

OHCHR's reply to the Special Rapporteur on freedom of expression

1) Does your organisation have an access to information policy? If so, please provide a link or a copy of it. Please also respond to the following questions as appropriate.

OHCHR's record management office, in coordination with relevant colleagues in the Office, is currently finalising its access policy. The draft policy is expected to be endorsed by OHCHR senior management in the coming months.

2) What are or were the key considerations supporting your organisation's decision to develop an access to information policy?

The need for OHCHR to have an access policy was first raised at a meeting with a representative of the UN Archives and Records Management Section (UNARMS) in New York, held in December 2012. At the meeting, it was concluded that OHCHR needs to develop an access policy which balances transparency with the need to safeguard security of individuals and authenticity of records.

At its meeting of 16 April 2013, OHCHR's Senior Management Team decided to appoint a team in charge of the development of a record management and access policy, while noting the requirement to ensure coherence with UN policies and working in close cooperation with UNOG and other UN entities.

When developing the draft policy, the team has taken into account the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, E/CN.4/2005/102/Add.1 of 8 February 2005, which in particular emphasises the importance of preservation of, and access to, archives bearing witness to violations.

The team has also referred to the Principles for Access to Archives adopted by the International Council of Archives at its Annual General Meeting on 24 August 2012, which sets out the basis for access to private, national and international archives. In particular, it has taken note of Principles 2, 3, 4, 10, 14, 15, 17, 18 stipulating: the inalienable right to the truth; the duty to preserve memory; the victims' right to know; guarantees to give effect to the right to know; guarantees for victims and witnesses testifying on their behalf; measures for the preservation of archives; measures for facilitating access to archives; and specific measures relating to archives containing names as effective measures of ensuring remedies for victims, guarantee reparation, and prevent recurrence of violations.

3) Please describe the process that led to the adoption of the policy, including any internal processes and external consultation. To what extent have your organisation's Member States and Observers, and the general public, been involved in its development? Did your organisation face any challenges in creating the policy?

As mentioned above, OHCHR's Senior Management Team decided to appoint a team to develop OHCHR record management and access policy and approved the nomination of the Chiefs of Programme Support and Management Services Section, the Rule of Law and Democracy Section, the Methodology, Education and Training Section and the Senior Legal Policy Advisor as members to lead the process.

The process commenced with an interview with the focal point of each division after which a questionnaire was circulated to all parts of the Office in order to collect information to help in refining types of records and match those records with the appropriate level of classification. On the basis of the information collected, principles, criteria, conditions and process for declassification and access were defined. A first draft of the policy was circulated within the Office for comments and feedback that were later incorporated into the draft policy as appropriate.

The process did not involve members of the public or member states or external stakeholders for the following reasons: the scope of the policy is internal and its purpose is to provide guidelines to OHCHR staff on what categories of documents/records should be classified and outlining the process of granting access and declassification. However, the broad interests of the public and all possible stakeholders were taken into consideration in making the determinations.

4) If your policy does not provide such information, please indicate the practical arrangement made by your organisation to ensure that the right of access to information can be effectively exercised. For instance, who or what office in your organisation has the responsibility to respond to the requests made by the public?

The decision to declassify and provide access to OHCHR's archives is made by relevant parts of the Office depending on where they originated from. The relevant section/Branch is systematically provided for this purpose with a copy of the Secretary General's Bulletin on information sensitivity, classification and handling (ST/SGB/2007/6) as legal standard for the purpose of classification and secure handling of confidential information.

The principles related to confidentiality and sensitivity of documents as set out in ST/SGB/2007/6 state that the work of the United Nations should be open and transparent, except in so far as the nature of information is deemed confidential.

Pending the forthcoming adoption of its access policy, as part of the UN Secretariat, OHCHR has been referring to ST/SGB/2007/6 when dealing with requests. According to the ST/SGB/2007/6, the information contained in the following documents is deemed sensitive:

- a) documents created by the United Nations, received from or sent to third parties, under an exception of confidentiality;
- b) documents whose disclosure is likely to endanger the safety or security of any individual, violate his or her rights or invade his or her privacy;
- c) documents whose disclosure is likely to endanger the security of Member States, or prejudice the security or proper conduct of any operation or activity of the United Nations, including any of its peacekeeping operations;
- d) documents covered by legal privilege or related to internal investigations;
- e) internal inter-office or intra-office documents, including draft documents, if disclosure would undermine the Organisation's free and independent decision-making process;
- f) documents containing commercial information, if disclosure would harm either the financial interests of the United Nations or those of other parties involved, and;
- g) other kinds of information, which because of their content or the circumstances of their creation or communication must be deemed confidential.

The Secretary-General's bulletin provides the following three levels of classification:

- a) unclassified: the designation "unclassified" shall apply to information or material whose unauthorized disclosure could reasonably be expected not to cause damage to the work of the United Nations;
- b) confidential: the designation "confidential" shall apply to information or material whose unauthorized disclosure could reasonably be expected to cause damage to the work of the United Nations and;
- c) the designation "strictly confidential" shall apply to information or material whose unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to or impede the conduct of the work of the United Nations.

Within OHCHR, the Legal Policy Office is responsible for coordinating access requests received from national, regional or international judicial institutions, including the International Criminal Court. The Rule of Law and Democracy Section, in collaboration with the offices of records (custodians), is responsible for coordinating access requests received from individuals or institutions conducting historical, academic or political research.

5) Please provide any data related to the implementation of the policy, including information on i) the number of requests your organisation has received under the policy; ii) the type of applicants seeking information (e.g. individuals, organisations, private sectors, etc...); iii) the type of information requested; and iv) the percentage of requests that are denied.

See below recent statistics regarding requests from member states, PhD students, academics and NGOs:

2016

Total requests received by October 2016: 14

Requests received from PhD candidates/academics: 12

Requests received from members states: 1

Requests received from NGOs: 1

Type of information requested: documents related to the work of Commission on Prevention of Discrimination and Protection of Minorities, letters issued by OHCHR/Commission on Human Rights to member states, documents related to country specific situations, documents related to minority rights, migrant workers and asylum seekers.

Access granted: 7 so far; the other requests are still being considered.

2015

Total requests received: 7

Requests received from PhD candidates and academics: 7

Type of documents requested: documents related to human rights and scientific technologies, work of CEDAW committee, drafting of the Convention against Torture, access to prisons, complaints received on human rights violations.

Access granted: 7

2014

Total requests received: 6

Requests received from PhD candidates and academics: 6

Types of documents requested: documents related to decolonisation, health care, the UN and African inter-governmental organisations, international human rights mechanisms.

Access granted: 6

- 6) **If your organisation has not yet developed an access to information policy, please explain why it does not have such as policy in place. Please also indicate the measures your organisation has adopted, or intends to adopt, if any, to make available or otherwise disclose information in the public interest.**

As noted earlier, OHCHR's draft access policy is expected to be finalised in the coming months which would provide relevant information with regard to this question.