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ACCESS TO ARCHIVAL INFORMATION UNDER VIETNAMESE LAW: A LEGAL PERSPECTIVE FROM 1986 TO THE PRESENT

ACESSO À INFORMAÇÃO DE ARQUIVO SOB A LEI VIETNAMITA: UMA PERSPECTIVA LEGAL DE 1986 ATÉ O PRESENTE

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ABSTRACT
Objective: To investigate the evolution of the right to access archival information in Vietnam from the beginning of the 1986 economic reforms to the present, and to analyze how Vietnamese legislation aligns with international trends regarding the right to information.

Method: The study employs historical, logical, comparative, and interdisciplinary methods. A critical analysis was conducted of legal documents, constitutions, access to information laws, and archival legislation, contextualizing their development within Vietnam's political, economic, and social transformations.

Results: The research shows significant expansion in the recognition and regulation of the right to access archival information in Vietnam. From the 1992 Constitution to the 2016 Access to Information Law and the 2024 Archives Law, there have been major advancements in government transparency, democratization of information, and alignment with international standards. Despite these achievements, challenges remain regarding effective practical implementation.

Conclusion: The evolution of Vietnam's legal framework has strengthened the right to access archival information, supporting democratization, good governance, and global integration. However, further efforts are needed to enhance practical enforcement and ensure full access for citizens and researchers.

Keywords: Right to access information; Right to use information; Archival documents; Use of archival documents; Vietnam.

RESUMO
Objetivo: *Investigar a evolução do direito de acesso à informação arquivística no Vietnã, desde o início das reformas econômicas de 1986 até os dias atuais, e analisar*

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como a legislação vietnamita se alinhou às tendências internacionais em matéria de direito à informação.

Método: *A pesquisa adota métodos históricos, lógicos, comparativos e interdisciplinares. Foi realizada uma análise crítica de documentos legais, constituições, leis específicas de acesso à informação e legislação arquivística, contextualizando seu desenvolvimento no cenário político, econômico e social vietnamita.*

Resultados: *O estudo revela uma expansão significativa no reconhecimento e regulamentação do direito de acesso à informação arquivística no Vietnã. A partir da Constituição de 1992 e intensificando-se com a Lei de Acesso à Informação de 2016 e a nova Lei de Arquivos de 2024, houve avanços na transparência governamental, na democratização da informação e na adequação aos padrões internacionais. Apesar dos progressos, permanecem desafios para uma implementação prática mais efetiva.*

Conclusão: *A evolução normativa vietnamita fortaleceu o direito de acesso à informação arquivística, contribuindo para a democratização, a boa governança e a integração internacional. No entanto, é necessário avançar na implementação prática para garantir maior efetividade e acesso pleno aos cidadãos e pesquisadores.*

Palavras-chave: *Direito de acesso à informação; Direito de uso da informação; Documentos de arquivo; Uso de documentos de arquivo; Vietnã*

1. INTRODUCTION

In Vietnam, the right to access information was first recognized in the 1992 Constitution under the term “right to information”. It was later renamed the “right to access information” in the 2013 Constitution. From its declarative provision in the Constitution, many legal documents, such as the Law on Archives (2011), the Law on Auditing (2015), the Law on Promulgation of Legal Documents (2015), the Press Law (2016), and the Law on Anti-Corruption (2018), have provided more specific and specialized provisions for various fields. The dedicated and detailed legal framework for the right to access information was established with the Law on Access to Information, issued in 2016. Furthermore, the 2024 Law on Archives represents the most comprehensive, clear, and progressive legal document on the right to access and use information in archival documents in Vietnam since the country initiated its reforms in 1986. These legal documents not only emphasize the importance of the right to access and use information for agencies, organizations, and individuals but also clarify the responsibilities of each agency, organization, and archival institution. They also

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serve as a legal framework to unlock the immense informational potential of archival documents in Vietnam. This is particularly significant for addressing both domestic and international demands as Vietnam enters a new era of national advancement and global integration.

2. METHODS

This article delves into the formation, evolution, role, and importance of the right to access and utilize information contained in archival documents, as reflected within the Vietnamese legal framework during the period of national reform, spanning from 1986 to the present. It examines how this right has developed in response to the broader socio-economic and political changes brought about by the renovation process. The study explores the legislative and institutional transformations that have shaped the accessibility and usability of archival information, highlighting their implications for governance, transparency, and public participation. To achieve these objectives, the research employs a range of methodologies, including the historical method to trace the chronological development of relevant laws and policies; the logical method to analyze the internal coherence and rationale behind these legal provisions; the comparative method to contrast Vietnam's approach with international practices and standards; and the interdisciplinary method to integrate insights from law, history, political science, and information studies. This comprehensive approach allows for a nuanced understanding of the evolving legal and social significance of information rights in Vietnam's archival system.

3. RESULTS AND DISCUSSION

3.1. OVERVIEW OF THE RIGHT TO ACCESS AND USE INFORMATION

The right to access information (also known as the right to freedom of information) is recognized as one of the fundamental human rights and is classified within the group of civil and political rights in international legal documents. The concept of the “right to information” first appeared in 1766 in Sweden's Freedom of the Press Act. By the 20th century, this concept was formally recognized in two

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international conventions: the United Nations' Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966). These two foundational international legal documents established basic human rights in the realms of civil and political liberties, with the right to access information being considered one of the most fundamental rights within this group.

Following its official recognition in these two international legal frameworks, the right to access information has continued to be affirmed in many other important international documents, such as the United Nations Convention Against Corruption (2003), the Rio Declaration on Environment and Development (1992), and the UNECE Convention on Access to Environmental Information. On an international, regional, and national level, the right to access information has been increasingly recognized. Numerous treaties, agreements, laws, action plans, and international declarations have included binding requirements or recommendations for member states to adopt laws recognizing the right to information.

Globally, many countries have acknowledged the importance of access to information not only as a fundamental human right but also as a crucial tool to improve government governance, enhance transparency, and combat corruption in government activities. Examples include the United States with the Freedom of Information Act (1966), Canada (1983), Hungary (1992), Thailand (1997), South Korea (1998), the United Kingdom (2000), South Africa (2000), Japan (2004), India (2005), Russia (2006), and China (2007). By 2017, approximately 120 countries had enacted Freedom of Information or Access to Information laws.

The core elements commonly found in these laws include: Applicable entities: Which entities are responsible for providing information? Procedures: How should public agencies provide information and respond to information requests? Subjects of the right: Who has the right to request information? Methods of access: How can information be accessed? Scope of access: Which types of information can or cannot be accessed? Limitations and challenges: What restrictions apply to accessing sensitive or confidential information?

In Vietnam, before the enactment of the Law on Access to Information in 2016, citizens' "right to information" was recognized under the 1992 Constitution, and the "right to access information" was reaffirmed in the 2013 Constitution. However, no legal document officially defined or explained the concept and scope of this right. Some sectoral legal documents stipulated the responsibilities of state agencies to disclose

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and ensure transparency of certain types of information in specific fields or granted the press the right to request relevant agencies, organizations, and units to provide information within their operational scope.

Referring to the United Nations International Covenant on Civil and Political Rights, which defines freedom of expression and speech, Vietnam's pre-2016 legal framework reflected varying degrees of recognition for these freedoms in specific contexts. The details are as follows:

The Right to Freely Seek and Exchange Information: For individuals and organizations, in addition to seeking information through traditional means such as audiovisual media, written documents, books, and newspapers, information can also be accessed via the Internet. For example, under the 2006 Law on Information Technology, organizations and individuals involved in IT applications are entitled to seek, exchange, and use information online. They also have the right to request the restoration of their information or access to their information sources, refuse to provide or receive illegal products or services online, and be held accountable for their actions.

The Right to Access Information Through State Agencies' Publication and Disclosure of Information: This right is reflected in various legal documents. Clause 3, Article 3 of the Law on Promulgation of Legal Documents states: "Ensuring transparency during the drafting and promulgation of legal documents, except for documents containing state secrets, and ensuring clarity in legal provisions". Clause 6, Article 33 of the law outlines the responsibilities of the lead drafting agency or organization, including the preparation of draft documents, explanatory notes, detailed justifications for projects, responses to feedback, impact assessments, and publishing these materials on the Government's electronic portal or the drafting agency's website. Clause 2, Article 78 also specifies that legal documents not published in the Official Gazette have no legal effect (except for those containing state secrets) (Hoc, 2013).

The Right to Receive Information Through Requests: Individuals and organizations have the right to request access to information held by public agencies, except classified information. The Anti-Corruption Law acknowledges the right of individuals, agencies, and organizations to request information. Article 7 of the 1989 Press Law (amended in 1999) defines the provision of information to the press as both a right and an obligation of state agencies and officials. Article 8 of the Press Law grants media heads the right to request responses from organizations or officials on issues raised by citizens through the press. Journalists are authorized to visit agencies

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and organizations to collect information, review documents, and perform journalistic duties. They can also carry out professional activities at sessions of the National Assembly, People's Councils, public events, and open court trials, including taking photographs, filming, and recording audio.

The Right to Disseminate Information: The 2012 Law on Publishing provides principles for ensuring the right to disseminate works and protecting copyright. It guarantees the right to disseminate works in the form of publications through publishers and ensures copyright protection and related rights. This law allows state agencies, political organizations, socio-political organizations, and other entities to establish publishing houses and permits publishers to collaborate with authors, copyright holders, and individuals with business licenses in printing or distributing publications. The 2012 Law on Legal Dissemination and Education regulates the content and methods of disseminating and educating the law by competent authorities, organizations, and individuals.

Thus, although there has been no official definition or explanation of the scope of the "right to information" or "right to access information", existing Vietnamese laws before the 2016 Law on Access to Information recognized and aligned this right with international conventions and treaties on freedom of expression and speech, as well as the access-to-information laws of other countries. However, in specific domains, the scope of the right to access information does not fully encompass all the elements analyzed above.

3.2. REGULATIONS ON ACCESS TO INFORMATION AND USE OF INFORMATION IN ARCHIVAL DOCUMENTS DURING THE FIRST 20 YEARS OF VIETNAM'S RENOVATION (1986–2016)

In 1986, at the 6th National Congress (December 1986), the Communist Party of Vietnam initiated the renovation of the country. The highest legal document concretizing the renovation policy was the 1992 Constitution. The right to access information was first recognized in Article 69 of the 1992 Constitution as the "right to information" and later renamed the "right to access information" in the 2013 Constitution. From a legal perspective, the concept of the "right to access information" is used to express a fundamental right that all people in all nations are entitled to, either

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directly or indirectly. This right entails the ability to know state-provided information to meet personal needs and protect or exercise other rights recognized by law.

Under Vietnamese law, “archival documents” are materials formed during the activities of agencies, organizations, individuals, families, and communities across various political and social regimes. These materials are preserved under the provisions of archival law and other related legal frameworks (National Assembly, 2014). The right to access and use information in archival documents is considered part of the right to access information as prescribed by the Vietnamese state. This right enables citizensand broadly forms the basis for human rights to use archival materials by reading, viewing, listening, recording, copying, or photographing the information contained in state-held or state-created archival documents, subject to conditions. Exceptions apply to certain types of information that are not permitted for access.

During the early period of renovation, the highest legal document on archives in Vietnam was the 1982 Ordinance on the Protection of National Archival Materials, which continued to be implemented. This ordinance provided basic and progressive regulations on the use of archival documents, declaring: “Party and State agencies, social organizations, and people’s armed units may use national archival documents to meet their work and scientific research needs. Vietnamese citizens may use national archival documents for legitimate purposes as prescribed by the Council of Ministers” (State Council, 1982).

Subsequent legal documents on archives, in line with the spirit of the “right to information” under the 1992 Constitution, include the 2001 Ordinance on National Archives and the 2011 Law on Archives.

The 2001 Ordinance on National Archives, issued by the Standing Committee of the National Assembly the standing body of the National Assembly of Vietnam—functioned as a law (the highest legal document in a sector or field in the absence of a formal law). Although the Ordinance did not directly address the right to access and use information in archival documents, it affirmed several key aspects of this right: (1) It stipulated that information in archival documents stored at historical archives (specialized archival agencies) managed by the state and preserved permanently for historical value is made widely accessible for research purposes, except for documents classified as state secrets or rare and precious materials. (2) The head of the historical archive is required to notify and introduce archival catalogs to facilitate access and use. (3) For archival documents held by agencies and organizations, the law delegates

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the authority to allow access and use to the head of the respective agency or organization. For documents stored at the National Archive Center, the head of the National Archive Center grants access and use. (4) Access to and use of national archival documents by foreign organizations and individuals is subject to legal provisions (Standing Committee of the National Assembly, 2011).

In 2011, the National Assembly of the Socialist Republic of Vietnam enacted the Law on Archives, building upon the 2001 Ordinance on National Archives. While the terminology “right to access information” and “use of information in archival documents” was not explicitly mentioned, the law introduced several progressive provisions:

Firstly, agencies, organizations, and individuals have the right to use archival documents for work, scientific research, historical studies, and other legitimate purposes. Compared to the 2001 Ordinance, which limited access to archival documents managed by historical archives, this provision extended access to documents held by all agencies and organizations.

Secondly, archival documents in historical archives are broadly accessible, except for those classified as restricted under the List of Restricted Materials or bearing secrecy stamps. Compared to the 2001 Ordinance, this provision broadened the types of archival documents available for use. It allowed for documents classified as restricted or bearing secrecy stamps to become accessible after a certain period (40 to 60 years).

Thirdly, agencies and organizations managing archival documents are required to proactively introduce their archival materials and facilitate access, including annually reviewing and announcing the declassification of documents bearing secrecy stamps.

Fourthly, the law introduced diverse forms of archival use, including reading at the agency or historical archive reading rooms, publishing archival materials, introducing materials through mass media and websites, exhibitions, citing archival materials in research works, and issuing certified copies of archival documents (National Assembly, 2011).

Thus, during the first 20 years of renovation in Vietnam, legal provisions on the right to access and use information in archival documents made notable progress. These developments were reflected in several key aspects: the regulations were developed into the 2011 Law on Archives, the highest legal document in the archival

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field. The content of the regulations expanded the right to use archival materials from historical archives to include materials in the archives of agencies and organizations. The scope of users was broadened to include not only Vietnamese citizens but also foreign organizations and individuals. Restrictions on state secrets and rare and precious archival materials were redefined to apply only to specific categories, with the provision that these materials could become accessible after a specified period (40 to 60 years). The lists of these restricted materials must be proactively disclosed and introduced by archival agencies. Furthermore, diverse forms of archival access were introduced, creating favorable conditions for agencies, organizations, and individuals to access and use information in archival documents (Tham, 2012).

3.3. REGULATIONS ON THE RIGHT TO ACCESS INFORMATION AND USE INFORMATION IN ARCHIVAL DOCUMENTS ACCORDING TO THE PROVISIONS OF THE LAW ON INFORMATION ACCESS 2016 AND THE LAW ON ARCHIVES 2024

The establishment of the Law on Information Access in 2016 aims to institutionalize the guidelines and policies of the Communist Party of Vietnam regarding “expanding democracy, ensuring citizens' rights, and human rights”, “creating mechanisms for the people to fully exercise their rights of ownership, especially direct democracy”, and “ensuring the right to information” of citizens. It specifically embodies the spirit and content of the 2013 Constitution concerning the recognition, respect, protection, and guarantee of citizens' right to access information and ensures consistency and synchronization with other relevant laws.

In this law, the concept of “Information is the data contained in documents, files, and available materials, existing in written form, printed form, electronic form, pictures, photographs, drawings, tapes, discs, video recordings, audio recordings, or other forms created by state agencies”; “Information created by state agencies is data generated during the process of state agencies performing their functions, tasks, and powers according to the provisions of law, signed, stamped, or confirmed in writing by the authorized persons of that state agency”; “Accessing information is the act of reading, viewing, listening, recording, copying, or photographing information”; “Providing information includes state agencies publicly disclosing information and providing information at the request of citizens”. Thus, overall, the Law on Information

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Access in 2016 encompasses the access to information and the use of information in archival documents, more specifically, the archival documents in agencies and organizations in general, and the archival documents directly managed by state archival agencies in particular.

Apart from general provisions and implementation clauses, the Law focuses on regulating the following fundamental contents:

Firstly, public disclosure of information, including provisions on the types of information that must be publicly disclosed, the forms and timing of public disclosure, public disclosure of information on electronic information portals, electronic information pages, mass media, publication in the Official Gazette, posting and handling inaccurate information.

Secondly, providing information upon request, including provisions on the types of information that can be provided upon request; the forms of requesting information; the forms of providing information upon request; receiving requests for information, resolving requests for information, and refusing requests for information; the procedures and processes for providing information directly at the headquarters of the information provider, the procedures for providing information through electronic networks, and the procedures for providing information via postal services, fax, and handling inaccurate information provided upon request.

Thirdly, the responsibility to ensure the exercise of citizens' right to access information, including provisions on measures to ensure the exercise of citizens' right to access information; the responsibilities of information-providing agencies in ensuring the exercise of the right to access information; and the responsibilities of the Government, ministries, and People's Committees at all levels in ensuring the exercise of citizens' right to access information.

The Law on Information Access in 2016 stipulates that state agencies are responsible for providing information according to the provisions of the law; they are required to retain records and documents that have been included in the catalog and must classify them in a manner that facilitates the exercise of citizens' right to access information; ensure that information can be stored electronically, must be digitized within a suitable timeframe, and made accessible to everyone; at the same time, they must connect to the national electronic network to allow easy access from various systems. Regulations on the responsibility to ensure the exercise of the right to access information are reinforced by strengthening the work of document management,

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archiving, and statistics; equipping technical means, information technology, and other necessary conditions so that requesters can directly read, view, listen to, record, copy, and photograph documents at the headquarters of state agencies and through electronic networks (National Assembly, 2016).

Thus, the Law on Information Access in 2016 is the highest legal document that specifies in detail the access to information. It contains fundamental concepts and terms that have been explained and have a unified meaning regarding the term information, access to information created or managed by state agencies, serving as a legal basis, encompassing and being a premise for the right to access information and use information in archival documents.

Building on the foundational principles of the 2013 Constitution, the Law on Archives of 2011, and the Law on Information Access of 2016, the National Assembly of the Socialist Republic of Vietnam has passed the Law on Archives of 2024, replacing the Law on Archives of 2011. The Law on Archives of 2024 officially takes effect from July 1, 2025.

Based on the 2013 Constitution and the Law on Information Access of 2016, the Law on Archives of 2024 officially uses the term “Access to information in archival documents” and stipulates the rights and obligations of agencies, organizations, and individuals regarding access to and use of information in archival documents. The use of archival documents is one of the particularly important aspects of archival work that the law affirms and emphasizes to ensure the right of agencies, organizations, and individuals to access information. The specific provisions regarding the right to access and use information in the Law on Archives of 2024 include the following basic contents:

Firstly, the law stipulates that agencies, organizations, and individuals have the right to access information in archival documents accurately, fully, timely, and following the law; they may use information in archival documents for work, scientific research, historical purposes, and other legitimate needs. In this regard, there is progress in that the law not only continues to affirm the rights of agencies, organizations, and individuals to access information in archival documents but also emphasizes the right to use accurate, complete, and timely information as stipulated by law.

Secondly, access to information in archival documents at the current archives of each agency and organization is implemented according to the legal provisions on

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information access. This is a new regulation that expands the scope of implementing contents such as public information disclosure, providing information, and ensuring citizens' right to access information as stated in the Law on Information Access of 2016 into the practical archival work of agencies and organizations. This can be affirmed as a significant advancement of the Law on Archives of 2024 compared to the Law on Archives of 2011, based on Vietnam's enactment of the Law on Information Access of 2016.

Thirdly, agencies, organizations, and individuals are entitled to access information in archival documents at historical archives as regulated by the Law on Archives of 2024. In particular, the law stipulates the right to access information in archival documents and conditional access if the use of documents may adversely affect national defense, national security, national interests, international relations; social order and safety; social ethics, and public health after receiving opinions from the advisory agency assisting the Minister of the Interior and the provincial people's committee in managing state archives. Additionally, a new provision states that private archival documents currently stored in historical archives may be accessed with the consent of the owner.

Fourthly, the law stipulates that the head of the agency, organization, or historical archive is responsible for publicly disclosing the catalog of archival records and documents; publicly and transparently disclosing the list of conditionally accessible archival documents. Accordingly, the Ministry of the Interior approves the catalog of documents at the State Historical Archive, the Chairperson of the provincial People's Committee approves the catalog of documents at the Provincial Historical Archive; the Minister of National Defense, the Minister of Public Security, and the Minister of Foreign Affairs approve the catalog of conditionally accessible archival documents of the Defense, Police, and Foreign Affairs sectors.

In 2016, Vietnam enacted a Law on Information Access, reflecting development and progress in line with the global trend of many countries having laws on information access. By 2024, the Law on Archives passed by the National Assembly officially introduced the terms “Access to information in archival documents” and “Rights and obligations of agencies, organizations, and individuals regarding access to and use of information in archival documents”. The provisions of this legal document represent a significant advancement in the perspective and organization of the use of archival documents, positioning it as a professional activity within archival work,

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leading to a new development step of “expanding democracy, ensuring citizens' rights, and human rights”, “creating mechanisms for the people to fully exercise their rights of ownership, especially direct democracy”, and “ensuring the right to information” for citizens. It specifically embodies the spirit and content of the 2013 Constitution concerning the recognition, respect, protection, and guarantee of citizens' right to access information, ensuring consistency and synchronization with other relevant laws.

The law regulates the implementation of citizens' right to access information, principles, procedures, and responsibilities of state agencies in ensuring citizens' right to access information. This document serves as a general legal basis for information access, where, along with the provisions of the Law on Archives of 2024, the archival documents in agencies and organizations will be executed based on the legal framework established by the Law on Information Access of 2016.

4. CONCLUSION

The right to access information is a fundamental and universally recognized human right, acknowledged both globally and within Vietnam. In general, this right entails the obligation of state agencies to provide information to citizens through two primary mechanisms: proactive disclosure and disclosure upon request. Since the inception of Vietnam’s national renewal period in 1986, legal provisions governing the right to access and use information in archival documents and their implementation in practice have gradually become more detailed and transparent. This legal evolution has followed an increasingly “open” orientation, aiming to reduce the scope of non-disclosure areas by balancing the state’s administrative requirements with the information needs of domestic and international users. Vietnamese legislation on accessing information in archival documents, while requiring further practical elaboration, has shown notable progress and expansion in several key areas. These include the enhancement of disclosure principles and specific regulations; the codification of obligations for public authorities and archival agencies to publish information; and the encouragement of “Open Government” practices, intended to overcome the longstanding culture of bureaucratic secrecy. Furthermore, efforts have been made to limit the scope of information exemptions by clearly and transparently defining the lists of restricted and confidential materials. Any limitations placed on

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access are intended solely to safeguard the public interest. The law also emphasizes the importance of an effective and functional information access mechanism, including timely, complete, and efficient provision of information, supported by independent oversight and evaluation mechanisms. Vietnam possesses a long and rich historical trajectory, shaped by dynamic cultural and political exchanges with major civilizations such as China, India, France, Western nations, and the United States (Tran, 2021). Its archival holdings represent a vast and invaluable collection, developed over centuries, and containing accurate and comprehensive records of all dimensions of Vietnamese society. These documents constitute a national treasurea vital resource not only for domestic use but also for international scholars, researchers, and stakeholders who seek to study and engage with Vietnam. Accordingly, the development of legal norms regarding access to archival information during the reform period has laid the foundation for maximizing the value of these archival resources. This progress supports both national development goals and the broader, forward-looking needs of the global community.

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