

Japan Information Access Project  
**Special Report**  
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# ACCESS TO JAPANESE INFORMATION



## Japanese Government Information: New Rules for Access The Proposed Information Disclosure Law, Status and U.S. FOIA Comparison

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## A. INTRODUCTION

After 20 years of lobbying by Japanese citizen's groups and media, the Government of Japan, under the administration of Prime Minister Ryutaro Hashimoto, presented a national "information disclosure" (*joho kokai*) bill to the Diet (parliament) on March 27, 1998. Such a law would create a legally enforceable right of access to Japanese national government files for the first time. This law is part of a series of reforms the Hashimoto government plans in order to make the bureaucracy more open and accountable to the Japanese public. Observers expect that it will be passed into law this year (1998) and come into effect in the year 2000.

More than a dozen countries have already adopted national laws providing some right of access to government information. The U.S. Freedom of Information Act (FOIA), which has served as a model for Japan's bill, became law in 1966 and has been expanded and improved many times since. FOIA has been used by millions of people to access a vast range of previously confidential information concerning such matters as food and drug safety, environmental concerns, government investigations, and virtually every topic relating to the public interest.

Will the Hashimoto bill play a similar role in Japan? Only time will tell. Compared to the American FOIA, the Japanese proposal clearly restricts the availability of many categories of important information and provides much broader discretion to officials in possession of the files. This accords with a long-standing tradition in Japan of respect for government officials, the domination of the legislative process by those officials and a lack of transparency in most government procedures.

Below is a brief history of the statute followed by an analysis and comparison of key provisions of the plan offered by the Administrative Reform Committee (ARC, *Gyosei Kaikaku Inukai*), which was established in December 1994 to plan deregulation and administrative reform. The proposal forms the core of the information disclosure bill.

### History

Academics, attorneys and civic activists have lobbied for a national disclosure law in Japan since the 1970s. Initial interest was spurred by strong public concern over failures in public administration illustrated by incidents such as the Lockheed scandal,

national outbreaks of disease due to defective drugs, nuclear power plant accidents, and severe pollution problems resulting in illness and death. Efforts mirrored a growing Japanese interest in grassroots politics.

Advocates saw a national information disclosure law as a practical tool to combat official secrecy and to root out the causes of government regulatory failures. Local governments responded quickly. Major population centers including Tokyo, Osaka, Kanagawa and Saitama had all adopted information disclosure ordinances by 1985. All prefectures and many municipalities and other local governments now also have information disclosure ordinances or guidelines in place.

At the national level, the bureaucracy teamed with a single party government to delay serious consideration of a disclosure bill until the mid-1990s. Formation of the Hosokawa Cabinet in 1993 led to appointment of an Administrative Reform Commission that included the drafting of a national disclosure statute in its mission. A subcommittee (Expert Committee on Disclosure of Administrative Information, *Gyosei Joho Kokai Bukai*) expressly devoted to this purpose was appointed in 1995. Chaired by a retired Supreme Court Justice and with leading administrative law scholars and ex-bureaucrats included among its membership, the committee delivered its final report in December of 1996. The Management and Coordination Agency subsequently drafted legislation based on the ARC report, which was submitted to the Diet in March 1998.

## Final Revisions

The information disclosure bill presently before the Diet closely tracks the ARC's proposals, although government drafters inserted a few significant revisions that illustrate the reluctance of the ministries to become subject to broad citizen oversight. Key issues that surfaced in the final weeks prior to Cabinet approval included the following:

1. Purposes clause. At the top of proponents' wish list is the explicit statement that the statute is a tool to seek concrete realization of the constitutional "right to know." Progressives on the ARC panel failed in their efforts to insert this into the ARC proposal but were mollified by new language stating that the statute sought to establish "enhanced supervision of and participation in administration by the people." This ARC language was in turn stripped from the final government draft and replaced by vague wording concerning the "appropriate understanding and criticism of the people." Participation in government has long been a rallying cry for proponents who are sorely disappointed by the last minute change.
2. Scope of exemptions. In practice, the most critical aspect of the statute is the scope of information exempt from disclosure. The government bill maintains the list of six categories exempt from disclosure as provided in the ARC draft, but adds new language which dramatically expands government discretion in three categories: national defense, diplomacy and investigations. Regarding each of these categories, information will be exempt from disclosure if "it is recognized by the head of the agency that there is sufficient reason" to withhold the information. This language effectively removes final determinations from the courts to agency heads in these categories.
3. Special corporations. Another issue of great concern has been application of similar rules to the 85 "special corporations" (*tokushu hojin*) which provide many basic government services but are considered separate from central government ministries and outside the scope of the statute. Lobbying by representatives of the Shaminto and Sakigake parties in the ruling coalition resulted in a pledge to adopt legislation within two years following passage of the present bill by the Diet.
4. Data in electronic form. In a positive step, the government bill provides expressly that computer files and other data maintained in electronic form are subject to disclosure. This eliminates a significant ambiguity in the ARC proposal.

As indicated by these final changes, the Hashimoto proposal is far from perfect. Other inadequacies are described in the chart below. Chief among them is the very broad scope of categories of exempt information set out in the ARC draft and the requirement that all suits be filed in Tokyo District Court (as any other administrative litigation against the national government).

The proposed information disclosure legislation is an important first step toward bringing Japan in line with a worldwide trend toward greater legislative and regulatory transparency. Most important, it provides a framework for further measures to heighten citizen participation in and supervision of government activity. The original American FOIA was itself a relatively weak statute, but persistent demands by requesters and the shock of Watergate-era events led to dramatic revisions to the statute and strengthening of the public right of access. As Japanese society transforms to meet the challenges of the future, the information disclosure law will also be subject to change.

## Draft National Disclosure Law

The following chart identifies key provisions of the ARC information disclosure draft legislation, compares them against their most analogous provisions of the U.S. Freedom of Information Act, and offers brief commentary and analysis. All U.S. citations are to the Freedom of Information Act, at 5 U.S.C. sec. 551 et seq. Japan citations refer to the *Joho Kokai Yoko An* (Proposed Information Disclosure Plan) published on December 16, 1996 by the Administrative Reform Commission.

## B. INFORMATION DISCLOSURE CHART

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US	JAPAN	COMMENTS
<p><b>Proactive Information Disclosure</b></p>		

<p>The opening sections of the US Freedom of Information Act ("FOIA") mandate proactive information disclosure by government agencies. Section 552(a)(1) requires publication in the Federal Register of information such as descriptions of agency organizations, functions, procedures, substantive rules, and statements of general policy. Section 552(a)(2) further requires the general availability for public inspection and copying of final opinions in adjudicated cases, specific policy statements and administrative staff manuals. This latter set of documents is often referred to as "reading room materials." The documents must be indexed for easy access and provided in "reading rooms" available to the public.</p> <p>1996 amendments to FOIA expressly expanded proactive disclosure to include electronic media. This is discussed below.</p>	<p>The proposed statute does not require government agencies to take any proactive steps to publish or otherwise make documents publicly available. It simply provides a right to request disclosure and a corresponding government obligation to respond. Although there is no requirement to publish actual documents, Article 23 of the proposal directs that each government agency publish regulations to govern the indexing and classification of documents. This could be a significant breakthrough in assisting requesters to locate documents of interest.</p> <p>Since the 1980's, many government offices have maintained windows for examination of public documents and in 1991, an interministerial committee adopted a set of standards for information to be disclosed. Citizens groups have been thoroughly dissatisfied with this initiative, complaining that officials disclose only documents prepared expressly for public dissemination, cataloging of documents is haphazard, and working level officials have little understanding of the standards.</p>	<p>Although the Japan proposal does not include a requirement of affirmative disclosure, Article 25 does state that "the government shall . . . make efforts to promote in a comprehensive manner" information disclosure. Optimistic observers may point to this language as the source of a future set of rigorous proactive disclosure requirements.</p> <p>The proactive disclosure requirements of the US FOIA became especially important with Congress' adoption of the Electronic FOIA (described below). Congress stressed the efficiency benefits of proactive disclosure: by screening documents already released under Sections 552(a)(1) and (2), requesters in many cases may discover that information is available without the need for a FOIA request at all. Review of released information should also enable parties to frame more precise document requests.</p>
<p><b>Electronic Media</b></p>		
<p>In 1996, the US Congress passed the "Electronic Freedom of Information Act," to address recent developments in information technology. This law explicitly defined "records" to include information maintained "in any format, including an electronic format" and established the affirmative requirement that all records which an agency must make available under present law (including "reading room materials") must be made available on-line as well as in hard copy. This amendment also clarified that agencies must make reasonable efforts to search for documents in electronic form and</p>	<p>The text of the proposed statute states that records subject to disclosure include "written documents, drawings, photographs, film, magnetic tape and other materials provided by Cabinet order (<i>seirei</i>)." Commentary to this provision states that information formats should be interpreted broadly in line with developments in information and communication systems.</p>	<p>Agencies of both governments have proactively adopted extensive Internet websites to provide access to a wide range of information. As one might expect, US government websites are more numerous and detailed. The 1996 amendments seek to enhance this practice. On-line access will spare many users the need to visit "reading rooms" or otherwise travel to the location of physical documents. As yet, few US government agencies accept on-line FOIA requests.</p> <p>What Japanese regulations will be adopted remain to be seen.</p>

<p>established the requirement that all agencies must create general indices of previously released material and that such indices must be made available on-line no later than December 31, 1999.</p>		<p>Japan's Management and Coordination Agency is separately promoting policies for the "informatization" (<i>johoka</i>) (increased use of computer files and networked computer communication) of administrative practices. The terms of this initiative do not address information disclosure.</p> <p>The ARC draft grants rights to "all persons," thus raising the hope that future requesters outside Japan will some day have convenient electronic access.</p>
<p><b>Right to Demand Disclosure</b></p>		
<p>All persons, domestic or foreign, natural or corporate, have the right to demand disclosure. Requests are sufficient if they reasonably describe the information sought; information can be sought for any reason whatever. Requests apply to all information, held in whatever form, including electronic formats. Government agencies must conduct a "reasonable" search for the records requested; if challenged in court, the government must demonstrate "what records were searched, by whom, and through what process." A decision to deny a request must state the reasons for the denial, the right to appeal and the name and title of each person responsible for the denial. In litigation, the government has the burden to prove that the cited exemption applies.</p>	<p>The ARC proposal also provides that "all persons" have the right to demand information. It does not provide guidance on the degree of specificity required, merely stating that requesters "shall submit...a document providing details necessary to specify the administrative documents requested." There is no language regarding the government's burden to conduct a search or specification of reasons for denial. As in the US law, this right is subject to exemptions (discussed below).</p>	<p>Perhaps the single most important factor in the success of an information disclosure system is the attitude of the officials implementing the system. Throughout its 30 year history, the American FOIA has been characterized by a continuing battle between an activist Congress seeking broader disclosure and an executive branch seeking to minimize disclosure standards. 1993 memoranda by President Clinton and Attorney General Reno dramatically changed this relationship. The presidential memorandum states unequivocally that maximum disclosure is government policy and calls for "consumer-friendly service". The Reno memorandum directs release of information when it only "technically or arguably" falls within an exemption and condones non-disclosure only in cases of foreseeable harm due to disclosure.</p> <p>By 1997, more than 300 local governments across Japan had adopted information disclosure ordinances and a wealth of case law had appeared. This case law will provide precedential guidance for interpretation of any national statute regarding a wide range of issues.</p>

Exemptions to Disclosure		
<p>The US FOIA provides nine specific exemptions to disclosure and incorporates by reference exemptions which may be created by language in other statutes. In general, the language creating these exemptions is very narrow. (E.g., "specifically authorized . . . to be kept secret," "related solely to internal personnel rules . . .," "disclosure of which would constitute a clearly unwarranted invasion of personal privacy").</p>	<p>Japan's proposed statute creates six specific exemptions and also incorporates others by reference. Language creating each of these exemptions is broad and appears to vest a maximum of discretion in agency personnel. (E.g., certain categories of administrative information can be withheld when "there is some possibility that confusion among the people will improperly result.")</p>	<p>Both the US statute and the ARC proposal establish a structure in which information disclosure is the general rule, but may be denied in exceptional cases. Statutory language creating the exceptions is the biggest single factor determining scope of disclosure. Broad wording of the exemptions in the ARC proposal should have a big impact in limiting documents subject to disclosure.</p> <p>The ARC proposal has been subject to much criticism on this score, including comments that it will result in an "information non-disclosure law." Japan's bar associations, consumer groups and all of Japan's opposition political parties have proposed statutes with more narrow language setting exceptions to disclosure.</p> <p>Analysis of each of the proposed Japan exemptions together with the most closely analogous US exemption follows.</p>
<p><u>Exemption for Individual Privacy Information</u></p>		
<p>Exempts personnel and medical files and similar files, the disclosure of which would constitute a "clearly unwarranted invasion of personal privacy." Section 552(b)(6).</p> <p>To decide whether an invasion is "clearly unwarranted," U.S. courts have adopted the approach of balancing the personal privacy interest against the public interest in access to the information.</p>	<p>Article 6(1) exempts information on individuals by which specific individuals may be identified in a document or through a collation of information. Four exceptions allow disclosure: information scheduled to be published anyway, information concerning duties of public officials, information related to public health and "that part of the information deemed not to prejudice . . . the interests of individuals."</p> <p>The starting point is a presumption of non-disclosure when an individual can be identified. Analysis then turns on interpretation of the exceptions.</p>	<p>The ARC draft displays a radically different approach from US law. The US exemption is limited to "clearly unwarranted" cases. The ARC draft starts with a blanket rule against disclosure of documents where a specific individual can be identified. A draft provision proposed by the Japan Civil Liberties Union ("JCLU") would restrict non-disclosure to information concerning "beliefs, religion, specific physical characteristics, health, family relationships, work, school record, place of origin, address, organizational memberships, property or income." Opposition party proposals have adopted a similar approach.</p>

		<p>In the US case, a rich body of common law concerning privacy allows drafters to incorporate this by reference. Japanese drafters have sought to incorporate lists of specific issues to be considered.</p>
<p><u>Exemption for Business Information</u></p>		
<p>Exempts trade secrets and commercial or financial information obtained from a person and privileged or confidential. Section 552(b)(6)(4).</p>	<p>Exempts information concerning corporations or their officers or employees that (A) may prejudice the competitive status, property or other legitimate interests of the submitter or (B) was voluntarily provided with a government promise not to disclose and which is confidential as a usual practice of corporations. Article (6)(2).</p> <p>In a significant concession, this proposal will allow release of otherwise protected business information "deemed imperative to protect human life, body or health from harm or property or daily life from infringement" due to the activities of the person submitting information.</p>	<p>Application of the US rule relies on common law re "trade secrets" and related concepts. The voluntary/non-voluntary distinction in the ARC proposal was borrowed from the US <u>Critical Mass</u> decision limiting disclosure of information voluntarily submitted to government. What constitutes "voluntary submission" can be a difficult issue. In the US, there is much case law and executive branch guidance to assist in interpretation.</p> <p>Non-disclosure in cases where information is submitted on a voluntary basis has been heavily criticized in Japan as welcoming collusion between government officials and corporate officers to keep information confidential.</p>
<p><u>Exemption for National Security and Diplomacy Information</u></p>		
<p>Exempts matters "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order." Section 552(b)(1).</p>	<p>Exempts information "where there are sufficient circumstances to believe that" disclosure may risk some harm to national security or foreign relations. Article 6(3).</p>	<p>U.S. courts generally show great deference to agency expertise. In rare cases, courts will order disclosure upon finding that the information was not properly classified.</p> <p><i>In camera</i> proceedings play an especially important role in applying this exemption. Agencies may submit <i>in camera</i> affidavits to assist the court in evaluating whether classification is appropriate at the same time protecting the confidentiality of the information. Counsel for plaintiffs are not allowed to participate in these proceedings.</p> <p>It is generally thought that</p>

		<p>Article 82 of the Constitution of Japan, which requires that all trial proceedings be held in public, prohibits <i>in camera</i> proceedings. Japan's courts therefore appear to be unable to examine agency information in a secure setting. The result surely means greater administrative discretion in selecting material for disclosure.</p>
<p><u>Exemption for Criminal Investigation Information</u></p>		
<p>Exempts records compiled by law enforcement agencies but only to the extent disclosure would (a) interfere with enforcement proceedings; (b) deprive the person of a fair trial; (c) constitute a clearly unwarranted invasion of privacy; (d) disclose identity of a confidential source; (e) disclose investigative techniques and procedures or guidelines where disclosure could "reasonably be expected" to risk circumvention of law; or (f) in cases where disclosure "could reasonably be expected to endanger the life or physical safety of an individual". Section 552(b)(7).</p>	<p>Exempts information where there are sufficient circumstances to recognize that disclosure "may interfere with prevention and investigation of crimes, sustainment of public prosecution, sentencing, guarding and other matters related to the maintenance of public security and order." Article 6(4).</p>	<p>ARC commentary points out that application is limited to the narrow circumstance of investigation and prevention of crimes rather than to all activities of police organizations. Within that scope, however, the text appears to be susceptible to very broad application.</p> <p>Congress amended the US provision in 1974, limiting the original blanket exemption for investigatory files to those where one of the list of six specific harms comes into play.</p>
<p><u>Exemption for Deliberative Process Information</u></p>		
<p>U.S. Exemption 5 applies to inter- and intra-agency memoranda and letters which would not be available to a party in litigation. Section 552(b)(5). This exemption includes several categories of documents, including those subject to attorney-client and attorney work product privilege. The most commonly invoked privilege is known as the "deliberative process privilege." It is intended to protect the "decision making processes of government agencies."</p>	<p>Exempts inter- or intra-agency "information concerning deliberation, study or consultation" where disclosure may "unreasonably interfere with frank exchange of opinions or the neutrality of decision-making or unreasonably cause public confusion or unreasonably result in advantage or disadvantage to any person" Article 6(5).</p>	<p>Language in the Japan draft appears to track case law under the US deliberative process privilege. According to a Justice Department analysis, "three policy purposes have been held to constitute the basis for this privilege: (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action."</p>

		<p>Because the information at issue generally concerns only the government itself, the 1993 Clinton and Reno memoranda described above have applied most directly to cases affected by this exemption, thereby expanding the range of documents disclosed.</p>
<p><u>General Exemption for Agency Operations</u></p>		
<p>Protects documents "related solely to the internal personnel rules and practices of an agency."</p>	<p>ARC Article 6(6) is an omnibus provision protecting a broad scope of agency operations, as follows: "information concerning auditing, inspection, control, dispute, negotiation, contract, examination, investigation, research, personnel management, management of nonclerical business, or other affairs or businesses of administrative organs, whose disclosure may risk interference with the proper performance of the affair or the business concerned." Article 6(6).</p>	<p>The language in the ARC draft creates a very broad exemption for administrative activities. We have listed U.S. exemption No. 2 as the most closely analogous provision, although it is severely limited by comparison.</p> <p>ARC language exempts any information "whose disclosure may interfere with the proper performance" of an agency activity. Thus, application will turn solely on interpretation of the term "proper performance." There is no limitation based on foreseeable harms, specific areas of activity, source of documents concerned, or other protectible interests, including the general public interest in disclosure.</p> <p>Similar language is found in many prefectural ordinances. This provision is the source of litigation concerning access to data describing entertainment and other expenditures by local government officials. Draft proposals from the <i>Shinshinto</i> and <i>Minshuto</i> limit protection to such administrative documents when disclosure would "clearly result" in interference with proper performance of the matter concerned.</p> <p>Cases applying US exemption 2 have focused on sensitive materials and have upheld nondisclosure of documents that are "predominantly internal" and whose disclosure "significantly risks circumvention of agency regulations." The foreseeable harm is that disclosure would "benefit those attempting to violate the law and avoid detection." Section</p>

		552(b)(2).
<b>Conflicts with Other Statutes</b>		
<p>FOIA expressly exempts records which are "specifically exempted from disclosure by statute" provided that such statutes "requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue" or "establishes particular criteria for withholding or refers to particular types of matters to be withheld." Sec. 552(b)</p>	<p>The ARC committee decided it was unnecessary to provide an express exemption for records required to be held confidential under another statute. Instead, the ordinary rules of statutory construction will be applied to solve potential conflicts between the information disclosure law and other statutes. In order to reduce these conflicts, Article 28 of the ARC proposal leaves the issue to future "necessary statutory adjustment measures." Personnel in the Management and Coordination Agency are said to be drafting amendments to a long list of other statutes.</p>	<p>Although the language of the U.S. exemption is narrowly drawn, many statutes have been held to qualify under this exemption. Examples include the federal rules of criminal procedure preserving the secrecy of grand jury material, the Ethics in Government Act, protecting the financial disclosure reports of special government employees, and Title VII of the Civil Rights Act of 1964 concerning matters pending before the Equal Employment Opportunity Commission.</p>
<b>Existence or Non-Existence of a Document</b>		
<p>Although not provided by language in the FOIA statute, in a narrow range of cases, US courts have allowed agencies to refuse to confirm the existence or non-existence of a document. This is commonly known as a "glomar" response, after the original case in which this exception was recognized.</p>	<p>Article 8 of the ARC proposal grants all administrative agencies the power to deny requests without revealing the existence or non-existence of a document, in cases where the "mere response" would "prejudice the interest protected by the provisions for non-disclosure."</p>	<p>This is a highly contentious issue in Japan. Draft proposals from the <i>Nichibenren</i> and <i>Minshuto</i> have no such provision. The <i>Shinshinto</i> proposal includes a "glomar" provision, but would limit application to defense, diplomacy and criminal investigations.</p>
<b>Time Limits</b>		
<p>1. An agency must determine whether to comply with a request within 20 working days of receipt. Section 552(a)(6)</p>	<p>1. An agency must determine whether to comply with a request within 30 days of request. Article 10.</p>	<p>In practice, many US government agencies are far behind schedule. Excessive delay is probably the most common complaint regarding operation of the FOIA. Use of electronic information technology to speed up processing of requests was a major concern of Congress when it adopted the Electronic Freedom of Information Act (1996).</p>

<p>2. May extend date of determination for additional ten (10) days in cases of "unusual circumstances" as defined in the statute. Section 552(a)(6)(B)</p>	<p>2. May extend for 30 days due to difficulty involved in the disposition or for some other reason. Article 10(2). If a decision cannot be made within 60 days due to the voluminous number of documents requested or if performance of agency functions will be interfered with, the agency may make a decision as to a reasonable part of the requested documents.</p>	
<p>3. Court may extend deadline for determination in "exceptional circumstances"-exceptional circumstances do not include heavy workload. Section 552(a)(6)(C)</p>		
<p><b>Accountability/Disciplinary Action for Failure to Disclose</b></p>		
<p>Denial shall include the names of officers or employees denying. Section 552(a)(6)(C)</p> <p>FOIA provides both for disciplinary action against government officers who deny requests "arbitrarily or capriciously" (Section 552(a)(4)(F)) and for the award of attorney's fees and litigation costs in the discretion of the court. Section 552(a)(4)(E)</p>	<p>The ARC proposal does not provide any sanction for an agency's improper denial of a request and has no provision granting attorney's fees.</p>	<p>In the US, disciplinary action against individual officers is very rare. However, courts do award attorney's fees in many cases and sometimes the amounts are substantial. Public interest organizations that actively bring FOIA suits rely on the award of fees and costs as a significant part of their budgets.</p>

<p><b>Agencies Subject to Disclosure Requirements</b></p>		

<p>Section 552(f) expressly defines "agency" to include "any . . . Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government, or any independent regulatory agency."</p>	<p>Article 2(1) defines agencies to include "organs established under the jurisdiction of the Cabinet" and under designated provisions of the National Government Organizations law. The ARC law would not apply to the nearly 100 "special corporations" established to conduct various governmental affairs. Article 27 states that regarding such entities, "Government shall adopt legislative measures and other necessary measures" for information disclosure "corresponding to the characters and contents of their operations."</p>	<p>This is a highly contentious issue in Japan. Special corporations carry out many regulatory and other governmental functions (e.g., <i>Donen</i> regulates the nuclear power industry, <i>Jutaku Kodan</i> is a national home financing agency, etc.) Exempting these organizations creates a significant gap in statutory coverage.</p> <p>To our knowledge, there has been no statement designating special corporations and plans to create parallel information disclosure rules for these entities.</p> <p>On the US side, there appear to be very few equivalents to Japan's "special corporations" with administrative authority independent of a supervising administrative organ.</p>
<p><b>Appeal Procedures</b></p>		
<p>Section 552(a)(4)(b) of FOIA enables requesters to file suit seeking an injunction to order disclosure of agency records improperly withheld. Requesters have several choices of forum. They may file suit in federal district court in the district where they reside, or have their principal place of business, or where the records are located, or finally in the District of Columbia.</p> <p>Dissatisfied requesters must first pursue an administrative appeal before going to court.</p>	<p>Dissatisfied requesters are provided two avenues of appeal. They can file a request for review with a new "Appeal Examination Council" (described below) or can file suits for nullification of denials directly with a court under the Administrative Case Litigation Law.</p> <p>Articles 17-22 of the ARC proposal create the Appeal Examination Council, attached directly to the Office of the Prime Minister, with panel members appointed by the Prime Minister subject to Diet approval. The panel would have power to examine requested documents and issue advisory opinions, but would not have authority to issue orders directly to administrative agencies. Commentary from the ARC indicates that the council is intended to act as a "third party" to provide guidance to administrative entities reviewing requests.</p>	<p>One major point of contention in Japan is the location of judicial forum. The Administrative Case Litigation law requires that all suits be filed in Tokyo District Court, thus imposing a substantial burden on requesters outside of Tokyo who may wish to challenge agency action. The ARC proposal does not propose change in this venue issue.</p> <p>Under existing procedures, courts in Japan do not require claimants to first pursue claims with the administrative panels; claimants are thus able to pursue parallel appeals with these specialized panels and with the courts.</p> <p>Many local ordinances have established appeal panels similar to those proposed by ARC. Results appear to be mixed, with success rates (overturning denials of disclosure requests) typically running between 25% to 50% on a prefecture by prefecture basis. Composition of the panel is critical. Appeals typically require six to</p>

## C. INFORMATION RESOURCES

### Information Disclosure in Japan and the United States

#### JAPAN

##### Japanese Language Documents

Asai, Takao (Chief Researcher, General Research Center) "Information Disclosure Bill to be Carried Over to Next Diet Session; People's 'Right to Know' Should be Incorporated, Information Disclosure System, Expected to Play Role for Government-Private Equality." Asahi Shimbun, 6/11/98, p4.

##### ***Joho Kohai Yoko An (Proposed Information Disclosure Guideline)***

Proposal, commentary and other documents can be found at: <[http://www.somucho.go.jp/gyoukan/kanri/kanri\\_f.htm](http://www.somucho.go.jp/gyoukan/kanri/kanri_f.htm)>.

The same material can also be found at: <<http://www.sorifu.go.jp/whitepaper/gyokaku/joho/1.html>>.

##### ***Joho Kokai Ho: Rippo no Ronten to Shiru Kenri (Information Disclosure Law: Legislative Issues and the Right to Know)***, Miyake, Tajima and Usaki (eds.), Tokyo: Sanseido, 1997.

This volume gathers articles by a committee of specialists formed in 1994, including prominent attorneys, journalists and young scholars promoting information disclosure. Topics include all key aspects of the ARC draft information disclosure bill with analysis of leading cases and comparisons to US and other foreign precedents.

##### ***Juristo***

Leading law journal published by Yuhikaku both on a monthly basis and in special editions addressed to selected topics. Articles concerning information disclosure and other issues have appeared on numerous occasions in recent years. Volumes with a major focus on information disclosure include:

##### ***Joho Kokai Yoko An wo Megutte (Concerning the Proposed Information Disclosure Guidelines)***, *Juristo* No. 1107, March 1, 1997.

Contents include a roundtable discussion among key members of the ARC subcommittee on information disclosure covering the history of the information disclosure movement and a number of critical issues covered in committee deliberations. Separate articles address the legal status of the right to demand information, specific exemptions to disclosure and other topics.

##### ***Joho Kokai-Kojin Joho Hogo (Information Disclosure/Protection of Individual Information)***, Horibe (ed.), *Juristo Zokan* (special edition), May 1994.

Compendium of articles by more than 30 authors including most authorities in the field. The wide variety of topics includes reports on existing local information ordinances, many issues likely to be covered by a national information

disclosure law including exemptions for national security, individual information, business information and trade secrets and many other topics.

See also <[http://www.somucho.go.jp/gyoukan/kanri/a\\_05.htm](http://www.somucho.go.jp/gyoukan/kanri/a_05.htm)>.

*Joho Kokai no Juyo Hanrei (Important Court Decisions on Information Disclosure)*, *Hogaku Kyoshitsu*, No. 201, (special issue), June 1997.

Monthly law journal published by Yuhikaku. It is directed primarily at law students, but is widely read.

This volume focuses on court decisions interpreting provisions of existing local disclosure ordinances. Separate articles address significant court decisions concerning privacy information, business data and trade secrets, administrative "deliberative process" information and other categories of exemptions to disclosure.

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(professor at the University of Texas at Austin and JIAP member, [pmaclachlan@mail.utexas.edu](mailto:pmaclachlan@mail.utexas.edu).)

Repeta, Lawrence. "**New Rules for Information Disclosure in Japan**," Conference paper presented at Legal Perspectives on Japan at the end of the Twentieth Century: Looking Back, Looking Ahead, April 4-5, 1998, Seattle, Washington, Washington University School of Law. (fellow at the University of Washington, Seattle, School of Law and JIAP member, [repeta@u.washington.edu](mailto:repeta@u.washington.edu))

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### **Final Report of the Administrative Reform Council**

<http://club.jpn.net/infomofa/domestic/final.html>

### **Organizations**

Office of the Prime Minister  
1-6-1 Nagata-Cho  
Chiyoda-ku, Tokyo 100  
81-33-581-2361

<http://www.kantei.co.jp>

<http://www.sorifu.go.jp>

**Conference on Administrative Reform:** <http://www.kantei.go.jp/jp/jp/singi/index.html>

### **Management and Coordination Agency (*Somucho*)**

1-1 Kasumigaki 3 chome  
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<http://www.somucho.go.jp>

### **The 21st Century Public Policy Institute**

3<sup>rd</sup> Floor, Otemachi Bldg.1-6-1 Otemachi  
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### **Japan Civil Liberties Union**

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fax: 81-33-578-6687

## **Citizens Movement for a Freedom of Information Law of Japan**

Kiunkaku Building, #108

3 Aizumicho, Shinjuku-ku, Tokyo, 160

81-35-269-0943

fax: 81-35-269-0944 (Japanese only)

## UNITED STATES

### **Documents**

*Freedom of Information Act Guide & Privacy Act Overview*, US Department of Justice, Office of Information and Privacy (September 1996 edition)

A 700-page overview discussion of FOIA, including statutory analysis, description of significant court precedents and many important procedural aspects. It is published as a guide to federal officers applying FOIA in their daily work.

### **Organizations**

Office of Information and Privacy

Justice Department

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Washington, DC 20530

(202) 514-2000

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<http://www.usdoj.gov/oip/oip.html>

### **Freedom of Information Clearinghouse**

1600 20<sup>th</sup> Street, NW

Washington, DC 20036

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fax (202) 588-7795

[foic@essential.org](mailto:foic@essential.org)

<http://www.citizen.org>

### **American Civil Liberties Union**

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fax (202) 546-0738

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### **Center for National Security Studies**

Gelman Library

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Washington, DC 20037

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Working on a project to declassify US government documents relating to US-Japan security.

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