



# **GUIDEBOOK ON IMPLEMENTING RIGHT TO INFORMATION**

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**EDITORS:**

Ngô Thị Thu Hà

Giang Công Thế (Hiệu Minh)

**COMPILERS:**

Vũ Văn An

Nguyễn Trần Ngọc Diễm

Đinh Hồng Hạnh

Ngô Thị Thu Hà

Lê Nguyễn Duy Hậu

Đặng Cửu Ngọc Huyền

Nguyễn Khánh Lâm

Nguyễn Ngọc Uyên Minh

Lê Nguyễn Anh Vũ

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## LIST OF ABBREVIATIONS

GUIDEBOOK	GUIDEBOOK for citizen to implement right to information
CQNN	State Agency
The Law to Access Information 2016	The Law to Access Information No. 104/2016/QH13 passed by Legislature XII of the National Assembly on April 6, 2016 and effective on July 1, 2018.
Resolution No. 326/2016/UBTVQH14	Resolution No. 326/2016/UBTVQH14 dated 30 December 2016 by Standing Committee of National Assembly on collection amount, exemption, reduction, remittance, management and use of court costs and fees
Socialist Republic of Vietnam	Socialist Republic of Vietnam
Ordinance on Protection of State Secrets	Ordinance No. 30/2000/PL-UBTVQH10 dated December 28, 2000 on the protection of State secrets
TAND	People's Court
TANDTC	The Supreme Court of the People
TCTT	Information Access
Circular No. 215/2016	Circular No. 215/2016/TT-BTC dated 10/11/2016 issued by the Minister of Finance stipulating the amounts, the regime of collection, remittance, management and use of fees for providing business information and fees for Business registration
VKSND	People's Procuracy
VKSNDTC	The Supreme People's Procuracy
UBND	People's Committee

## PREFACE

The rights of information access of the citizens are recognized in Article 25 of the Constitution 2013. By institutionalizing this provision, the National Assembly of the Socialist Republic of Vietnam passed the Law to Access Information on 06/04/2016. This important law also recognizes the rights of information access of foreigners residing in Vietnam and takes effect from 01/07/2018.

Drafting and finalizing the **GUIDEBOOK ON IMPLEMENTING RIGHT TO INFORMATION (THE GUIDEBOOK)** is an effort by our team to introduce some concepts related to the rights of information access and to generalize the searching processes and procedures and request for information provision as well as appeals and lawsuits related to the rights of information access of the citizens. The language of the **GUIDEBOOK** is simplified to fit the majority of the readers. The language, images, process and charts in the **GUIDEBOOK** are also simplified to fit the majority of the readers.

Compilers expects that **this GUIDEBOOK** is a useful tool to assist individuals and organizations throughout the search, retrieval and use of information. The content and forms, procedures discussed in this **GUIDEBOOK** are mainly based on the Law to Access Information 2016 and some related legal documents. **The GUIDEBOOK** will be continuously updated on the basis of new legal documents and user feedback.

Our team is looking forward to receiving comments from users and concerned persons **for the GUIDEBOOK** to be increasingly better.

Sincerely yours and best regards!

**COMPILERS**

## HOW IS THE RIGHT TO INFORMATION ACCESS STIPULATED?

### What is Information?

Information is information, data contained in available documents, records, profiles, existed in the form of written documents, print out, electronic copies, pictures, photographs, drawings, tapes, recording or other forms produced by the State Agency.

The information produced by the State Agency is information and data generated during the process of implementing the functions, tasks and powers under the current provisions of law, signed, stamped or certified in written documents by the competent person of such the State agency.

*(Clause 1 and 2, Article 2 of the Law to Access Information 2016)*

### What is Information Access?

Information Access is the reading, viewing, listening, recording, copying, capturing information.

*(Clause 3, Article 2 of the Law to Access Information 2016)*

### How to understand the rights of information access?

Citizens reserve the right to free speech, press freedom, **access to information**, meetings, associations, demonstrations. The exercise of these rights is governed by law.

*(Article 25 of the Constitution 2013)*

All citizens are **equal, not discriminated against** in the exercise of the rights to information access. The State assumes **responsibilities and obligation** to ensure the rights to information access of citizens.

*(Article 1 and Clause 1, Article 3 of the Law to Access Information 2016)*

Consequently, Information Access is not a relationship of asking for and receiving permission for information but it is a **process** to perform the **citizens' rights**. Accordingly, citizens are free to seek or request information, the State Agency is responsible for

providing and only refuses to provide information when there are clear reasons in accordance with the law.

The Process of Information Access is the formal process as prescribed by the Law to Access Information 2016 and implemented in **writing documents**. All exchanges and results of settlement from the state agencies to the citizens must be expressed in writing and may be complained or sued in accordance with the law.



# WHAT TO DO TO ACCESS INFORMATION?



You need to answer these **7 questions** respectively. Each question is as a step of practicing your right to information access:

1. Do you have legal rights against information access?
2. The information that you request can be accessed or not?
3. Who do you meet to request information?
4. What documents do you need to prepare to request for information provision?
5. Do you have to pay for fees of Information Access?
6. How long do you have to wait for information?
7. The State Agencies refuse to provide information in which cases?

## **Question 1 - Do you have legal rights against information access?**

### **1.1 Vietnamese citizens and foreigners residing in Vietnam reserve the right to access information**

Vietnamese citizens reserve the right to access information.

*(Article 1 of the Law to Access Information)*

Foreigners residing in Vietnam reserve the right to request information provision directly related to their rights and obligations.

*(Clause 1, Article 36 of the Law to Access Information)*

### **1.2 Special Cases**

- Persons who have lost their civil act capacity shall request for information through their representatives by law.
- Persons who have difficulty in perceiving or mastering the act shall request for information provision through their guardians.
- Persons under 18 years of age shall request for information through their representatives by law.

*Please refer to Articles 22, 23, 46, 136 of the Civil Code 2015 to understand the provisions of the law on loss of civil act capacity, persons having difficulties in perception and behavioral mastery, guardian and legal representative of an individual.*

## Question 2 – The information that you request can be accessed or not?

*In this section, you need to answer several simple questions to find out what fields of information you need and whether you reserve the right to access or not.*

### 2.1 What field of information do you need?

First of all, you should determine **the content and nature** of the information to know whether the information can be accessed or not. In addition, this will help identify where the information to be provided and how to access.

Depending on the specific case, there are basic steps to answer this question. In case of uncertainty, you can ask for help from the state agency, consult with a qualified person or a lawyer for the exact name of the information you need to access.

*Please note*, most law firms are free of charge for initial general advices, or they will negotiate the rates before you use their services.

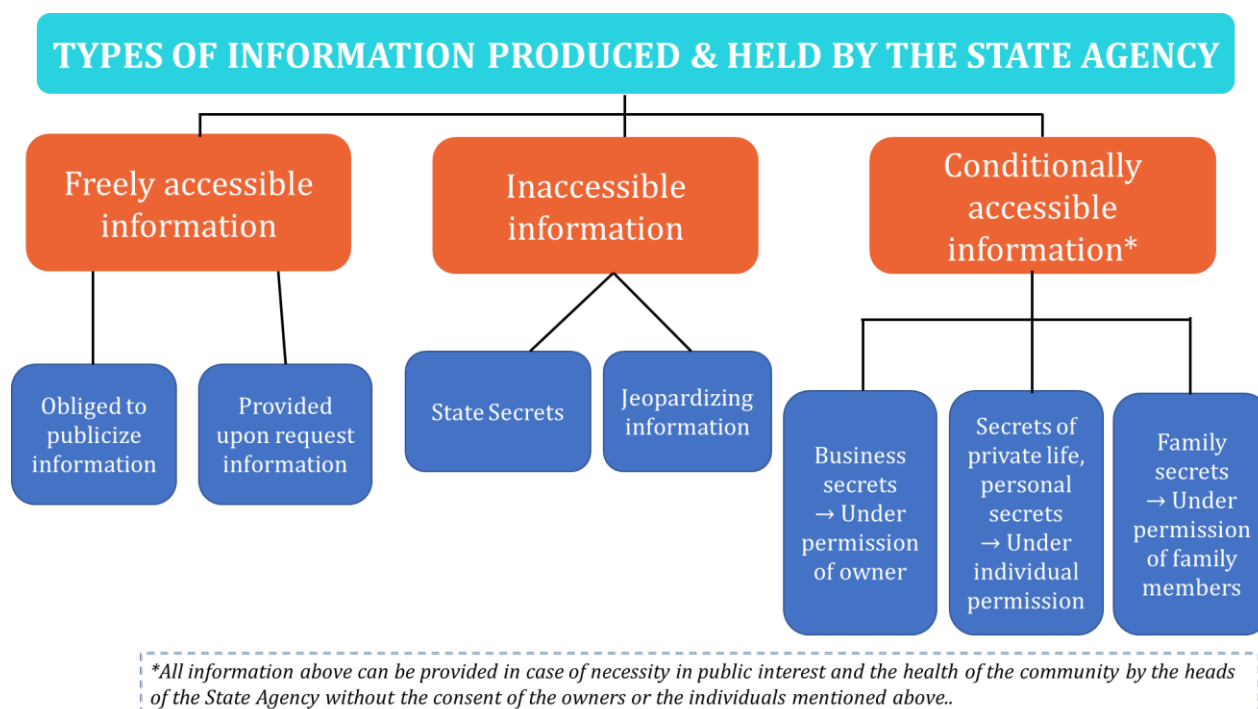
### 2.2 Information you need is free to access or accessible upon request or not?

Citizens reserve the right to access all information of the State Agency, except for "inaccessible information" or "conditionally accessible information".

*(According to Articles 5, 6 and 7 of the Law to Access Information)*

Hence, you will have to answer the question of whether the information you want to access is inaccessible or conditionally accessible information. **If the answer is "no," then this information is free to access or accessible upon request.**

The chart below helps you know the types of information held by the State Agency and the access level of each type:



### 2.3 What information is freely accessible?

Citizens are free to access information which **the State Agency are obliged to publicize** within 5 working days from the date of creating the information if no legal document is available.

*(Article 18 of the Law to Access Information)*

Please refer to Appendix II attached to this **GUIDEBOOK** for a list of information that must be publicized by the State Agency.

#### **FORMS FOR INFORMATION PUBLICATION BY THE STATE AGENCY**

- *E-portal, electronic information website of the State Agency*
- *Mass media*
- *Official Gazette*
- *Listed at the head offices of the state agencies and other locations*
- *Reception of citizens, press conferences, press releases, through a spokesperson of the State Agency*
- *Other forms favorable for citizens.*

*(Paragraph 1, Article 18 of the Law to Access Information)*

## 2.4 What information is provided upon request?

- Information must be publicized, however, subject to one of the following cases:
  - o Information subject to publicized period but not yet publicized.
  - o Information subject to expiry of publicity in accordance with the law.
  - o Information being publicized but for force majeure reasons that the requesting person is inaccessible.
- Information relating to the life, activities, production and business of the requesting person for information but not subject to the type of *publicized information* and *the conditionally accessible information*.

## 2.5 What information is conditionally accessed?

Subject to Article 7 of the Law to Access Information, citizens reserve the right to conditionally access to information relating to business secrets, private life secrets, personal secrets and household secrets. Specifically:

- Business secrets: Only provided as agreed by the owner of the business secret.

**Business Secrets** are information obtained from financial investment, intellectual property, not disclosed and capable of being used in business. When the State Agency refuses to provide information since it is a business secret, the State Agency should demonstrate the following three elements:

- o This is not a common understanding and not easy to obtain;
- o When used in business, it gives the holder of the business secret advantages over the person who does not hold or use the business secret; and
- o To be protected by the owner by the measures necessary to keep the business secret from being disclosed and not easily accessible.

*At present, there is no unified definition of **private life secrets, personal secrets or family secrets**. Accordingly, it is the responsibility of the State Agency to explain the reasons for refusing to provide information as so requested.*

*(Article 84, Intellectual Property Law 2015)*

- Secrets of private life, personal secrets: Only provided as agreed by the individual.

- Family secrets: Only provided as agreed by the family members.

### **EXCEPTIONS:**

*The heads of the State Agency shall decide on the provision of information related to business secrets, personal life, personal secrets and family secrets in case of necessity in the public interest and the health of the community according to the provisions of the relevant law without the consent of the owners or the individuals mentioned above.*

## 2.6 What information is not accessible?

Under Article 6 of the Law to Access Information, the information not accessed by the citizens includes:

- Information belongs to State secrets.

State secrets are information about cases, affairs, documents, objects, places, times, speeches with important contents in the fields of politics, defense, security, foreign affairs, economics, science, technology, and other fields not publicized or not yet publicized and, if disclosed, it shall harm to the State of the Socialist Republic of Vietnam.

*You are strongly advised to consult a qualified person or a lawyer in case of any questions about whether the information you request belongs to the state secret or not.*

*(Article 2, Ordinance on Protection of State Secrets 2000)*

- Information, if accessed, would jeopardize the interests of the State, adversely affect national defense, national security, international relations, social order and safety, social morality, public health; endanger the life or properties of others; Information on internal meetings of the State Agency; documents prepared by the State Agency for internal affairs.

*Note that*, the request for information classified as State secrets does not violate the law. However, the State Agency reserves the right not to provide this information.

### Question 3 - Who do you meet to request information?

*Information subject to conditionally accessible and the information provided on request are two types of information that you can request from the State Agency. You do not need to answer this question if the information you need is public information.*

#### 3.1 How to know who is obliged to provide information?

To identify the focal point responsible for providing information by the State Agency, **the GUIDEBOOK** suggests that you follow the steps corresponding to the following guiding questions:

- *First of all, what kind of information do you need to provide?*

Answering this question will help you locate and narrow the field of information you need. This will help to more accurately identify the specialized State Agency in the next step.

- *Which State Agency manages the industry or information field you need?*

To answer this question, you are requested to cover basic knowledge about the organization as well as authority of the State Agencies. In case of uncertainty, you should look up the Internet or consult with and help of those from qualified persons.

In addition, regarding the matter of subject identification and authority to provide information from the State Agency, you may refer to the "Authorization of Information Provision" section in the next section of the **GUIDEBOOK**.

- *In the end, which division or civil servant is responsible for providing the information you need?*

Once it is determined the State Agency is responsible for providing the information, you must identify the focal point of information provision or, in other words, the division or civil servant you need to reach in order to provide the information you need.



### 3.2 Who has the authority to provide information?

- *Firstly*, the State Agency is responsible for providing information **created by itself** unless the People's Committees of commune level are responsible for providing information **created by itself** and **the information it receives** in order to directly perform its functions, duties and powers.

*In principle, when the state agency refuses to provide information since it does not fall under its authorization, it will **also be obliged to provide necessary instructions** to the requester.*

- *Secondly*, the State Agency must **directly organize** the provision of information, unless some state agencies do not directly organize the provision of information and assign to its office to provide (Example: The National Assembly does not directly provide Congressional information that is provided through the office of the National Assembly).

#### NOTES

*The request to provide information is the process that the citizen perform **the right to information access** as prescribed by law. Accordingly, the State Agency assumes the responsibility and obligation to comply with the law on information provision. In addition, you also reserve the right to request the civil servants belonged to the State Agency while receiving citizens to ensure the compliance with the code of conducts at the workplace.*

*In addition, you are also **obligated to comply with legal regulations**. Including the correct implementation of the process for requesting information, payment of fees for information provision in accordance with the Law to Access Information and other relevant laws. At the same time and in all cases, you should abide by the **non-bribery principle** in any way for the State Agency to be informed.*

## Question 4 - What documents do you need to prepare to request for information provision?

Once a State Agency to provide information has been identified, you should contact that State Agency for guidance on the required documents to request for information. Where the state does not provide guidance, you can follow the list of proposed documents of the Compilers subject to the regulations of law.

Name of document	Notes	Quantity
Request form for information provision	<p>According to the form stipulated by the Government, however, the following main contents must be ensured:</p> <ul style="list-style-type: none"> <li>- Full name; Place of residence, address; Identity card number, citizen identification card or passport number of the requester; Fax number, telephone number, email address (if any);</li> <li>- Information requested, indicate the name of the documents and files;</li> <li>- Form of information provision (written documents, direct reception);</li> <li>- Reason and purpose of request for information provision</li> <li>- Signature of the requester.</li> </ul>	01 original copy
Identity card / Citizen identification / Passport of the Requester of Information.	Original copy of the information requestor	01 original copy

## Guidebook on implementing right to information

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Written power of attorney of the information requester	<b>Necessary only when the applicant authorizes another person to perform the procedure.</b> It is requested to be notarized or certified for signature where the applicant is an individual.	At least 01 original copy
Written consent of the owner of business secrets	<b>Necessary only when the information requested is a business secret.</b> It is requested to be notarized or certified for signature where the owner is an individual.	At least 01 original copy
Written consent of the individual having privacy secrets	<b>Necessary only when the information requested is a privacy secret of an individual. It is requested</b> to be notarized or certified for signature of the individual having privacy secrets.	At least 01 original copy
Written consents by all family members.	<b>Necessary only when the information requested is a secret of a household.</b> It is requested to be notarized / certified for signature of all household members.	At least 01 original copy

## Question 5 - Do you have to pay for fees of Information Access?

Information Access is the right of citizens (*Article 25 of the Constitution*), the State Agency assumes responsibilities and obligations to ensure the rights of information access of citizens (*Article 1 of the Law to Access Information*) and citizens provided with information **shall not have to pay fees**, except where otherwise provided by law (*Article 12 of the Law to Access Information*). The person requesting information only **pays the actual cost** to print, copy, capture, send information.

### **EXAMPLE OF FEE FOR ACCESS TO BUSINESS INFORMATION**

*How to know the amount of cost and fees to be provided with business information?*

*Regarding the determination of fees and charges for the provision of business information, you should not only look up the regulations of the Law to Access Information but also look up the provisions of the specialized law, namely the Law on Fees and Charges 2015, the Law on Enterprise 2014 and its implementing guidelines.*

*Specifically, in this case, the fee for providing business information is provided in Section II.8 of Annex I, the Law on Fees and Charges 2015. Therefore, this is a paid information type.*

*To know the exact amount to be paid, you can refer to the provisions of Circular No. 215/2016/TT-BTC regulating the amount of costs, the regime of collection, remittance, management and use of the fee for providing business information, the fee for business registration issued by the Minister of Finance. Accordingly, the fee for providing business information is regulated as follows:*

- *Fee for providing information of Certificate of business registration; Certificate of operation of branches, representative offices, business locations: VND 20,000 /copy.*
- *Fee for providing information in the enterprise registration dossier; providing financial reports of various types of enterprises: VND 40,000 /copy.*
- *Fees for providing general reports of enterprises: VND 150,000 / report.*
- *Fee for publishing contents of enterprise registration: VND 300,000 /once.*
- *Fee for providing business information by account from 125 copies / month or more: 5,000,000 VND/month*

### ***Examples of fees for providing secured transaction information***

*Regarding the determination of fees and charges for the provision of secured transaction information, you are required not only to look up the provisions of the Law on Information Access, but also to look up the provisions of the specialized law, namely Circular No. 202/2016/ TT-BTC regulating the amount of collection, remittance, management and use of fees in the field of secured transactions promulgated by the Minister of Finance.*

*Accordingly, in this case, you do not have to pay for the online search of information in **the secured transaction** database through the online registration system. If you require the Registry Agency to issue the certificate of search results, you will be required to pay the fee for the issuance of a security transaction fee of VND 30,000 / 1 case.*

## Question 6 - How long do you have to wait for information?

- *For information which must be publicized:*

Time for publicity of information for each field shall be implemented in accordance with relevant laws; in cases the law has not yet prescribed, within **5 working days** from the date of creation of the information, the competent state agencies must disclose the information.

*(Clause 4, Article 18 of the Law to Access Information)*

It is apprehensible, *since the time for publicity under a specific form or mean*, citizens are able to access this public information.

- *For information provided upon request:*

The Law to Access Information stipulates different time for the provision of information depending on the nature, scope, volume of information or the different available levels of such information. Accordingly, the maximum time that state agencies must provide information is **not more than 15 working days** for simple information, which can be provided immediately and **be extended not more than 15 days** after the expiration of the above period in case of complex information.

Specific time for state agencies to provide information for each of the different types is attached in Appendix III of this **GUIDEBOOK**.

## **Question 7 - The State Agencies refuse to provide information in which cases?**

**The State agencies refuse to provide information in the following cases:**

- The information requested is not allowed to access (Refer to Question 2 of the **GUIDEBOOK**)
- The information requested is only accessible under certain conditions, but the conditions have not satisfied (Refer to item 2.4 of Question 2 of the **GUIDEBOOK**)
- You contact with incorrect State Agencies to ask for information (Refer to Question 3 of the **GUIDEBOOK**)

**The information you are requesting has been provided to you twice, and you require to re-inform that information without a good reason:**

- The information you request exceeds the ability to respond to or otherwise affect the normal operation of the State Agency assuming responsibilities and obligations to provide.
- You do not pay actual costs for printing, capturing, sending information through postal or fax services.

*(Clause 1, Article 28 of the Law to Access Information)*

### **NOTES**

*The State Agency shall notify in writing and clearly state the reasons for the refusal to provide the information. To avoid the case where a state agency bases on the above reasons for refusal to provide information, you need to know that the state agency is not permitted to refuse the provision if the information you request is:*

- *The Information required to be publicized, subject to publicized period but not yet publicized; or*
- *The Information subject to expiry of publicity in accordance with the law; or*
- *The Information being publicized but for unavoidable reasons that you are inaccessible.*

*(Clause 1, Article 23 and Clause 2, Article 28 of the Law on Information Access)*

# HOW TO USE INFORMATION?

In principle, freedom of information does not only include the freedom to seek, receive, access but freely use but is not limited to sharing, exchange and dissemination of information.

In this section, the **GUIDEBOOK** gives recommendations and principles to help citizens use the information in accordance with the law. Users are **required to read this section carefully** after receiving information to avoid legal risks from misuse.





## 1. What principles should citizens comply with when using information?

### 1.1 The first principle

Not against the national interests and legitimate rights and interests of other agencies, organizations or persons. Specifically, the Law on Information Access prohibits citizens (i) to use information against the State of the Socialist Republic of Vietnam, undermine the policy of solidarity and incitement to violence; and (ii) use information that is intended to offend honor, dignity, prestige, to cause gender discrimination, or damage the property of individuals, agencies or organizations.

*(Clause 5, Article 3 and Clause 2, 3 Article 11 of the Law on Information Access)*

### 1.2 The second principle

No misrepresentation of the information provided.

*(Point b, Clause 2, Article 8 of the Law on Information Access)*

### 1.3 The third principle

**Citizens may not disclose information restricted to access, except for some certain jurisdictions.** Accordingly, access restriction information includes (i) information not permitted to access by the citizens as defined in *Article 6 of the Law on Information Access*; and (ii) information conditionally accessed by the citizens defined in *Article 7 of the Law on Information Access*. Accordingly, this principle is understood as:

- For the information freely accessible by the citizens pursuant to *Article 5* and not subject to the case of information not accessible as defined in *Article 6* or information subject to conditional access under *Article 7 of the Law on Information Access*, the citizens reserve the right to use (including the right to disclose) that information, provided that the principles of use of the information provided above are complied with.
- For the information **not permitted to access** by the citizen (*Article 6 of the Law on Information Access*) and **permitted to conditionally access** (*Article 7 of the Law on Information Access*), where the citizens reserve the right to access to this kind of information, then:

- The Citizens must **not disclose** such information, unless the information is declassified or disclosed in accordance with the law or in the judgment of a competent court (For the information not permitted to access by the citizens as defined in *Article 6 of the Law on Information Access*);
- The information accepted by the parties involved or allowed to be disclosed, or subject to forcible disclosure under statutory circumstances or under effective court judgment or decision (For the information permitted to conditionally access by the citizens as defined in *Article 7 of the Law on Information Access*);
- In all cases, the use of information (including disclosure of information) must adhere to the principles of using the information above.

## 2. How to handle the citizens violating the provisions of law on use of information provided?

### 2.1 Engaged in violation of the provisions of law

The persons who commit acts of violating the provisions of the legal regulations on information access, subject to the nature and seriousness of their violations, shall be disciplined, administratively handled or examined for criminal prosecution.


*(Clause 1, Article 15 of the Law on Information Access)*

### 2.2 In case of adversely affecting legitimate rights and interests

The persons exercising the rights of information access use the information provided, adversely affecting the legitimate rights and interests of other agencies or organizations or persons, shall have to take responsibility according to the provisions of law.

*(Clause 3, Article 15 of the Law on Information Access)*

The responsibility mentioned in this part may be civil liability under **civil law** or **administrative responsibility**; or also **criminal liability**, depending on the nature and extent of the violation and its effect on the legitimate rights and interests of other agencies, organizations, persons or the State.



# WHAT WILL YOU DO WHEN THE RIGHT TO INFORMATION ACCESS IS INFRINGED?

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Within the limits of the **GUIDEBOOK**, our team compiles only the most common points that you need to know about a complaint and an administrative lawsuit process. Practices may arise in specific cases requiring further learning about the Law on Complaints, the Law on Administrative Litigation and related guidelines as well as advice from lawyers.

### 1. Complaint

#### 1.1 What is meant by Complaint?

Complaints are request of citizens, authorities, organizations or state officials, civil servants submitted to the competent authorities, organizations, individuals to reconsider administrative decisions or administrative acts of the administrative State agencies, of the competent person in the administrative State agencies or disciplinary decision of state officials and civil servants when obtaining grounds to believe that such decision or act is unlawful or infringes upon its legitimate rights and interests.

*(Clause 1, Article 2 of the Law on Complaints 2011)*

As a result, causing difficulties by the state agency; provision of inaccurate, incomplete, untimely, inexplicit information; provision of information incorrect to the orders, procedures or refusal to unlawfully provide information may be regarded as unlawful administrative acts or decisions, infringement upon the legitimate rights and interests of individuals and organizations and may be subject to complain.

It should be noted that you only have the right to complaint within **90 days of the receipt of the written refusal to provide information** or from the date you have learned of (although no official document has been received) refusal to provide information. However, in case people suffering from illness, natural disasters, enemy sabotage, business trips, distant learning or other objective obstacles, the duration of such obstacles shall not be counted in the 90-day period as mentioned above.

*You may complain **up to two times** and may initiate a lawsuit against the decision to refuse to provide information to an administrative court at any time.*

#### 1.2 Complain to whom?

Depending on the actual situation, you may determine whom you will complain against, since there will be exceptions, detailed rules depending on each situation. Therefore, you should actively look up the legal regulations, consult with qualified persons or directly contact at the Head Office of the State Agency related to your complaint to learn about.

In general, you can not proceed on a complaint exceeding the hierarchy, complaint shall be firstly proceeded against the **very civil servant or the state agencies refusing to provide information**, so called "first-time complaint." If you are not satisfied with the results of the first complaint, you can **file a complaint to the immediate superior** of the first-time hierarchy, called a "second complaint" or **take a lawsuit to an administration court**.

In the event that you file a complaint to a wrong authority of jurisdiction, such the authority is responsible for sending or transferring your complaint or instruct you to contact an appropriate authority.

### 1.3 What documents are included in a complaint file?

Please note that the categories listed below are **for reference only**. Subject to specific cases, the competent authority may request additional documents or further require quantities of the documents. In addition, as required by law, you only need to submit one (1) set of dossier; however, in practice there may be cases where the competent authority with good reason to request two (2) dossiers. For such the practice, in the list below, the Editorial Team recommends that you actively prepare **02 (two) dossiers**. Most importantly, when the relevant situation arises, you should actively contact the competent authorities to specifically ask whether special dossiers are required (in terms of composition, number) or not.

**Dossier for the first complaint:**

Name of document	Notes	Quantity
Complaint letter	Under the statutory form	2 copies
Refusal document to provide information	Certified as true copy	2 copies
Identity Card	Certified as true copy	2 copies
Household record book	Certified as true copy	2 copies
Any material that you think relevant	Certified as true copy	2 copies

**Dossier for the second complaint:**

Name of document	Notes	Quantity
Complaint letter	Under the statutory form	2 copies
Refusal document to provide information	Certified as true copy	2 copies
Decision on the first settlement of the complaint	Certified as true copy	2 copies
Identity Card	Certified as true copy	2 copies
Household record book	Certified as true copy	2 copies
Any material that you think relevant	Certified as true copy	2 copies

The chart below shows how long the state agencies handle your first and second complaint (if any).



The Law on Administrative Litigation does not provide a specific definition of what an administrative lawsuit is. However, subject to the content of Article 5 of the Law on Administrative Litigation 2015, which provides for the *right to request the Court to protect legitimate rights and interests*, the Editorial Team considers that "a lawsuit" can be construed as an administrative lawsuit to ask the court to protect your legal rights and interests. You reserve the right to take a lawsuit to an administrative court when:

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- You disagree with the decision to resolve the second complaint.
- The time limit for the second settlement of the complaint has expired and you are not resolved.

### 2.2 What is the time limit for proceedings?

Before initiating a lawsuit, you must pay close attention to the "time limit for proceedings" - that is, within a certain period of time, you may have the right to take legal action, beyond such the period, you will lose the right to take a lawsuit. Specifically:

- Within **1 year** of receiving or knowing of the refusal to provide information;
- Within **1 year** of receiving or knowing of the decision on the first settlement of appeal or the decision on the second settlement of the appeal; or
- Within **1 year** of the expiration of the time limit for settlement of the appeal, that there is no written response to you.

### 2.3 What steps included in the litigation process?

The time limit for settling an administrative lawsuit in Vietnam averages about 5-7 months from the acceptance date of your case by a court. The litigation process shall



cover the following steps:

### 2.4 What documents are included in a lawsuit file?

Please note that the categories listed below are **for reference only**. Subject to specific cases, the competent court may request additional documents or further require quantities of the documents. As a rule of law, you only need to **submit 01 (one) set of dossier**. However, in practice, there may be cases where the court of competent jurisdiction may give reasons to request two (2)



sets of dossier. For such the practice, in the list below, the Editorial Team recommends that you actively prepare 02 (two) dossiers. Most importantly, when the relevant situation arises, you should actively contact the competent court to specifically ask whether special dossiers are required in terms of composition, number or not.

<b>Name of document</b>	<b>Notes</b>	<b>Quantity</b>
Lawsuit petition	Under the statutory form	2 copies
Refusal document to provide information	Certified as true copy	2 copies
Decision on the first settlement of the appeal (if any)	Certified as true copy	2 copies
Decision on the second settlement of the appeal (if any)	Certified as true copy	2 copies
Your Identity Card	Certified as true copy	2 copies
Your household record book	Certified as true copy	2 copies
Any material that you think relevant	Certified as true copy	2 copies

## **2.5 Which court will you proceed on a lawsuit?**

<b>Whose decision?</b>	<b>In which court?</b>	<b>Where to file an appeal?</b>
Ministry, central departments Office of the National Assembly The Supreme People's Court The Supreme People's Procuracy Office of the State President	The Provincial People's Court where the applicant resides and works	High-level People's Court in Hanoi, Da Nang, or Ho Chi Minh City

<p>Chairmen of People' Committees at levels of provinces, cities or districts</p> <p>People' Committees at levels of provinces, cities or districts</p> <p>Departments, divisions at levels of provinces and cities</p> <p>People' Courts at levels of provinces, cities or districts</p> <p>People' Procuracies at levels of provinces, cities</p>	<p>Provincial People' Courts where the State bodies engaged in a lawsuit are located</p>	<p>High-level People's Court in Hanoi, Da Nang, or Ho Chi Minh City</p>
<p>Chairmen of People' Committees at levels of communes, wards and towns</p> <p>People' Committees at levels of communes, wards and towns</p> <p>Departments, divisions belonged to People' Committees at levels of wards, communes and towns</p> <p>People' Courts at levels of districts</p> <p>People' Procuracies at levels of districts</p>	<p>People' Courts at levels of districts where the State bodies engaged in a lawsuit are located</p>	<p>Provincial People' Courts where the State bodies engaged in a lawsuit are located</p>

## **2.6 How much you have to pay for a court fee?**

Under Paragraph 3 of Article 7 and the List of Legal Costs of Resolution No. 326/2016/UBTVQH14 of the Standing Committee of the National Assembly dated 30 December 2016, effective from 1 January 2017, the advance of a court fee for each case is VND 300,000. This amount will be returned to the appellant if the court declares that the administrative decision / administrative action initiated is against the law since in this case, the administrative body issuing the administrative decision or administrative action against the law will be charged according to Paragraph 2, Article 32 of Resolution No. 326/2016/UBTVQH14.

# WHAT SHOULD YOU DO WHEN DETECTING THE INFORMATION PROVI- DED IS INACCURATE?

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In this section, the **GUIDEBOOK** guides the steps and conditions so that you can ask the State Agency to pay compensation in the spirit of the Law on Compensation Liability of the State when the rights of information access have not been complied with.



A person accessing information who has suffered damage caused by the act of intentionally provision of false information, incomplete information or from the act of forging information from the information provider shall reserve the right to request the agency providing information to compensate damages.

### 1. What damages can be compensated?

- Actual damages that you incur, including expenses incurred in the course of the complaint such as transportation, travel, accommodation, printing, mailing ...;
- Property damaged due to infringement;
- Actual income has been lost or diminished: For example, wages, monthly salary, seasonal incomes of employees (e.g farmers, fishermen, salt workers, employees, small traders, artisans ...).

### 2. What steps included in the process for request of compensation?

The chart below indicates the steps of the process for request of compensation.



#### 2.1 Filing a request for compensation

After going through the complaint process mentioned above, you are able to request for compensation.

- **Period:** Within 2 years of the written response from the information provider.
- **Form of filing:** Directly filing or sent by post.
- **The dossier includes:** 01 (one) set, including:
  - Request for Compensation under Form 01a attached to Circular No. 18/2015/TTLT-BTP-BTCC-TTCP;
  - A certified copy of the document identifying the illegal acts of the information provider, such as the reply of the body providing the information, the decision on appeal settlement ... or an original copy of such document for comparison in case of directly filing.
  - Documents and evidences proving damages;
  - Notarized copy or authenticated power of attorney (if any).

## 2.2 Time for considering and handling the request for compensation

The receiving body must reply to you within **5 working days** for the settlement of the request for compensation. Where the responsibility for the settlement does not fall within this body, the receiving body must return the file and instruct you to contact a responsible agency for settlement.

## 2.3 Verification of damages

The agency accepting the consideration and settlement of the request for compensation must verify damages **within 20 days**. In complicated cases, the time limit for verification of damages may be prolonged but must **not exceed 40 days**.

If you disagree with the verification results, you are able to require re-valuation, re-assessment. In this case, you have to pay the cost of re-valuation, re-assessment.

## 2.4 Negotiation for compensation

Upon the completion of the damage verification, the agency engaged in request for compensation must negotiate a compensation **within 30 days**. Negotiation may last **up to 45 days**.

*You may not sign the negotiation minutes if you disagree with the results.*

## 2.5 Decision on settlement of compensation

The settlement agency must make a decision on compensation **within 10 days**. This decision is not valid from the signing date but cover a waiting period of 15 days from the date you receive the decision. Within these 15 days, you reserve the right to sue in court if you disagree with the result of this decision.

Should you fail to initiate a lawsuit within the time limit, this decision will take effect and you will **no longer have the right to take a lawsuit**.

## 2.6 Payment of compensation

Depending on the case, the time of payment of compensation may be within **1-2 months** from the effective date of the compensation decision. Compensation will be paid in lump sum.

## **APPENDIX I - LIST OF INFORMATION OBLIGED TO BE PUBLICIZED**

1. Legal documents; generally applicable administrative documents; International treaties to which the Socialist Republic of Vietnam is a contracting party or an international agreement to which Vietnam is a party; administrative procedures and work-handling procedures of the State Agency;
2. Dissemination information and guidance on the implementation of law, regimes and policies in the fields under the management of the State agencies;
3. Drafts of legal documents in accordance with the law on promulgation of legal documents; contents and results of referendum, opinions collection of the people on matters falling under the decisive competence of the State Agency, publicized for gathering the people' opinions according to the provisions of law; schemes and drafts of schemes for establishment, dissolution, merger, division of administrative units, adjustment of administrative boundaries;
4. National, local strategies, programs, projects, plans for socio-economic development; industry and field planning and methods and results of performance; annual programs and plans of the State agencies;
5. Information on state budget estimates; report on the implementation of the state budget; Finalization of the state budget; Estimation, implementation situation for programs, basic construction investment projects funded with capital of the state budget; State budget procedures;
6. Information on the allocation, management and use of official and non-governmental development assistance capital sources as prescribed; Information on management, use of relief, social assistance; Management, use of people's contributions, types of funds;
7. Information on the list of projects, programs of public investment, public procurement and management, use of public investment capital, situation and results of implementation of public investment plans, programs and projects; Information on tendering; Information on land planning and use plans; land price; Land acquisition; Compensation, ground clearance and resettlement plans related to projects, works in the area;
8. Information on operation of investment, management and use of state capital in enterprises; Report on performance evaluation and classification of enterprises;

- reports on supervision of the publicity of financial information disclosure by the enterprise and the state agency representing the owner; Information on the organization and operation of state owned enterprises;
9. Information on products, goods and services of negative impacts on health and environment; Conclusion of inspection, investigation and supervision related to environmental protection, community health, food safety and labor safety;
  10. Information on the functions, tasks, powers and organizational structure of the agencies and attached units; The tasks and powers of state officials and civil servants directly handling the affairs of the people; internal rules and regulations promulgated by the State Agencies;
  11. Regular work report; Annual financial reports; Statistical information on the industries and fields of management; National database of industries and fields; Information on the recruitment, employment and management of state officials, civil servants and public employees; Information on the list and results of scientific programs and projects;
  12. The list of information must be made public according to the provisions at Point b, Article 1, Article 34 of this Law; name, address, telephone number, fax number and e-mail address of the State agency or the focal point to receive request for information provision;
  13. Information relating to public interest, community health;
  14. Information on taxes, fees and charges;
  15. Other information must be made public in accordance with the law;
  16. The information created and held by the State Agencies or publicly available by the State Agency on the basis of actual conditions.

*(Article 17 of the Law to Access Information 2016)*



## APPENDIX II - TIME LIMITS FOR PROVIDING SPECIFIC INFORMATION FOR EACH TYPE OF INFORMATION

### **For information which must be publicized:**

Where other laws do not yet contain regulations, competent state agencies must publicize such information within 5 working days as from the date of creation of such information.

*(Clause 4, Article 18 of the Law to Access Information 2016)*

**For simple information, available for immediately provision**, the requested agency is responsible for providing information to the requester within:

- **Immediate provision for directly information provision** at the head office of the information provider. Accordingly, information requesters may directly read, watch, listen, record, copy or photocopy documents or request the immediate provision of copies or photocopies of documents.
- Within **3 working days** after the receipt of valid information requests by the State agencies, the information shall be applied to the case of information provision via the electronic network.
- Within **5 working days** after the receipt of valid information requests by the State agencies, the information shall be applied to the case of information provision via postal services, fax.

For **complicated information which is not available but needs to be gathered** from the required divisions of the State agencies or **necessary information must be obtained comments from other agencies, organizations or units**, then the requested agency shall provide information to the requester within:

- Within **10 working days** after the receipt of request for information provision by the State Agency, the information shall be provided directly at the head office of the information-providing agency;
- Within **15 working days** after the receipt of valid information requests by the State agencies, the information shall be applied to the case of information provision via the electronic network. Specifically, the Law to Access

Information regulates: Within **3 working** days from the date of receipt of a valid request, the requested agency must notify in writing the time limit for the resolution of the request for information. Within **15 working** days from the date of receipt of a valid request, the requested agency must provide information or issuance of refusal document of information provision. In cases the requested agency needs more time to consider, search, gather, copy and handle requests for information, it may extend the time limit **not exceeding 15 days** and issue a notification document on the extension within the period of information provision.

- Within **15 working days** after the receipt of valid information requests by the State agencies, the information shall be applied to the case of information provision via postal service, fax. Specifically, the Law to Access Information regulates: Within **3 working** days from the date of receipt of a valid request, the requested agency must notify in writing the time limit for the resolution of the request for information. Within **15 working** days from the date of receipt of a valid request, the requested agency must provide information or issuance of refusal document of information provision. In cases the requested agency needs more time to consider, search, gather, copy and handle requests for information, it may extend the time limit **not exceeding 15 days** and issue a notification document on the extension within the period of information provision.

## **APPENDIX III - 9 PRINCIPLES FOR INFORMATION ACCESS IN ACCORDANCE WITH INTERNATIONAL STANDARDS**

ARTICLE 19, an international non-governmental organization dedicated to promoting freedom of expression and information around the world, has researched and developed the principle of freedom of information. The formulation of these principles is based on the study of widely recognized international, regional and national standards and practices in the world.

### **The first principle: Maximum disclosure**

All information held by the state agencies must be publicized. Information can only be limited to disclose in very limited circumstances (see Principle 4). Everyone has the right to know and access to information without explanation the reason to the State Agency.

### **The second principle: Obligation to publish**

The state not only accede to requests for information but also actively publicizes and disseminates important types of information relating to the common interests.

The following types of important information are the minimum types of information for which the state is obliged to make public, regardless of the citizen's request:

- ✓ The structure, functions, tasks and powers of the State Agency.
- ✓ Information on revenues, expenditures and budget of the State Agency
- ✓ Information on requests, complaints, appeals, denunciations that citizens are able to perform to the state authorities
- ✓ Guide the process so that people can contribute to the policy or the law
- ✓ Types of information held by the State Agency
- ✓ The content of the decisions and policies affecting to the people and the reasons and grounds thereto.

**The third principle: Promotion of open government**

State agencies must actively inform people about their rights, how people exercise the rights and the extent of information that people are able to access to. It is necessary to promote an open culture and to prevent the secret culture in the state authority.

**The fourth principle: Limited scope of the exceptions**

Exceptions need to be explained clearly, narrowly drawn and must be gathered in a list in law. All requests for information sent to all state agencies must be met, unless it is within the scope of the restrictions or exceptions not publicized.

**The fifth principle: Processes to facilitate access**

Requests for information should be processed rapidly, fairly and must be responded within a certain time limit. When refusing to provide information, the State Agency shall reply in writing, and at the same time inform the requesting parties of their right to complain and denunciation. (See Chapter IV on complaint and denunciation procedures in this **GUIDEBOOK**). The refused requests must be reviewed independently. Data and records must ensure that certain special social groups are able to access, for example those who can not read or write or who are visually impaired.

**The sixth principle: Reasonable cost of information access**

The State Agency is not permitted to set forth a high cost of information access to hinder or discourage the requester of information provision.

**The seventh principle: Open meetings for everyone to access**

Meetings of the State Agency must be *publicly* disclosed and should be informed if the public wants to participate. Any decision regarding closure of the meeting must be open to the public.

**The eighth principle: Disclosure takes precedence**

Exceptions for restricting information access are required by *law* and may not be extended. *Legal normative documents* that do not comply with the principle of disclosure of maximum information should be abolished.

### **The ninth principle: Protection for whistleblowers**

Individuals providing information *about wrongdoing* must be protected. "*wrongdoing*" in this context includes the commission of criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body. It also includes a serious threat to health, safety, or the environment, whether linked to wrongdoing or not.

## APPENDIX IV - REMARKS OF THE PROCEDURES FOR COMPLAINTS AND LAWSUIT FOR FOREIGNERS

Since foreigners residing in Vietnam reserve the right to request for information provision directly related to their rights and obligations under Clause 1 of Article 36 of the Law to Access Information, there will be cases where foreigners residing in Vietnam complaining, initiating administrative acts, administrative decisions of the state agencies affecting their right to access information. Therefore, in this section, the Appendix gives the points that foreigners residing in Vietnam should pay attention to in relation to complaints, lawsuits, administrative decisions.

### Complaint

Subject to Clause 1, Article 3 of the Law on Appeals 2011, the complaint and settlement of complaint of foreigners residing in Vietnam are similar to the complaints and settlement of complaints process for Vietnamese as stated in the main content of the **HANBOOK**.

However, subject the practical experience of the Editorial Team regarding administrative procedures for foreigners, the checklist for complaints for the complainant who is a foreigner residing in Vietnam (as stated below) will have some differences from the complaint record for Vietnamese complainants. Specifically, Vietnamese law does not require you to submit one (1) written complaint in English language. However, in practice, there are some cases that the State Agency, as soon as receiving your applications in Vietnamese language - foreigners residing in Vietnam, requests you demonstrate that you scrutinize what is written in the application. Therefore, the Editorial Team recommends that you should prepare one (1) Complaint letter in English for the purpose of proving to the State Agency that you fully scrutinize what is written in the Complaint letter.

As well as noted in the main content of the **GUIDEBOOK**, the checklist listed below are for reference only. Subject to specific cases, the competent authority may request additional documents or further require quantities of the documents. In addition, as required by law, you only need to submit one (1) set of dossier; however, in practice there may be cases where the competent authority with good reason to request two (2) dossiers. For such the practice, in the list below, the Editorial Team recommends that you actively prepare **02 (two) dossiers**. Most importantly, when the relevant situation

arises, you should actively contact the competent authorities to specifically ask whether special dossiers are required (in terms of composition, number) or not.

**Checklist for the first complaint:**

<b>Name of document</b>	<b>Notes</b>	<b>Quantity</b>
Complaint letter in Vietnamese language	Under the statutory form	2 copies
Complaint letter in English language	Translated from the Appeal letter from Vietnamese language and you also give your hand in this form	1 copy
Refusal document to provide information	Certified as true copy	2 copies
Your passport	Certified as true copy	2 copies
Any material that you think relevant	Certified as true copy	2 copies

**Checklist for the second complaint:**

<b>Name of document</b>	<b>Notes</b>	<b>Quantity</b>
Complaint letter in Vietnamese language	Under the statutory form	2 copies
Complaint letter in English language	Translated from the Appeal letter from Vietnamese language and you also give your hand in this form	1 copies
Refusal document to provide information	Certified as true copy	2 copies
Decision on the first settlement of the complaint	Certified as true copy	2 copies

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Your passport	Certified as true copy	2 copies
Any material that you think relevant	Certified as true copy	2 copies

In addition to the basic documents mentioned above, to facilitate the process of contacting the State Agency, you may authorize another person to contact the State agency on your behalf. To authorize another person, you need to present a power of attorney (for this document, you should also prepare two (2) copies for the person you want to delegate and contact a Judicial Office of people's committees at the district level or in a notary public (Notary Office) to certify your signature on this letter of attorney.

### Initiate lawsuit

According to Article 298 of the Law on Administrative Prosecution 2015, if you are a foreigner, the administrative case you are initiating is an administrative case involving *foreign elements* and will be handled in accordance with the *procedures for settling administrative case*.

*(Article 298, Chapter XVIII of the Law on Administrative Litigation 2015)*

Matters related to procedures for the settlement of administrative cases involving foreign elements, if not provided for in Chapter XVIII of the Law on Administrative Litigation 2015, shall be governed by other relevant provisions of the Law on the Law on Administrative Litigation 2015 to solve. The provisions of Chapter XVIII of the Law on Administrative Litigation 2015 mostly stipulate that the Court shall send notices related to administrative cases to *foreigners residing abroad*, the basic contents of the initiation of an administrative lawsuit presented in the main content of the **GUIDEBOOK** remains ***unchanged*** in case you are a foreigner residing in Vietnam.

Language used in the application for administrative litigation: applied the same principal with the application for complaint.

As well as noted in the main content of the **GUIDEBOOK**, the checklist listed below are for reference only. Subject to specific cases, the competent court may request additional documents or further require quantities of the documents. As a rule of law, you only need to **submit 01 (one) set of dossier**. However, in practice, there may be cases



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where the court of competent jurisdiction may give reasons to request two (2) sets of dossier. For such the practice, in the list below, the Editorial Team recommends that you actively prepare **02 (two) dossiers**. Most importantly, when the relevant situation arises, you should actively contact the competent court to specifically ask whether special dossiers are required in terms of composition, number or not.

Name of document	Notes	Quantity
Lawsuit petition	Under the statutory form	2 copies
Lawsuit petition in English language	Translated from the Lawsuit petition from Vietnamese language and you also give your hand in this form	1 copies
Refusal document to provide information	Certified as true copy	2 copies
Decision on the first settlement of the complaint (if any)	Certified as true copy	2 copies
Decision on the second settlement of the complaint (if any)	Certified as true copy	2 copies
Your passport	Certified as true copy	2 copies
Any material that you think relevant	Certified as true copy	2 copies

In addition to the basic documents mentioned above, to facilitate the process of contacting the Court, you may authorize another person to contact the Court on your behalf. To authorize another person, you need to present a power of attorney (for this document, you should also prepare two (2) copies for the person you want to delegate and contact a Judicial Office of people's committees at the district level or in a notary public (Notary Office) to certify your signature on this letter of attorney.

## LIST OF REFERENCES

1. The Civil Law 2015
2. The principles of information freedom of an Organization Article 19
3. Constitution 2013
4. Law on Appeal 2011
5. The Law to Access Information 2016
6. The Law on Administrative Prosecution 2015
7. Law of Compensation Liability of the State 2009
8. Ordinance on Protection of State Secrets 2000
9. Circular No. 215/2016/TT-BTC dated 10/11/2016





Contact:



[cepewdk@gmail.com](mailto:cepewdk@gmail.com)



[www.facebook.com/quyentiepcanthongtin](https://www.facebook.com/quyentiepcanthongtin)



(04) 35745999