

CPPS Policy Factsheet: Freedom of Information

CPPS is pleased to bring to you its “**CPPS Policy Fact Sheet**” on freedom of information. In this factsheet, we will review the checkered history of freedom of information in Malaysia, and various related issues which continue to be relevant. You can [access other policy factsheets on the CPPS website](#).

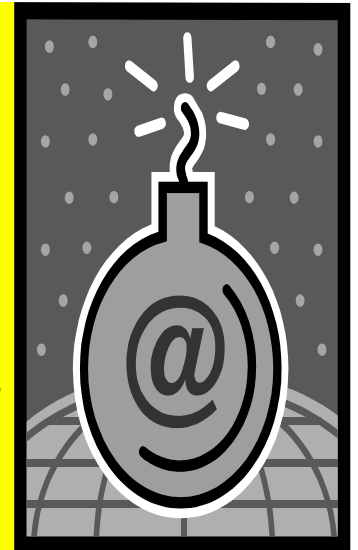
BACKGROUND

Freedom of information is **not guaranteed** in Malaysia either constitutionally, nor through any specific legislation. Freedom of information legislation sets rules on **access to information or records held by government bodies**. In general, such laws define a **legal process** by which government information is required to be **available to the public**. Over 70 countries around the world including **China, India and Thailand** have implemented some form of such legislation, and other countries are working towards introducing such laws.

The Malaysian government has repeatedly **rebuffed requests** for FOI legislation from opposition Parliamentarians, civil society representatives and journalists' groupings. Its chief argument is that access to information could **"affect race relations"** within the multi-ethnic population.

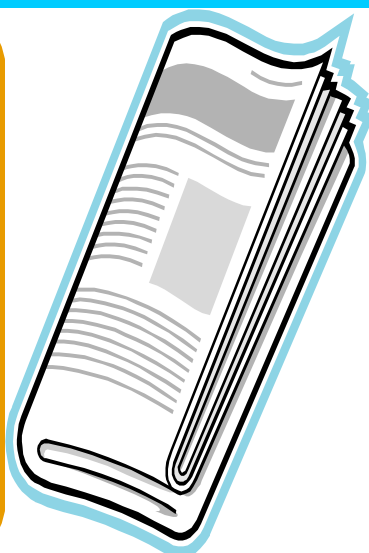
The Official Secrets Act and several other related laws **limit access to any information deemed an official secret** by the government. Those who make public such information risk **criminal prosecution**, and may be subject to **stiff fines or even imprisonment**.

Rare exceptions have been made in releasing classified information. The most recent examples were the **air pollution index** readings during environmental haze and the **names of holders of approved permits** for foreign luxury car imports.



FLASH POINTS

- Under the **Official Secrets Act 1972** government documents fall under one of five categories. Only those labeled as “open” may be made public; publishing documents under the other four categories is a **crime punishable by mandatory jail time**.
- Laws such as the Printing Presses and Publications Act 1984, the Sedition Act 1949 and the Internal Security Act 1960 can also be **applied to those who release classified information**, subjecting them to further criminal penalties.
- The government defends this legislation, citing **public immaturity, potential for racial discord, and national security**.
- Some state governments, namely Penang and Kelantan, have been looking into tabling **freedom of information legislation at the state level**. Constitutionally, state law cannot be inconsistent with federal law, complicating these efforts.
- Various documents, ranging from information on armed forces tendering to the air pollution index to toll tariff agreements are or have been classified as **state secrets**, making information on government operations and projects scarce and often **unavailable to the public**.
- Much of the media is **owned, directly or indirectly, by political parties from the ruling Barisan Nasional coalition**, further hampering investigative journalism.
- Independent media is often subject to **self-censorship** to avoid running afoul of restricting legislation. Bloggers have been **detained or sued** for postings on their websites, while more traditional media such as newspapers have been **shut down**.
- Books are subject to banning, and the rate of **book bans** has only increased since Abdullah Badawi assumed office as Prime Minister.
- **Alternative media** is playing an increasingly important role in disseminating information; the internet, theatre and independent films are playing greater roles in influencing public opinion.

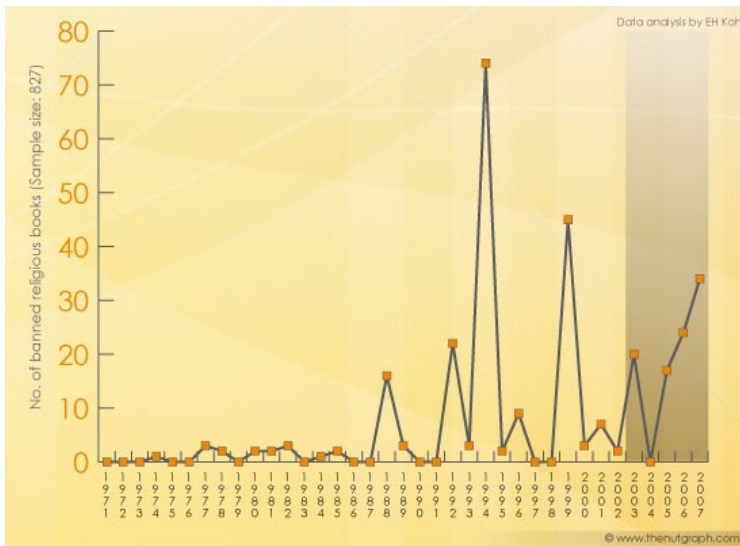


BASIC STATISTICS and FACTS

- Under Article 19 of the **Universal Declaration of Human Rights**, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, **receive and impart information and ideas** through any media and regardless of frontiers.”
- Article 10 of the **Federal Constitution** states that subject to certain conditions, “every citizen has the right to **freedom of speech and expression**”.
- In the 2007 **Press Freedom Index**, Malaysia dropped from 92nd in 2006 to **124th**, out of 169 countries surveyed.
- On Freedom House’s **Global Press Freedom** ranking for 2008, Malaysia placed **141st** out of 195 countries.
- The **Sedition Act, Internal Security Act** and **Official Secrets Act** impose strong restrictions on the press and dissemination of information. Under the Official Secrets Act, a government document is classified as open, restricted, confidential, secret, or top secret. Only “open” documents are available to the public, and **publishing or possessing** all other documents is a **crime**.
- Classification of documents under the Official Secrets Act is **final and not subject to judicial review**.
- The Broadcasting Act 1988 allows the Information Minister to **decide who can own broadcast stations**.
- The Printing Presses and Publishing Act 1984 (PPPA) requires all print periodicals to **obtain a permit from the Home Affairs Minister**. The permit must be **renewed yearly** and can be **revoked or suspended at any time** for various reasons; the decision of the Minister is **final and not subject to judicial review**.
- Maliciously **publishing false news is a criminal offense**; however, it is presumed that all false news is published maliciously, and the onus is on the defendant to prove otherwise.
- Under section 7(1) of the PPPA the Home Affairs Minister has the **power to ban the publication of any book**. From 1971 to mid-2007 the government **banned 1,446 books**.

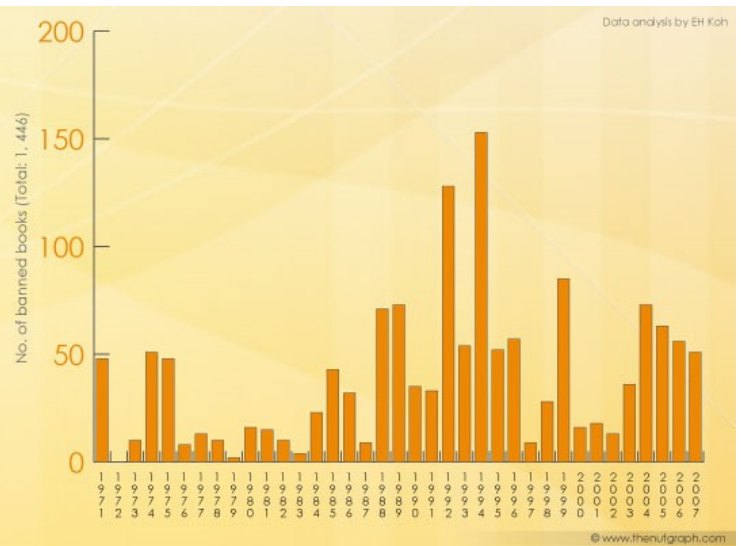
Number of Banned Religious Books Year-by-Year

Source: www.thenutgraph.com



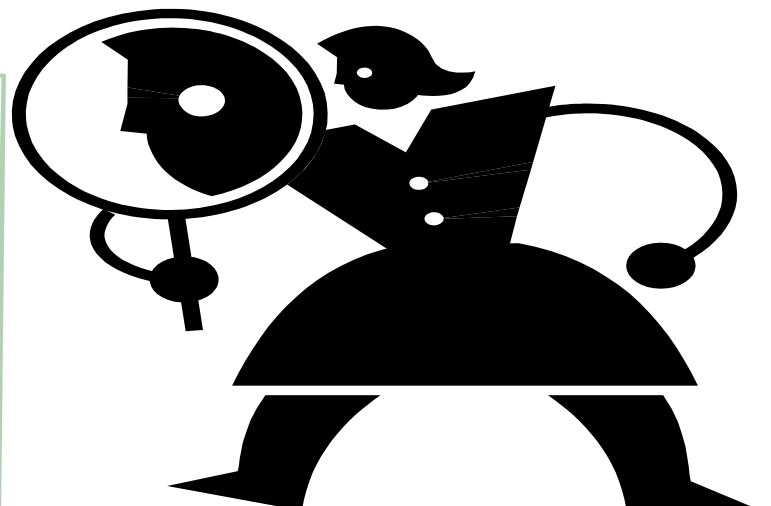
Total Number of Banned Books Year-by-Year

Source: www.thenutgraph.com



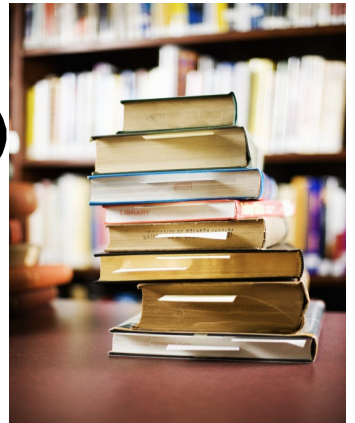
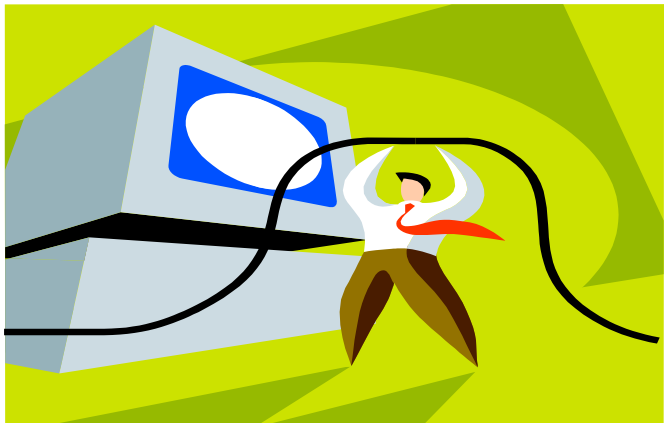
WHO ARE the PLAYERS

- The Ministry of Home Affairs performs a number of functions under the PPPA, including **issuing and revoking publishing licences**, and **banning books**. The Ministry also has the power to **summarily detain** anyone it considers a threat to national security under the Internal Security Act.
- The Information Ministry **determines and regulates content** which appears on government-owned media outlets.
- The Ministry of Energy, Water and Communications **regulates the communications sector** through the Communications and Multimedia Commission.
- **Umno**, the main party in the ruling coalition, owns the **Media Prima** conglomerate, which through its subsidiaries controls more than **half the television viewership** in the country, and claims to have a **market share of 50%** in the newspaper market through the New Straits Times Press stable of periodicals.
- **MCA**, a major component party of the ruling coalition, owns **the most widely read English daily** (The Star), and several Chinese newspapers including Nanyang Siang Pau and China Press.



AROUND the WORLD

- In Thailand Article 58 of the Constitution recognises the “**right to know**”. The Official Information Act of 1997 guarantees citizens **access to public information**, and applies to all public agencies, as well as individuals or corporations performing official duties under a public agency.
- In India the Right to Information Act 2005 gives citizens **access to the records of the central and state governments**. Citizens may request information from a public authority, which must in turn reply within 30 days. Public authorities must computerise their records and **proactively publish information** to minimise hassle to citizens. Previously, the Official Secrets Act 1923 applied, but the new law has since relaxed it.
- In the UK the Freedom of Information Act 2000 introduces the “right to know” in relation to public bodies. Since the introduction of the act, **numerous corruption scandals** have come to light. However, an amendment has been introduced in the House of Commons which may exempt MPs from the provisions of the act.
- In the US, the Freedom of Information Act was passed in 1966, mandating that federal agencies **cooperate with public requests for information**. Agencies are **subject to penalties** if they hinder petitions for information. Exemptions exist for national defense and protection of personal privacy.
- In China, the government promulgated Regulations of the People's Republic of China on Open Government Information in 2007. Although not a fully binding law, the regulations lay down a **framework for freedom of information**, which will apply not only to the central but also provincial and local governments.



CRACKDOWNS and RESTRICTIONS

- Over the years a variety of documents have been classified as official secrets. Information on military tenders, the air pollution index, water concessions, and audited accounts of government-linked companies have all been or still are official secrets.
- **All records of Cabinet meetings, state executive council meetings**, and documents related to national security, defence or foreign relations are **automatically classified as official secrets**.
- **Draft legislation** is often classified as an **official secret** until it is tabled in Parliament; even MPs do not have access to the draft, or have access only under very limited and restricted circumstances.
In 1997, the **Air Pollution Index** was **classified as an official secret**, limiting public access to information on air quality. The classification was only repealed after **public outcry** in 2005 during a resurgent outbreak of haze.
- In 1979, prominent opposition leader **Lim Kit Siang** was **convicted of offenses under the Official Secrets Act** after he made public information on allegedly corrupt dealings between the government and a Swiss arms company.
- In one of the more recent high-profile cases involving the Official Secrets Act, the offices of opposition leader Anwar Ibrahim were **raided by police looking for state secrets** after Anwar made public **classified information on toll agreements** between the government and concessionaires.
- The **press has also been threatened** with the Official Secrets Act; in 2008, the government threatened action against several newspapers which published **excerpts from the report of the Royal Commission** on the Lingam Video Tape before the government officially published the report.
- In 1988, **Operation Lalang** resulted in the **suspension of The Star** and two other major newspapers. Numerous journalists, social activists and politicians were detained under the **Internal Security Act**.
- In 2006, the **Sarawak Tribune** was **banned** after it republished the infamous cartoons of the Prophet Muhammad from the Danish Jyllands-Posten newspaper.
- That same year, the government **forced China Press to sack two of its top editors** or risk the suspension of its licence after the newspaper falsely reported that a woman who had been videotaped while in police custody was a Chinese national.
- In August 2007 the Tamil newspaper **Makkal Osai** was **banned for a month** after publishing a picture of Jesus holding a cigarette and beer can.
- In 2008, the government asked Herald, a Catholic newspaper to explain why it was reporting on political issues. The newspaper had previously **almost lost its press licence** over its use of the word “Allah” for God in its Malay edition.
- The Home Affairs Ministry has **unlimited authority to ban the publication of any book**; from 2003 to mid-2007 alone, 279 books were banned. Most of these books dealt with religion, and had been sold openly without any incident prior to banning, in some cases for years or even a decade, as in the case of Karen Armstrong's A History of God. The most recent high-profile banning was of Norani Othman's Muslim Women and the Challenge of Islamic Extremism, first published in 2005. The Ministry website has a [partial list of banned books](#).
- The government has been **reluctant to televise live proceedings from Parliament**; after the 2008 general elections, it relented and agreed to televise the first half-hour of question time in the Dewan Rakyat daily.
- Although the government has promised not to censor the internet, **bloggers and other internet media outlets** have come under attack. Jeff Ooi and Ahirudin Atan, two prominent bloggers, were **sued** by the New Straits Times Press for defamation. Other bloggers and webmasters such as Raja Petra Kamarudin and Nathaniel Tan have been **arrested and remanded** under the Sedition Act or Official Secrets Act, in some cases not even for their own postings, but comments left on their blogs. The Prime Minister has called bloggers “liars”, while other Ministers have **threatened to use the Internal Security Act** against them.

WHY an FOI ACT is NECESSARY

- **Communicating and receiving information** and opinions is a **fundamental right of citizens**, as enshrined under Article 19 of the Universal Declaration of Human Rights. Moreover, the Federal Constitution acknowledges the **right to freedom of speech and expression**.
- Making information on government activities and operations readily available would **reduce corruption and abuse of power**. The increased transparency would **hold public servants accountable** for their actions and encourage responsibility.
- Showing that the government has **nothing to hide** would increase **public confidence** in the government and shore up its credibility.
- Current legislation is **broadly worded and arbitrary**, often presenting **significant challenges** to members of the public seeking to know how their taxes are being spent.
- Under the Official Secrets Act almost **any government document can be considered a secret**, and possession of its information therefore illegal, **without any checks or balances** to ensure that secrecy is in the public interest.
- There is currently **no clear or standard process** to obtain public information, nor any obligation on the part of a public agency to cooperate with such requests. A standardised petition process would **expedite the release of information** while protecting secrets when it is in the national interest to do so.
- The **arbitrary power** of the government to muzzle the press and to control the media poses a **direct threat to the right of citizens** to know how their elected government is using its authority and their tax monies.



POLICY RECOMMENDATIONS

- A **Freedom of Information Act** should be pursued and legislated at **both Federal and State** levels.
- A **Whistleblowers' Protection Act** should be passed to protect those who disclose information so as to expose malpractice and matters of similar concern
- The **Official Secrets Act** should be **restricted** for use on material that are strictly in connection with seriously endangering national security, and in connection with defence and foreign relations. The rule of thumb should be for citizens to have **maximum access to information** especially information related to public interest - with particular exceptions, which should be clearly articulated.
- **Draft legislation should not be classified** under the Official Secrets Act, so that Parliamentarians and the public should be given the opportunity to debate and analyse Bills before they are passed. The business community would also benefit from this.
- **Do away with the practice of book banning**, in conjunction with national efforts to stimulate creativity, innovation and critical thinking. (In the age of globalisation, books are readily bought or read online.)
- The **Sedition Act** should be **amended to allow for greater freedom of expression** and reasonable, constructive critique of national policy.
- Establish a **Parliamentary Select Committee on Media Law Reform** to review all media laws to ensure all media regulations are justified.
- The Printing Presses and Publications Act (PPPA) should **only require media outlets to register** with the Information Ministry without printing license and annual publishing permit requirements.
- The government should implement the **recommendations of the Centre for Independent Journalism's** letter of demand calling for freedom of expression and access to information, signed by almost 40 other civil society organisations. Read more [at their website](#).

PARTY POSITIONS

Barisan Nasional

- Supports current legislation, citing national security and public order
- Does not view the Official Secrets Act as a threat to transparency and efficiency, citing Anti-Corruption Agency access to state secrets
- Supports letting the Cabinet exempt documents from official embargoes on a case-by-case basis.

Pakatan Rakyat

- Opposes the Internal Security Act, Official Secrets Act, Sedition Act and PPPA.
- Supports a Freedom of Information Act and whistle blower protection legislation.