



## CHAPTER III

### CONTEXT OF RESEARCH AND CASE STUDIES IN OIA ENFORCEMENT

In the 2000s, when most democratic countries around the world have some form of freedom of information law in place, in ASEAN, Thailand is the only country that has already implemented such law. Indonesia will follow suit in 2010.

The idea of “Information is power”, as quoted by Robin Morgan, a founding member of Women’s Media Centre, may be said to have ignited important concepts on information among the ASEAN countries. Two such concepts are most relevant here: state secrecy and access to information. State secrecy has less influence and is now being replaced by the idea of access to information in Thailand, Indonesia and the Philippines but it remains influential in Malaysia, Singapore and Myanmar.

Even though information could serve as a tool of the public, in the past 12 years, of the 63 million Thai citizens, less than 0.05 per cent of them filed any requests/complaints with the Office of the Official Information Commission (OIC). This statistics may not be understandable on its own, but it in a way suggests that the Official Information Act (OIA) is not as effective as it was meant to be.

#### **3.1 Context surrounding the enactment and enforcement of Official Information Act**

The most common question with which researcher began study is, “Is an Official Information Act appropriate for a country like Thailand?” Many key informants often have similar answers. Kavi Chongkittavorn, one of the most respected journalists in Thailand, explains clearly that the use of the OIA opens up more information to the general public about their day-to-day lives. For example, a resident of the province of Roi-et who needed to find out about the road-building project that would intersect with his village could make an inquiry at the OIA in order to know to which agency the project belonged and how large was the budget for its construction. Evidently, the information from use the OIA could help villagers to gain better understanding of the project.

It is possible to say that freedom of information began with the Official Information Act in 1997, because before that time freedom of information had been very limited in Thailand.

Many outside observers also tend to forget that, while Thailand has had a constitutional monarchy since 1932, it is a relative newcomer to democracy. For some four decades after the Thai monarch relinquished absolute power, the country came under the control of a succession of authoritarian military governments that subscribed to the practice of suppressing the media, justifying it as essential to the protection of the king and the state.<sup>1</sup>

Thailand under Field Marshall Pibunsongkram's military rule (1938-1957) experienced a strict control on official information. Pibunsongkram, aware of the power of mass media, used the government's monopoly on radio broadcasting to shape popular support for the regime. He passed a number of authoritarian laws which gave the government the power of almost unlimited arrest and complete press censorship. The government passed an Official Secrecy Act of B.E. 2483 (1940) consisting of seven articles imposed a control on various aspects of official information dissemination. These included copying or drafting the plan, and showing a model or taking a photograph, of restricted areas such as a railway station, military arms depot, and airport, among others, except a formal permission had been granted by responsible military authorities. This law was understood to be part of the government's anti-communist mechanisms. During the Second World War, newspapers were instructed to print only good news emanating from Axis sources, while sarcastic comments about the internal situation were banned.

By 1955 Phibunsongkram was losing his leading position in the army to younger rivals led by Field Marshall Sarit Dhanarajata and General Thanom Kittikachom and was forced to step down by a bloodless coup in September 1957. The regimes of Sarit and Thanom were strongly supported by the United States. After the coup, Sarit imposed strict censorship of the press that was stricter than that of Phao Sriyanon when the latter was in command of the police.

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<sup>1</sup> Kavi Chongkittavom. *Breaking the Culture of Secrecy*. in Sheila S. Coronel. *The Right to Know: ACCESS TO INFORMATION IN SOUTHEAST ASIA*, pp.179 Manila : PCIJ and Seapa. 2001.

Immediately, his newly-formed Revolutionary Party banned eighteen leftist, neutralist, and opposition newspapers and prohibited new newspapers from publishing negative reports.

In addition to press censorship, Sarit brought one of the most intense crackdowns on the leftists Thailand had ever witnessed. Those captured in the crackdown included some journalists like Sang Phathanothai, Kularb Saipradit, Jit Phumisak and Prasert Sapsunthom.

When the Cold War came to this region after the communist victory in mainland China in 1949, the Thai anti-communist stance followed the domino theory introduced by the United States: that is, it formed part of the measures designed to prevent Thailand from falling under communist rule a domino. The military-controlled government issued an Official Secrecy Government Order of B.E. 2499 (1956) prohibiting dissemination of official information. The rationale for the introduction of this measure was that during that time spying activities had been discovered. Therefore, to safeguard national security, it was necessary to strictly enforce this measure. Information was classified into four categories of secrecy, namely, "top secret", "very secret", "secret", and "confidential". The government also undertook to prevent unnecessary exposure of official information. For this purpose, officials responsible for the disclosure of information to the public, and the media in particular, were clearly designated, who could only disclose the information permitted by the government. The media could not in any way verify such information. This method of public information disclosure, which was sanctioned by a cabinet order issued in 1957 and in force until 1968, consisted of the following procedures:

- 1) Interviews on ministerial policy could be given only by the responsible minister.
- 2) Government officials were not authorized to give any interview on matters relating to government policy; officials of a director-general rank might give interviews on factual matters relating to their respective ministries. After they had given the interviews, they had to immediately report to their responsible ministers.
- 3) Government officials who wanted to write an article for publication in a newspaper could do so within the limit of the law. They had to be provided with formal permission of their respective ministries each time they wrote a newspaper article. They must disclose the

It was not until 19 April 1988 that this cabinet order was revoked.<sup>3</sup>

Blocking the media is almost comparable to blocking democracy. Since the establishment of a constitutional monarchy, the media had been under the state's scrutiny until 1988, when Gen. Chatichai Choonhavan came to power through elections. He was a defender of press freedom, which he realized was crucial to the promotion of Thailand's image abroad. This was the true beginning of the Official Information Act, but it was interrupted by a group of military chiefs who staged a bloodless coup.

After the May of 1992 mayhem, two events during the second Anand Panyarachun government in 1992 led to the progress in freedom of the press. ITV, the first independent television station and the privately operated radio station once reserved for the armed forces were part of the great movement in spreading democracy to the people. The second is drafted the OIA.

OIA was first drafted by the so-called *Transparent Government*, under Prime Minister Anand Panyarachun, and had to wait until July 1997 for approval by the Parliament. It has been in effect since 9 December 1997.<sup>4</sup>

It would take five years and numerous hurdles before the first draft of the Official Information Act could be completed, and several more months of public debate before the final version was signed into law.<sup>5</sup>

It is undeniable that the reasons for the delay in passage of the OIA were the two governments that followed the Anand Panyarachun administration. Both Prime Minister Banharm Silaparcha (1995-1996) and Gen. Chavalit Youngchaiyudh (1996-1997) were known to be in favor of blocking access to government information and control of the media.

Banham went to the extent of trying to ban radio and television shows that were critical of his administration and seeking the dismissal of a few journalists from their jobs.

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<sup>3</sup> Ibid.

<sup>4</sup> Nakorn Serirak. Towards personal Data Protection: A Proposed Model for the Development of 'Right to Know' in Thailand. *Thammasat Review* 2006, Volume 11: pp.116 – 117

<sup>5</sup> Kavi Chongkittavom. Breaking the Culture of Secrecy. in Sheila S. Coronel. *The Right to Know: ACCESS TO INFORMATION IN SOUTHEAST ASIA*, pp.178 Manila : PCIJ and Seapa. 2001.



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Banham went to the extent of trying to ban radio and television shows that were critical of his administration and seeking the dismissal of a few journalists from their jobs. Chavalit, for his part, set up a Media Monitoring Center that was supposed to clarify inaccuracies in reporting and to limit sensationalism in the media.<sup>6</sup>

Even though the Parliament approved the OIA during Gen. Chavalit Youngchaiyudh's government, its full implementation began during the following government led by Prime Minister Chuan Leekpai, who adopted a policy on access to information that was different from those of his predecessors. Kavi Chongkittavorn referred to Chuan's administration this way:

Chuan's administration believed that the public should have as much information as possible to help them follow the government's performance. Chuan even had a famous slogan, "People should know what the government knows". More importantly, he believed that such information would allow the people to form their own views, exercise their political rights and take part in the political process.<sup>7</sup>

With Chuan's outstanding policy on freedom of the press, the period from 1997 to 2001 was considered the golden age for the OIA. After Chuan left office, the next administration did not support the OIA's principles. Even with this setback, Thailand is the 16<sup>th</sup> country in the world to have information law and it is the first country within ASEAN (Association of South East Asian Nations) which gives citizens the legal right to access government information. Indonesia is the next country to follow suit by 2010.

In the first stages of the establishment of the OIA, there was plenty of support from the government and from the citizens. Ordinary citizens seem to be enthusiastic about using the law to get information regarding government concessions, contracts, projects and budgets. There have been a growing number of people filing requests for information from state institutions.

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<sup>6</sup> Ibid.,183.

<sup>7</sup> Ibid.

### 3.2 Case study of the implementation of the Official Information Act in Thailand

Out of the half million users, there are three cases that are of specific interest to this study: The first is the case of an ordinary citizen; the second is that of a government official, and the last one is related to the media.

#### *3.2.1 The first case of the implementation of OIA, Sumalee Limpa-ovart vs. The Kasetsart Demonstration School*

Sumalee Limpa-ovart became part of 1998 headlines when she had to battle for her child who failed in the entrance exam examination at Kasetsart University's Demonstration School. Sumalee, who is an attorney, suspected that there was discrepancy in the hardly of the administration of the school.

Sumalee spent 461 days in the process of uncovering the mystery behind her daughter's failure in the examination. The chronology of her civic actions runs like this:

- April 3, 1998: Sumalee requested to view/examine her daughter's test-sheets, along with those of the 120 students, who were accepted.
- June 19, 1998: The Kasetsart University Demonstration School rejected her request to view the test sheets for a lack of a reason.
- June 25, 1998: Sumalee filed a complaint to the OIC, claiming the The Kasetsart University Demonstration School did not follow the code of the Official Information Act.
- Sept 25, 1998: A sub-committee from the OIC summoned the representatives of the Kasetsart Demonstration School for questioning. The school consulted the Ministry of University Affairs that in turn consulted the Council of Ministers to determine the proper response to Sumalee's request. In the meantime, the OIC sub-committee determined that Sumalee had the rights to view her daughter's test sheets, but not those of the other test takers.

She would need to request permission from the parents of the other test takers in order to view those test sheets.

Oct 21, 1998: The Kasetsart University Demonstration School sent 10 files of documents relating to the clarification of the case to the OIC for review.

After this, Sumalee made an appeal for her case to the Information Disclosure Tribunal's (IDT) committee for social information.<sup>8</sup>

Nov 11, 1998: The IDT stated that Sumalee should be allowed to see all test sheets for the following reason: the test sheets of other children were in the possession of a government institution; therefore, they were public information rather than personal information.

But The Kasetsart University Demonstration School refused to comply with the IDT's decision, insisting that any disclosure would be an encroachment on the test takers' privacy.

Dec 3-6, 1998: *Prachachart Thurakit*, bi-weekly newspaper, exposed to the Council of State that the Kasetsart University Demonstration School accepted 38 special case students, thirty one percent, out of the 120 students enrolled in that class.

Dec 25, 1998: The parents of the other children who had taken the test joined the conflict. They filed a civil case against the IDT's decision to reveal results. The parents also sued Sumalee. One irate parent sent a letter of complaint to the Attorney General's Office, accusing Sumalee of misbehavior.

Jan 29, 1999: Khunying Supatra Masdit, the Minister to the Prime Minister's Office as the president of the OIC sent a letter to the Kasetsart University Demonstration School, asking it to follow the commands of the IDT.

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<sup>8</sup> The Information Disclosure Tribunal has five committees : 1)foreign affairs and national security; 2)economic and financial; 3)social, government, jurisprudence; 4)medical and public health; 5)science and industrial and agricultural technologies information. Each committee comprises prominent officials or expert. The duration of each committee's consideration and decision depends on the readiness of each member to act on the matter at hand.

- Feb 01, 1999: Dr. Teera Sutabutr, president of Kasetsart University, accepted the request to reveal the test sheets of the 120 students for the reason that it was required by the law.
- Feb 04, 1999: The 109 students from the first grade class of the Kasetsart University Demonstration School issued a complaint that the IDT committee of seven and the president of Kasetsart University should withdraw their decision and the court revoke the ruling on the case.
- Feb 09, 1999: The president of Kasetsart University issued a statement declaring that Sumalee would be the only person allowed to view the test sheets on February 15, 1999.
- Feb 15, 1999: Sumalee did not have a chance to view the test sheets because the formal letter did not show up until noon of the day she was permitted to view them. The school claimed to have sent the letter out on 5 February 1999.

Sumalee stated that even though she received the letter in time to examine the test sheets, there were many stipulations that were not satisfactory. Condition number three stated that she could not expose that information to others or use that information to damage the reputation of Kasetsart University or other examinees. This was not in agreement with the IDT's ruling which imposed no conditions on the release of the information.

Finally, in March of 1999, the Kasetsart University Demonstration School showed Sumalee the list of all the examinees' marks together with their answer sheets and Sumalee found, as expected, that her daughter's marks did not correspond to her answer sheets. The answer sheet indicated that her daughter scored below 15, even though, on the score sheet, 68 were recorded. Sumalee suspected her daughter's answer sheet had been tampered with, and this, in her view, was indicative of a corrupt practice in Thai society.

Apart from suspecting that the answer sheet was tampered with, Sumalee found that 38 students were among a group whose seats were kept for them in advance. These students were generally



relatives of those with connections to the school instructors and administrators and children of the people who assisted the school and the government.

### **Conclusion and Analysis**

The case of Sumalee brought widespread media attention to the OIA. It is the first case that led to public recognition that such law exercise and how access to government information can empower people. Meanwhile, this case can set a precedent for reform of the admission procedures and other related practices of government-run schools. It took well over a year of fighting and clashing, but Sumalee taught Thai society a valuable lesson. She gave hope to ordinary citizens to fight a large institution with the help of the OIA.

#### *3.2.2 Case of the OIC's first director, Surasri Kolsonnawin, who is the only one to practice the information disclosure.*

As the OIC's first director, Surasri was also apparently most strictly committed to public information disclosure, and, for this reason, he ironically fell victim to the use of the OIA. In an interview, he mentioned that before becoming the OIC's director, he was a prosecutor, and that there were some moves that landed him the directorship of the OIC.

Surasri took office as OIC Director on July 20, 1998. In assuming this new post, he received a salary that was 5,000 baht less than what he had obtained as a prosecutor. He accepted this decrease in salary because he considered it his duty to assist the public, especially journalists, in gaining access to government institutions.

It was Surasri's intention to see Thailand more open. Because it is the first Southeast Asian nation to have an information act, he said, it should therefore set a good example. Surasri mentioned Prime Minister Anand Panyarachoon's words at the first anniversary of the OIC:

“Giving information and news is to turn on the light in a working room to be analyzed and investigated. It is common sense that with an open and clear workspace, those persons working will think hard before committing any

corrupt or dishonest acts and rather would try harder to do good things to show the world.”<sup>9</sup>

Surasri uses the example of a reporter asking Poul Schlüter, Denmark’s Prime Minister, how Denmark has the lowest corruption levels in the world. Schlüter states that when the citizens know as much as the politicians, they can investigate all the small details of the laws and bills and keep the politicians honest. This is achieved through a Freedom of Information Act.

Surasri found that one of the keys to open up the information to the public was the atmosphere. When he became the director of the OIC, he made sure that journalists and public were treated as staff members of the OIC rather than as outsiders. With this method, access to the government information was attained more easily. During that era, many newspapers benefited from the use of this public information. Sumalee in the previous case asserted that Surasri was one of the reasons she was successful in her fight for access to information.

In Surasri’s mind, making government information more accessible to the public, including the journalists and regular citizens, won over many hearts. However, he lost the support of many government officials. One of the reasons this new policy was not popular with government officials was that these officials still adhered to the culture of bureaucratic secrecy, according to which “The Official Secrets Act is not there to protect secrets. It’s there to protect officials.”<sup>10</sup> Clearly, the openness of the information was not in accord with this bureaucratic culture.

One of the cases that attracted Surasri’s attention was the one involving the demand of the press and NGOs for the disclosure of the outcome of an internal report on corruption in the Ministry of Public Health. This case dealt with the procurement of 1.4 million baht worth of drugs and other health-related items, which led to the resignation of Minister Rakkiat Sutthana and his deputy, Thirawat Wannarat. The chronology of this case runs like this

December, 1997: Former Public Health Minister Rakkiat Sutthana signing an announcement revoking on the government regulated drug prices.

<sup>9</sup> Prime Minister Anand Panyarachoon. Speech at first OIC anniversary, 2541.

<sup>10</sup> Bibek Debroy. **Officials’ secret acts** [Online]. 2007. Available from: <http://www.indianexpress.com/news/Officials%92-secret-acts/225705/> (chapter II, pp.8.) [retrieved February 16, 2008]

- March, 1998: Drugs and equipment bought by Ministry of Public Health at 50 to 300 times higher than their market prices.
- Sept, 1998: The Office of the National Anti-corruption Commission (ONAC) reports the investigation on improper prices for the drugs and paraphenalia, but no involvement of high-ranking public officials was found
- October, 1999: Some changes were made in the ONAC's structure, and this prompted 30 NGOs and the media to request the exposure and disclosure of information regarding the corruption of drug prices. Surasri, the director of the OIC at that time, was a valuable component in supporting this movement
- November, 2001: The committee formed to investigate the ONAC was found Rakkiat to be corrupt
- October, 2003: The court rules that Rakkiat is guilty and is sentenced to 15 years in prison

It seemed that this case would be an example that showed the power of the OIA in action. It protected the government agencies from corruption as was intended by former Prime Minister Anand Panyarachoon and Surasri. Further, the Chuan government that advertised open policies fully supported the OIA. In the end it seemed Minister Rakkiat would be punished for the crimes he had perpetrated and this was appropriate to all parties.

But in reality, this did not happen. The appropriate measures would have led to the downfall of other officials. Eventually, however, Surasri was ousted from the OIC directorship. Journalists and citizens protested and demanded the disclosure of the details of his dismissal. In a private conversation between Surasri and Kavi Chonkittavorn, assistant editor in chief at The Nation, Surasri said he was a victim of a political game. As a result of the Rakkiat case, the politicians thought it was dangerous to expose official information to the public. They believed moving Surasri from the position of such power would be the best solution.

The proceedings of Surasri's dismissal reflected the nature of the Chuan administration. The administration appeared hypocritical after its stated support for openness in Thai society. The

following OIC directors remained in line with typical government officials. They did not produce an environment of ease to access government information. The OIC became just like any other government agency.

### **Conclusion and Analysis**

In the case of Surasri, it showed that the OIC is still under the control of the government as one of its branches. The government could say they were open, but it truly was not. No matter how the OIA has promoted itself, it remains ineffective. In reality, the principles of the OIA have become just something on paper. But at least it could be said that once upon a time Thailand practiced openness in government information. It could spark good governance that was dependent upon the user of the information.

#### *3.2.3 The case of Prasong Lert-rattanwisut, the journalist who has used the OIA since 1997*

The Prasong Lert-rattanawisut case involved a journalist who used the OIA to gain information about the concessions of the Army Television Stations. Prasong Lert-rattanwisut, president of the Thai Journalist Association, is an example of a citizen who has used the OIA frequently for the past 12 years of its existence. He remains a quiet observer through its website [www.oic.co.th](http://www.oic.co.th).

Prasong was the editor in chief for a business newspaper, *Prachachart Thurakit*, when the OIA came into being. As a news medium, the newspaper used its right to view information on the military-run television channels 5 and 7 and their 30 year-concessions to private operators. The OIA permitted disclosure of previous and current contracts, including the most recently signed contracts.

It is generally known that the military-run television and radio stations are very lucrative broadcasting businesses that involve huge profits and deals. Many officials have benefited from the concessions to the private operators and it is suspected that there is a large amount of



corruption in this undertaking stemming from the closed nature of the deals leading to these concessions.

Believing that there were some irregularities in the concession of the Thai military and Telefive Co. and Bangkok TV, the mother companies of Channel 5 and 7, respectively, *Prachachart Thurakit* requested to view the details of the deals through the OIA. The chronology of this case runs like this:

July, 1998 : Prachachart Thurakit requested to view the details of the deals between Thai military and Telefive Co. and Bangkok TV. That was during the initial period of the OIA.

August, 1998: the Ministry of Defense refused to disclose the information, invoking article 15 of the Act, which lists the reasons for non-disclosure of official information.

Prasong declared that in invoking article 15 of the OIA to deny access to that information, the Ministry of Defense actually wanted to avoid a negative impact on members of the Army.<sup>11</sup>

August, 1998: Prachachart Thurakit used its right to file a complaint with the OIC

Sept, 1998: After careful consideration, the OIC found that the case had fallen into Articles 9 and 13 of the OIA B.E. 2540 which led to the disclosure of the information

Oct, 1998: The Ministry of Defense allowed the disclosure of the information requested.

Even with this formal permission, it took more than three months and many complex steps. Nevertheless, this was a big step in setting a precedent for future broadcasting corporations to disclose their information to the public. Also, it was a huge step in the progress of freedom of expression and it stimulated the public to investigate the truth and reality.

This was one of the many cases about which Prasong used the OIA in his professional inquiry. Except for only one case, he has mostly had success in uncovering hidden information through

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<sup>11</sup> Prasong Lert-rattanawisut. President of the Thai Journalist Association. *Interview*, 21 March 2009.

the OIA. Those successful cases might have involved more time and effort than he had expected, but he received the information he desired.

According to Prasong, the OIA has made slow progress over the past 12 years. This is due generally to government agencies refusing to cooperate under the OIA. Many attempts have been made to rectify this problem, but, in many cases, these have been unsuccessful, and the problem still remains.<sup>12</sup>

### **Conclusion and Analysis**

The case of Prasong is a good example to show that the OIA truly supports the right to know and the right of expression of Thai citizens. For example, when the case of the Army-controlled TV stations was exposed, experts and lawyers discussed “Contract on Channel 7: the legal faults and corruption.” In addition, all the cases discussed above exhibit the culture of bureaucratic secrecy that still remains in Thai society, and that is so deeply rooted that it is very difficult to change. In this social context, it is also very difficult to introduce the concept of free public access to government information to fight corruption and promote good governance.

In the past 12 years, the OIA has suffered from many limitations in its enforcement, such as the complex procedures involved in making requests for information and the lengthy inquiries that might be necessary. Many times the actions of officials exceeded what the law permitted, for example in taking too much time to respond to requests. Furthermore, the government officials generally would not allow any information to be passed on to the public without a direct order from a superior. If Prasong had not had connections in the agency, the information he received would have been hard to come by.

#### **3.3 Users and statistics of requests made to OIC to disclose public information**

OIC senior official Nakorn Serirak stated that the different agencies kept their own records and there was no centralization of the statistics of the utilization of the OIA. However, records of complaints and appeals were kept, but these were not the actual numbers of cases that would reflect the OIA’s effectiveness.

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<sup>12</sup> Ibid

Filing complaints or appeals asking the government agencies to disclose the official information which has not yet been disclosed or not being announced in Royal Gazette initiated by public. If the mission failed, then complaints and appeals will follow in order.

During the golden age of the OIA, complaints and appeals usually involved officials who refused to provide information and to answer questions regarding the Act itself. This amounted to more than half of all the cases concerning disciplinary investigative documents.

One-fourth dealt with current affairs such as the corruption probe in the Ministry of Public Health and some were related to information on government concessions and meeting reports. Most of these cases were filed in Bangkok.

A survey of the statistics from the 9<sup>th</sup> of December 1997 to February 2009 yielded a total of 3130 complaints and 1816 appeals, which amounted to 58.01 percent of complaints. Nakorn Serirak, an OIC senior officer, arranged for statistics to be kept from 1997 to 2005:

556 cases are related to local government entities (24.67%), and 184 cases (8.16%) to agencies not affiliated with a ministry. There are 129 cases (5.72%) against independent organizations or special function agencies, as well as 122 cases (5.41%) cases against regional administrative bodies or provincial administration offices.<sup>13</sup>

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<sup>13</sup> Nakorn Serirak. Towards personal Data Protection: A Proposed Model for the Development of 'Right to Know' in Thailand. *Thammasat Review* 2006, Volume 11: pp.120 – 122

Table 1: Comparison between Complaints and Appeals cases from 2006 - 2009

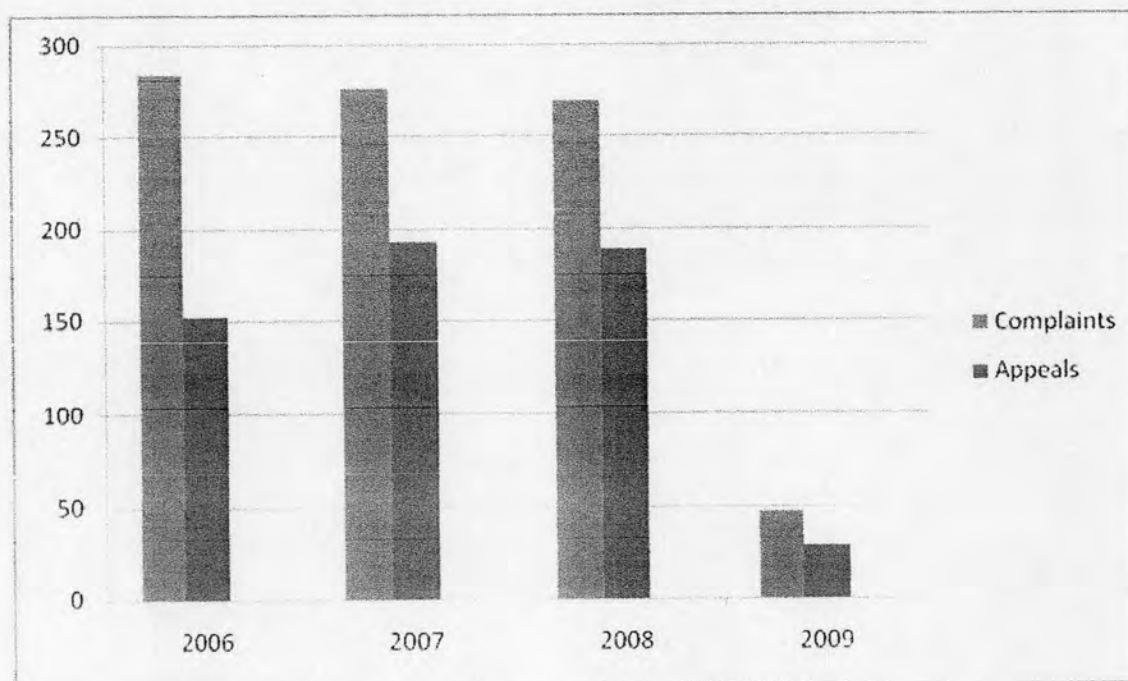


Table 2: Comparison complaints case between agencies from 2006 - 2009

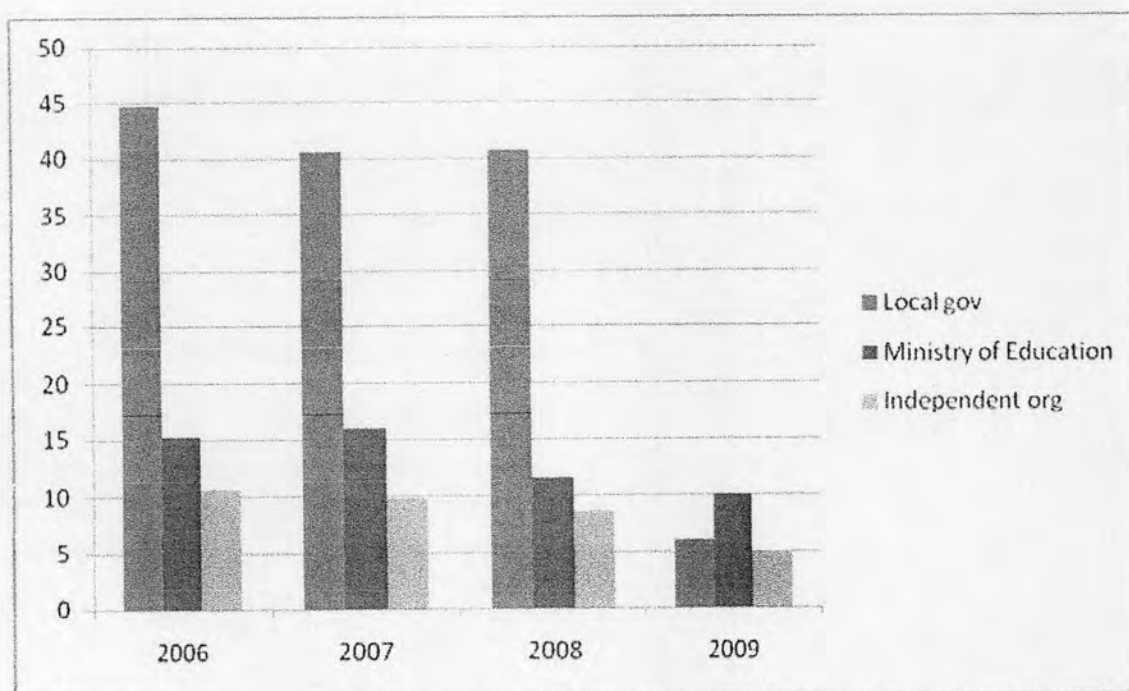
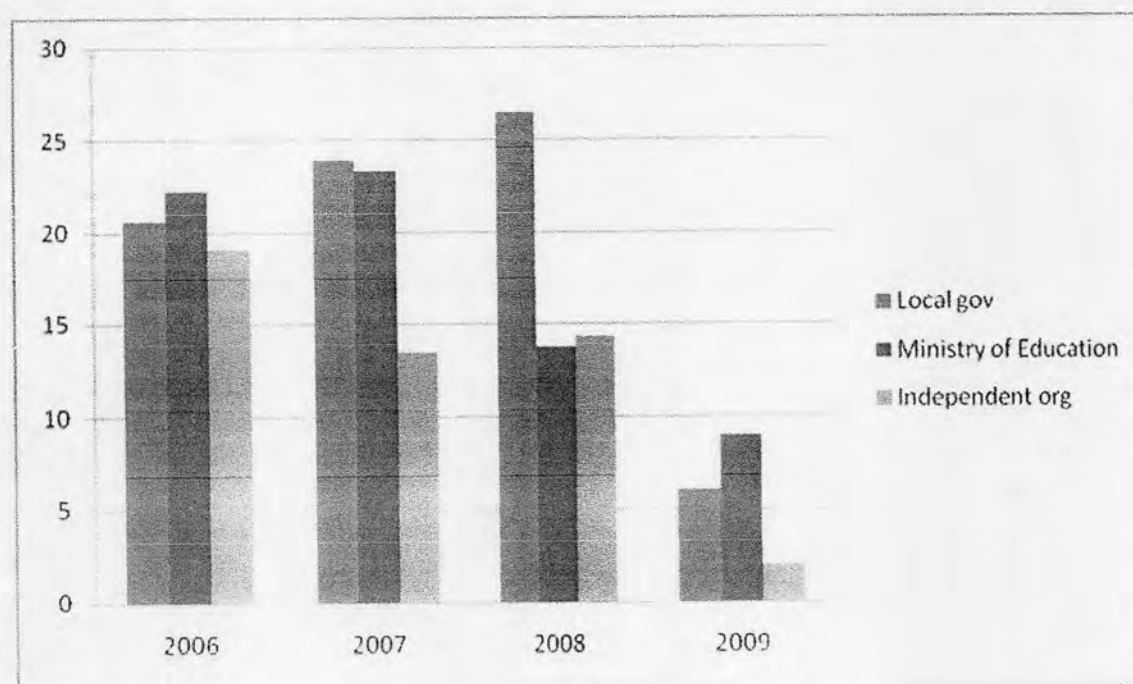




Table 3: Comparison appeals case between agencies from 2006 - 2009



Statistics from 2006 to February 2009 show 876 complaints and 562 appeals. Agencies receiving most complaints and appeals are as follows: local government organizations (354 complaints or 40.41% of the total complaints and 133 appeals or 23.66% of the total appeals); the Ministry of Education (128 complaints or 14.61% of total complaints and 114 appeals or 20.28% of the total appeals); and independent organizations or special function agencies (89 complaints or 10.1% of the total complaints and 84 appeals or 14% of the total appeals).<sup>14</sup>

Kavi Chongkittavom, assistant editor in chief of the Nation group, remarks:

The number of complaints from the district and provincial level was also significant because local officials tried to sit on the information requested, particularly when it pertained to biddings and contracts. Many bidders who had failed in the tenders wanted to see the details of such matters as the terms of reference. But the officials, some of them formerly influential business men or having extensive links with the local business

<sup>14</sup> Accumulating data from <http://www.oic.go.th/content/stat.htm>

community, tended to lapse into the mantra-like reply that the documents being sought were “confidential.”<sup>15</sup>

It is also interesting to note that the same agencies and offices seemed to receive complaints and appeals over and over again.

Prasong Lert-rattanawisut, senior journalist, expresses his opinion that the OIC should push for improvement of the efficiency of the OIC. With such high numbers of complaints and appeals and high numbers in repeated offenses, it should be clear that information should be disclosed without the need for complaints and appeals. He also mentions that regular citizens are so upset with the difficulty and frequently unsuccessful attempts that the OIC is ineffective in the eyes of the public.<sup>16</sup>

Kavi Chongkittavom points to a trend in the initial phase of the OIC:

In 2000, private individuals far outnumbered provincial officials, NGOs and journalist. This runs contrary to the trend in other countries, including Canada and the United States, where most of those who make similar requests are journalists, businessmen and special-interest groups. In Japan, NGOs are the most frequent seekers of data from the state institutions.<sup>17</sup>

Even after nine years, the number of complaints and appeals lodged by individuals still amounts to more than half of the total of complaints and appeals. This number is followed by those of government officials and businessmen. Still much smaller are the numbers of complaints and appeals lodged by journalists and NGOs. It seems that these groups have not put this law to much use.

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<sup>15</sup> Kavi Chongkittavom. *Breaking the Culture of Secrecy*. in Sheila S. Coronel. *The Right to Know: ACCESS TO INFORMATION IN SOUTHEAST ASIA*, pp.187 Manila : PCIJ and Seapa. 2001.

<sup>16</sup> Prasong Lert-rattanawisut. President of the Thai Journalists Association. *Interview*, 21 March 2009.

<sup>17</sup> Kavi., *ibid*, pp.187

### 3.4 Problems and obstacles encountered in the enforcement process

The problem of putting the OIA's to effective use has stemmed from two large sources. Firstly, it has come from the citizens themselves. "At the public level, most people neither understand the law nor know their own rights. Therefore, people cannot exercise their rights as they do not know the procedures."<sup>18</sup>

On the other hand, the government officials, senior and junior alike, do not want to cooperate in enforcing the new law. They do not promote the use of this new civic instrument. Consequently, Thailand remains attached to a culture of secrecy and its people are still living with political interference. In any case, based on interviews and secondary data, this research has found the following to be the main problems and obstacles encountered in the enforcement process of OIA in Thailand.

#### 3.4.1 Culture of Secrecy

A very deep-rooted problem that obstructs information access in Thai society is the culture of secrecy. Of course, this is not only a problem in Thailand; many countries all over the world are facing this problem.

Prasong Lert-rattanawisut, president of the Thai Journalists Association, states that the culture of secrecy has existed since the period of absolute monarchy when citizens were not supposed to receive any information in legal matters or matters regarding the government and administration of the country. This was due to the fear that citizens could cause an uprising if they knew too much.<sup>19</sup>

It is a general perception that information is knowledge and knowledge is power. Thus it is in the nature of government officials to hold on to as much information as possible to maintain their authority. Hence, even though the OIA had been implemented in Thailand for twelve years, the government officials still hold on to the old belief. They fail to look at the fact that one of the key elements in the development of democracy is the sharing of power.

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<sup>18</sup> Kavi Chongkittavorn. *Thai information Act: An Impossible Act to Follow. Seminar on Freedom of Economic Information for Effective Government*, pp.1. Jakarta, 2000.

<sup>19</sup> Prasong Lert-rattanawisut. President of the Thai Journalists Association. *Interview*, 21 March 2009.

After the OIA came into force, Prasong Lert-rattanawisut stated that even though the OIA was not put to full use, at least Thailand had some form of freedom of information in its legal system. Prasong told of a time prior to the enactment of the OIA, when news reporters or citizens were denied government information outright without any reason or explanation. An ordinary citizen had nowhere to go from that point and usually ended up failing in their effort to access official information. They could have sued the government agency, but there were no laws that stipulated that those agencies disclose their information.

### *3.4.2 Political interference*

Another reason for the so far ineffectual implementation of the OIA is political interference. When certain information is requested by citizens, it is usually due to suspicion of corruption or some types of unfair practices. There generally is intervention by another government entity to destroy any evidence of such frauds or corrupt practices before it reaches the public. A motive behind these actions usually stems from government officials who are trying to conceal their past corrupt behaviors.

In the case of the irregularities of medical procurements within the Ministry of Public Health, Surasee Kolsolnawin, the first director of the OIC, was moved from his position because the public officials involved in those irregularities wanted to keep the public unaware of the truth. There are countless other cases that involve government agencies or officials imposing their power to suppress any information leaks or releases that could damage the reputation of their respective entities. This is confirmed by journalists such as Prasong and Kavi.

In order for Thailand to become a true democracy, it is important that the government be open to admitting its mistakes and wrongdoings to prove that it accepts transparency and accountability in politics.

In the times when more transparency is demanded from the government, it can be expected that government officials will be much more careful in making decision on disclosure or non-disclosure of their information. They will be pressured to either cover their tracks with more detail or to honestly disclose the relevant information. If they are caught with any corrupt activities, the Information Disclosure Tribunal (IDT) could be very harsh in giving out its



sentences. It is believed that the more open the government is, the better it becomes, and with the OIA, citizens will be able to stand up to government officials without being silenced anymore.

### 3.5 Advantages of OIA

Even though the OIA has not yet made its full effect felt in Thai society, it represents a very progressive legal mechanism that has been in place for over 10 years. It now has two major functions: for citizens to have power especially in other provinces and for the media/reporters.

#### 3.5.1 Empowering People

As a law, the OIA is a tool for building power for citizens who live in the rural areas. Associate Professor Kanjana Kaewthep mentions a theory, "Accessibility to information is a criterion to divide social status into one with information and one without."<sup>20</sup> Citizens who dwell in the provinces, districts, and villages do not have access to information and are victims of red tape, complicated procedures, and bureaucratic bullying tactics.

Thailand has up to 50 million citizens<sup>21</sup> in this category, which amounts to the majority of the country. In a democracy, it is the majority that rules the country, but this does not apply to this majority because:

"If the democratic assumption is that authority lies in the hands of the people, then the source of knowledge must fully be in the hands of the citizens. As long as the citizens do not have sufficient knowledge, there and then, sovereignty slips out of their grasp into the hands of an oligarchy of elite groups"<sup>22</sup>

The OIA provides a means of attaining access to information to receive sufficient knowledge in the business of the government. This makes life very different for rural citizens from the time

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<sup>20</sup> Kanjana Kaewthep. *Media analysis: Technique and concept*. Bangkok. 2541.(1998) pp 222-224.

<sup>21</sup> Data from Department of provincial administration

<sup>22</sup> Dr Agus Pramusinto. *BUILDING GOOD GOVERNANCE IN INDONESIA: Cases of Local Government Efforts to Enhance Transparency*. EROPA Conference: **Modernising the Civil Service Reform in Alignment with National Development Goals**, pp.4. Bandar Seri Begawan Brunai Darussalaam, 2006.

when the OIA did not exist: during that time, they had fear of requesting government information even though it was their right to access it.

Now the OIA could be a more or less effective tool for the people in the rural areas, especially if and when the citizens of those provinces are aware of the functions and uses of the OIA. In order for this to occur, leaders of the rural communities need to be trained and taught how to access government information and relay this onto their respective communities.

Along the same lines, government agencies will need to readjust their attitudes to become more friendly and amicable to citizens inquiring information. They will need to encourage citizens to gain knowledge such as about the prices of certain agricultural commodities for the planning of their crop cultivation in the near future. In this way, citizens will be more interested in this process and achieve greater understanding of their rights and interests. In particular, with a more cooperative attitude of government officials and agencies, citizens will have more courage to request government data and officials will be more efficient in providing such data. In the end, this will enable Thailand to progress along the line of a civil society and a true democracy.

### *3.5.2 Tools for Journalists*

Globally, the majority of users of freedom of information law are reporters because government information is very useful to them. They can report and spread the news to citizens through media. However, in Thailand, the situation is completely different. As has been indicated, the top three groups that have filed complaints about, and appeals for information disclosure do not have any relation to the media/reporters.

According to senior journalist Kavi Chongkittavorn and Prasong Lert-rattanawisut, the main cause that has deterred many Thai reporters from making use of the OIA is their lack of knowledge about the procedures and the law for access to information. Prasong mentions that he has personally received many good pieces of news through the OIA. He claims that with the right planning and preparation, one can attain the information despite complicated and complex procedures and processes. There might not be daily stories about this matter, but these valuable pieces of information could lead to big stories. Beyond the personal use of such information, Prasong asserts that others' appeals case can be viewed on [www.oic.co.th](http://www.oic.co.th) in order to write other

related articles which could be of great use to the people at large. It all depends on how the public would like to use such a legal tool.

Kavi Chongkittavorn, on his part, sees that some journalists, especially columnists and senior journalists were apprehensive about the information law when it was first introduced because they viewed access to information as a threat to their long-standing personal connections in the state agencies. They preferred to go through the so-called "backdoor."

In my opinion, however, new-age journalists should have a different viewpoint of the OIA as they have fewer connections and need to find some special information more easily to analyze and convey it to the public.

In addition, the new journalists who utilize the OIA are supporting the civic responsibility of government officials in being careful with their duties to the public. If they do not participate, they will be reprimanded for their actions through the use of public complaints. Young and old journalists should be trained in the means of using the OIA and its procedures no matter how tough or complicated those steps may be.

Exercising the right to using the OIA to retrieve access to information is a basic skill that all citizens and journalists should acquire. This will lead to more transparent and accountable political rule.

In the big picture, the OIA is a law for everyone, but it is the responsibility of reporters and journalists to be the ears, eyes and mouths for the people. This law might not be the most rapid or effective form of information release, but it enables everyone to investigate the government affairs and possible corrupt practices. This will lead to future good governance which the law was intended to achieve.