



TRANSPARENCY INTERNATIONAL PNG INC.

A national chapter of Transparency International

- *the global coalition against corruption*

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Friday 16th June 2023

Mr. Flierl Shongol
Deputy Secretary – Policy & Emerging Technology Wing
Department of Information and Communication Technology (DICT)
PO Box 85, Vision City, Port Moresby
National Capital District

Dear Mr. Shongol,

Subject: TIPNG Submission on Draft National Right to Information Policy 2022-2032

Transparency International PNG (TIPNG) is the national chapter in Papua New Guinea (PNG) of the global transparency movement, and a registered association with a mission to empower people in PNG to take action against corruption. TIPNG is writing to your office to make a submission on the draft National Right to Information Policy 2022-2032 that has been shared internally within the PNG Open Government Partnership (OGP) Freedom of Information (FOI) Technical Working Group (TWG).

As a member-led organization that represents the views of people in Papua New Guinea that value transparency and accountability, within the rule of law, TIPNG's submission will focus on ensuring that Papua New Guineans are able to enforce our constitutional right to access information in a timely and accessible manner.

This submission is structured into 3 feedback sections:

1. General principle-based feedback
2. Specific Feedback on the text of the Draft Policy
3. Specific Feedback in response to Guiding Questions

General Feedback

Broadly, TIPNG welcomes the Government of PNG's efforts to create a Right to Information (RTI) Framework. Citizens expect RTI to empower them achieve their other constitutional rights, open access to participation in our democracy and ensure quality of life through service delivery.

The RTI Policy 2022-2032 will achieve citizen's expectations if it:

- Grounded in the local context and meets the practical expectations of Papua New Guineans to know what is being done in our name, with our money, by our government.
- Provides the policy framework for an independent constitutional office such as an Information Commission to enforce citizens' right to access information

- Ensures wider agency participation in this document, particularly in identifying laws that impacts citizen’s right to know
- Promotes proactive disclosure of information with minimal approvals and barriers to access
- Ensures that the Independent public interest test that is clear and can be enforced by the courts
- Puts the onus on officials to explain exemptions, while not expending exemptions beyond the 10 listed under Section 51 of the Constitution

Specific Feedback – Text of the Draft Policy

The following table outlines specific feedback to the text of the draft policy as presented to members of the PNG OGP FOI TWG on Thursday 11th May 2023. In that meeting, TWG members were advised that the policy would be reformatted to meet the standard template for policy submission. With that in mind the feedback is grouped by pages and sections on pages.

Page	Section – Specific Feedback
2	‘ICT Department’ should be replaced with ‘DICT’ ‘TI PNG’ should be replaced with ‘TIPNG’
3	‘Minister for Information and Communication Technology’ should be ‘Minister for Communication & Information Technology’ as per Parliament website
4	Acknowledgements need to be completed
5	As this is a government policy document, the best place to mention external donor support would be under acknowledgements.
6	ISBN needs to be either included or if not available, the ISBN removed
9	Introduction and Background - should start with domestic framework e.g. Section 51 NC and Constitutional Planning Committee and then international obligations. Noting from TWG that the template for policy submissions from DNPM will provide the structure Benefits of RTI regime - should use PNG-specific examples, studies and legal cases to justify benefits
10	Accountability, Transparency, and Anti-Corruption Efforts – This should focus on the Open Government Partnership FOI Cluster Commitment as RTI/FOI is larger than just anti-corruption and meeting international anti-corruption commitments.
12	Early RTI Efforts in Papua New Guinea – this could be represented graphically, e.g. as a timeline, as part of the introduction and background
12	Current Information Disclosure Landscape a. RTI Law – This should list provisions in all existing laws that require disclosure of information, e.g. s.38 & s.40 National Procurement Act 2018, s.34, s.35 and s.36 Digital Government Act 2022, s.13A Business Groups Incorporation (Amendment) Act 2022, s.105(1)(d) ICC Act 2002 etc. Additionally, the requirement for gazettal of information by multiple Acts could be seen as a proxy for access to information and should be included when assessing current RTI legal requirements. Lastly, legal developments such as the recent ruling in 2023 for the government’s contract on gold processing to be made public could also be referenced. Ensuring that this section is more comprehensive will demonstrate the extent to which in the absence of RTI legislation, state agencies have filled in the gap to ensure that right to information under section 51 of the National Constitution is maintained.
16-18	Definitions – where applicable, where terms are already defined in relevant legislation e.g. ‘private body’ could reference the definition in the PNGEITI policy or the Investment Promotion Authority Act.

19	Vision, Mission, Objectives – while the UN has assisted with producing this report, it should be formatted like a policy by the Government of PNG, this section should be in alignment and guided by the Constitution, National Goals and Directive Principles, Development Plans. This section needs to be reworked to reflect national priorities.
19	Core RTI Principles – this should be more contextualized to PNG, i.e. how would these principles look within the PNG legal and policy framework. If it can't be contextualized then it should be a reference document in the annex.
21	Application of Policy – we support this definition, and would recommend the inclusion of 'state owned enterprises and commercial ventures where the state is a shareholder'.
22	RTI Unit – We oppose the establishment of an RTI unit as it is subject to politicization, and will undermine the section 51 right to information. TIPNG recommends that to protect the constitutional right, there should be an independent Information Commission established.
23	RTI Steering Committee – this would be subsumed by the establishment of an independent commission that could engage directly with state agencies and public bodies.
24	Ombudsman Commission – A court of competent jurisdiction should perform this role were a RTI Commission established, furthermore there should be a request for annual reports to Parliament. The Organic Law on the Independent Commission Against Corruption has an oversight body in its legislation that could also be considered as a model.
24	Public Bodies – we support this section, and would recommend the inclusion of a requirement to 'budget and allocate resources for achieving the objectives of this policy'
24	Departmental Information Officers (DIOs) – we support this section, but would amend so that DIO's are points of contact for the RTI Commission and appropriate oversight body
25	National Archives and Public Records Services – This section should include how the National Archives will work within the RTI policy framework e.g. how is information under the RTI policy transferred to National Archives each year?
25	Proactive Publication of Information – this section mentions it will 'encourage organisations' but only lists requirements without any incentives or more importantly, punitive measures to ensure compliance. We recommend inclusion of incentives and penalties for proactive disclosure.
25	Proactive Disclosure by the State – where applicable this policy should reference existing legislation e.g. National Procurement Act, that already require proactive disclosure. Furthermore, it should specify where applicable this policy is reinforcing existing standards under the Digital Government Act
26	cont. Proactive Disclosure by the State – where existing acts of Parliament, e.g. Audit Act, prevent proactive disclosure by the state they need to be amended. If there are requirements on specific agencies, e.g. the Department of Treasury, they shouldn't be included in the general requirements for all public bodies; but rather separated out.
27	cont. Proactive Disclosure by the State – the requirements on the PNGEC will require amendments to the organic law on national and LLG elections. The PNGEC is not responsible for Political Party information, that is the role of the IPPCC. The RTI Unit will not be mandated to compel action by independent constitutional entities, this will need to be done by an RTI Commission.
27	Proactive disclosure by Parliament – this Policy should recognize that the National Parliament is already engaging in proactive disclosure of information, e.g. through website and livestream of sessions, and to see how these means of proactive disclosure can be supported within the existing framework of Parliamentary services.
27-31	Request Process – This would be better expressed graphically as a flowchart, and should be amended to capture the process within an RTI Commission
31	Exemptions – this section should be reworded to clarify that the Constitution is not saying that information in these areas are automatically exempt, rather that these are areas where secrecy might be 'reasonably justifiable'

32	Records affecting national economy – this section is not based on the grounds of exemption in the Constitution and should be removed. Furthermore, the areas relating to taxes, duties, rates, policies etc. are clearly in the public interest and are the basis for the PNGEITI.
32	Records subject to legal privilege - this section is not based on the grounds of exemption in the Constitution and should be removed
32	Records affecting policy making and conduct of public affairs - this section is not based on the grounds of exemption in the Constitution and should be removed. Furthermore, cabinet papers are already covered under the earlier point (iii)
32	Records relating to business affairs - this section exceeds the grounds of exemption in the Constitution and should be reworded. The term 'business affairs' is vague and could be misinterpreted by the state, as well as undermining the business registry information maintained by the Investment Promotion Authority
33	Records relating to protected sites and the environment - this section is not based on the grounds of exemption in the Constitution and should be removed.
33	Public Interest Test – we support this section, and would recommend the inclusion of the process of arbitration over public interest, i.e. how do citizens commence a public interest test hearing and which body hears the matter? This is where an independent RTI Commission would make the most sense.
34	Vexatious and Unreasonable Requests – This is where an independent RTI Commission would be better, as an RTI Unit might be politically motivated and use this as a reason not to respond to applications.
36	Complaints - This is where an independent RTI Commission would be better, as an RTI Unit might be politically motivated and use this as a reason not to respond to applications.
38	Measures to promote openness – 'Openness' is spelt incorrectly; this section should really be the work of an independent RTI Commission

Conclusion

This submission by TIPNG is made with the intent of realizing the full scope of Section 51 of the National Constitution. It is in PNG's national interest to develop an inclusive and effective National Right to Information Policy as this will directly contribute towards achieving our National Goals and Directive Principles.

We anticipate the outcome of this consultative process and to receiving a response from your office to our submission.

Yours in partnership,

Yvonne Ngutlick

Deputy Director – Communications, acting Chief Executive Officer

