meanwhile, people should recognize their own right to know and know how to utilize the Information Act as a means of access to state information and privacy protection. As the matter of fact, the implementation of the Thai Official Information Act is in a certain level successful and wellknown to the public due to the request made by a mother of a school girl asking for detail disclosure of the results of competitive entrance examination at a public school. This led to a widespread discussion and better understanding in almost every family about information access law, privacy protection and principle of equality in public recruitment of students. Thai society should recognize the information law as an essential part of establishing accountable and transparent and accountable government and a crucial part of eventually building up civil society.