**THAILAND: A CASE STUDY IN THE INTERRELATIONSHIP BETWEEN FREEDOM OF INFORMATION (FOI) AND PRIVACY**

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**1. Constitution of the Kingdom of Thailand, B.E. 2540 (1997)**

Thailand Constitution (1997) has define principle to protect people right to know and Privacy as mention in the constitution

1.1 A persons family rights, dignity, reputation or the right of privacy shall be protected.
The assertion or circulation of a statement or picture in any manner whatsoever to the public, which violates or affects a person's family rights, dignity, reputation or the right of privacy, shall not be made except for the case which in beneficial to the public. (section 34)

1.2 A person shall have the right to get access to public information in possession of a State agency, State enterprise or local government organization, unless the disclosure of such information shall affect the security of the State, public safety or interests of other persons which shall be protected as provided by law. (Section 58)

1.3 A person shall have the right to receive information, explanation and reason from a State agency, State enterprise or local government organization before permission is given for the operation of any project or activity which may affect the quality of the environment, health and sanitary conditions, the quality of life or any other material interest concerning him or her (section 59)

***2. Official information Act (OIA), B.E. 2540 (1997)***

The official information Act (1997) of Thailand has four important objectives.

2.1 To ensure people's right to know state agency information in order to :
(1) People can view their opinion and use their political right correctly
(2) Promoting transparent and efficient government.
(3) Promoting Democratic stability.

2.2 To define clearly what kind of official information may not Subject to Disclosure

2.3 To protect the Personal information which possess or control by
a state agency.

2.4 To secure Historical information

**3. The boundary of Official Information and State agency**

3.1 Official information
Means an information in possession or control of a State agency, whether it is the information relating to the operation of the state or the information relating to a private individual;

3.2 State agency
Means a central administration, provincial administration, local administration, State enterprise, Government agency attached to the National Assembly, court only in respect of the affairs unassociated with the trial and adjudication of cases. Professional supervisory organization, independent agency of the State and such other agency as prescribed in the Ministerial regulation;
 **4. The Official Information Act and the principle of People Right to know**

The Act has set three principles for information disclosure.

4.1 A State agency shall at least publish the following official information in the Government Gazette: (OIA, section 7 Paragraph one)
(1) the structure and organization of its operation: (OIA, section 7)
(2) the summary of important powers and duties and operational methods; (OIA, section 7(2))
(3) a contacting address for the purpose of contacting the State agency in order to request and obtain information or advice; (OIA, section 7(3))
(4) by-laws, resolutions of the Council of Ministers, regulations, orders, circulars, Rules, work pattern, policies or interpretations only insofar as they are made or issued to have the same force as by-laws and intended to be to general application to private Individuals concerned; (OIA, section 7 (4))
(5) such other information as determined by the Board. (OIA, section 7 (5))

A State agency shall, for dissemination purpose, compile and make available the information under paragraph one for sale, disposal or distribution at its office as it thinks fit.

4.2 Make available at least the following official information for public inspection: (OIA, section9 Paragraph one)
(1) a result of consideration or a decision which has a direct effect on a private individual including a dissenting opinion and an order relating thereto: (OIA, section 9(1))
(2) a policy or an interpretation which does not fall within the scope of the requirement of publication in the Government Gazette under section 7 (4): (OIA, section 9 (2))
(3) a work-plan, project and annual expenditure estimate of the year of its preparation; (OIA, section 9(3))
(4) a manual or order relating to work procedure of State officials which affects the rights and duties of private individuals; (OIA, section 9(4))
(5) a concession contract, agreement of a monopolistic nature of joint venture agreement with a private individual for the provision of public services; (OIA, section 9(6))
(6) a resolution of the Council of Ministers or of such Board, Tribunal Commission or Committee as established by law or by a resolution of the Council of Ministers; provided that the titles of the technical reports, fact reports or information relied on in such consideration shall also be specified; (OIA, section 9 (7))
(7) such other information as determined by the Board. (OIA, section 9 (8))
A person, whether interested in the matter concerned or not , has the right to inspect or obtain a copy or a certified copy of the information under paragraph one.

4.3 Provide information to individual request:
If any person making a request for any official information other than the official information already published in the Government Gazette or already made available for public inspection or already made available for public studies and such request makes a reasonably apprehensible mention of the intended information, the responsible State agency shall provide it to such person within a reasonable period of time, unless the request in make for an excessive amount or frequently with out reasonable cause.(OIA, section 11))

**5. The information that may not be disclosed**

We can see that most of the official information is subject to disclose while only few is declared as an exemption. According to the Official Information Act, some information, which is not subject to disclosure, is described as follows

5.1 Official information which may jeopardize the Royal Institution shall not be disclosed. (OIA, section 14)
5.2 A state agency or State official may issue an order prohibiting the disclosure of official information falling under any of the following descriptions. Having regard to the performance of duties of the State agency under the law, public interests and the interests of the private individuals concerned: (OIA, section 15)
(1) the disclosure thereof will jeopardize the national security, international relations, or national economic or financial security; (OIA, section 15 (1))
(2) the disclosure there of will result in the decline in the efficiency of law enforcement or failure to achieve its objectives, whether or not it is related to litigation, protection, suppression, verification, inspection, or knowledge of the sure of the information; (OIA, section 15 (2))
(3) an opinion or advice given within the State agency with regard to the performance of any act, not including a technical report, fact report or information relied on for giving opinion or recommendation internally; (OIA, section 15 (3))
(4) the disclosure there of will endanger the life or safety of any person; (OIA, section 15 (4))
(5) a medical report or personal information the disclosure of which will unreasonably encroach upon the right of privacy; (OIA, section 15 (5))
(6) an official information protected by law against disclosure or an information given by a person and intended to be kept undisclosed; (OIA, section 15 (6))
(7) other cases as prescribed in the Royal Decree. (OIA, section 15 (7))

An order prohibiting the disclosure of official information may be issued subject to any condition whatsoever, but there shall also be stated therein the type of information and the reasons for non-disclosure. It shall be deemed that the issuance of an order disclosing official information is the exclusive discretion of State officials in consecutive levels of command; provided that, a person who makes a request for the information may appeal to the Information Disclosure Tribunal as provided in the Act. (OIA, section 15 Paragraph two)
 **6. The protection of the Personal Information and the Official Information Act**

The Act state that all the state agency:

6.1 A State agency shall take the following actions with regard to the provision of a personal information system:
(1) providing for a personal information system only insofar as it is relevant to and necessary for the achievement of the objectives of the operation of the State agency, and terminating the provision thereof whenever it becomes unnecessary;
(2) making efforts to collect information directly from the person who is the subject thereof, especially in the case where such person's interests will be directly affected;
(3) causing the following information to be published in the Government Gazette and examining and correcting the same regularly:
(a) the type of persons in respect of which information has been held;
(b) the type to the personal information system;
(c ) the ordinary nature of the use of the information;
(d) the procedure for the inspection of the information of the person who is the subject thereof;
(e) the procedure for the making of a request for the correction and alteration of the information;
(f) the source of the information;
(4) examining and correcting personal information under its responsibility;
(5) providing an appropriate security system for the personal information system in order to prevent improper use of any use to the prejudice of the person who is the subject of the information.

In the case where the information has directly been collected from the person who is the subject thereof, a State agency shall, in advance or simultaneously with the request therefore, notify such person of the purpose for the use of the information, the ordinary nature of its use and whether such case of making the request is one which the information may be given voluntarily or one which it must be given compulsorily under the law. (OIA, section 23 paragraph two)

In the case where the personal information is dispatched to any place which, in consequence thereof, may become known to general members of the public, a State agency must notify the person who is the subject thereof, unless it is carried out in conformity with the ordinary nature of the use of the information (OIA, section 23 paragraph three)

6.2 A State agency shall not disclose personal information in its control to other State agencies or other persons without prior or immediate consent given in writing by the person who is the subject thereof except for the disclosure in the following circumstances; (OIA, section 24 paragraph one)
(1) the disclosure to State officials in its own agency for the purpose of using it in accordance with the powers and duties of such agency;
(2) the disclosure in its ordinary use within the objectives of the provision for such personal information system;
(3) the disclosure to State agencies which operate in the field of planning statistics or censuses and have the duty to keep the personal information undisclosed;
(4) the disclosure for studies and research without mentioning the name or part revealing the identity of the person to whom the personal information is related.
(5) the disclosure to the National Archives Division, Fine Arts Department or other State agencies under section 26 paragraph one for the purpose of evaluating the value of keeping such information;
(6) the disclosure to State officials for the purpose of preventing the violation of law or non-compliance with the law, conducting investigations and inquiries or instituting legal actions of any type whatsoever;
(7) the disclosure necessary for the prevention or elimination of hazards to the life or health of persons;
(8) the disclosure to the Court, State officials, State agencies or persons having the power under the law to make a request for such information;
(9) other cases as prescribed in the Royal Decree;

In disclosing the personal information under paragraph one (3), (4), (5), (6), (7), (8) and (9) a list recording the disclosure shall be prepared and attached to such information in accordance with the rules and procedure prescribed in the Ministerial Regulation.

6.3 A person shall have the right to get access to personal information relating to him. When such person makes a request in writing, the State agency in control of such information shall allow him or his authorized representative to inspect or obtain a copy of the same.

In the case where there exists a reasonable ground to disclose a medical report relating to any person, state officials may disclose it only to doctors entrusted by such person.

A person who considers that any part of personal information relating to him is incorrect shall have the right to make a request in writing to the State agency in control of such information to correct, alter or delete that part of information. The State agency shall consider the request and notify its result to such person without delay.

In the case where the State agency fails to correct, alter or delete the information pursuant to the request, such person shall have the right to appeal to the Information Disclosure Tribunal within thirty days as from the date of the receipt of the notification of the order refusing to correct, alter or delete the same. The appeal shall be submitted through the Board and, in any case, the person who is the subject of the information shall have the right to require the State official to attach his request to the relevant part of the information.

**7. The complaint and appeal cases and the Official Information Act**

7.1 Complaint case

Any person, who considers that a State agency fails to publish the information under section 7, fails to make the information available for public inspection under section 9, fails to provide him with the information under section 11, violates or fails to comply with this Act, ordeals in performing its duties, or considers that he does not receive convenience without reasonable cause, is entitled to lodge a complaint with the Board, (OIA, section 13)

In the case where a State agency denies that there is such information as requested, if the person so requesting does not believe that it is true and lodges a complaint with the Board (Commission) the Board shall have the power to inspect the relevant official information and notify the complainant of the result of the inspection.

The State agency or State official shall allow the Board or the person entrusted by the Board to inspect the information which is in its or his possession, whether or not it is the information permitted to be disclosed. (OIA, section 33)

7.2 Appeal case

There shall be information Disclosure Tribunals in appropriate fields, which are appointed by the Council of Ministers upon the recommendation of the Board, having the power and duty to consider and decide an appeal against an order prohibiting the disclosure of information. (OIA, section 35)

The appointment of Information Disclosure Tribunals under paragraph one shall be made on the basis of the specialized fields of the official information, such as the fields of national security, national economy and finance or law enforcement. (OIA, section 35)

The decision of an Information Disclosure Tribunal shall be deemed final. In making the decision, an observation may be made to the Board with regard to appropriate action to be taken by the State agency concerned in any particular case. (OIA, section 37)

**8. The appeal cases and the decision of an Information Disclosure Tribunal.**

8.1 Case : The entrance examination result disclosure (Decision No. S1/1998)

*Background*

The Parents of a student, who failed the entrance examination for the Demonstration School of Kasetsart University, petitioned the school to disclose the examination result of her daughter and other students. After the school denied releasing, the parents then submitted the appeal to the Office of the Official Information Commission (OIC) to force the school to disclose the requested information.

The case is also concerned with the issue of personal information intervention. As the school claimed that the score and answer sheets were categorized as personal information and couldn't be revealed to anyone else apart from the owner. The parents of other students filed a lawsuit

*The Decision*

The Information Disclosure Tribunals for Social Information (IDT) ruled that the parents has the rights to see the examination result, but the school, however, declined to comply with the IDT's decision. The school claimed they had to consult the council of State , the Attorney General's Office, and the Ministry of University Affairs first, in order to have guided procedures for disclosing examination result, which should be set up as a new standard to cope with similar request in the future.

Finally, the OIC confirmed the IDT's order and enforced the disclosure, followed by the cabinet's resolution asserting that state agency had to comply with the OIC's recommendations and the IDT's order; otherwise they should be punished by disciplinary regulation.

8.2 Case : Corruption Investigation Report (Decision No. S 15/1999)

*Background*

Journalists and non-government organization (NGOs) petitioned the office of the Counter Corruption Commission (CCC) to disclose the investigative result report of the corruption in the Ministry of Public Health. The CCC denied disclosing the requested documents; petitioners then submitted the appeal to the office of the official Information Commission (OIC.)

The disclosure of investigative report of the CCC, concerning the corruption scandal in purchasing drug and health materials in the Ministry of Public Health, was criticized as the might hamper the efficiency of law enforcement. It was argued that the report was protected by the CCC's regulations against disclosure and that concerned witness who gave investigative documents intended their names and those information to be kept undisclosed.

*The Decision*

The Information Disclosure Tribunals for Social Information (IDT) ruled that the investigation was finalized. Those involved officials were disciplinarily punished and politicians were forwarded to criminal investigation. The IDT considered that the investigative report is official information, and the case has great impact on pubic interest and the disclosure could bring about positive attitude to the national administration, in particular to the CCC itself. The IDT thus decided that the CCC disclosed the requested information.

As a matter of fact, the witnesses in this case were high position executives; their activities as witnesses in this case were official duty of which will be protected by law. Though there is a regulation of the CCC against the disclosure of such information of the argument of witness safety, the discretion of the IDT in this case was weighted over by public interest. As the scandal involved a large amount of national budget, committed by the height-ranking officials, involving high executive members, both government officials and politicians, The case was very sensitive, as it is the corruption of purchasing drugs, which affect basic services to the people, in particular, the poor.

8.3 Case : The Business Contract (Decision No.E2/1998)

*Background*

Journalists requested to the Financial Sector Restructuring Authority (FRA) to release the Purchasing Contract related to the Bid for sales of the Financial Sector Debits. The FRA refused to release such requested information claiming that the documents were business contracts between the FRA and private company and such a commercial deal cannot be disclosed.

*The Decision*

After considering this appeal case, the Information Disclosure Tribunal (IDT) for Economic Information ruled the FRA to release the contract with exceptional conditions for Initial Purchase Price and Sharing Agreement to be released after the bid date. Those documents contain personal information, such as amount and information, which are personal debts, should be privacy protected.

8.4 Case : Application documents for constructing a river pier (Decision No. S 17/2000)

*Background*

A man suspected that the construction of a river pier will not follow river regulation and might be obstruction and damage to river navigation. So he request to get the Application documents for contraction the river pier of a businessman from the Port Authority. But the port Authority refused to disclose the documents because the documents concern with Personal Data and the disclosure will have bad effected to the business of the Applicant

*The Decision*

The Information Disclosure Tribunal (IDT) for Social Information ruled that the documents are not the Personal Data but it concern the government permission procedure. And the disclosure will benefit to public and promote confident to the Authority concern.

**9. The Implication of Freedom to Information Access vs. Privacy Protection**

The Official Information Act is a new law, knowledge and understanding in the Freedom of Information, and Privacy Protection issue, in particular, is new for Thailand. During the first two years of the Information act implementation, there was some implication of misunderstanding of the law substance, and many cases reflected the tension between the matter of freedom of access to information and privacy protection, since these two issues are closely related. On the academic perception, many scholars propose the two issuers to be separately considered while some claim that close interrelationship as two sides of the coin. To the Thailand experience from 1992 -2001, according to the Act, in the matter of information disclosure, discretion of state officials must be made with regards to the factors of State duties, public interests, and private interest. This is also confirmed by the constitution, which stipulated information causing damage to a person, dignity, reputation or privacy must be prohibited. Therefore, freedom of information and privacy protection could be persistently found on each other's boundary and become the matter of how to balance these two components.