

EXECUTIVE SUMMARY

EVALUATION OF THE IMPLEMENTATION OF THE LAW ON ACCESS TO INFORMATION

(The fifth year)

Hanoi, August 2023

ACTIONS EACH STATE AGENCY NEEDS TO TAKE TO PERFORM INFORMATION DISCLOSURE AND PROVISION OF INFORMATION UPON REQUEST

This document is compiled for state agencies with responsibilities and obligations to disclose and provide information^[1] based on the provisions of the 2016 Law on Access to Information, Decree No. 13/2018/NĐ-CP, and Circular No. 46/2018/TT-BTC. Below are nine tasks that every state agency needs to perform to disclose and provide information at the request of citizens:

1) Promulgate and publicize internal regulations on the provision of information within their scope of responsibility^[2] including the following main contents:

- Assign a focal point for the provision of information;
- Establish the process of transferring information from the information-creating units to the focal point for information provision; classification of information into information that is accessible, accessible under certain conditions, and inaccessible to citizens;
- Update the information to be disclosed and the information provided upon request;
- Set up the order of and procedures for processing information requests among the focal point for information provision, the unit in charge of information database management, and other relevant units.

2) Assign and publicize the focal point for information provision, including name, address, phone number, fax number, and email address of the state agency or the person acting as the focal point to receive requests for information^[3]

3) Arrange officials and civil servants to provide guidance, explain and assist illiterate people, people with disabilities, and people with other difficulties in filling out and signing information request forms; and help fill out the request form in case the requesters cannot write themselves^[4]

4) Set up a dedicated section on access to information on the agency's portal/website^{[5],[6]} which provides basic functions to assist people with disabilities in accessing and using information and communication technologies to access information in electronic forms^[7]

5) Create, maintain, and update the list of information to be disclosed and information accessible under certain conditions^{[8],[9],[10]}

6) Equip technical facilities and infrastructure for the provision of information, including ensuring the right of access to information for people with disabilities^{[11],[12],[13],[14],[15]}

7) Proactively disclose information^[16] and provide information upon request^[17]

8) Settle complaints, lawsuits, and denunciations in access to information^[18]

9) Open a monitoring book and prepare a report on the implementation of the right of access to information^[19]

Note

[1] Article 9 LAI, Clause 1 Article 8 Decree No. 13/2018/NĐ-CP

[2] Point h Clause 1 Article 34 LAI and Clause 1 Article 12 Decree No. 13/2018/NĐ-CP

[3] Clause 1 Article 33, Point m Clause 1 Article 17 LAI, Clause 1 Article 8 and Clause 1 Article 12 Decree No. 13/2018/NĐ-CP

[4] Clause 6 Article 8 Decree No. 13/2018/NĐ-CP

[5] Clause 3 Article 6 LAI and Clause 1 Article 11 Decree No. 13/2018/NĐ-CP

[6] Refer to: <http://www.bentre.gov.vn/Pages/Homepage.aspx> or <https://moj.gov.vn/Pages/home.aspx>

[7] Clause 2 Article 3 Decree No. 13/2018/NĐ-CP

[8] Point b Clause 1 Article 34, Clause 3 Article 19 LAI, and Article 6 Decree No. 13/2018/NĐ-CP

[9] Refer to <http://www.bentre.gov.vn/Pages/CanBiet.aspx?ID=2682> and <https://moj.gov.vn/tctt/Pages/Index.aspx>

[10] Refer to <http://vpcp.chinhphu.vn/documents/z6.vgp>

[11] Article 9 Decree No. 13/2018/NĐ-CP

[12] Clause 6 Article 8 and Clause 4 Article 3 Decree No. 13/2018/NĐ-CP

[13] Article 40 Law on People with Disabilities

[14] QCVN10:2014/BXD Standards on National Technical Regulation on Construction for Disabled Access to Buildings and Facilities

[15] Clause 6 Article 33 LAI

[16] Chapter II LAI

[17] Chapter III LAI

[18] Article 14, Article 15, Point k Clause 1 Article 34 LAI and Clause 4 Article 8 Decree No. 13/2018/NĐ-CP

[19] Clause 2 Article 13 and Point l Clause 1 Article 34 LAI, Clause 5 Article 8, and Article 12 Decree No. 13/2018/NĐ-CP

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1. RATIONALE, OBJECTIVES AND METHODS OF EVALUATION

As of July 1, 2023, the Law on Access to Information (LAI) has been in effect for five years. Since the LAI came into effect, the Center for Education Promotion and Empowerment of Women (CEPEW) has worked with several partners^[20] to conduct five annual evaluations of its implementation. For each evaluation, the Research Team aims to:

- (1) identify factors that promote effective enforcement of the right to information from the legal and practical perspectives;
- (2) evaluate the implementation of the LAI by multiple central and local state agencies since the law came into force; and
- (3) propose recommendations for more effective enforcement of the LAI.

CEPEW conducted its fifth evaluation from January to August 2023. In this evaluation, the Research Team continues to apply previous methods, including:

- (1) reviewing legal documents as well as Government programs and schemes developed and promulgated in the period from September 2022 to July 2023 related to promoting citizens' rights to information;
- (2) conducting in-depth interviews with representatives of Bac Ninh and Bac Giang provinces - two good practices in the implementation of the LAI;
- (3) reviewing portals/websites of 438 state agencies at all levels; and
- (4) sending 811 requests for information to 447 government agencies at all levels (388 requests were sent via email and 423 requests were sent by post).

2. EVALUATION RESULTS

2.1. Factors driving the implementation of the Law on Access to Information

From September 2022 to July 2023, the Government and the Ministry of Information and Communications (MIC) drafted and issued several legal

documents to ensure citizens' right to access information. Accordingly, the MIC promotes the provision of information in the online environment by issuing Official Letter No. 4946/BTTTT-CĐSQG dated October 4, 2022, guiding the implementation of Decree No. 42/2022/NĐ-CP. Citizens' right to access information and the

[20] The partners include the Forest Land Alliance (FORLAND), the Minerals Alliance (LMKS), the Clean Water Alliance (LMNS), the Network of Social Organizations in the Northern Mountainous Region (NORTHNET), the Institute for Policy Studies and Media Development (IPS), CARE International in Vietnam and Oxfam in Vietnam.

information provision process are also stipulated in the draft amended Land Law^[21] and the draft amended Law on Archives.^[22]

In addition, social organizations and development partners continued to implement models to promote the implementation of the LAI. The United Nations Development Programme (UNDP), in collaboration with CEPEW, conducted an "Action Research to Enhance Citizens' Access to Land Information (the 2nd round)" from July 2022 to May 2023.^[23] UNDP also collaborated with the Budget Transparency Alliance (BTAP), the Viet Nam Center for Economic and Strategic Studies (VESS), and the Centre for Development and Integration (CDI) to conduct an "Action Research on Policies and Practices of State Budget Publicity and Citizen Participation in Budget Process."^[24] UNDP and partners also disseminated the results of these studies to the public and sent them to policymakers.

2.2. Results of the review of portals/websites of state agencies

Of the 438 portals/websites of state agencies reviewed in the fifth evaluation, 25.1% have established a section on access to information,^[25] 17.4% have made a list of information to be disclosed.^[26] 19.4% have uploaded regulations on information provision to citizens, and 23.7% have publicized the information on focal points for information provision on their portals/websites.^[27]

Figure 1 shows that the proportion of agencies that have developed a section on access to information and a list of information to be disclosed increased in comparison to the fourth evaluation, but not significantly. There was not much change in the number of agencies with regulations on information provision and information on focal points for information provision found on their portals between the fifth and fourth evaluations.^[28]

[21] Article 25 Draft Amended Land Law

[22] Article 32 Draft Amended Law on Archives

[23] The research report is published on <https://www.congkhaithongtindatdai.info/>

[24] See: <https://www.facebook.com/undpvietnam> (accessed on August 29, 2023)

[25] The development of a section on access to information on portals of state agencies to provide information to citizens is specified in Article 34 (Point b, Clause 1) of the LAI and Article 11 of Decree No. 13/2018/NĐ-CP

[26] The development and disclosure of the list of information to be disclosed on portals of state agencies are specified in Point b, Clause 1, Article 34 of the LAI and Clause 1, Article 11 of Decree No. 13/2018/NĐ-CP

[27] The assignment of units and individuals as focal points for information provision and the disclosure of the information on the focal points of state agencies and the head of the agency's handling of the person in charge of providing information under his/her management who obstructs the exercise of the right to access information of citizen are specified in Clause 4, Article 33; Point h, Clause 1, Article 34; and Clause 2, Article 34 of the LAI

[28] The promulgation and disclosure of internal regulations on information provision within the scope of responsibility of state agencies are specified at Point h, Clause 1, Article 34 of the LAI

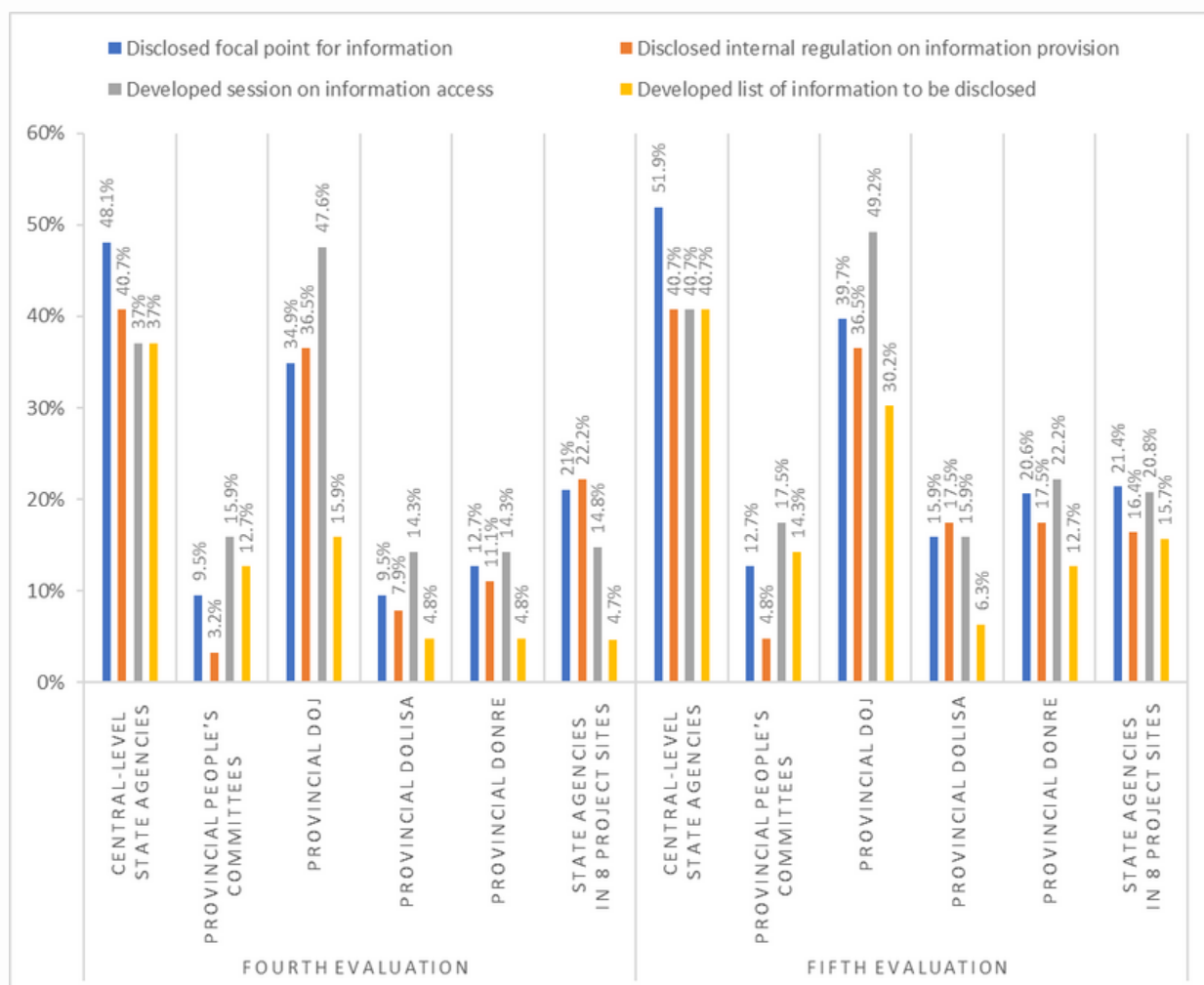


Figure 1: Results of the fourth and fifth reviews of portals of agencies at all levels

The Ministry of Justice (MOJ) and the People's Committee of Ben Tre province are good practices in developing sections on access to information with comprehensive instructions on steps to access on their portals. In particular, the section on the (MOJ's portal allows citizens to submit requests for information online. Meanwhile, the Provincial People's Committee, Department of Justice (DOJ), Department of Natural Resources and Environment (DONRE) and Department of Labor, Invalids and Social Affairs (DOLISA) of Nam Dinh

province have built well-synchronized sections across their respective portals.

Bac Ninh province has also systematically built access to information sections on the portals of all departments, branches, and People's Committees of the reviewed districts. In addition, these portals effectively maintain a text-to-speech function and update all documents in PDF and WORD formats to aid people with visual disabilities in accessing information.

2.3. Results of sending requests for information to state agencies

In the fifth evaluation, the results of sending requests for information to 447 state agencies showed that 25.1% of agencies provided the requested information, 4.9% refused to provide information, 12.3% had some sort of other responses, and 57.7% were unresponsive. The rate of responses for requests sent by post (39%, n=165) was much higher than by email (6.2%, n=24). This reflects that email communication between citizens and state agencies is more limited than by post.

Figure 2 shows that the proportion of central state agencies, provincial People's Committees, DOJ, DOLISA, and DONRE providing the requested information increased in the fifth evaluation. The provincial People's Committees group has the highest increase rate (35%), and the group with the lowest increase rate is central state agencies (1.2%). The proportion

of non-responding agencies decreased for the group of central-level agencies (2.7%), provincial People's Committees (4.8%), DOJ (38%), DONRE (9.5%) but increased by 17.4% and 2.6% respectively for DOLISA and other agencies in eight provinces where projects to promote the implementation of LAI were implemented.

Similar to previous evaluations, state agencies cited several reasons for refusing to provide information. These include (1) The task not falling within the agency's scope of responsibility for information provision because it is not the agency that created the document (pursuant to Clause 1 Article 9 of the LAI); (2) The requested information is not available;^[29] (3) The requested information belonging to non-accessible information (pursuant to Clause 2 Article 6 of the LAI);^[30] (4) Requesters failing to specify the type of document in the request form;^[31] and (5) Unclear purpose of using the information.^[32]

[29] For requests for the regulations on information provision

[30] For requests for the 2022 Annual Report on Natural Resources and Environment Management

[31] For requests for the 2022 Annual Report on Legal Education and Dissemination

[32] For requests for the 2022 Annual Report on the Progress on the Work toward the Advancement of Women for the purpose of personal research

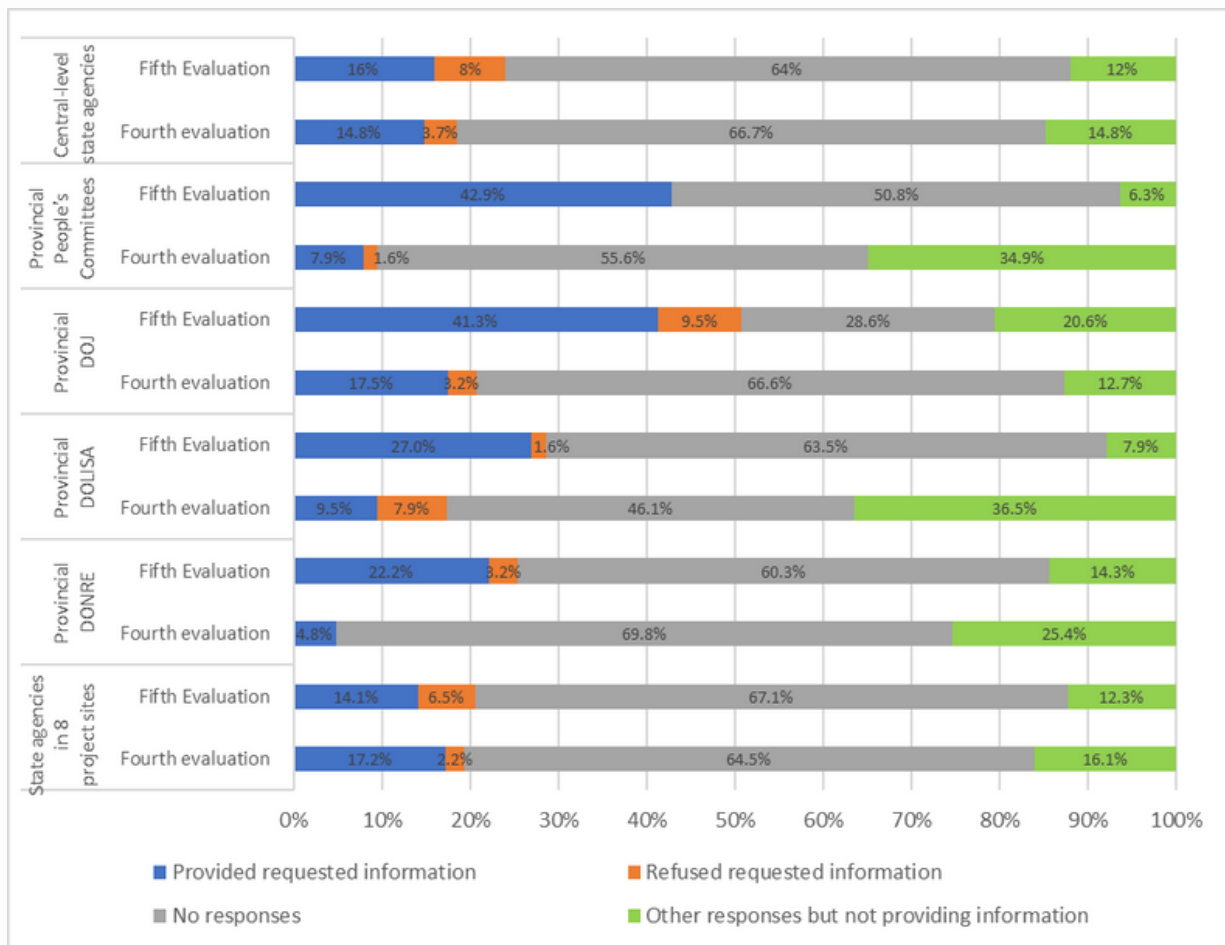


Figure 2: Results of sending requests for information to state agencies at all levels in the fourth and fifth evaluations

Regarding procedures, very few state agencies used the forms provided in Decree No. 13/2018/NĐ-CP to respond to information requests. The Research Team received only one receipt confirmation,^[33] seven resolution slips,^[34] and two notices of refusal to provide information^[35] from state agencies using the forms specified.

Regarding the form of response, the majority of state agencies had officials call the requesters to clarify further the purpose for the request and the requested information, ask for photos of the requesters' ID card to verify identity,^[36] or notify the requesters that the response has been sent and ask them to check the

[33] Department of Justice of Gia Lai province

[34] Binh Phuoc People's Committee, Department of Justice of Gia Lai province, Department of Justice of Ha Nam province, Department of Finance of Da Nang City, Department of Agriculture and Rural Development of Dien Bien province, Delegation of Dien Bien People's Council, Department of Information and Communications of Dien Bien province

[35] Department of Justice of Vinh Phuc province and State Bank of Ha Giang province

[36] For example, Hai Phong City People's Committee, Soc Trang Provincial People's Committee, Department of Justice of Binh Thuan province, Ministry of Foreign Affairs, Ministry of Planning and Investment, Ben Tre Provincial People's Committee, Binh Phuoc Provincial People's Committee, Hai Duong Provincial People's Committee, Lao Cai Provincial People's Committee, Quang Ninh Provincial People's Committee, Tuyen Quang Provincial People's Committee, Department of Justice of Binh Dinh province, Department of Justice of Lai Chau province, Department of Justice of Phu Tho province, Department of Justice of Quang Ninh province, Department of Justice of Soc Trang province, Department of Home Affairs of Bac Ninh province, Department of Science and Technology of Da Nang city, Department of Labor, Invalids and Social Affairs of Lao Cai province, Department of Labor, Invalids and Social Affairs of Bac Lieu province, Department of Labor, Invalids and Social Affairs of Ninh Binh province, Department of Labour, Invalids and Social Affairs of Quang Binh province, Department of Labour, Invalids and Social Affairs of Tuyen Quang province, Department of Natural Resources and Environment of Nghe An province and Committee on Ethnic Minority Affairs of Dien Bien province.

information.^[37] Some agencies proactively sent the requested documents in both PDF and WORD formats. This can better support citizens' access to information, especially for those with visual disabilities or unable to read the official Vietnamese language.^[38]

Regarding the feedback attitude, most civil servants handling the requests for information responded politely to the Research Team members. In many cases, they showed their understanding of the provisions of the LAI and their willingness to support citizens.

2.4. Some challenges in the implementation of the Law on Access to Information

The findings of the fifth evaluation continue to show certain limitations in the implementation of the LAI as follows:


1) Conflicts exist between the LAI - considered the general law on citizens' right to information and several special laws. Currently, special

laws also regulate access to information for citizens and foreigners studying and living in Viet Nam. Therefore, there are some inconsistencies in the requirements and procedures for disclosing and providing information upon request between these laws. These conflicts make it difficult for people to determine which provisions in the general or special laws to be applied when requesting information from state agencies.

2) Many state agencies have not yet developed a dedicated section on access to information, the list of information to be disclosed, and internal regulations on information disclosure and information provision. The findings show that 328/438 reviewed state agencies have not yet set up an access to information section on their portals/websites (accounting for 74.9%), and 362/438 state agencies have not developed a list of information to be disclosed (accounting for 82.6%). In addition, the Research Team has not found regulations on information provision on the portals of 353/438 agencies

[37] For example, Lang Son Provincial People's Committee, Department of Justice of Thua Thien Hue province, Department of Culture, Sports and Tourism of Bac Kan province, Department of Industry and Trade of Bac Kan province, Department of Finance of Da Nang city, Department of Agriculture and Rural Development of Da Nang city, Department of Information and Communications of Da Nang city, Department of Foreign Affairs of Da Nang city, Department of Labour, Invalids and Social Affairs of Gia Lai province, Department of Natural Resources and Environment of Cao Bang province and Department of Natural Resources and Environment of Ha Tinh province.

[38] For example, Lang Son Provincial People's Committee, Department of Justice of Tra Vinh province, Department of Labor, Invalids and Social Affairs of Quang Binh province, Department of Labor, Invalids and Social Affairs of Ca Mau province, Department of Natural Resources and Environment of Thai Binh province, Department of Natural Resources and Environment of Quang Tri province, Department of Natural Resources and Environment of Ha Tinh province, Department of Natural Resources and Environment of Cao Bang province, Department of Home Affairs of Da Nang city, Department of Justice of Quang Binh province, Hai Duong Provincial People's Committee of province and Ca Mau Provincial People's Committee.



(accounting for 80.6%) and the information about the focal point for information provision on the portals of 334/438 agencies (accounting for 76.3%). Many agencies that have developed access to information sections have these sections designed ineffectively, and there is a lack of information synchronization between localities or state agencies in the same locality. This shows a discrepancy among agencies in understanding the LAI's provisions.

3) People still face many difficulties in accessing information. The Research Team did not find the portals of several state agencies during the review, indicating a possibility that some agencies have not had a portal yet or it is difficult to find the portals of these agencies on the popular Google search page. Some portals also lack supporting functions, such as reading articles or texts out loud for the elderly, people with visual disabilities, and people not fluent in the official Vietnamese language. In addition, people might have to consider sending requests for information by post instead of via email to avoid the risk of not

receiving responses from state agencies. As a result, problems might arise, such as the extra time and cost incurred when people must go directly to state agencies or send letters by post to request information.

4) Technical limitations persist on many state agencies' portals. Some portals failed to respond promptly (e.g., researchers received the message "This website cannot be accessed. [Web address] takes too long to respond"), or researchers encountered inaccessibility errors (e.g., "502 Bad Getaway", "Page under maintenance"). The search bar of some portals did not work properly either. For example, when researchers looked up "Regulations on information provision" on these sites, some did not return results or returned incorrect results that did not contain the keyword. In addition, it is still a common practice for civil servants to use personal email to respond to information requests due to limitations in the IT infrastructure that cannot afford business email addresses.

3. RECOMMENDATIONS

Based on the achievements and challenges in the implementation of the LAI that have been outlined in the evaluation, to implement this Law more effectively, the Research Team recommends that:

1) The Government directs the addition of procedures for information provision at the request of citizens to the set of administrative procedures that the Government is working to promote at state agencies at all levels. At the same time, instruct the Government Office, ministries, ministerial-level agencies, and provincial -level People's Committees to make the LAI a priority so that the Coordinating Council for Legal Dissemination and Education at all levels can devote resources to the implementation of this Law, especially at state agencies.

2) The Ministry of Justice (MOJ) organizes discussions with representatives of relevant state agencies to evaluate the effectiveness of the implementation of the LAI after five years of its entry into force to identify challenges and propose solutions. Strengthen


dissemination and organize trainings on the LAI for state agencies and focal points for information provision. In particular, emphasize the nine categories of actions each state agency needs to do and instruct the standardization of the access to information section in accordance with the LAI and Decree No. 13/2018/NĐ-CP. In addition, there should be specific guidelines defining conditionally accessible and non-accessible information to avoid abuse of these provisions to limit the provision of information to citizens.

3) The Ministry of Information and Communications shortly issue guidelines to ensure uniformity in interface design of portals and consistency in information provision activities in the online environment following the provisions of the 2016 LAI, Decree 13/2018/NĐ-CP, Decree No. 42/2022/NĐ-CP, and Circular 26/2020/TT-BTTTT.

4) The People's Committees of provinces and municipalities establish a working group

[39] Article 6 LAI

[40] Article 7 LAI



consisting of the Department of Justice as a standing member and other entities responsible for providing information in their respective localities to promptly discuss, guide, settle, or propose guidelines on issues related to the implementation of the LAI. In addition, continue to urge the responsible entities to fully implement the provisions of this Law.

5) The National Assembly and People's Councils at all levels promote the monitoring of the assurance of citizens' right to information as prescribed in Article 13 of the LAI and request the Government and People's Committees at all levels to include contents related to the implementation of this right in their annual socio-economic development reports to be submitted to the National Assembly and the People's Council.

6) Socio-political organizations add the content of monitoring the implementation of the LAI, especially the implementation of the nine categories of actions each state agency needs to do in the 2024 monitoring plan. In addition, disseminate the LAI and Decree No. 42/2022/NĐ-CP to their members and citizens, emphasizing citizens' right to information and the responsibilities and obligations of state agencies in disclosing and providing information in a timely, complete, and accurate manner.

7) Non-governmental organizations and research institutes exercise their right to request information in accordance with the provisions of the LAI, thereby motivating state agencies to follow the procedures outlined in the LAI for information provision and disclosure.

