

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights of persons with disabilities and the Special Rapporteur on the situation of human rights defenders

Ref.: OL MYS 1/2026

(Please use this reference in your reply)

30 September 2026

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights of persons with disabilities and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 61/14, 62/7 and 61/22.

We would like to bring to the attention of your Excellency's government our observations concerning the Freedom of Information Bill 2026 (D.R. 19/2026) (hereinafter, "the Bill"), which was tabled for first reading in the Dewan Rakyat on 13 July 2026 and subsequently referred to a Parliamentary Special Select Committee (PSSC).

We take note of the decision to subject the Bill to further parliamentary and stakeholder scrutiny, as well as the Government's stated commitment to transparency, accountability and institutional reform. While efforts aimed at strengthening transparency and access to information are welcome, we wish to express concern that several provisions of the Bill may not be consistent with international human rights standards, including regarding access to information and freedom of expression.

Particular concerns arise as to whether the proposed framework adequately safeguards individuals' right to seek, receive, and impart information held by public authorities, a right recognised as an integral component of freedom of expression. Questions also remain as to whether the Bill sufficiently recognises and protects a substantive and enforceable right of access to information, as well as the rights to freedom of opinion and expression.

Certain provisions appear to characterise access to information primarily as a procedural mechanism rather than as a right, while other aspects of the framework may limit who can request information, impose conditions on requests, establish broad restrictions on disclosure, affect the effectiveness of review and oversight mechanisms, and impose liability in relation to certain uses and dissemination of information. Taken together, these features may affect the practical enjoyment of the right to seek, receive and impart information and, consequently, the effective exercise of the right to freedom of expression, and may warrant further consideration in light of relevant international human rights standards, as envisaged, among others, by article 19 of the International Covenant on Civil and Political Rights (ICCPR) and the Human Rights Committee's general comment No. 34 on freedoms of opinion and expression (CCPR/C/GC/34, paras. 2, 3, 11 and 13).

More specifically, the observations relate to the nature and scope of the right established by the Bill, restrictions on access requests, the breadth of certain exemptions, the effectiveness of review and oversight mechanisms, and provisions that may affect the use and dissemination of information.

The comments set out below are intended to contribute to the ongoing consideration of the Bill and to support efforts to ensure its consistency with relevant international and regional human rights standards and principles.

Background

The Bill consists of 23 clauses. It would apply principally to the Federal Government and specified federal entities; establish appointed officers to process written requests; create internal review, Ombudsman review and judicial review; list exempted information; provide criminal offences; and permit public authorities to publish certain information proactively. On 4 August 2026, a specially constituted Parliamentary Committee began a two-month review process, with recommendations expected to be presented during the next parliamentary sitting. We have taken note that this review process provided an opportunity to consider whether the Bill may be further strengthened to ensure consistency with relevant international human rights standards.

The analysis that follows is based on our independent assessment of the Bill against the standards outlined in the following section.

Applicable international and comparative standards

Article 19 of the Universal Declaration of Human Rights provides authoritative international guidance to protect the freedom to seek, receive and impart information and ideas. The Human Rights Committee has clarified that article 19 of the International Covenant on Civil and Political Rights embraces a right of access to information held by public bodies and, in appropriate circumstances, by other entities carrying out public functions (general comment No. 34, paras. 18-19). In addition, Malaysia is bound by article 13 of the Convention on the Rights of the Child, article 21 of the Convention on the Rights of Persons with Disabilities, and articles 10 and 13 of the United Nations Convention against Corruption. Article 23 of the ASEAN Human Rights Declaration also protects the freedom to seek, receive and impart information.

Across international and regional human rights systems, right-to-information standards have coalesced around a common set of principles, including maximum disclosure; universal access without the need to demonstrate an interest or purpose; broad institutional and material scope; simple, accessible and low-cost procedures; narrowly drawn exceptions subject to harm and public-interest tests; partial disclosure; independent and effective review mechanisms; sound records management; proactive publication of information; and protection for good-faith disclosures made in the public interest.

These elements are also reflected in the Inter-American Model Law 2.0 on Access to Public Information¹; the Principles on the Right of Access to Information

¹ Particularly articles 1-24, 25-49 and 50-71.

adopted by the Inter-American Juridical Committee (CJI/RES. 147 (LXXIII-O/08)); the Model Law on Access to Information for Africa and principles 26-36 of the 2019 African Declaration on Freedom of Expression and Access to Information; the Council of Europe Convention on Access to Official Documents (Tromsø Convention)²; and Among other standards, UNESCO's monitoring framework for Sustainable Development Goal indicator 16.10.2, assesses legal guarantees, limited exemptions, oversight, appeals, record keeping and reporting. The Global Principles on National Security and the Right to Information (Tshwane Principles) provide additional guidance where secrecy or national security is invoked, including the State's burden of proof, the prohibition of categorical institutional exclusions, time limits on classification, independent oversight, and protection of public-interest disclosures (principles 3-5, 9-17, 31-33 and 40-48). These instruments provide further useful guidance regarding legislative safeguards that contribute to the effective protection of the right to seek, receive and impart information held by public authorities.

Principal concerns

Failure to recognise a substantive right and the principle of maximum disclosure

Clauses 6(2) and 22 raise significant concerns regarding the extent to which the Bill recognises and gives effect to the right of access to information, including as an integral component of the rights to freedom of opinion and expression. In particular, Clause 6(2) states that the permitted purposes do not confer on any person, the press, or the media a right of access to information, while Clause 22 provides that nothing in the Act shall be construed as creating or recognising a fundamental liberty under Part II of the Federal Constitution. The Explanatory Statement reinforces this position by describing the Bill as a procedural framework that neither recognises a substantive right of access to information nor protects rights associated with freedom of the press.

In our view, Clauses 6(2) and 22 may discourage officials and courts from adopting a human rights-based interpretation of the legislation and could weaken the principle of maximum disclosure. We therefore encourage consideration of amendments to expressly recognise the right of access to information and to establish a clear and enforceable presumption in favour of disclosure.

Further consideration could be given to clarifying the objectives of the legislation, including its role in promoting transparency, accountability, and public participation in governance, as well as supporting a human rights-consistent interpretation of its provisions.

Unduly narrow personal, institutional and material scope

Clause 5(1) limits the right to request information to Malaysian citizens aged 18 years or older, while clauses 5(3)(a) and 7 require applicants to provide identity-card details and proof of citizenship. Clauses 5(2) and 5(3)(b) do not appear to provide an independent basis for children, non-citizens, stateless persons, refugees, asylum-seekers or legal persons to exercise the right of access to information. These restrictions raise concerns in light of the principle that access to information should be

² Articles 2-10.

guaranteed to all persons without discrimination or distinctions based on nationality, legal status or other protected characteristics. The exclusion of children further raises concerns regarding the enjoyment of their right to seek and receive information under article 13 of the Convention on the Rights of the Child. In addition, mandatory identity-verification requirements may have a chilling effect on requests relating to sensitive matters and could be limited to information strictly necessary for the processing and delivery of a response. Consideration could also be given to permitting anonymous or pseudonymous requests where this can be accommodated without undermining the effective administration of the access-to-information regime.

Clauses 2(1) and 3 define the institutional scope of the Bill primarily by reference to the Federal Government, the Parliamentary Service, federal statutory bodies and local authorities in the three Federal Territories. However, they do not clearly extend its coverage to all parliamentary and judicial functions, constitutional and independent bodies, State governments, most local authorities, government-linked or government-controlled entities, oversight institutions, or private bodies that perform public functions or receive substantial public funding. This approach appears narrower than international standards, which generally favour a functional model that extends access obligations across all branches and levels of government and, where public functions are exercised or substantial public funds are involved, to entities beyond the formal public sector.

The definition of "information" in clause 3 is similarly restrictive. By limiting its scope to information contained in an "official document" and excluding from the outset categories of information referred to in clause 9, the Bill may prevent certain information from falling within the access regime altogether. International standards generally apply to all recorded information held, controlled, or required to be held by a covered entity, regardless of its form, origin, date, or classification. Consideration could therefore be given to ensuring that limitations on disclosure are addressed through the exceptions regime and assessed on a case-by-case basis, rather than through categorical exclusions embedded in the definition of information itself.

Purpose-based access, excessive formalities, fees and delay

Clauses 5(3)(e), 6 and 18(1)(a) make the stated purpose of a request central both to access and to potential criminal liability. Clause 6 limits access to specified purposes and, under its residual category, requires applicants to demonstrate a "proper and tangible interest" and prejudice caused by a public authority. These requirements appear difficult to reconcile with the principle that individuals seeking information should not be required to justify their requests or demonstrate a direct, personal or legally recognised interest in the information sought. They may also create differentiated and potentially uncertain conditions of access for journalists, researchers and members of the public. Consideration could therefore be given to reviewing clauses 5(3)(e), 6 and the related offence in clause 18(1)(a) in light of the principle that access to information should not depend on the purpose for which information is requested.

Clause 5(3) requires requests to be made in writing and to contain extensive personal information, while clause 5(4) requires payment of a prescribed fee at the point of submission. The Bill does not appear to guarantee the possibility of oral, electronic or assisted requests, access in alternative formats, reasonable accommodation for

persons with disabilities, or fee waivers in appropriate cases. These requirements may create unnecessary barriers to access. International standards generally favour simple and accessible procedures, assistance for requesters facing literacy, language or disability-related barriers, and fees limited to reasonable costs associated with the reproduction and delivery of information.

Under clauses 8(1) and 8(2), a public authority may take up to 15 working days to decide a request and a further 14 working days to provide the information, resulting in a total period of 29 working days before any extension is applied. Clause 8(4) permits an additional 21 working days, or “any other reasonable period”, while clause 8(5) allows notice of an extension to be given only after the original disclosure period has elapsed. Even requests concerning life or liberty under clause 8(3) may be subject to an additional 14-working-day period between the decision to grant access and disclosure of the information. The Bill further appears not to establish a specific timeframe for disclosure following a deferment of access under clause 10, nor does it provide clear deadlines for determinations under the internal review procedure in clause 11 or for external review proceedings before the Ombudsman under clauses 13 and 14. Taken together, these provisions may result in significant delays and risk undermining the practical and effective enjoyment of the right of access to information.

Consideration could be given to requiring disclosure as soon as possible and within a single overall statutory deadline, limiting extensions to clearly defined exceptional circumstances, and requiring advance notification and justification of any extension. Further consideration could be given to requiring public authorities, where reasonably practicable, to transfer misdirected requests to the competent authority rather than refusing them under clause 9(1)(c). Clarification could also be provided regarding the terms “vexatious” and “unreasonable” in clause 9(1)(e), including through narrowly defined and objective criteria designed to prevent arbitrary or overly broad application.

Overbroad exceptions and preservation of secrecy laws

Clauses 2(3), 3, 9 and 12 establish a regime of exclusions and exemptions that raises concerns in light of the principle of maximum disclosure. Clause 12(a) excludes from disclosure all official secrets and any information protected under other written laws, while the Explanatory Statement confirms the continued primacy of the Official Secrets Act 1972 and other secrecy provisions. Clauses 12(b)-(q) further provide for a series of broad, class-based exemptions covering, among other matters, law enforcement, commercial and economic interests, research, confidential information, judicial and tribunal proceedings, deliberative processes, personal information, unpublished communications, and journalistic source material held by public authorities. Several of these exemptions are framed in broad and categorical terms, may extend beyond what is necessary to protect a legitimate aim, and do not appear to require a demonstration that disclosure would cause specific, probable and substantial harm to the protected interest.

International and comparative standards require a closed and narrowly interpreted list of legitimate interests, an individualised harm test, a mandatory public-interest override, the burden of justification on the authority, and disclosure of non-exempt portions. For instance, the Tshwane Principles require a real and identifiable

risk of significant harm for national-security restrictions, prohibit categorical institutional exclusions and require classification to last only as long as necessary.³

The Bill does not appear to provide for a general harm test, a public-interest override, severability, temporal limitations on secrecy, declassification procedures, or explicit safeguards for information relating to serious human rights violations, corruption, or other matters of significant public interest. Clause 12(n), for example, could exempt a broad range of opinions, advice, recommendations and consultations generated in the course of deliberations without requiring a demonstration that disclosure would cause specific and substantial harm to an ongoing decision-making process. Similarly, clause 12(m) appears capable of excluding extensive categories of information relating to judicial administration and proceedings without requiring a clear showing that disclosure would adversely affect the administration of justice or another protected interest.

These provisions raise concerns that the exemptions regime may permit the withholding of information in circumstances where disclosure would not result in demonstrable harm and may outweigh competing public interests in transparency and accountability. Consideration could therefore be given to ensuring that all exemptions are narrowly construed and subject to a harm-based assessment and a mandatory public-interest override. Further consideration could be given to requiring the disclosure of any non-exempt portions of a record, introducing mechanisms for the periodic review and declassification of protected information, and establishing appropriate safeguards to govern the interaction between the Bill and other statutory secrecy provisions.

Incomplete and insufficiently independent review

Clause 11 requires requests for internal review to be submitted to the head of the same public authority within 14 working days and does not establish a timeframe for the determination of such reviews. Clauses 13 and 14 provide for external review by the Ombudsman; however, the Bill refers to an Ombudsman Act that had not yet been enacted when the Bill was tabled, does not specify accessible procedures for lodging complaints or time limits for their resolution, and does not clearly confer binding decision-making, enforcement, or compliance-monitoring powers. Most significantly, clause 15 excludes freedom-of-information reviews from the Ombudsman's investigatory powers. In addition, clause 14 is expressly subject to clause 9, while the Explanatory Statement indicates that information protected under secrecy legislation would fall outside the Ombudsman's jurisdiction. Taken together, these limitations risk depriving requesters of access to an independent and effective remedy and may undermine the practical effectiveness of the right of access to information.

Relevant international and comparative standards on access to information generally require a prompt, accessible, and inexpensive appeal before a body independent of the authority that denied access, with power to inspect all information, including classified material; compel evidence, order disclosure, remedy delay and excessive fees and monitor compliance.⁴ Clause 16 preserves judicial review, which is positive, but it also appears to permit both public authorities and requesters to challenge

³ Principles 3-5 and 9-17.

⁴ Inter-American Model Law 2.0, arts. 47-66; Tromsø Convention, art. 8; African Model Law, art. 45; UNESCO's oversight and appeals criteria; Tshwane Principles 31-33.

Ombudsman decisions, potentially delaying disclosure. Consideration could be given to establishing an independent oversight body through primary legislation and vesting it with clear guarantees of institutional independence, adequate resources, comprehensive investigative powers, and effective remedial authority. Consideration could also be given to restoring full investigative powers and authorising the issuance of binding disclosure orders.

Further clarification may be warranted as to whether review mechanisms will be available in respect of all aspects of the processing of requests, including delays, fees, the form of access provided, and administrative silence, rather than being limited solely to decisions refusing disclosure.

Secrecy offences, criminalisation of subsequent use and inadequate protections

Clauses 17(1)(b), 17(2) and 18(1)(a) raise serious concerns regarding the exercise of the right to freedom of expression. These provisions appear to criminalise the disclosure of information relating to an access request, as well as the use of information for a purpose other than that originally specified, with penalties of up to five years' imprisonment, a fine of up to RM 100,000, or both. As a general rule, information lawfully disclosed by a public authority should remain available for subsequent use, analysis, reporting, research and dissemination. The imposition of purpose-based criminal sanctions on the use or dissemination of lawfully disclosed information appears difficult to justify as a necessary and proportionate means of pursuing a legitimate aim and risks unduly restricting the exercise of freedom of expression.

In this regard, the Tshwane Principles emphasise that disclosures made in the public interest should be protected and that journalists, human rights defenders and other persons outside government should not be subject to prosecution solely for receiving, possessing or disseminating classified information, provided that they were not involved in obtaining it through unlawful means (Principles 40-48). The African Declaration of Principles on Freedom of Expression and Access to Information similarly recognises the importance of protecting public-interest disclosures, while articles 67 and 68 of the Inter-American Model Law 2.0 distinguish between conduct that obstructs access to information and conduct that promotes transparency and accountability. Although clause 20 provides public authorities and their officials with limited protection from civil liability for disclosures made in good faith, the Bill does not appear to afford comparable protection against criminal, disciplinary, administrative or employment-related repercussions for whistleblowers, requesters, journalists, or other individuals who disclose, receive or use information in good faith and in the public interest.

Clause 18(1)(c), which criminalises the intentional destruction, alteration, concealment or falsification of records to prevent disclosure, pursues a legitimate objective. At the same time, measures to address such conduct could form part of a broader framework of administrative and legal accountability for obstruction, repeated non-compliance, and failures relating to proactive disclosure obligations. Further safeguards may also be warranted to protect whistleblowers and other individuals who disclose information in good faith and in the public interest, including information concerning corruption, maladministration, or serious human rights violations. A review

of clauses 17(1)(b) and 18(1)(a) may likewise be appropriate to ensure that any sanctions comply with the requirements of necessity and proportionality and remain compatible with the rights to freedom of expression and access to information.

Discretionary proactive disclosure and missing implementation duties

Clause 21 provides that public authorities “may” publish specified categories of information and may do so through websites, print publications, digital media or any other channel considered appropriate. As drafted, proactive disclosure appears to be discretionary rather than a mandatory obligation. The provision does not establish a comprehensive publication scheme, timeframes for the regular updating of information, open-data requirements, accessibility standards, language obligations, enforcement measures, or consequences for persistent non-compliance. The Bill also does not appear to impose a general duty on public authorities to create, maintain, preserve, organise and retrieve records in a manner that facilitates the effective exercise of the right of access to information. These omissions may limit the practical effectiveness of the access-to-information framework, particularly for individuals who rely on proactive disclosure as a primary means of obtaining information of public interest. Consideration may therefore be given to strengthening proactive publication obligations and to establishing clear records-management duties to support transparency, accountability and the effective implementation of the Bill.

The Inter-American Model Law 2.0 requires active transparency, publication schemes, responsible officers, document management, reports, monitoring, training and formal education (arts. 5-10, 18-21 and 65-71). The African Declaration similarly requires proactive disclosure, records management, oversight and responsibility for non-compliance (principles 29-36). In this regard, UNESCO's SDG 16.10.2 framework identifies record keeping and reporting as a core component, and its 2025 guidance highlights autonomous oversight, access to data and digital tools. Articles 9 and 10 of the Tromsø Convention require measures to inform the public, train authorities, manage documents efficiently and publish official documents on authorities' own initiative.

Clause 21 could be further strengthened through the introduction of mandatory proactive disclosure obligations, including clearly defined publication categories and regular publication and updating schedules. Consideration may also be given to incorporating safeguards relating to accessibility, machine-readable and reusable formats, open-data publication where appropriate, the designation of responsible officials, responsiveness to the needs of persons with disabilities and marginalised groups, and effective mechanisms for monitoring compliance. In addition, information officers could be entrusted with broader responsibilities relating to implementation, requester assistance, records management, compliance oversight, and reporting, alongside their functions in processing individual requests.

Entry into force, regulation and territorial implementation

Clause 1(2) leaves commencement entirely to a date appointed by the Prime Minister, without establishing a statutory timeframe for the Bill's entry into force. Clause 23 further authorises the Prime Minister to regulate key aspects of the access-to-information regime, including the procedures governing requests and internal and external review mechanisms. As a matter of legal certainty and effective rights

protection, the essential elements of the access-to-information framework should be set out in primary legislation rather than determined through executive regulation. These provisions may therefore raise concerns regarding legal certainty and the timely, consistent and effective implementation of the framework. It may be useful to ensure that primary legislation clearly establishes the substantive right of access to information, its scope, applicable exceptions, procedural deadlines, fees, remedies, institutional powers and reporting obligations, while providing for commencement within a defined and reasonable period.

The federal limitation reflected in clauses 2(1) and 3 may also result in uneven access to information depending on the level of government that holds the information or the jurisdiction in which an individual resides. While due regard must be had to Malaysia's constitutional allocation of powers, opportunities may exist to promote the broadest possible application of access-to-information guarantees within the constitutional framework, including through cooperative arrangements that support consistent protection across States and local authorities.

The observations set out above identify a number of areas in which the Bill could be further strengthened and amended to enhance its consistency with international human rights standards especially relating to access to information and the rights to freedom of opinion and expression.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have regarding the analysis set out above.
2. Please explain whether the Government intends to amend clauses 6(2) and 22 to recognise the right of access to information as a substantive and enforceable right and to establish a presumption in favour of maximum disclosure.
3. Please indicate whether consideration is being given to revising clauses 5-7 so that every person, including children, non-citizens, stateless persons and legal entities, may request information without proving citizenship, identity, purpose, prejudice or a tangible interest.
4. Please explain whether consideration is being given to expanding the institutional and material scope of clauses 2 and 3 so as to cover all constitutionally permissible public bodies, including parliamentary and judicial functions, constitutional oversight bodies, entities exercising public functions or managing public funds, and information held or controlled in any form.
5. Please indicate whether the Government intends to simplify request procedures, remove the application fee, ensure accessible formats, guarantee assistance and reasonable accommodation, permit multiple submission channels, provide for prompt acknowledgement of requests

and applicants' preferred formats of disclosure, facilitate the transfer of misdirected requests, and shorten the decision and disclosure periods established under clause 8.

6. Please explain whether consideration is being given to amending clauses 9 and 12 to include an individualised harm test, a public-interest override, severability, burden of proof requirements, time limits and declassification procedures, as well as safeguards relating to information concerning serious human rights violations and corruption.
7. Please explain whether consideration is being given to reviewing the deferment provisions in clause 10, including the grounds relating to information released to the media and the absence of a defined maximum period for deferment of access.
8. Please clarify how the Bill will interact with the Official Secrets Act 1972 and other secrecy legislation, and whether consideration is being given to ensuring that restrictions on access satisfy requirements of legality, necessity, proportionality, harm and public interest.
9. Please provide information on the proposed Ombudsman legislation and explain whether consideration is being given to ensuring institutional independence, adequate resources, investigative powers, access to classified information, binding remedies, enforceable decision deadlines and effective oversight functions in relation to access-to-information requests, including in relation to delay, fees, format of access and administrative silence. Alternatively, please provide information if consideration is being given to establishing a specialised oversight body such as an independent Freedom of Information (FOI) Commission, mandated to manage appeals as well as to oversee the full implementation of the Act.
10. Please indicate whether consideration is being given to reviewing clauses 17 and 18(1)(a), and what protections may be established for whistleblowers, journalists, researchers, human rights defenders, civil society actors and other persons who receive, use or disclose information in good faith or in the public interest.
11. Please indicate whether consideration is being given to ensuring that information lawfully disclosed under the legislation may subsequently be analysed, reused and disseminated without undue restrictions, including through a review of clause 18(1)(a).
12. Please explain whether consideration is being given to strengthening clause 21 through mandatory proactive disclosure obligations, publication schedules, accessibility requirements, open-data standards, records management obligations, annual reporting, training and public education measures.

13. Please provide information on the timetable and modalities of the Parliamentary Special Select Committee's review, including the publication of submissions, hearings, draft amendments, reports and opportunities for meaningful participation by affected groups.
14. Please explain whether consideration is being given to ensuring that primary legislation establishes the substantive right of access to information, its scope, applicable exceptions, procedural deadlines, fees, remedies, institutional powers and reporting obligations, and provides for commencement within a defined and reasonable period.
15. Please indicate the anticipated timetable for the adoption and commencement of the Freedom of Information Bill and any related Ombudsman legislation.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Leopoldo Maldonado Gutiérrez
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